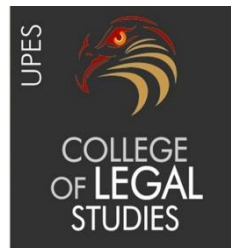


ELECTORAL REFORMS IN INDIA

AKANKSHA KHARE

Submitted under the guidance of: Ms. Kavya Salim

*This dissertation is submitted in partial fulfillment of the degree of
B.B.A., LL.B. (Hons.) in Corporate Laws*



College of Legal Studies
University of Petroleum and Energy Studies
Dehradun
2015

CERTIFICATE

This is to certify that the research work entitled “**Electoral Reforms in India**” is the work done by Akanksha Khare under my guidance and supervision for the partial fulfillment of the requirement of B.B.A., LL.B. (Hons.) at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

This dissertation is fit for submission and evaluation for the above purpose.

Ms. Kavya Salim
Assistant Professor
COLS, UPES

Date:

DECLARATION

I declare that the dissertation titled “**Electoral Reforms in India**” is the outcome of my own work conducted under the supervision of Ms. Kavya Salim, Assistant Professor, at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

I declare that the dissertation comprises only of my original work and due acknowledgement has been made in the text to all other material used.

Akanksha Khare

Date:-

TABLE OF CONTENTS

<u>S.No</u>	<u>NAME OF TOPIC</u>	<u>PAGE NO.</u>
1.)	Abbreviations	6
2.)	Table of Cases	7
3.)	Acknowledgement	10
4.)	CHAPTER I. INTRODUCTION 1.1 Historical Background 1.2 The need for Present Study 1.3 Survey of literature 1.4 Statement of Problem 1.5 Objective of Research 1.6 Hypothesis 1.7 Research Methodology	11
5.)	CHAPTER II. ELECTORAL LAWS IN INDIA 2.1 Legal Framework <ul style="list-style-type: none">▪ Under the Constitution of India▪ Under Representation of people act, 1951 2.2 Corrupt practices 2.3 Recent Trend in Electoral laws <ul style="list-style-type: none">• The Lily Thomas vs union of India• Inclusion Of None Of the Above option (NOTA)• Guidelines on “freebies” by supreme court	21
6.)	CHAPTER III. ELECTION COMMISSION 3.1 Introduction 3.2 Evolution of election Commission 3.3 <i>Ripon’s Resolution</i> 3.4 Composition Of Election Commission 3.5 Election commission- a multi-member body	40

	<p>3.6 T.N. Sheshan vs. Union of India: An Appraisal</p> <p>3.7 Power and Function of the Election Commission</p> <p>3.8 Election Commission- a Tribunal for certain Purposes</p>	
7.)	<p>CHAPTER IV. JUDICIAL ATTITUDED TOWARDS THE CRIMINALIZATION IN ELECTORAL POLITICS: ISSUES ADDRESSED AND UNADDRESSED</p> <p>4.1 Introduction</p> <p>4.2 Instances of Criminalization In Electoral politics</p> <p>4.3 Reasons for Criminalization</p> <p>4.4 Contesting of Candidates with criminal Background</p> <ul style="list-style-type: none"> • Judicial Approach <p>4.5 Recent Instances Of Criminalization</p> <ul style="list-style-type: none"> • Fodder scam • Junior Basic Trained Teacher scam • Disproportionate Assets case of Former Ms. Jayalalithaa 	56
8.)	<p>CHAPTER V ANALYSIS OF THE LAW COMMISSION REPORT ON REFORM NECESSARY IN ELECTORAL POLITICS</p>	67
9.)	<p>CHAPTER VI CONCLUSION SUGGESTIONS/ OBSERVATION</p>	83
10.)	<p>CHAPTER VII REFERENCES/BIBLIOGRAPHY</p>	89

ABBREVIATIONS

1. ECI	.....	Election commission of India
2. STV	.....	Single Transferable Vote
3. PR	.....	Proportional Representation
4. ENPP	.....	Effective number of parliamentary parties
5. UDHR	.....	Universal Declaration of Human Rights
6. ICCPR	.....	International Covenant on Civil and Political Rights
7. ECHR	.....	European Convention for the Protection of Human Rights and Fundamental Freedoms
8. IPC	.....	Indian penal Code.
9. The 1951 Act	.....	The Representation of People Act 1951.
10. I.C.S	.....	Indian Civil Services.
11. CEC	.....	Chief Election Commissioner
12. FEC	.....	Federal Election Commission.
13. PAC	.....	Political Action Committee.
14. FPTP	.....	First-Past-The- Post.
15. NCER	.....	National Campaign for Electoral Reforms.
16. VHP	.....	Vishwa Hindu Parishad
17. RSS	.....	Rashtriya Swayamsewak Sangh.
18. RTI	.....	Right to Information.
19. EVM	.....	Electronic Voting Machine.

TABLE OF CASES

A

A.B. K. Prasad v. State of A.P AIR 1997 AP 357

B

Bhavan Kumar Shastri vs. Mohan Lal Sukhadir AIR 1971 SC 2025; (1971)1SCC

370

C

Charan Lal Sahu v. Giani Zail Singh AIR 1984 SC 309

Chanda Singh v Shiv Varma AIR 1975 SC 403

D

Dev Raj V. Bhagwan Das AIR 1971 SC 241

Devi Prasad v. Maluram AIR 1918 Nag 193

G

Ghasi Ram vs. Dhal Singh AIR 1955 SC 755

H

H.V. Kamath vs. V. Nitraj Singh AIR 1970, SC 211.

Haridwarlilal vs. Kanwal Singh (1972) SCR 742.

I

Indira Gandhi v. Raj Narain 1975 AIR 865

J

Jagannadh Prasad Singh vs Kamalpathi Triparthi 1981 – All. L.J.- 912

Jamal Uddin Ahmad v Abu Saleh Najmuddin AIR 2003 SC 1917

K

Komireddy Ramuloo V. Chennemaneni Vidyasaggar Rao AIR 1990 SC 1352

Kanhiya Lal Omar vs. R.K. Trivedi AIR - 1986 - SC -111.

M

Mohinder Singh Gill and others v. Chief Election Commissioner & AIR 851

Murlidhar Reddy v Pulla Reddy AIR 1964 AP 530

Munichimappa v Basavalingappa 1965 AIR 1269

N

Nani Gopal Swami vs. Abdul Hamid Chowdary 1985 - ELR – 175

N.V.Ponnuswamy v Returning Officer AIR 1952 SC 64

Nawab Khan v. Vishwanath Shastri AIR 1993 All 104

O

Om Prabhu Jain Vs. Avinash Chandra AIR 1968 SCC 1083

P

Pratap Singh vs Jagdev Singh 24 ELR 378(S.C.)

Pritpal Singh v. Ranjit Rai AIR 1984 (Delhi) 198

Peoples Union for Civil Liberties & Another V. Union of India 1997 (1) SCC301

R

Ram Sharan Yadav vs Thakur Muneshwar Nath Singh AIR 1985 SC 24

Ramchandran Kadanappalli v. K. P. Noordeen AIR 1988 Ker.141

Rikhab Das v Ridhichand 9 E.L.R 115

S.

Satyanarayana vs. Dhuja Ram AIR1974SC1185

Surinder Singh v Hardial Singh AIR1985 SC 89

Shivajirao B. Patil Kawekar v Vilasrao D. Deshmukh AIR 2000 SC 341

ACKNOWLEDGEMENT

I wish to express my gratitude towards **College Of Legal Studies, University of Petroleum & Energy Studies** for providing me an opportunity to prepare a dissertation thesis on the topic, **“ELECTORAL REFORMS IN INDIA”**

My sincere thanks to my mentor, Ms Kavya Salim for guiding me and making me understand the core issues related to my topic and also for providing assistance in research work related to my thesis topic.

I would extend my sincere thanks towards the library and IT resources of our university, without which the effective preparation of this work would not have been possible.

Last but not the least, I am thankful for the immense support and encouragement extended by my family and friends.

CHAPTER I

INTRODUCTION

India has become a glorified example to the world as to how a democracy works. The boldest feature of Indian Democracy is to conduct free and fair elections. It has been seen that there is still a lot of scope in realising and achieving the proper functioning of a democracy. The system related to elections requires a proper overhauling as to the criteria of selection of candidates and the ways in which funds are to be accumulated and spent during campaigning for elections. The problems in the Indian electoral system are many but the regular reforms to overcome each of them would pay dividends to the India's democracy. The foremost problem is the lack of honest representation because of poor voter turnout. The major worry is that half the country has no say in the nation's policies since only half of the population votes.

As a matter of fact a dire need for penalising the Indian political System has been felt if any act of crime is committed by them which they usually tend to escape in India. It has been a universally accepted fact agreed to by all the committees. There has been a lot of criminalisation but the most important aspect of it is electing candidates who already have criminal charges against them. Some proportion of citizens claim to have lost faith in the political parties and their candidates and it is no surprise that the people doubt the integrity of candidates. Criminalisation, muscle power, money power has completely destroyed the Indian politics. Unfortunately, the possibility of making money, serves as a strong pull for people to join politics¹.

In this paper, the author will also deal with the standing of political parties in the electoral system.

Over the years many significant reforms have been brought in by the judiciary and the election commission to make the electoral system healthy. The introduction of the Electronic Voting Machines (EVM) to reduce the human error and tampering. On 10th July 2013, the Supreme Court has struck off section 8(4) of the Representation of the People Act (RPA) as unconstitutional. Now, an MP or a legislator stands disqualified immediately if convicted by a court for crimes with punishment of two years or more². The judiciary also gave the None

¹ The Hindu centre of politics and Public Polity, "Crimilization of Politics" available at: <http://www.thehinducentre.com/verdict/get-the-fact/article5962667.ece> (accessed on 16th November, 2014)

² Section 8(4), which existed previously, was struck down by the Supreme Court in Lily Thomas v. Union of India, (2013) 7 SCC 653.

of the Above (NOTA)³ option, so that the people can be involved in the electoral process even though they don't want to vote for any candidate⁴.

1.1 Historical Backdrop

The Constitution of India has its own Preamble which declares India as a Democratic Republic. The election is the most important feature of the democracy. The election consist of the heart and soul of the constitution. Free and fair elections at regular intervals shows the health of the democracy of any country. Election are the medium through which attitude, values and beliefs of the people towards their political environment are reflected. Elections grant people a government and that government governs the people who forms it. Election provide opportunity to the people to show their faith in the government and change it as and when need arises. Only free and fair election to the various legislative bodies in the country can guarantee the growth of the democratic polity. It is the cherished privilege of the citizen of India to participate in the electoral process which places persons in the seat of power. Election can be considered as a tool in which the citizens of the modern state are provided with the right to be involved in public affairs⁵.

People have the right and due duty to properly shape the form of the democracy. The people elect a new government after years through electoral process and thereby express their will on important matters through the press or other means. The Election is the process through which sense of responsibility is created among citizens to choose the form of government they like. India follows the democratic set up of government and in democratic set up there are two variants i.e the direct democracy and indirect democracy. In direct democracy, the people of the country chooses their representative through election. In the indirect democracy the people of the country directly do not elect the representatives⁶. To take out the choice of people elections are conducted. To understand the "will of the people" the elections should be held in sort span of times to allow the people to at least show their opinion. Elections when seen in this context appears to be the method of finding persons who possess this representative quality⁷. Representatives may be chosen in different methods. India is a constitutional democracy with a parliamentary system of government, and at the core of the

³ Supreme court Judgement on None of the above Option, Press Information Bureau, Government of India available at; <http://pib.nic.in/newsite/erelease.aspx?relid=100291> (accessed on 15th November 2014)

⁴ NOTA, small matter available at; <http://www.thehindu.com/opinion/lead/nota-small-matter-this/article5214816.ece>, (Last visited on 15th November 2014)

⁵ Hearnshaw: Democracy of the Crossways, from R.C. Agarwal, Principles of Political Science (1982) pp.17, 22

⁶ R.C. Agarwal, Principles of Political Science, (1982) 296.

⁷ Carl. J. Friedrich, Constitutional, Government and Democracy, IV Ed. (1974) 279.

system is a commitment to hold regular, free and fair elections. These elections define 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. The election plays a very important role in the implementation of what is enshrined in the constitution of the country. The electoral process of the country is the process which should not be manipulated and unfair. Citizens of the country bestow their trust in the process and vote for their candidate. The elections should be based on the principle of secularism as enshrined in the constitution of the country.

Representation is the basic principle of modern government. The basic notion of this representation is making somebody a head, then who can represent later on. Election where public directly choose people who they want to see as leaders is the right methods in the current scenario⁸. Therefore, it is very important to elect representative through elections, where people can cast their votes to elect the leader. If there is no elections, then it is not possible to elect the leaders. John Stuart Mill, the supporter of women's right to vote. According to him,

“Democracy gives all the rights equally to everyone. This equality can be seen and achieved everyone has the right to vote in an election. Laws and policies of the government should be made keeping in mind everyone⁹”

The people of the country elect representatives during elections. It may also be refer to the specific approval of voter in electing a particular person or set of persons to represent them. By that act, these persons acquire representative quality. Through representation, People can rule among themselves. Without this it is impossible to elect representatives in a democratic state. This may be well defined by John Stuart Mill as:

“Democracy postulates the equalities of men, a political equality can be assumed only when all citizens are granted the right to vote. Laws and policies of the government concern all people and what touch at all, should be decided by all¹⁰”

Who should be given the right to vote is a debatable question. In this regard people have different opinions. According to Montesquieu, “All citizens ought to have right at the election

⁸ Carl. J. Friedrich “The Problem of Representation” Constitutional Government and Democracy” IV Ed. (1974) 270

⁹ Ibid.

¹⁰ “Adult Franchise”, Principles of Political Science, R. C. Agarwal (1982) 392.

of representatives except such those who are deemed to have no will of their own. According to Rousseau, “every adult should have the right to exercise franchise”. Duguit is of the opinion that Rousseau’s doctrine led not only to universal suffrage but to equality of suffrage¹¹.

J.S.Mill, the most powerful advocate of woman suffrage said, “I consider it entirely difference, women require it more than men, since being physically weak, they are more dependent on law and society for protection”¹².

All the above lead to the introduction of adult suffrage. It’s a great problem that whom should be given the right to vote. People are of the view that adult should be given right to franchise, because the source of sovereignty is people. It gives representation to minorities. It differentiates citizens from alien. It even brings vigilance in society, renders political education and brings about national unity. As such, the government enjoys the confidence of the people. In democracy political parties play a vital role because during the elections they create consciousness among the voters. Normally after the declaration of election results, the majority party forms the government and if no party gains majority two or more parties form a coalition government. The parties who do not win and join the government acts as the opposition. The opposition parties also serve the country through check on functioning of ruling party if it exceeds its power and prevents from becoming autocratic. There are different types of party systems like single, bi-party and multiparty system. Multiparty system exists where there are more than two political parties. It is observed in India, France, Italy and Germany. Bi-party system itself shows that there will be two major political parties in the country, and it is observed in Britain, United States etc. Communist countries have single party system¹³

In practice, bi-party and multiple party systems are necessary for the protection of democracy. The concept of democracy is not new in India, as the concept of self-government lies embedded in our past history. This common form of democracy is generally represented by every person enjoying the right to vote. To achieve the ends by peaceful means the democratic way of working is the right means. It transforms the pressures which other forms of government may use over individuals. It is a self-discipline for all particularly for the

¹¹ Montesquieu, *Esprit Deslois*, bk.XV, Ch.6, Principles of Political Science (1982)

¹² Ibid.

¹³ “Adult Franchise”, Principles of Political Science, R. C. Agarwal (1982) 392.

minority because it is better to accept it rather than to have a conflict. As an alternative they can try to change power by peaceful methods¹⁴

Prior to Indian Independence and the implementation of constitutional provisions as prepared by the Constituent Assembly, the country was under the control of the feudal Lords, the Rajas and Nawabs. There was restricted franchise and denial of political rights to the illiterate or the weaker sex or sections or racial and other minorities in the country. Individual liberty enjoyed by the people in democracy gives opportunity for the growth of each individual. This is indicative of democratic values conferred under the Indian Constitution¹⁵. Here it is necessary to quote Gandhi, in his autobiography, "My Experiments with Truth" that "To safeguard democracy, the people must have a keen sense of independence, self-respect and oneness and should insist on choosing as their representatives only such persons as are good and true¹⁶".

Parliamentary democracy as envisaged in the Constitution of India is enjoined through a parliamentary Government which is of the British kind which means that parliament is not an executive body. It is a deliberative body overseeing and overriding the activities of the Government which is subordinate to it i.e., the Lok Sabha is chosen regularly after every five years directly by the people on the basis of electoral franchise. It implies and includes a permanent civil service which is neutral in its conduct and demeanour to the government of the day and runs on a party system, independence of judiciary, and free and fair elections, among other things. All these features of British parliamentary democracy have been uniformly incorporated in the various provisions of the constitution of India.

The constitution establishes the Election Commission¹⁷ to ensure free fair and impartial elections a body of autonomous character and free from political or executive influence. The Commission is an all India body having jurisdiction over elections to Parliament, State Legislatures, offices of the president and Vice-President. In order to prevent prejudices being done to any section of the people, it was thought best to have one central body which would be free from local influence and have control over the entire election machinery in the

¹⁴ R.K. Bhargava, Concept of Democracy, (1980) 1

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Refer Article 324 of the Constitution of India

country. The Election Commission plays a pivotal role in the electoral mechanism of the Country¹⁸.

In India, people mostly uneducated, get influenced by slogans and sentimental speeches of the candidates and the political parties. The nepotistic consideration plays major part in the selection or election of candidates. The voters feel so much disenchanted with their elected representatives that many of them are carried away by the swift moving current out of the support they extend to the deserving candidates. So, there is less possibility for misled by any sort of temptation or consideration.

But if we observe out country people have less experience about democracy. In fact, the vote is the national trust which has to be exercised to improve higher Interests of the country. Though the Indian Constitution proceeds for the Universal suffrage, yet no proper steps have been taken to educate the voter to realize the value of the vote. This is in anyway a failing that the voters are being misguided by persons and parties having vested interest. Sometimes the elections and the means adopted by these candidates kindles the progress because it obscures fundamental changes in social customs and habits and the common interests of the people. In the words of Dr. S. RadhaKrishnan:

“A Government is not democratic simply because it is voted into power by the majority. It is not democratic where it is required to vote only for one party. The test is whether it gives democratic rights to its subjects, if it allows freedom of thought, speech and association to its opponents. If a party brooks no rivals outside it and no dissensions within it, even if it is voted by electorate, it is undemocratic¹⁹”.

In the matter of electoral reforms, a parliamentarian has to go beyond electoral reforms and deal with the malady in the country. Otherwise the situation will become worse. And there will be breakdown of law and order resulting in the breakdown of economic system and we will touch point of no return. Time is ripe to develop a new political culture. Any foreign electoral or political system cannot be adopted wholly or completely to the Indian situation. Some modifications will certainly be needed for adopting and better adapting²⁰.

Indian Scenario- First Election In India

¹⁸ Dr. Ambedkar's Speech VIII CAD 905-7, "Elections", Indian Constitutional Law - N. P. Jain IV Edn., (1994).

¹⁹ R. K. Bhardwaj, Evolution of Democracy in India, Democracy in India (1980) 32

²⁰ A.N.L. Dasan Nadar "Seminar Proceedings on electoral Reforms in India" JOL Constitutional and Parliamentary Studies Vol.XVIII (Jan – June 1984) 153,

India being the largest democracy of the world is very distinctive because of its varied heritage. India is a vast country with humungous population, tribes, caste, and religion. There are huge sections of the country which are illiterate or low in literacy rate. Election is a device which a modern state creates amongst its citizens a sense of involvement towards the public affairs. So, in election every person of the country is involved and keeping every citizen on equal platform is big challenge in country like India. In India, where voter turnout is very low because of the lack of knowledge among citizens among various classes of the country. Elections in India is considered as the largest electoral exercise in the world, as the whole world takes a keen interest in elections in India. In India, the democracy took the huge step in organising first general election in India in the year 1951-52. These election last for a period of over four months. These elections at the first place were the biggest experiment in democracy anywhere in the world. The election held on the basis of universal adult franchise, where people who were above twenty-one years of age had the right to vote. At that point of time there were over 173 million voters, most of them were poor and illiterate and they had no idea about the elections, So , it was a big challenge before the election organising authorities. There were many opinions regarding the first election that happened in the country. Some said that democratic elections were not suited to a caste-ridden, multi-religious, illiterate and backward society like India's. People described these elections as 'a leap in the dark' and by others as 'fantastic' and as 'act of faith'²¹.

The elections were conducted according to the rules and procedures as enshrined in the constitution. The constitution of India provides for Election commission for conducting the elections in the country. The commission is to be headed by chief election commissioner, to conduct elections. It was to be independent of the executive or the parliament or the party in power.

1.2Need For The Present Study

Election is the main facet of the democracy. A sound electoral system is therefore, the basic principle of genuine representative government. If there exists suspicion over the verdict of the ballot box, it may vitiate the faith of the public in the democratic process and may tend to bring it into disrepute. Aware of the importance of electoral administration to a democratic systems, Pollock observed, "Unless public elections are conducted with accuracy and efficiency, not only the public services are discredited but the whole democratic system is

²¹ Bhalla "Election Mechanism" Elections in India 1, (1973).

endangered. The process for election should be free and fair and it should not come under the influence of any party of people. But with time, the electoral process is losing its sanity. Despite the noble intention of the founding fathers of constitution, elections in India are no longer a true measure of people's power on a genuine expression of their choice. The money power, criminalization and mafia power is easily seen and witnessed during electoral procedures²². India being the largest country should act as a guiding light for other democracies of the world. India is the country of diversity but despite that there has been a visible unity running throughout the whole country. Under the democratic system of government, people get opportunity once in every five years to elect representatives who are accountable to them. The Indian constitution is liberal enough to leave the scope for any kind of criticisms. In any case, if the work done during this period is unsatisfactory and the policy framed turns out to be strong or its implementation defective, it is open to the people to change the government and choose some other party. The Parliamentary democracy can be more attractive if the people are more literate and aware and participate in the making of the government. Free and fair elections, freedom of thought, expression and press and independence of judiciary are the three pillars on which the structure of democracy stands. If the elections are not fair and free the other two pillars, freedom of thought, expression and press and independence of judiciary, can be fixed through constitutional means. The question of fair and free elections is much wider and is of greater importance than the question of clean elections. Use of money and liquor, arousing of caste and communal sentiments to secure group votes can and do affect the election results and constitute electoral malpractices.

This dissertation will critically examine the provisions of the Electoral laws and also appreciates the reforms taken up the legislature, judiciary and the Election Commission in this regard.

1.3 Literature Review

The author in her present research for a comprehensive analysis of the issues involved so as to give holistic perspective to the research has referred to the following sources comprising of reference papers, articles, policy guidelines, newspaper articles, books which have been enlisted as below:

- Milan Vaishnav, 'The Market for Criminality: Money, Muscles and Elections in India' (2010).

²² O. P. Khanna "Another Shameful episode" Competition Master, Aug, 1992.

- Sankaran.T.S. “Electoral Reforms: A farce and an opportunity” Economic and Political weekly (July, 1994)
- Bhagat, Anjana Kaw, Elections and Electoral Reforms in India, New Delhi, Vikas Publishing House Private Limited
- Agarwal, R.C. “Principles of Political Science” (1982)
- Bhalla R. P, “Election in India”

1.4 Statement of problem

To study the electoral system of the country and the various reforms which are required to overcome these problems.

1.5 Objective of Research

- To study the history of elections in India
- To study the issues and challenges before the Election commission.
- To study about the reforms which are required in the political and electoral process.
- To study the anti-defection laws in the country.

1.6 Hypothesis

The electoral system of the country is not healthy because of criminalization of the politics. Money-power, muscle-power, corrupt practices and unfair means are being freely used to win the elections.

1.7 Research Methodology

The method taken up for this research is Doctrinal method. The approach adopted for this study is descriptive, analytical and critical.

CHAPTER-II

LAWS GOVERNING ELECTIONS IN INDIA

2.1 Legal framework

The laws which govern the elections in India are basically a part of Indian Constitution, Representation of Peoples Act and provisions of the Indian penal code and certain other specific laws of the country. Most of these are post constitution enactments. The constitution of India embodies ground principles of electoral laws to be followed in India. It has to pass the golden test of Art. 14, Art.19 and Art.21 in order to be held constitutionally valid. Representation of Peoples Act deals with the qualification, disqualification, eligibility of the electoral candidates, conduct to be followed during elections and corrupt practices undertaken by the electoral candidates. The Indian Penal Code relates to the criminal charges ought to be imposed on the electoral candidates for certain acts involving moral turpitude.

The constitution of India establishes the Election commission, in order to ensure free, fair and impartial elections. It is an independent body set up as a regulatory authority in the elections. It is a permanent body having jurisdiction over every kind of election in the country²³. Part XV of the Constitution deals with elections. It contains six articles viz., articles 324 to 329. Article 324 states that the organisation of all election in India is in the hands of Election commission. Article 325 states that there shall be only one electoral roll for national, state, and no person can included in that on the base of any race, caste or creed. The Article 326 provides that every citizen of the country is eligible to be included in that roll, if he or she has completed the 18 years of age and are not disqualifies from any other law of the country. The Article 327 states that the Parliament can provide law which is related to the preparation of

²³ Article 324(1) of the Constitution of India.

electoral rolls, delimitation of constituencies and any other matter securing the due consideration of the house. This power can be enjoyed by parliament from time to time subject to the provisions of the constitutions. Article 328 gives the similar power to the legislature.

Article 329 creates a bar to interference by courts, on which parliament cannot make law in electoral matters. Clause (a) declares that the validity of any law relating to the delimitation of the constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 327 or 328 shall not be called in question in any court. Clause (b) declares that no election to either House of Parliament or to the House or either House of Legislature of a State shall be called in question except by an election petition presented to prescribed authority and in the prescribed manner. Pursuant to article 325 to 327, Parliament has enacted the Representation of the People Act, 1950 and Representation of the People Act, 1951 (besides certain other minor enactments and orders) which cover the entire gamut of elections to Parliament and State Legislatures.

The role, power and function of the election commission is dealt in detail by the author in next chapter.

2.1.2 The Representation of peoples Act, 1951

The Representation of people's act, 1951 is the act which covers the entire gamut of elections to parliament and state legislatures. The constitution of India allows Parliament to make laws in all matters relating to elections in Parliament and state legislatures. In exercise of this power, the parliament has enacted the RPA, act 1951. The said act is very important for elections in India as it provides for all the details relating to elections in India. The act talks about the qualification of voters, preparation of electoral rolls, delimitation of constituencies and allocation of seats in parliament and state legislature. This is an act enacted by the Indian provincial parliament before first general elections. The People's Representation act provides for the actual conduct of elections in India. The act also deals with details like qualification and disqualification of members of both houses of Parliament (i.e. Loksabha and Rajya Sabha) and the state legislatures (i.e. State Legislative Assembly and State Legislative Council). The act is of special significance to the smooth functioning of Indian democracy, as it checks the entry of persons with criminal background into the representative bodies. The act has been amended several times, the major amendment being made in 1996.

2.2 Corrupt Practices²⁴

The section 123 of the act provides for corrupt practices. They are:-

- 1. Bribery;*
- 2. Undue influence;*
- 3. Appeal by a candidate or his agent or by any other person with the consent of the candidate or his election agent to vote or refrain from voting on the ground of his religion, race, caste, community or language etc.;*
- 4. Promotion of or attempt to promote feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community or language.*
- 5. Propagation, commission or glorification of the practice of sati; Publication by a candidate or his agent, etc., of any statement of fact which is false or defamatory;*
- 6. Hiring or procuring of vehicles or vessel for the free conveyance of voters;*
- 7. Incurring or authorizing of expenditure in contravention of Section 77 i.e. in excess of the amounts prescribed;*
- 8. Obtaining or procuring any assistance from any person in the service of the Government;*
- 9. Booth capturing by a candidate or his agent or other person*²⁵

Bribery²⁶

Definition of Bribery as a corrupt practice is as under:

²⁴ Ref Representation of the Peoples act,1951

²⁵ Bhagat, Anjana Kaw, Elections and Electoral Reforms in India, New Delhi, Vikas Publishing House Private Limited, pp.163-165.

²⁶ Ref Representation of Peoples act, 1951.

(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 as, 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 votes 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

b) By any person for whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting or any candidate to withdraw or not to withdraw his candidature²⁷

The act of bribery is to pay money to get your work done. In politics it is used for the alteration of votes by candidates. It is kind of a bargain done by the candidates. *Dev.Raj Vs.Bhagwan Das*²⁸, reference was made in this case to earlier judgments of the Supreme Court on the point *Om Prabhu Jain Vs. Avinash Chandra*²⁹; *Ghasi Ram vs.Dhal Singh*³⁰., There is also a good discussion of the element of “bargain” in *Bhavan Kumar Shastri vs.Mohan Lal Sukhadir*³¹, and in *H.V. Kamath vs. V. Nitraj Singh*³².

The Supreme Court in one of its judgement in 1994 discussed about the object of gift, offer and gratification. The court said the object is to purchase votes of the voters by the

²⁷ The Representation of Peoples act, 1951 available at <http://lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act,%201951.pdf>

²⁸ AIR 1971 SC 241

²⁹ AIR 1968 SCC 1083

³⁰ AIR 1955 SC 755

³¹ AIR 1971 SC 2025; (1971)1SCC 370

³² AIR 1970, SC 211

candidates. The offer is made to the voters to give their vote in favour of the candidate. A connection between the gift, offer and gratification needs to be established. This can be established even by circumstantial. The act of purchasing votes of the voters by way of bribe is bad in law and is considered as a corrupt practice under the RPA act, 1951. However, S. 123(A) does not ask the electors to express or convey their approval of assurance that they shall vote for such candidate. The election petitioner is not duty bound to prove any direct negotiation between the candidate or his agent on the one hand and the electors on the other. If an election petitioner is asked to prove that the gift, offer or promise of gratification was accepted by the electors by assuring to vote in favour of such a candidate, the provisions of S. 123(1) (A) (b) shall become infructuous and shall have to be understood as a pious wish of the framers of the Act to eliminate the role of 'bribery' in elections.

Undue Influence:

Clause (2) of Section 123 of the RP Act, 1951 states undue influence as a corrupt practice. It talks about any interference by the candidate or his agent or any kind of pressure created by the candidate on the voters to vote in his favour in the election. *Any person, as referred to above, who reprimand any candidate or electors or any person in whom a candidate or an elector is interested, with injury of any kind, including social ostracism, ex-communication or expulsion from any caste or community or induces or attempts to induce a candidate or an elector to believe that he will end up being an object of divine displeasure and spiritual censure, shall be deemed to interfere with the free exercise of the electoral will and will be guilty of undue influence*³³ (Section 123(2) Proviso (a), Act, 1953) A declaration of any public policy or the usage of any legal right by the candidate does not amount to undue influence. It is something where pressure is being put or some kind of interference to get vote in their favour. If the candidate do any kind of religious appeal, then it must be proved by the petitioner that non-compliance would be sinful and unreligious. This kind of appeal is done by people who has standing in the society or from gurus of any particular religion.³⁴

In a case before the Supreme Court, *"the candidate disclosed that certain leaflets and posters were circulated (during election), to the effect that one of the candidates had withdrawn and that any vote given to the candidate who withdrew would be considered as a vote given to the returned candidate would be considered as a vote given to the withdrawing candidate. The*

³³ Refer section 123(2) Of The Representation of peoples act, 1951.

³⁴ Sardul Singh Canveeshar v. Hukam Singh, 6 Election Law Reporter 316, in Jain, Kiran and Jain P.C., Chawla's Elections, Law and practice, New Delhi, bahri Brothers, 1998, p.1.460.

*statement was circulated at the instance of the returned candidate. The court held that the candidate was guilty of corrupt practice. Further, having regard to the fact that the margin of votes between the defeated and the returned candidate was very small (only 123), there was a strong presumption that the votes polled in favour of the candidate who had been alleged to have withdrawn would have gone to the defeated candidate. In the circumstances, the election was set aside, its result having been materially affected by a corrupt practice*³⁵ „³⁶

In another case the Supreme Court refused to believe the story that a police officer of senior rank favoured and showed biasness with the opposite party (successful candidate), where the petitioner (defeated candidate) was a sitting member belonging to the ruling party which was in power in the state at the time of the election petition³⁷

An allegation that the returned candidate and his agents did not allow the other contestant and his followers to do any effective canvassing out of fear of life, is an allegation of undue influence. Similarly, an allegation that the other candidate was carrying on false propaganda about divine displeasure, if anybody voted for opposite candidate, is an allegation of undue influence³⁸.

In case presented to the Supreme Court, disturbance had taken place at the police Station and the police had to resort to control the disturbances. The defeated candidate (the petitioner) took the plea that the police were in league with the successful candidate fired. The High Court accepted this fact but the Supreme Court did not accept the story. The fact that only two persons were injured and they both belonged to the defeated candidates group, showed that the police fired on the aggressors³⁹.

The Supreme Court in one case refused to accept the story that a conspiracy for creating violence at the particular polling station was suddenly and so openly hatched up in the election office of the successful candidate and in the presence of so many persons as alleged by the petitioner⁴⁰.

A poster contained a statement that a vote cast for the Akali Party Candidate was a vote in favour of the Guru and asked the Sikhs to get the blessing by the Guru by supporting the

³⁵ Ref section 123 of the Representations of peoples act, 1951.

³⁶ Avtar Singh v. Tej Singh, All India Reporter 1984 SC 619.

³⁷ M. Narayana Rao, V. Venkata Reddy, AIR 1977 SC 208, (1977), 1 SSC 771 (1977) 1 SCR 490, in Jain, Kiran and Jain P.C. Chawla's Elections: Law and Practice, New Delhi, Bahri Brothers, 1998, p.1.322, 1`460, 1.461

³⁸ Jagannath Prasad Singh v. Kamlapati Tripathi 1981 All India Law Journal 912.

³⁹ M. Narayana Rao v. Venkata Reddy op. cit

⁴⁰ Ibid.

Akali Party candidate. It was held that it did not amount to undue influence, but was a systematic appeal to voters to vote for a particular candidate on the ground of religion, and, as such, was corrupt practice under Section 123(3)⁴¹.

In the case of *Ram Sharan Yadav vs Thakur Muneshwar Nath Singh*⁴², The allegations against him were that through his supporters and his agents duly informed tried to obstruct the electoral process by putting voters in serious fear. The instances of firing, adducing and threatening was shown to support the claim. The Supreme court came out with following guidelines in this case. They are-

- (i) *the nature, character, respectability and credibility of the evidence;*
- (ii) *the surrounding circumstances and the improbabilities appearing in the case;*
- (iii) *the slowness of the appellate court to disturb a finding of fact arrived at by the trial judge who had the initial advantage of observing the behaviour, character and demeanour of the witness appearing before it; and*
- (iv) *The totality of the effect of the entire evidence which leaves a lasting impression in regarding the corrupt alleged. In view of these considerations, the High Court was held on be justified in concluding that all the circumstances taken together led to the irresistible inference that the voters were pressurized, threatened or assaulted at the instance of either the candidate or the supporters with his consent or that of his agent. And all such acts amounted to undue influence exercised by the appellant sufficient to vitiate his election. Besides, in the opinion of the court, it was not a case where two views were possible so that the appellant could be the given benefit of doubt. Disturbing an election meeting, in absence of any threat to the free exercise of electoral right, would not amount to undue influence, but would be an electoral offence under Section 127⁴³.*

When the supporters of the candidates or his agents put a double mark on the ballot papers of the candidate and if they gets wasted then the candidate is defeated and this practice amounts to be bad and they were guilty of commission of corrupt practice of undue influence as defined in Sub-section (2) of S.123⁴⁴.

⁴¹ Fakir Chand v. Pritam Singh, 7 Election Law Reporter 119 in Jain Kiran and Jain P.C., Chawla's elections: Law and Practice, New Delhi, Bahri Brothers, 1998, p.1.461

⁴² AIR 1985 SC 24

⁴³ Surinder Singh v. Hardilal Singh, All India Radio Reporter 1985 SC 89.

⁴⁴ Amar Singh v. Dharamvir, All India Reporter 1990 NOC 172 (P & H).

Whether an Undue influence within the Ambit of Section 123(2)(a), Act, 1951

It was alleged in *Ramchandran Kadanappalli v. K. P. Noordeen*⁴⁵, The candidate caused undue influence while making an direct contact with the public. This has become the major thing in the election nowadays. It has become so important as it can now be compared to the right to vote. The candidate while canvassing exceed their limits and causes undue”. These days candidates does not want to leave no-stoned unturned in winning the elections⁴⁶.

In *Charan Lal Sahu v. Giani Zail Singh*⁴⁷, it's a case dealt under section 14 of the presidential and vice presidential election act, 1952, it says that only if the candidate wants to target the particular set of people for votes does not amount to undue. The other main allegation of the petitioner was that the offence of undue influence was committed by certain supporters and close associates of the respondents with his connivance. In the light of the legislative history of the statute, specially the Amending Act, 1974, the court found that 'connivance' and 'consent' cannot distinct concepts and for the purpose of Section 18(1)(a) what is needed is 'consent' and not 'connivance'. In an election petition, the court observed that it is not open to a petitioner to plead in terms of synonyms, because pleadings have to be precise, specific and unambiguous so as to put the respondent on notice. "The rule of pleadings that facts constituting the cause of action must be specifically pleaded is as fundamental as it is elementary". Mere canvassing in favour of a candidate does not make it undue influence even if the canvassing is done by the Prime Minister, the Chief Whip of the Party or the Chief Minister⁴⁸.

Relating to symbols:

The proviso to Section 123(3) of the RP Act has a history in relation to a a question being raised in Smt. Gandhi's case before the Allahabad High Court that the symbol of cow and calf of the Congress was a religious symbol and its use was a corrupt practice under Section 123(3). This question was again put forth the Supreme Court for consideration. It was held by the Supreme Court that representation of a cow and a calf cannot except in some special and purely religious context be held to have an appear to religion as such or not. In each case,

⁴⁵ AIR 1988 Ker.141

⁴⁶ Ibid

⁴⁷ AIR 1984 SC 309

⁴⁸ Baburao Patel v. Dr. Zakir Hussain, All India Reporter 1968 SC 904.

therefore, the substance (and not merely the form) of the matter has to be judged". It was observed in a case that an appeal "to Maharashtrian" is not an appeal on the ground of Race, caste or community as Maharashtra includes all people residing to Maharashtra, whatever their race, caste or religion may be. The word 'community' in Section 123(3) must be given a narrower meaning that the dictionary meaning of a "group of persons having a common interest". Maharashtrians are not a distinct community within the meaning of Section 123(3)⁴⁹.

In the case of *Komireddy Ramuloo V. Chennemaneni Vidyasagar Rao*⁵⁰, The candidate has the allegation for the distribution of booklets having pictures of candidate with Lord Krishna and Lord Rama, an allegation of distribution of booklets containing photographs of leader of a party having alliance with idols of Lord Krishna and Lord Rama by the Candidate at a meeting was made. The books being distributed is proved but what is not proved is that the candidate took part in the printing of that. It might can happen his supporters or agents have done this and he has no knowledge of that. So the court said, the corrupt practice is not proved.

Appeal on the Ground of Language:

In the case of *Pratap Singh vs Jagdev Singh*, the question came in the ground of language. The candidate made a appeal to voters to vote or not to vote by seeing the language of the candidate. The Hon'ble Supreme court said it is the corrupt practice as appeal was made to the ground of language which is the personal right of the candidate to choose. This act of appealing on the basis of language attracts the provision of section 100 read with section 123(3) of the 1951 act. Thus, when the voter is being asked to vote according to the language then the act of corrupt practice has been committed.

Promotion of Feeling of Enmity of Hatred Between Classes:

If there is promotion of any race, caste, creed or the feelings of enmity hatred are spread between different classes of citizen, then it will amount to corrupt practice. The promotion of any particular religion, is also amount to corrupt practice. The section 123 does not violate the Article 19(1)(a) as it imposing restriction in the interest of maintain public order and

⁴⁹ Kataria Takan Dass Hemraj v. Pinto Frederick Michael, 18 Election law reporter 403 in Jain Kiran and Jain P.C., Chawla's Elections, Law and practice, New Delhi, Bahri Brothers, 1998, p.1.448.1.464, 1.466, 1.480.

⁵⁰AIR 1990 SC 1352

serving the public at large. This Section is similar to S. 153-A of the Penal Code and the element of prejudicial effect on public order is implicit there under⁵¹.

The constitution gave us the right to profess and practice our own religion but it does not give the right to create hatred among two groups professing different religions. The section 123 has no conflict with the Article 25 of the constitution. They only prescribe the condition to enter the Parliament or state assemblies. The right to fight election is the special right under the statute and restrictions are also given in the statute to observe that right⁵².

In an important judgment pronounced in 1980, the Supreme Court has spelt out the scope of Section 123(3-A). The main propositions laid down can be briefly stated as under:

1. The essence of Section 123(3-A) is the noticeable effect of the speech on the voters. A hate speech may bring feeling of hatred among people even though the candidate is targeting the opposition party.
2. Truth is not a defence in this and if its said years ago is also the no ground of defence

It was held in the above case that the laws do not place any bar on describing a party as irreligious. It is also pointed out that so long as the laws allows the formation of communal parties, an appeal for votes made by the candidates of such parties may (if successful) lead to their election and, in an indirect way, may conceivably be influenced by considerations of religion, race, caste, community or language⁵³.

The corrupt practice specified in Section 123(3-A) differs from the practice specified in the other sub-sections of Section 123. The evil effects of activities creating feelings of enmity or hatred between different classes of citizens do not disappear after the election. Hatred may be dormant and may unexpectedly erupt like a volcano⁵⁴.

⁵¹ Ramesh Yeshwant Prabhoo (Dr) v. Prabhakar Kashinath Kunte, (1996) 1 SSC 130; All India Reporter 1996 SC 1113

⁵² Subhash Desai v. Sharad J. Rao, 1994 Supp. (2) SCC 446, All India Reporter 1994 SC 2277.

⁵³ Ebrahim Sulaiman v. M.C. Mohammad Koya All India Reporter 1980 SC 354, 358, para 11.358, para 11.

⁵⁴ T.K.S. M.A. Muthakoya Thangal v. C.H. Muhammad Koya, (1978) KLH 38 in Jain Kiran and Jain P.C., Chawla's Elections: Law and Practice, New Delhi, Bahri Brothers, 1998 Delhi, Bahri Brothers, 1998.

A speech criticizing the Muslim League for aligning with parties said to be responsible for atrocities against Muslims (and not intended merely to emphasize the atrocities) is not hit by Section 123(3-A) having regard to its total effect when read as a whole⁵⁵.

Promotion of enmity or hatred against the ruling Government is not a corrupt practice. Government cannot be comprehended within the expression "...different classes of citizens of India". In *Pritpal Singh v. Ranjit Rai*, With reference to Section 123(3-A) and proviso (a)(i) the Supreme Court has held that the term "Consent" as a much stronger word than the term "knowledge" and implies conscious consent, which must be proved beyond reasonable doubt. From the mere fact that the Chief Editor received daily a copy of the paper, the consent cannot be presumed, particularly when he explained that he was very busy⁵⁶.

Booth Capturing:

Under Clause (8) of Section 123 of the Act 1951 (added in 1989 by Act 1 of 1989), "booth capturing by a candidate or his agent or other person" is one of the corrupt practices. Explanation (4) to Section 123 provides that for the purpose of Clause (8), 'booth capturing' shall have the same meaning as in Section 135-A. The phenomenon of booth capturing is increasing at great pace. Candidate by using wrong means do this which creates a very wrong impact on the voters.

The allegation of booth capturing must be specifically made in the election petition. Name and number of polling station, persons helping in booth capturing, time and place of booth capturing etc., must be specified in the petition. Booth capturing, forcible removal of ballot papers from the possession of polling officers and putting the same in the ballot box after marking them in favour of a candidate are corrupt practices.⁵⁷

For the purpose of Sub-Section (8) of S.123, "booth capturing" has the same meaning as in Section 135A of the Act. The activities which denote "booth capturing" are not exhaustive. Nonetheless these activities have to be of the category which is mentioned in Clauses (a) to (e) under the Explanation to Section 135A of the Act. Activities such as casting of votes by

⁵⁵ Op. cit. Ebrahim Sulaiman v. M.C., Mohammed Koya

⁵⁶ C.H. Mohammad Koya v. T.K.S.M.A. Muthukoya, All India Reporter 1979 SC 154.

⁵⁷ Ram Singh v. Ram Singh, 1985 Supplement SCC 611 (1990) 3 SCC 612 in Jain Kiran and Jain P.C., Chawla's Elections: Law and Practice, New Delhi, Bahri Brothers, 1998 Delhi, Bahri Brothers, 1998.

persons who are not genuine electors or casting of vote by an elector at two polling booths, do not amount booth capturing. In this case the allegation was made that the returned candidate along with his supporters, variously armed, threatened the polling agent of the rival candidate (election petitioner) not to go inside the polling station and not to raise objections regarding identity of persons. The polling agent of the election petition was not examined as witness in support of the allegation. No complaints, oral or written, were made about the incident to the Returning Officer, President Officer or the police personnel on election duty. On the contrary consistent, convincing and satisfactory evidence adduced by the returned candidate showed that polling was peaceful. In the circumstances the court has held that the allegation or corrupt practice was not made out. It further held that the alleged threat may be offence but it would not constitute a corrupt practice under S.123 (8)⁵⁸.

2.3 Recent Trend in Electoral Laws

Criminality in politics or criminals sitting in the parliament and legislatures is the issue that has for long being debated in many forums. It is the grave problem and menace for the country. With time, the corrupt practices by parties and candidates during elections are increasing at great pace. These wrongful practices during elections is spoiling the very intent of the constitution i.e. the free and fair elections. The election commission of India and the Hon'ble supreme court of India has come out with various reforms and decisions to curb these practices.

Lily Thomas Vs Union of India⁵⁹ - section 8(4) of the constitution declared unconstitutional

The Representation of People's act, 1951 provide for disqualifications of candidates on various grounds. Under section 8 of the act, the disqualification for certain offences is provided under the act. The section 8(4) of the act provides that if a MP or a MLA has been convicted of a criminal offence, such MP or MLA can continue to remain, and discharge his or her duties as, a member of the House, if within three months of the conviction, he or she has filed an appeal or a revision against such conviction. This provision encouraged the tainted leaders to contest elections and keep their seat as MP and MLA even after their conviction. What has changed is that while they still have the right to appeal, now they immediately cease to be members the House, if they got the minimum punishment of 2 years.

⁵⁸ S. Baldev Singh Mann v. Gurcharan Singh and Others (1996) 2 SSC 743; All India Reporter 1996 SC 1109.

⁵⁹ (2013) 7 SCC 653

While previously they were able to file appeals within the stipulated three months without giving up their membership, they managed, in effect, to remain MPs or MLAs often for long years after their terms had expired.

The complex argument from both sides of the parties took place. The court relied on the text of the constitution. The petitioner argued that in light of section 102(1)(e) and 191(1)(e) the parliament does not have the competence to enact section 8(4). Thus section 8(4) is beyond what the Parliament is constitutionally 'competent' to do making the same unconstitutional. The government argued that the Parliament is constitutionally competent to declare in what situations the MPs and MLAs will be held disqualified. The government was trying to portray that the Parliament is competent to enact section 8(4), if not under articles 102(1)(e) and 191(1)(e) then under article 246. The court rejected the government's argument and held that 'entry 97' comes into use only when the constitution is silent as to who has the competence to enact the law on a given subject. But in this case the constitution is not silent. Articles 102(1)(e) and 191(1)(e) very clearly put the Parliament in charge of making laws on the subject of disqualifications of MPs and MLAs. So entry 97 does not come into play. The court located the legislative power of the parliament to enact laws relating to disqualification of MPS and MLAs only in Article 102(1)(e) and 191(1)(e) of the constitution and not in Article 246 read with Entry 97 of list I of the seventh schedule⁶⁰. This is the first important holding of the case.

The Lily Thomas matter has been applied by the court prospectively and not retrospectively. The court did this with the reason, that the many political leaders in the past had the criminal record. The court gave the judgement that in the present of future whosoever gets convicted in criminal offences and gets two years of imprisonment shall be debarred from contesting election for six years from the date his term of prison ends. Moreover and equally importantly, there are offences which are already on the statute book and where conviction (even without sentence of imprisonment) leads to disqualification. These include conviction for rape, for promoting enmity and hatred between and among different classes or groups, conviction relating to bribery, and conviction under the Prevention of Corruption Act, the Foreign Exchange Regulation Act (FERA) and The Prevention of Terrorism Act, 2002 (POTA). Once again, since the grace period for remaining an MP or MLA has ended, this in effect means that the six year axe of debarment comes immediately into operation in these

⁶⁰ Khagesh gautam, (Blog) "understanding lily Thomas case", available at' http://khagesh-gautam.blogspot.in/2013/07/understanding-lily-thomas-v-union-of_31.html (last accessed on 19th February 2015)

categories of cases as well⁶¹. The court removed that 3 months window period which the members used to get after conviction for appeal. Now the disqualification will be immediate.

In an attempt to change the decision, the government introduced the, Representation of the People (Second Amendment and Validation) Bill, 2013 in Rajya Sabha on 30 August 2013, by then Law minister Mr Kapil Sibal. The government introduced this bill by an proposed amendment that representatives would not be disqualified immediately after conviction. The Indian government also filed the review petition, which the Supreme Court rejected. The government decided to rush headlong into enacting an Ordinance to counter the July 10th 2013 order of the Supreme Court. But after seeing the public sentiment and hue and cry happened after this, the government withdrawn the ordinance and bill on 2nd October.

Rasheed Masood was the first sitting MP of Rajya Sabha to lose its membership according to the new guidelines. The nation also witnessed the jailing of Lalu Prasad Yadav, the president of nationally recognised political party. While both stand debarred from contesting elections for six years after their jail terms are completed, in effect such a long banishment might well put an end to their political careers.

Inclusion of None of the option (NOTA)

The none of the above option gives right to the persons to show to their disapproval against candidates. The Supreme Court in the recent case included the right to reject in the right to vote. The court held that it is an integral part of the free and fair election. Voting is a formal expression of people's will and opinion in an electoral process. The right to reject gives the option to voter to not to vote for any candidate during an election. Such a right implies the right to remain neutral and not to vote for any one. The voter can use this type of right when he feels that none of the candidate is deserved to be elected. It can be considered as exercising his right to freedom of speech and expression. The Supreme Court directed the election commission to introduce this option in EVMs and ballot papers. According to EC circular, even if NOTA received maximum votes, the candidate who will get second highest number of votes will be declared elected. To comply with the decision of the Supreme Court, the election commissioner has asked the chief electoral officers of the states to include this option in the voting machine. Even if in any case, the number of votes in favour of NOTA is more than the number of votes secured by contesting candidates, the candidates who will get

⁶¹Navin B. Chawla, The Hindu (November 21, 2013) available at; <http://www.thehindu.com/todays-paper/tp-opinion/criminality-in-the-indian-political-system/article5373789.ece> (last accessed on 20th February 2015)

the largest number of votes will be declared as elected as per the provisions of Rule 64 of Representation of people's Act.

It is a remarkable judgement as Supreme Court asked to give voters an option to show their non-preference of candidates. The provision of law says that the votes on NOTA option should be counted but it does not put any effect. But it does not stop the selection of any candidate from the constituency.

Laws on “Freebies”

During the time of election the political parties make promises that are unmatched. In election manifesto they say, that if they come to power, they provide free water, to the poor. These kind of huge promises the parties make during election. They release their manifesto which talks about these things. The promises made in the election manifesto cannot be seen as corrupt practice under the section 123 of the Representation of Peoples act, 1951. But the announcements of these freebies attracts the voters and it disrupts the level playing field of the elections. The supreme court of India in its recent judgement said that the “Freebies shake the root of the election at large”. There is no enactment in the country which directly governs the election manifesto. The supreme said that there should be some enactment which governs the law on freebies. The Hon'ble court has given the responsibility to the election commission of India to frame guidelines on this by consulting the all recognised parties of the country. The court felt it is necessary that the manifesto is covered by some enactment. These guidelines should be included in the model code of conduct for the candidates⁶². The election commission has the responsibility to provide the level playing field to all the parties whether it is national or regional. In all the election, this should be done.

CHAPTER-III

ELECTION COMMISSION

3.1 Introduction

⁶²J.Venkateshan, The Hindu(July 5, 2013) available at;<http://www.thehindu.com/news/national/freebies-shake-the-root-of-free-and-fair-elections-court/article4884327.ece> (last accessed on 5th February 2015)

The Election commission is the autonomous body in character and insulated from political pressures or executive influence. Care has been taken to ensure that the commission functions as an independent agency free from external pressures from the party in power, or the executive of the day. The commission is set up as a permanent body under Article 324(1). It is an all India body having jurisdiction over elections to parliament, state legislatures, offices of the president and vice-president⁶³. The reason for having this all India body is to supervise and conduct elections, rather than separate bodies to organise elections in each state. A state government could discriminate against outsiders by so managing things so as to exclude them from the electoral rolls and thus them of their franchise which is the most basic right in democracy. In order to prevent injustice being done to any section of the people, it was thought best to have one central body which would be free from local influences and have control over the entire election machinery in the country.

3.2 Evolution of the Election Commission:

The existence of election commission is result of the lot of discussions. A thought was given in to the fact that a separate body should be formed with the sole purpose of organising and conducting elections of the Parliament. The President of India is authorise to appoint the central body and the governors to appoint the state body. According to the sample draft of the Constitution of India it had such an idea of the Apex level body. It was held that it is the commission that is to be vested with the responsibility of conducting, administrating, controlling all elections of the Parliament and of the office of the President and Vice President held under this Constitution.

It was held that a panel be constituted for superintending and controlling all the elections relating to the Legislature of a State as specified in Part I of the First Schedule. The right to appointment of the governor and the appointment of election tribunals for any kind of dispute regarding the election is mentioned in the constitution. Subject to the provisions of this Constitution, the Parliament may, from time to time, by law would make provision with respect to all matters relating to or in connection with elections to either House of Parliament including matters necessary for securing the due constitution of the two Houses of Parliament and the delimitation of constituencies.

The feature of elections in has been considered to bring about the initiation of te parliamentary democratic process. The idea of electoral democracy was an exclusive one and

it was brought in colonial India. Although the strengthening and endurance of what was conceived during the freedom movement. The method of governance was different in ancient India. Except to the fact that kings succeeded by way of hereditary. The councils in the village consisted of elderly people who achieved authority through consensus of people rather than election. When the Britishers set up their colonial system. They introduced the idea of elections⁶⁴.

3.3 Ripon's Resolution:

Viceroy Lord Ripon's hope that the evolution of the native sovereign establishments within the country would precede and contribute to the institution of representative and accountable provincial and central governments wasn't completed. The stubborn resistance and apathy of most of a people district, divisional and secretariat officers and Governors as regards the implementation in letter and spirit of Ripon's resolution of 1882 on native self-rule stalled the belief of Ripon's hopes. The method of political education, to be ushered of Ripon's hopes. The method of political education, to be ushered in by the arrival of sound native sovereign establishments as a prelude to the liberal democratic reforms at the provincial and central government levels, was a non-starter. It had to attend till native bodies were established below provincial form of government on associate degree elective basis within the Twenties by the favoured ministries. Within the meantime, the political pressures exerted by the Indian National Congress and different bodies of educated Indians had become too insistent to be unnoticed by the alien government. In any case, a robust bulwark for the realization of the liberal democratic thesis within the provincial and central governance of the country couldn't be designed up throughout a people rule. a people Government believed within the 'Trickle Down' theory not solely in relevance the unfold of education from the elite categories to the lower ones however additionally in respect of the illustration of the various categories within the country in legislatures and native bodies. This policy wasn't simply contributive to the protection of the Indian empire however was additionally to keep with the policies for legislative illustration that had been pursued in United Kingdom of Great Britain.

3.4 Composition of election Commission

The drafting committee had different proposals for the establishment of election commission. That either to have a permanent body of four or five members or to have a ad-hoc body constituted at time of electoral activities. Then the commission decided to go for the middle

⁶⁴Altekar, A.S., State and Government in Ancient India, Varanasi, Motilal Banarasidas, 1972, pp80-84.

way by setting up the activity of having the CEC as head in the election commission office⁶⁵. The commission is responsible for organization of elections and regulating the electoral system of the country.

Article 324 of the Constitution and the Election Commission:

The article deals with the formation of election commission⁶⁶. Article 324(2) says that the office consist of one head i.e election commissioners and other members. The chief election commissioners shall act as the chairman of the commission. The sub clause 4 talks about the appointment of regional commissioners for helping the commissioners mentioned in sub clause 1. The election commissioners functions in an impartial manner. From the discussions of the constituent assembly it is clear that the framers of the constitution wanted a body who can function sin the impartial manner.

3.5 Election Commission- A multi member body

The commission is three member commission which consist of chief election commission and other election members.⁶⁷. the three member committee helps in the decision making process. All the three members are in the same footing. In taking any decision the the views of all the three members are required.

The joint committee on amendments to election law, which had gone into the matter carefully, had unanimously recommended in its reports in 1972, that the Election Commission should be a multi member body. All political leaders and constitutional experts favoured a multi-member commission consists of carefully chosen persons who should be able to function cohesively and settle quickly through discussions any controversial issues.

The organization and administrative structure of the Office of the Election Commissioner varies from State to State depending upon the size of the State and the volume of work involved. The Office of the Chief Electoral Officer generally forms part of the State Government Secretariat at the Head Quarters of the State. Clause (6) Article 324 prescribes “the president or the Governor of the State shall, when so requested by the Election Commission make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission. The awesome power yielded by the Election Commissioner over the

⁶⁵ C.A.D. Vol: VIII, June, 15, 1949.

⁶⁶Seervai. H.M., “Constitutional Law of India”, 1163. (1984)

⁶⁷ Kamala Prasad, “Supreme Court and Administration of Elections”, Mainstream 33 (Aug 5, 1995)

Democratic process calls for urgent amendment to the Constitution before Chief Election Commissioner's successor is appointed. The Tarkunde committee set up by Sri Jayaprakash Narain on Electoral reforms, submitted its report in Feb 9, 1975 and its important proposals are....

a) The Election Commission should be a multi-member body manned by persons of undoubted integrity, such as judges of the Supreme Court and the High Courts. They should be selected by a Board consisting of the Chief Justice of India, the Prime Minister and the leader of the opposition; or a representative of the opposition acceptable to all groups in the Lok Sabha.

b) The position of the Election Commission should be made analogous to that of the Union Public Service Commission at the centre and the Sub-clause 2 of Art 324, regarding the appointment of other Commissioners should be implemented (this includes the appointment of the Regional Commissioners also) .

c) The unanimous recommendations of the Joint Parliamentary Committee on Electoral Reforms (1972), in which the members of the ruling party were also present, should be implemented⁶⁸ .

For the smooth running of the deliberations of the Commission and also furthering the cause of free and fair elections the following guidelines are important:

1) The Election Commission should not depart from the Cardinal principles of functioning harmoniously always bringing to bear in their deliberations objectivity, judiciousness the need for the application of the Rule of Law.

2) It should realize that only through co-ordination and cooperation and not confrontation with the Governments, both at the Centre and the States and the Electoral machinery at all levels, the underlying principles of democratic elections could be served.

3) The Commission should not forget that by taking all political parties into confidence and functioning openly, it could be ensured that the Commission would discharge its duties without fear and favour.

⁶⁸ Report of the "Tarkunde Committee on Multi-Member Commission, 1974, 24-25.

- 4) The Commission should clearly understand that it is an independent constitutional body completely insulated from the control of the Government and this concept should always guide in its deliberations; in this context, there is no harm for this purpose only in learning useful lessons from the Election Commission of Pakistan which boldly acted recently in some matters without fear or favour.
- 5) It is advisable and desirable to constitute a permanent committee, some sort of a consultative committee, comprising representatives of national parties to aid and advise the Commission on all parties of importance connected with the conduct of elections.
- 6) The Election Commission is expected to be firm with regard to the enforcement of the provisions of the model code of conduct with special reference item VII-party in power of model code of conduct⁶⁹.

3.6 T. N. Seshan Vs Union of India: An Appraisal

The decision of the Supreme Court in *T.N.Seshan*⁷⁰ finally settled the much debated controversy over the constitution of the multi-member Election Commission by declaring the presidential ordinance constituting a multi-member Election Commission as valid. The observations of the Supreme Court in *T. N. Seshan* on the role of election commission and the importance of their opinion are noteworthy. *T. N. Seshan* case was presented before the Supreme Court with specific issues connected with the constitutional and statutory provisions. For the first time this case provided an opportunity to the Supreme Court to dwell much upon the importance of Article 324 and the Representation of the peoples Act, 1951. It also provided a fertile ground to the court to explain the need to have an independent Election Commission, manned with persons of high stature and integrity to ensure a free and fair poll in the Indian Electoral process. The attention of the Supreme Court T. N. Seshan is drawn mainly on the following issues:

⁶⁹ Ganeshan. K. "MULTI-MEMBER POLL PANNEL", the Hindu, 12, (8 Oct, 1993).

⁷⁰ (1995-4) SCC – 611

- a) Constitutionality of Chief Election Commissioner and other Election Commissioners (conditions of services) Amendment ordinance, 1993 which provided a multi-member Election Commission under Art. 324.
- b) Role of the Chief Election Commissioner in Multi-member Election Commission.
- c) Removal of Election Commissioners from office on recommendation of CEC.
- d) Status of Chief Election Commissioner vis-à-vis Election Commissioners and Regional Commissioners.

The Supreme Court in T. N. Seshan maintained that the scheme of Article 324 is that there shall be a permanent body to be called the Election Commission with a permanent incumbent to be called the Chief Election Commissioner. The Election Commissioner can therefore be a single-member body or a multi-member body if the president considers if necessary to appoint one or more Election Commissioners. The Supreme Court in its opinion rightly held that the Chief Election Commissioner does not enjoy a status superior to Election Commissioners. But, Article 324 envisages a permanent body to be headed by a permanent incumbent, namely, the Chief Election Commissioner.

Therefore, in order to preserve and safeguard his independence, he had to be treated differently because there can't be an election commission without a CEC. That is not the case with other Election Commissioners. They are not permanent incumbents. The service conditions of the CEC are akin to those of the Supreme Court Judges, namely (i) the provisions that he can be removed from Office in like manner and on like grounds as a judge of the Supreme Court and (ii) his conditions of service shall not be varied to his disadvantage after appointment. The Supreme Court on the role of the Election Commission in India maintained that the constitution makers entrusted the task of conducting all elections in the country to a Commission referred to as the Election Commission and to an individual. It may be that, if it is a single-member body the decisions may have to be taken by the CEC but still they will be the decisions of the Election Commission. The decision to make the Election Commission a multi member one was made by the Government in the wake of certain recent controversial decisions taken by the Chief Election Commission which had created a serious confrontation between Election Commission and the Government in August, 1993. The Chief Election Commissioner has postponed certain by-elections and biennial elections to the Rajya Sabha and State legislature councils unless certain "unresolved" dispute about the exclusive powers and privileges of the Commission to 'direct' the Government about the deployment of

Central police forces at the time of an election. The Commission had claimed exclusive jurisdiction to take disciplinary action against the staff placed on poll duty. As if to remove any future ambiguity about the authority of the president to such appointments the Court has laid down:

“The Question whether it is necessary to appoint other Election Commissioners besides the Chief Election Commissioner is for the Government to decide and that it is not justifiable matter.” The apex court verdict closes a controversial chapter in the management of Indian Elections that started almost simultaneously with the appointment of Chief Election Commissioner to the constitutional post. The constitution does not provide for a hierarchy of constitutional authorities. The authorities have been given specific tasks. In the present Supreme Court cases the Constitution has established the Commission to function within the frame work of the federal administrative structure and the authority of the democratically elected Governments. Article 324(6) clearly stipulates that Article 328 provides for the status to legislate as matters connected with elections to state legislatures is parliament has not done so. The ‘Vertical’ Commission has expanded the paper work of field functionaries’ manifold and the excessive deputation of central observers and finally the functionary of the administration of the Status. The Election Commission’s administration has to deal with a political process.”

“The Deputy Election Commissioners will ensure, in the work under their charge, that orders issued from the Commission are in compliance with Sections 9 and 10 of the Chief Election Commissioner and other Election Commissioners (Conditions of Service) Act, 1991, as amended by Act 4 of 1994⁷¹.

Ever since the appointment of the other two Election Commissioners in 1993, the two Commissioners have been denied access to any Official paper as the Chief Election Commissioner had issued a decree prevented his Staff from having anything to do with the two Commissioners. In the only judgment delivered on this subject the question of the functioning of the multi-member Election Commission has been discussed⁷². It was find that it is difficult to reconcile the opinions delivered by judge in two cases on the powers of the

⁷¹ THE HINDU, 12 (21 July, 1995).

⁷² Madhu Limaye, “POLL PANNEL AND CONSTITUTION” The Hindu, 12 (12th May, 1994).

Chief Election Commissioner and on the mode of decision making in the multi-member Commission whose responsibility it is to conduct the election⁷³.

There are many other issues to be tackled if the poll pollution syndrome is to be cured. That may be left over for the present India being large and boasting of being the largest democracy. This ombudsman should be independent even of the Election Commission. The Election Commission itself must be collegiums of three or five commissioners. The Chief Election Commissioner and other Commissioners, the ombudsman invigilating the work of political parties and the other staff at higher levels must be selected by a high level panel⁷⁴.

The ordinance has amended the law and equated the two Election Commissioners with the Chief Election Commissioners in respect of status and other terms of service. The decision to have a Multi-Member Commission was also prompted by the ruling of the Supreme Court in the *S. S. Dhanoa Vs Union of India*⁷⁵ case where it had observed that when the institution like Election Commission is entrusted with vital functions and is named with exclusive and uncontrolled powers to execute them, it is both necessary and desirable that the powers are not exercised by one individual. It all confirms to the tenants of democratic rule. The Government decision to have a multi-member Election Commission is of far reaching significance. It removes the element of a one man show in such an important function as conducting elections to parliament and State Legislatures while the Chief Election Commissioner to be the Supreme he would no longer have “Unbridled” powers⁷⁶.

3.7 Powers and Function of the Election Commission

The Election Commission has to deal with a variety of Administrative matters and practical problems not involving questions of policy and to maintain contact with the administrative authorities at the Centre and the States. This is the one segment of the Commission’s work. And above all, there is the responsibility for overseeing the entire electoral process and ensuring its integrity and efficiency which must obviously rest with the Chief Election Commissioner himself, sharing heavy responsibilities with colleagues does not involve loss of prestige or diminution of the authority as an institution’s head. It may be added that if the Commission is to be given additional statutory powers, as it ought to be to effectuate the wide

⁷³ Madhu Limaye, “WELTER OF JUDICIAL DECISIONS” *The Hindu*, 12 (20TH April, 1994).

⁷⁴ Krishna Iyer, V.R. “REFORM OF THE ELECTORAL PROCESS” *The Hindu*, 12 (27th May, 1994).

⁷⁵ AIR 1991 SC 1745.

⁷⁶ Pandey. J.N. “CONSTITUTIONAL LAW OF INDIA”, pp. 51-512 (1974)

ambit of its constitutional responsibilities with same enlargement that may be found necessary. According to the Representation of the people Act, 1951, the powers of Election Commission with inquires as to disqualifications of members in connection with the tendering of any opinions to the president under Article 103 or under Sub-Section (4) of Section 14 of the Government of Union Territory Act, 1963 or to the Governor under Article 192, the Election Commission considers it necessary or proper to make an inquiry, and the Commission is satisfied that on the basis of the inquiry, it can't come to decisive opinion as the matter which is being inquired into, the Commission shall have for the purpose of such inquiry the powers of civil court, while trying a suit under the Code of Civil Procedure, 1908. The commission shall also have the power to require any person subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points as is the opinion of the commission shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code. The Election Commission shall have the power to regulate its own procedure (including the fixture of places and times of its sittings and deciding whether to sit in public or private)⁷⁷.

In preparing electoral roll for a constituency, an area not belonging to it was included; the Election Commission has power to correct the mistake. Like this, the scope of the commissioner's powers came up consideration. Art 324(1) refers to the functions of the commission; while interpreting the expression the court held that it includes powers as well as duties and observed, "It is incomprehensible that a person or body can discharge any functions, without exercising powers and duties are integrated with the function." It was therefore held that cancellation of the whole poll was covered by Art 324, if not by sections 58 and 64- A of Representation of the people act, 1951⁷⁸. The Supreme Court while setting aside an election petition had an occasion to consider the scope of powers of the commission the legal and constitutional position is as follows:

- a) When there is no legislation made by parliament or rule made under the said legislation the commission is free to pass any orders in respect of the conduct of elections.
- b) Where there is an Act and express Rules made there under, it is not open to the commission to over side the Act or the Rules and pass orders in direct disobedience to

⁷⁷ Sec.146-B of pre Representation of the people Act, 1951.

⁷⁸ Mohinder Singh Vs Chief Election Commissioner – AIR 1978 SC 851.

the mandate contained in the Rules. In other words, the powers of the Commission are meant to supplement rather than supplant the law (both statute and Rules) is the matter of Superintendence, direction and control as provided by Art.324.

c) Where the act or the rules are silent the commission has no doubt plenary powers under Art.324 to give any direction in respect of the Conduct of elections and

d) Where a particular direction by the commission is submitted to the government for approval, as required by the rules, it is not open to the commission to go ahead with implementation of it at its own sweet will even if the approval of the government is not given⁷⁹.

The government decides plan to curb poll panel powers. The union Government denied reports in a section of the press that it was planning to bring a constitutional amendment to curtail the powers of the Election Commission on the contentions issue relating to the jurisdiction of the commissions to discipline state officials drafted for election purposes. Maintaining that the “existing legal provisions were adequate to deal with all the relevant issues and the Government was meeting the requirements of the Election Commission for smooth conduct of polls⁸⁰.

Section 19-A of Representation of the people, Act, 1951 provides for the delegations of functioning of Election Commission. The functions of Election Commission under the Constitution, the Representation of the people Act, 1950 (43 of 1950) and this Act or under the rules made there under may, subject to such general to special directions, if any, as may be given by the Election Commission in this behalf, be performed also by a Deputy Election Commissioner or by the Secretary to the election Commission⁸¹.

The functions of Election Commission under Sec 19-A which solely vested in the Chief Election Commissioner, or to the Deputy Election Commissioner or to the Secretary to the Election Commission. To ensure free and fair elections the Constitution established the Election Commission, a body autonomous Character and free from political or executive influence. The commission is an all India body having jurisdiction over elections to parliament. In order to prevent injustice being done to any section of the people, it was thought best to have one control body which would be free from local influences and have

⁷⁹ Rameswar Dayal “Election Law”, 27 (1989)

⁸⁰ Ganeshan. K, “Centre and Seshan”, 12 THE HINDU (12 July, 1993).

⁸¹ Section 21 Ins. By R. P. Act 47 of 1966.

control over the entire election machinery in the country. The Election Commission plays a pivotal role in the electoral mechanism of the country⁸².

The architect of the Indian constitution attached considerable significance to an independent electoral machinery for the conduct of elections. This is clear from the reports of various committees of the constituent Assembly. At one stage, the “Fundamental Rights Sub-Committee” also unanimously agreed that the independence of elections and avoidance of interference by the executive in Legislative elections might be regarded as a Fundamental Right and include in the Chapter dealing with the subject. The Sub-Committee also observed:

- 1) That universal adult franchise must be granted by the constitution.
- 2) That elections should be free, secret and periodic and
- 3) That elections should be managed by an independent commission set up under Union Law⁸³.

To ensure fair and free elections, “it is essential that the election work should be spread through the length and breadth of the country and that even in the remote villages this election work should be done so as to inspire confidence of the people.” The expansion of the Election Commission may even “act as hindrance to efficiency and speed in work”. Election machinery should therefore, ‘be broad based and pyramidal and not too much top heavy and conical’. It should be such as may function effectively, quickly, independently and impartially in every nook and corner of the country. The functions of the Election Commission under the Constitution and the election laws can be performed also by a Deputy Election Commissioner or by a Secretary to the election Commission subject to such general or special directions⁸⁴.

The Supreme Court’s verdict in certain cases, to curb Chief Election Commissioner’s “whims and Fancies”, however certain institutional changes that the Chief Election Commission brought about will remain in force⁸⁵. The Chief Election Commissioner’s function was limited; run the election machinery in accordance with the existing law of the land. As a first step, the Chief Election Commissioner sought to restore to the Election Commission the powers conferred on it by the Constitution. The Election Commission has every right to audit

⁸² Dr. Ambedkar’s speech VIII Constitutional Assembly Debate, 15th June, 1949.

⁸³ Shiva Rao. B. THE FRAMING OF INDIA’S CONSTITUTION: A STUDY: 460 (1968)

⁸⁴ Bhalla. R. P. “ELECTION IN INDIA 1950-72” 24 (1973)

⁸⁵ THE HINDU, 7 (23rd July, 1995).

the election expenses of every contesting candidate in the Elections, according to Section 77 of the Representation of the people Act, 1951⁸⁶.

The Supreme Court has observed in the case of Mohinder Singh Gill and others v. Chief Election Commissioner and others⁸⁷ that:

“The constitution contemplates a free and fair election and vests comprehensive responsibilities of superintendence, direction and control of the conduct of elections in the Election Commission. This responsibility may cover powers, duties and functions of many sorts, administrative or other, depending upon the circumstances.

Where law is silent Article 324 is a vast reservoir of power to act for the law avowed purpose of, not divorced from pushing forward a free and fair election with expedition. The Election Commission has been discharging its functions conferred on it since the day it was constituted on the 25th January, 1950. It has already conducted ten general elections to the house of people and innumerable general elections to the house of people and innumerable general elections to the Legislative Assemblies of various states apart from the biennial elections to the councils of states and state legislative councils, as when the same became due. The Constitution has entrusted sacred task of conducting elections to the election Commission. There is no independent Electoral machinery provided to the Commission for the discharge of its functions. So, Elections is most important in a democratic set up and it is very necessary that it should controlled and supervised by a very competent authority and impartial body⁸⁸ while the impasse on the interpretation of the Commission’s power to secure the services of necessary staff stands unresolved due to the procrastination in the Government of India. In performance of its duties and functions under Article 324 of the constitution for conducting the elections in a free and fair manner, the Election Commission has been requesting and directing the Government of India from time to time to take such measures as are considered appropriate and expedient by the Commission. The Supreme Court had held in 1978 that Article 324 of the Constitution is a “reservoir of power” for the Commission and it can act in its own right in a contingency where the law enacted by parliament is silent.

3.8 Election commission- A tribunal for certain purposes

⁸⁶ Govindan Kutty.K. “Seshan: An Intimate Story: 241 (1995). 25. AIR – 1978 – SC – 851.

⁸⁷ “Govindan Kutty. K. SESHAN “An Intimate Story”, 258 (1995).

⁸⁸ “Govindan Kutty. K. SESHAN “An Intimate Story”, 258 (1995).

Under Art 324 read with Election symbols (reservation and allotment) order, 1968, the Election commission has power to allot symbols for purpose of election to political parties and to adjudicate upon disputes with regard to recognition of political parties and rival claims to a particular symbol for purpose of elections.

In several cases before 1974, the Supreme court had heard appeals from the Election commission without however deciding the question whether the election commission could be regarded as a tribunal for purpose of Art 136 in so far as it discharged adjudicatory functions. The Supreme Court has left this question open in the cases⁸⁹. However in *A.P.H.L Conference, Shilling v, W A Sangama*⁹⁰, the Supreme Court held that the commission is tribunal for purpose of Art 136 while deciding such controversy. The power to decide the particular dispute is a part of the state judicial power and that power is conferred on the Election commission by Article 324 of the constitution as also by rule 5 of the rules.

The Elections commissions has various administrative functions, but that does not mean that, while adjudicating a dipute, it does not exercise the judicial power conferred on it by the state. The commission is created by the constitution and is invested under the law with not only administrative powers, but also with certain judicial powers however fractional the same may be.

CHAPTER IV

⁸⁹ Sadiq ali v Election Commission, AIR 1972 SC 187

⁹⁰ AIR 1977 SC 2155

JUDICIAL ATTITUDE TOWARDS THE CRIMINALIZATION IN ELECTORAL POLITICS: ISSUES ADDRESSED AND UNADDRESSED

4.1 Introduction

India is the largest democracy and elections being the distinct feature of the democracy. Democracy can only stay healthy, if there is free and fair election at regular interval of time. Free and unbiased elections in the country tell about the health of the democracy. But with the changing time, the criminalization and corporatization of politics is happening. There are several problems in the process of conducting election in a peaceful manner. The problem of communalism in the country. In India, there are still people who divide people according to caste, and they vote to create their vote bank. Just for the sake of getting vote, the political parties and candidates polarise the voters just to win the election. This problem is very serious in the country as the ultimate sufferers are the voters who choose the candidates to work for them. But after winning the elections, the candidate of the political parties does not even come to visit the constituencies. This problem of communalism⁹¹ is there from a very long time. But the new problem which is emerging is of the booth capturing. Candidates with the help of gundas of that place capture the booth and turn the voting count in their favour. It is totally unethical and a shame for the democracy.

4.2 Issue of Criminalization In Electoral Politics

The crime and politics are two terms which are interchangeably used these days. Democracy can only function properly when there is faith that elections are free and fair and based on law and values. But in the present scenario, the corruption is increasing far and wide. These days elections require a lot of money. Money plays a very significant role in election. Politicians are purchasing votes with money. The corruption is the root cause for all this. Black money is being used by the politicians for fighting elections. During the times of elections, leaders and political parties distribute money and liquor to convince people to vote in their favour⁹². It happens majorly with illiterate people, who have no knowledge and these political parties purchase their votes by paying money.

⁹¹ Subhash, Kashyap C “Challenge and Response – Electoral Reforms”, Hindustan Times (7th August, 1994).

⁹² Rameswar Dayal, Electoral Reforms”, PP: 40-42 (1989).

In recent Delhi Elections 2015, the liquor has been used as a major way of allurements by candidates. The parties are using various kinds of innovative ways to escape from the onus or liability put on by the election commission. According to the modus operandi, the voter is provided with slip with the number of currency notes which is to be deposited with the owner of liquor shop to get bottles. The candidates used their agents to secretly distribute these slips among candidates. The liquor vendor, who has already been paid in cash, supplies the bottles to the customers on the basis of slips. The candidates in some cases directly supplies the bottles to the voter's home. This has become the menace during elections. The Election commission keeps a tab on this during elections but candidates escape the liability. In elections, the candidates are trying to outcast each other in offering allurements. From the day of filling nominations, the slum dwellers and the minority people have been gets royal treatment in form of biryani, cash and liquor by political parties by their agents

The commission is determined to curb the use of liquor and to keep a check on the violation of model code of conduct⁹³. The Election commission seized 43,000 bottles of liquor packed in different units and Rs 1.57 crore in cash.

This practice of proving allurements has become very and rampant in national as well as state wise elections. The parties and candidates during elections also rely on the muscle power. Candidates takes support of mafia groups to win the elections. Candidates spend their money on these activities to win the elections.

In past few years, the elected representatives have been in use for all the wrong reasons. They were not in the news for some important policy decision they had taken, nor they did something significant to help the downtrodden. Be it Shibu Soren, who was remanded in custody over a 30 years old case. Lalu Prasad Yadav attempting to bribe voters ahead of the Assembly elections in Bihar or Pappu Yadav, who has flouted every possible rule in the jail manual there is a great tendency among India's elected representatives to at some point or the other brush with the law as we had seen Madhukoda, A Raja etc. The time has come into politics where the criminization is only increasing. The ministers does not leave office despite the fact that they are facing charges. In recent years, the number of elected .Representatives facing charges, reprimands from courts and convictions has only increased. In the previous Bharatiya Janata Party- led government, there were three ministers who

⁹³ Press Trust of India(October 27, 2013) available at <http://ibnlive.in.com/news/delhi-political-parties-distribute-liquor-to-lure-voters-ahead-assembly-elections/430777-80-258.html> (last accessed on 15th January 2015)

continued in office despite having charges and court proceedings against them. At least six ministers in the new congress party led government are in a similar position. It doesn't take a genius to figure that corruption is one of the root causes for such malaise. Corruption begins with exorbitant election budgets of candidates.

According to the figures of Association of Democratic Reforms (ADR), in the 2009 Loksabha, out of 162 MPs who have criminal cases against themselves, 76 have serious criminal cases like murder, attempt to murder, kidnapping and robbery against themselves. As the analysis shows, some of these cases against the MPs have remained pending for ten years or more. In recent 2014 elections, out of the 8163 candidates analysed, 1398(17%) candidates have declared criminal cases against themselves. These records show the amount of criminalization is happening in the country and especially people having so many criminal records are elected as MPs and MLAs.

4.3 Reasons of Criminalization

*Corruption- the root cause:-*Just as it is impossible not to taste the honey or the poison that finds itself at the tip of the tongue, so it is impossible for a government servant not to eat up, at least, a bit of the king's revenue. Just as fish moving under water cannot possibly be found out either as drinking or not drinking water, so government servants employed in the government work cannot be found out (while) taking money (for themselves).” –Kautilya.

India acquired a lineage from the people who rules this country long time back as they had the mentality of expecting gifts for any favours that they would do. The exclusive function that the employers did was to extract money from the common people and to pass it over to the rulers to come in their good books. In those times there was a lot of Red Tapism and only family members were promoted. Thus, this kind of tapism and nepotism was widely accepted in those times. Another important fact is that India has been a hub of colonial systems and they have always considered them as aliens so the Indians always tried to cheat the people who came and formed colonies. In fact, corruption has now become institutionalized and a commonly accepted way of life. In India, acceptance of bribes, commissions, under-the-table payments, and gifts, by the politicians or the bureaucrats are no longer frowned upon, and even subtle ways have been discovered to create a legitimate veneer and consider these as a part of normal life activities. In short, such an ethos has been created in the society that corruption has ceased to be regarded as a crime any longer.

Money Power: - The basic function of money is to act as mode of payment and also in the discharge of liabilities. But these days money is being to bribe others for the wrongful purposes. The candidates in the election use the money to bribe the people to vote for them and the same is being used to promotion of their parties and their objective. The condition of politics has been deteriorating from the years and the hon'ble Supreme court of India in which the court accepted the fact the money is being widely used in the electoral system. Apart from the candidate using money, these days common man also uses money in government offices to get their work done. And the news headlines are evidence of this fact. This has completely devastated the condition of the politics as everywhere there is money is being used. This has become the part and parcel of life and it is totally damaging the current scenario. Candidates in the election uses black money for their expenditure and they exceed the expenditure limits.

Muscle Power: - Violence during elections. Pre-election, intimidation, post-election victimization, rigging booth capturing are mainly the outcomes of this and its there in many parts of the country.

Lack of Moral Values in Politics: There is so much ideological crises going on in the politics these days leaders candidates who contest elections, just wants to win and holds office to earn profit. The candidate sometimes does not believe in the ideology of the party they belong to. Parties who have come into politics with specific purpose of public service are now not abiding by that purpose. The Aam Admi party who came into politics to fight against corruption, but its own members carries the allegations of corruptions. So, the parties and candidates are losing the touch of values they need to abide by. Indian democracy has many examples where the parties and candidates totally forgot their moral values. MPs and MLAs accept bribes, to do something. All this created a political world full of corruption.

4.4 Contesting of candidates with criminal background in Elections

Judicial Approach

While upholding the Right to know the antecedents of the Candidates, in the case of Union of India v. Association for Democratic Reforms, the Supreme Court held that the right to information - the right to know antecedents, including the criminal past, or assets of candidates - was a fundamental right under Article 19(1) (a) of the Constitution and that the information was fundamental for survival of democracy. In its Judgment of May 2, 2002, it directed the Election Commission to call for information on affidavit from each candidate

seeking election to Parliament or the State Legislature as a necessary part of the nomination papers on: Whether the candidate has been convicted / acquitted / discharged of any criminal offence in the past - if any, whether the candidate was accused in any pending case of any offence punishable with imprisonment for two years or more, and in which charge was framed or cognizance taken by the court of law. If so, requires the details thereof; the assets (immovable, movable, bank balance, etc.) of a candidate and of his/her spouse and that of the dependents; liabilities, if any, particularly of any overdue of any public financial institution or Government dues; educational qualifications of the candidate. The Right to Information Act 2005 is a historical Act that makes Government officials liable for punishment if they fail to respond to people within a stipulated timeframe. Many public servants are leading luxurious lifestyles, beyond the legal sources of their income. Many public servants are filing false affidavits about their annual income, wealth details to Election Commission of India / Vigilance Commission / other authorities, as the case may be. These authorities are not properly verifying these affidavits.

Many scams, scandals are coming to light day in & day out, politicians are accusing each other of involvement in scams. Whereas, the said authorities are keeping mum, as if those affidavits filed by tainted public servants are true. The tainted public servants are not even providing full, right information to public as per RTI Act, lest the truth come out.

This trend is very normal nowadays that some public servants, caught red-handed during luxurious spending, they easily say that it is at their political party's expense or their well-wisher's expense. However no entries are found in the account books of said parties to that respect.

The law forbids public servants from accepting gifts, hospitality, favours beyond the value of rupees one hundred (₹250) as it may be a form of bribe. But one may ask all these under RTI. Right to Know is an inherent attribute of every person. Right to know differs only in one sense with right to information. Right to know is a natural right and right to information is a provision given by government to its people. Natural rights do not have any value legally until they are legally considered. Hence right to know as such implied in the freedom of speech and expression which is a legally considered right must have to be given a special value. Right to information as such will bring transparency of the government activities and allow the people to find remedies for those things they suffered.

The Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice has invited suggestions/views/comments of individual's /institutions/ organizations on Electoral Reforms. The subject "Electoral Reforms" has been referred to the Committee headed by Dr. E. M. Sudarsana Natchiappan, M.P. Rajya Sabha, by the Hon'ble Chairman, Rajya Sabha for detailed examination and report. While considering the issue of "Criminalization of politics", as part of its study on "Electoral Reforms", the Committee has decided to first consider the issue of disqualification of persons from contesting elections, on framing of certain charges against them by a competent Court for the offences punishable by imprisonment for five years or more. In this regard, the Committee inter-alia, required to consider the proposal of the Election Commission of India to amend the Representation of the People Act, 1951 to disqualify such persons.

Accordingly the committee deliberated upon the recommendation of the Law Commission of India as contained in its 170th Report on "Reform of the Electoral Laws" for insertion of a new section 8B in the Representation of the People Act, 1951 in the following words:

"8B. Disqualification on framing of charge for certain offence: - A person against whom charge has been framed under: -

a) Section 153A, section 171E, section 171F, section 171G, section 171H, section 171-I, subsection (1) or sub-section (2) of section 376, sub-section (2) or sub-section (3) of section 505 of the Indian penal Code (45 of 1860); or

b) Section 10 to 12 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967); or

c) The penal provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) except section 27 thereof; or

d) Section 125, section 135, section 135A or sub-section (2) of section 136 of this Act; or

e) Any other offence punishable with imprisonment for life or death under any law shall be disqualified for a period of five years from the date of framing the charge, provided he is not acquitted of the said charge before the date of scrutiny notified under section 36 of this Act."

India suffers from a combined process of politicization and criminalization of politics. Combined with other factors like politicization of the police, it certainly poses a real threat to democracy. The most pernicious method has been the use by politicians of the services of the anti-social elements at the time of elections. One of the most disturbing features of the post-

Independence era has been the trend towards the uninhibited use of muscle-power by the political parties for winning elections. As muscle-power is mostly provided by criminal elements and mafia leaders, a close nexus has come to exist between the politicians and the criminals.

4.5 Recent Instances of Criminalization.

1. Fodder scam

The scam was about the group of supplies of fodder, medicines, artificial insemination instrument for livestock all over the state. The animal husbandry department of Bihar used to supply this. They used to supply less than what is being shown on papers. The officials used to do the fudging of government funds, granted for this purpose. Of 64 cases in the 1996 famous fodder scam case in Bihar, 53 were litigated in Ranchi and trials have been completed in 45 cases so far. Mr Lalu Prasad Yadav, then chief minister of Bihar was not the king-pin, but he was responsible for hiding the details of the irregularities in lieu of bribe. On October 3, 2013, Mr Lalu Prasad was sentenced to five years of rigorous imprisonment in the corruption case by the CBI court.

The sentence immediately disqualified him from Parliament as a MP because and bars him from election for 11 years, raising questions over leadership of his party ahead of lok sabha election in 2014. He was convicted under the Prevention of Corruption act. He was also charged with fine of Rs 25 lakhs.

His disqualification as a member of parliament came after the landmark Lily Thomas case judgement in which court ordered, if any Member of Parliament or the member of state legislature will be convicted of any criminal case whose imprisonment is minimum of two years, then the member will be stand disqualified from that date.

The sentencing is seen as the landmark step in tackling corruption in India where it has become the major national issue. The Lalu Prasad Yadav has become first among politicians to lose its parliamentary seat after a recent Supreme Court ruling which ban convicted legislators from holding office. The scandal came to light in 1996 and judgement came in 2013, this time difference clearly show the time taking procedure of the Indian Judiciary.

The Delhi-based election watchdog, who keeps a check and do the electoral surveys, the Association for Democratic Reforms, says that there are 1,460 serving lawmakers facing

criminal charges. In the 543-seat lower house of parliament alone, more than 150 MPs are said to be facing criminal charges. The Supreme Court has recently been trying weigh in on the issue. The court gave voters the right to reject all candidates in elections - the judges said that such a move would help cleanse the political system in the country.

2. Junior Basic Trained Teachers Recruitment scam (JBT Scam)

The scam was basically about the enrollment of 3208 Junior Basic Trained (JBT) teachers in 2000. The former director of primary education Mr Sanjeev Kumar, a IAS officer of 1989 batch, had filed a writ petition in the Supreme court alleging that the Om Prakash chautala, used corrupt and wrongful practices while recruiting the teachers in 2000. Mr Sanjeev Kumar also filed a petition accusing chautala forcing him to change the original list of candidates for the appointment of teachers kept under seal by his predecessors after the completion of the selection process. On the other hand, MR Chautala said Sanjeev Kumar is the person who has changed the original list and also involved in the corrupt practices. After all the allegations and counter allegations , the apex court handed over the matter to the CBI, which after four years of investigation, raided the house n premises of chautala and his sons on various events. According to the CBI, each teacher had paid rupees three to four lakhs for selection and chautala, the education minister at time asked the Sanjeev Kumar to change the original list with new one.

The CBI on 6th June 2008, filed the charge sheet against the chautalas, other leaders of Indian national lok dal in connection with the scam happened in 1999-2000. The CBI established that the way in which the second list has been prepared by calling a meeting of district level selection committee of eighteen districts to Haryana bhawan in Delhi .The CBI also found that the father-son duo has used forged documents for the enrolment of teachers. After from the father-son many others have been registered. There were 62 accused, 6 out of them had gone dead during the period. The CBI court found them guilty under the Indian penal code (IPC) and Prevention of Corruption act. The court announced ten years imprisonment to them in jail.

3. Jayalalithaa disproportionate Assets case

The former chief minister of Tamil nadu was found guilty in the 18 year old disproportionate case from her own source of Income. The BJP leader Subramanian swamy in 1996 filed this case against Jayalalithaa's for corruption and accumulated of her own source of income. The special court gave a punishment of 4 years and fine of Rs 100 crore.

The trial concludes on August 28, 2014, a shockingly 18 years after it was first filed. On September 27, 2014, the special court at Bangalore found Jayalalithaa guilty of corruption under the Prevention of Corruption Act and sentenced her to four years in jail and a Rs 100 crore fine. On the day of her conviction, she ceased to be the chief minister and get debarred from contesting elections for six years. She will also have to resign as an MLA. She cannot contend election unless the decision is overturned by a higher court. The verdict could have long-term impact on Tamil Nadu, since Jayalalithaa does not have the viable successor. With this judgement her political career is almost finished. This judgement puts forth the biggest implementation of the Liliy Thomas Vs Union of India, case rationale⁹⁴.

4.6 Booth capturing In Elections

Free and fair elections are an integral part of democracy without any disturbance like booth capturing, rigging, and others. The political parties maintain antisocial elements at the time of elections in a large scale for the purpose of booth capturing and rigging activities. The candidate with criminals record are not allowed to contest elections in the papers but the reality is entirely different, today most of the contesting candidates have the criminal records. The commission has right to bring in any kind of resolution. if there is violation of model code of conduct **4.6.1 Definition –Booth Capturing**

- i) A person shall be guilty of booth capturing at an election if he-
 - a) Arms himself with lethal weapons seizes a polling booth or stations, makes the polling party surrender the ballot papers, marks them with the voting mark in favour of a candidate of his choice and fills up the ballot box with these ballot papers;
 - b) Takes possession of polling booth or station and allows only his own supporters to exercise their franchise and drives away others;

⁹⁴ Krishna Prasad, The Hindu(March 11, 2015) available at; <http://www.thehindu.com/news/national/tamil-nadu/jayalalithaa-case-hc-reserves-verdict/article6982058.ece> (last accessed on 1st April 2015)

- c) Entertains polling officials with food, drinks etc., and influences them to act in a manner so as to sub serve his interests; or
- d) Threatens any elector and prevents such elector from going to the polling booth or station to cast his vote.
- e) Any person guilty of an offence under law shall be punishable with imprisonment for a period of two years or two thousand rupees of fine or with both.

4.6.2 Election Commission Proposals to Eradicate Booth Capturing

- i) If the candidate found liable for booth capturing then he shall be disqualified from contesting election without approaching court. The commission should not wait for the election results to even come out
- ii) Capturing booth ought to be made a cognizable offence carrying a huge penalty for the candidates and his aids who helped in this. It should be made a punishable offence under law.
- iii) Removing ballot papers from polling station is the explicit offence.
- iv) If it is found that any polling officer has helped in this then he will be held for prosecution.
- v) When complaints of capturing of booth is received, then the ECI has power to give this task to some committee who it considers fit.⁹⁵

CHAPTER V

ANALYSIS OF THE REFORMS NECESSARY IN ELECTORAL POLITICS

5.1 Introduction

There are certain areas in the electoral politics in which reforms are required to combat and tackle the amount of corruption present. When elections take place, candidates use every kind of possible technique to win elections. During elections, new things come up before the

⁹⁵ Rameswar Dayal, "Electoral Reforms", PP: 40-42 (1989).

election commission. Election petitions filed before the court of law. Then decision on various issues come up. The Supreme Court also takes the help of law commission of India, to do the research on the particular issues and make laws⁹⁶. The election commission of India has come up with the report i.e. Law commission of India 255th report in which many issues relating to the electoral process of the country are been discussed.

5.2 Reforms Needed in the Electoral Process

Financing Of Elections

The financing of elections has always been a controversial issue, as the parties during elections uses lot of funds. Lots of money comes through donations to the parties. The parties sometimes discloses the correct source of funds and sometimes they hide it, as it is the black money. For the expenditure of candidates during electoral process, there has been a law under the RP act, 1951 and also the election commission has its own rules i.e. conduct of election rules, 1961, the companies act 2013 and the Income tax act 1961. The section 77 of the RP act, 1951 puts a limit on the expenditure of the candidates. The candidate of national election can spend Rs 54-70 lakhs and candidate of assembly constituency can spend Rs 20-28 lakhs. This money includes the supporters and party spending towards election campaign. It excludes the expenditure of the leaders who come up for the election campaign. This is also mentioned in the rule 90, election rules, 1961 amended by the conduct of elections (amendment) rules 2004.

There is no limits on individual contributions. The contribution by the corporates are allowed as long as the non-government company is three years old. The company's aggregate contribution in every financial year should be below than 7.5 % of its average net profits during the three immediately preceeding financial year and it should be authorized by the board of director's resolution. It is governed by the 29B of the RP act, 1951, section 182(1) of the companies act, section 3 and 4 of the foreign contribution (regulation) act 2010. The contributions from corporates are entitled to deduction from the total income. No limit on political party accepting the contribution and there is ban on foreign contribution. Every party should submit a detailed report of all contributions received above Rs 20000 during each financial year. It is governed under section 29C of the RP act 1951, section 182(3) of the

⁹⁶ Sankaran, T.S ; "Electoral reforms : A farce and an opportunity, Economic and Political Weekly, P : 1635 (2nd July, 1994)

companies act and section 80 GGB, 80GGC and section 13A of the IT act. If a candidate does not provide his financial details then he will disqualifies as voter or standing in elections for three years⁹⁷

Need for Financial Reform

Money plays a great role in politics. Money is required at every step in the election procedure. It plays a big role in conduct and campaigning for elections. But there is always concern that money is disturbing the healthy scenario of elections. It hampers the level playing field of all the candidates. Money is used for every kind of illegitimate source during elections. Money is used for bullying, buying of muscle power, to influence the voters through liquor, cash. In recent Delhi Elections 2015, the liquor has been used as a major way of allurements by candidates. The parties are using various kinds of innovative ways to escape from the onus or liability put on by the election commission. According to the modus operandi, the voter is provided with slip with the number of currency notes which is to be deposited with the owner of liquor shop to get bottles. The candidates used their agents to secretly distribute these slips among candidates. The liquor vendor, who has already been paid in cash, supplies the bottles to the customers on the basis of slips. The candidates in some cases directly supplies the bottles to the voter's home. This has become the menace during elections. The Election commission keeps a tab on this during elections but candidates escape the liability. In elections, the candidates are trying to outcast other in offering allurements. From the day of filling nominations, the slum dwellers and the minority people have been gets royal treatment in form of biryani, cash and liquor by political parties by their agents

The commission is determined to curb the use of liquor and to keep a check on the violation of model code of conduct. The Election commission seized 43,000 bottles of liquor packed in different units and Rs 1.57 crore in cash. This practice of proving allurements has become very and rampant in national as well as state wise elections. The parties and candidates during elections also rely on the muscle power. Candidates takes support of mafia groups to win the elections. Candidates spend their money on these activities to win the elections.

Because of this misuse of money during elections, financial reforms are needed.

⁹⁷ S 8A, 10A, 11A, 123 (6) of the RP act 1951.

- 1) Money provides superiority to candidate. The candidate who has more money will feel his chances are better in winning than candidates who has less money. It provides certain kind of boost to establish a strong stand in the elections. The candidates and parties who are rich, stands a greater chance of winning an election, than candidates who are not that rich. Through money, the election campaign can be properly carries out. The Supreme Court in Kanwar Lal Gupta vs Amar Nath Chawla⁹⁸ said that money will bound to play an important role in the prosecution of election campaign. The candidate who is more rich has more chances of winning than candidates who is less rich. Under the current political scenario, the party has more resources available has greater chances of winning than parties who has less access to resources. The Supreme Court in Ashok Shankarrao chavan vs madhavrao Kinhalkar⁹⁹, the court said candidates use money to buy votes. The court said if the candidate has the capacity to use money to unimaginable limits, then only he should contest for the membership other than the criteria of being deserving.
- 2) There should be equal footing between candidates who are fighting elections. There should be level playing field. The candidates should be of same status. Like in kanwar lal gupta the court said, that any party or candidates can contest elections but it is also equally true that they cannot attain the same kind of financial strength that the other rich candidates carries. The court observation in these cases came up with the reason, the percent of crorepati candidates in lok sabha elections 2009 was 16% and now it has increased to 27%. So, it can easily be understood that, the number of rich candidates are increasing with time. Therefore usage of money is also been increased.
- 3) The usage of black money during elections is also the concerns in the recent past. During the time of election corruption increases to a large extent. Candidates uses bribery a s a method to earn votes. Parties uses black to sponsor their election campaign. This is core problem in the electoral process. Despite issuance of many guidelines and circulars by election commission, these things does not stop during elections. In PUCL vs Union of India¹⁰⁰, the court raised its concern over the issue of expenditure. The court said there is no limit on expenditure and for contesting an election one needs large amount of money. Because of this reason, it has become very difficult for the honest candidates who does

⁹⁸ 1975 3 SCC 646.

⁹⁹ (2014), 7 SCC 99

¹⁰⁰ 2003 4 SCC 399

not have so much money to enter the electoral process. And it also creates a high degree of corruption in the political scenario.

These things in the electoral process is so rampant and the election commission without so much of effort is not able to stop this menace. The candidates and parties are ready to break the laws to win the elections. They are ready to violate the law at any choice. Be it section 77 of the RP act 1951, the candidates are ready to break. The money used by the candidates is unaccounted and has sources to some mafia and criminals. This is very saddening that candidates who are interested in the welfare of the society, and fight elections to serve the society has no say in the process as they do not have enough money to fight elections. The political parties uses number of ways to allure the votes by transferring money through newspapers, through rural moneylenders, keeping community feast, arranging birthday parties, gifts, giving recharge on mobile phones, providing liquors etc.

- 4) The current system of electoral process does not prevent the lobbying of funds in the process. As black money is the root cause, but the kind of pressures the candidates put on the election official is immense. During elections situation becomes really worst, when candidates uses black money, all the corrupt practices and then above everything they put pressures on the officials to not to take action. Usage of lot of money is done to keep the politics favourable to them.

B Regulation of Political Parties and Inner Party Democracy

The democratic is based on two type of laws i.e. substantive and procedural. The procedural law deals with the regular and unbiased elections, adult franchise. While substantive law deals with the internal functioning of the parties. No reform in the system is helpful until and unless the reforms are being introduced in the system of political parties. There should be organisational changes in the part at the national and local levels. At every level of the party, there should be systematic and proper functioning. There should rules, procedures and guidelines for the internal functioning of the parties. If the party does not function properly at the day to day level, then it will not be possible for the party to effectively function. Every party is based on certain beliefs and ideologies. Every party worker should work according to their beliefs and ideologies. In any kind of circumstances the party should not leave its

ideologies. The party workers and cadres should keep the values of parties in mind and work accordingly. The party should not deviate from its activities. Every party should have the preamble which state the reason for which it has come into existence. If the party deviates from its values, then the party loses its stand among public. The party should come into existence with the object of eradication of evil and serve the society. The Aam Admi Party (AAP) has come into existence to fight against corruption. But with time, there were many cases where persons of that party has come up with records of malpractices. Then in these kind of circumstances the party loses its stand among people at large. The Indian nation Congress (INC), national level political party has its motto *Helping hand with poor*, and it has palm as its symbol. The parties should also set out the procedures an criteria through which party workers can be enrolled to the party. If this kind of action is not taken, then any person, even whose thinking does not match with the thinking of the party will join the party. Every political party should have strong internal organization framework. With the strong framework, it is easy for the party to take decisions.

There should not be any dictatorship in the party. Every decision in the party must have been taken by conducting proper meetings and taking suggestions from each level. It should not be the case, where only top leadership is taking every decision without consulting the party workers at lower level. The party worker at the lower level is the key person who works for the party day and day. The party leadership should be such that, it keeps all the party together. The rules, laws, by-laws of the party should be all according to the constitution of India. Anything which governs the internal democracy of party should be against the constitution and other laws of the country.

In 2011, the draft of act was prepared under the guidance of justice and submitted to the Law commission. The act is Political Parties (Registration and Regulation of affairs) act, 2011. The act was drafted basically to govern the internal democracy of the parties. Section 6 of the draft talks about the creation of executive committees in every political parties. The purpose of these committees is to elect the candidate for contesting national and local elections. The members of this committee will be selected by the recommendations of the local bodies. The decisions of the executive and local committee to be taken on the basis of simple majority vote based on secret ballot. Till now there is no express provision which governs the internal democracy of the parties. There is only one section i.e. 29A in the RP act 1951 which provides for the registration of political parties and under section 29A (5) registration of political parties is done and every application to the election commission should be

accompanied by memorandum stating that the party keep true faith in the constitution of India, and it is based on the principle of socialism, secularism.

The ECI in its guidelines also stated that, while party gives application for registration it should provide the constitution of the party, its organs, power and functions. The guidelines of the Election commission does not mention anything about the internal democracy of the party. The guidelines does not provide any thing on the selection of candidates. There is vagueness which can be wrongly interpreted by the parties. The guidelines are also silent about the appointment of office bearers. So there are no provisions for the internal democracy of the parties. There is nothing mentioned in the RP act 1951 and the guidelines, which give power to the ECI to de-register the party. The supreme court in the case of Indian National Congress Vs Institute of social Welfare¹⁰¹, made one thing very clear that section 29A does not power to ECI for de-registration of parties and the Election symbols(Reservation and Allotment) Order 1968 also does not provide any power to ECI for de-registration. There is no review mechanism in which it can be seen that the party follows the principle enshrined in the constitution or not. The party can only be de-registered on the ground that that the party got its registration by fraud, the party is declared illegal by central government, the party amends itself and sends an application to the ECI and informs that, it is no longer abide by the principles enshrined in the constitution. Every part who has come into existence can contest elections. Even if there internal mechanism does not provide for election, then also the party can go for election. This is very contradictory and reforms is required on urgent basis to keep intact the seriousness.

Germany, Portugal are the countries which have special provision in the constitution which deals with the internal democracy and mechanism of the parties. This increases seriousness in the electoral process. Every party should be well organised and for that law is required.

C Proportional Representation

All over the works there are many electoral systems which exist. There is one first-past-the-post-system (FTFP), which is variant to the proportional representation system¹⁰². This is the system which followed in the recent Lok sabha elections. According to this system the person or candidate receiving maximum votes wins. It is also known as the plurality voting and the simple majority voting. In the single member constituencies people vote for their candidate of

¹⁰¹ 2002 5 SCC 685

¹⁰² Andrew Reeve and Alan Ware, ELECTORAL SYSTEMS: A COMPARATIVE AND THEORETICAL INTRODUCTION 6 (2001)

choice, whosoever gets the highest vote wins the elections. It is the second most used system in the world. Like everything this also has its positives and negatives. It has positives like, it is simple to understand and people can easily cast their vote. The people who counts also feel the ease with this system. The voters express their verdict on whom they think should form the next government. Representatives can be elected on tiny public support. It gives rise to the lot of tactical voting. The system of proportional representations has many variants like list system, single transferable vote. In the list system, parties take out the list of candidates, who will contest the elections in advance. In single transferable vote, Electoral College consisting of MPs and MLAs rank candidates in order of preference. The vote is allotted to their first preference. If no one emerges with majority the least voted candidate is removed. And this process continues till the time winner with the majority does not emerge. While constitution is getting drafted, lot of discussion was done regarding the choice of electoral system, but finally FTFP system was adopted, as it is simple and through this stable governments can be formed. This system is simple and stable, simple because the voters can choose between the parties and candidates both. They are not in any compulsion to accept the list given by the party. This kind of system increases lot of election expenditure as every candidate wants to reach out to every voter. Every voter has one single vote. This system is considered as the hallmark of stability in the electoral system of India. In *RC Poudyal V Union of India*¹⁰³, the Supreme Court said, this system has the advantage of producing a majority government at a general election, by being simple, familiar and decisive to the electorate. Through this system voters can easily make out whom to vote and whom not to vote. The criticism against this system is only this, that it excludes the party from parliament, which are small and regional. The votes given to these parties are wasted and sometimes the winning candidate only win about 20-30% of the total vote share which is less. Examples come from lok sabha and state assembly elections, where it shown that many parties are not able to convert their vote shares into seats and vice-versa. In 1984 general elections the Indian national congress won 49.10 % of the total vote share but had a sweeping majority of 405 out of 515 seats in the house¹⁰⁴. In this system there is a problem with regional parties, the parties who have broad base across constituencies. The change in the vote share brings a lot of changes in the number of seats won.

¹⁰³ 1994 Supp (1) SCC 325.

¹⁰⁴ V.S. Rama Devi and S.K. Mendiratta, *HOW INDIA VOTES: ELECTION LAWS, PRACTICE AND PROCEDURE*, 1167 (3rd edn., 2014). (hereinafter "Mendiratta")

Proportional system comes second in terms of simplicity of voting but it has its own advantages. Candidates can simply focus on defined groups to appeal during campaign and they need not to target the every voter. In this seats are granted according to the vote share. Numerous parties can get seat in the legislature without any part gaining the majority.

D. Anti-defection Law In India

The constitution of India enshrines laws which talks about the disqualifications of candidates. India follows the federalised multi-party system. In the Indian constitution, there is no explicit existence of political parties in the country but it is implied with the kind of setup India follows. The large numbers of political parties have emerged in the in the past which has increased lot of defections. Around 438 defections occurred within the period between March 1967 and February 1968¹⁰⁵. Because of these defections in the past, political instability has increased a lot. Frequent defections made a mockery of the parties and made the electoral system vulnerable. With the large increase in the number of defecting legislators. During 1967 and d1969, the need to frame an adequate anti-defection law increased. There were many instances where the elected representative from one party leave that party to join the opposition party. These instances made the need of anti-defection law all though more urgent. Then the committee was set up under the chairmanship of then home minister Mr YB Chavan. The report was submitted on 1969 where it was noted that the same person has the multiple acts of defections. On the suggestions, of the committee, the constitution (thirty second amendment) bill, 1973 and the constitution forty eight (amendment) bill, 1979 were introduced in the loksabha. These amendments bills were formed for the purpose to devise a law which can disqualify a candidate from his membership¹⁰⁶. Then finally after the 1984 general elections, the 52nd amendment came into force. The object of this anti-defection law is to avoid the defections motivated by the incentive of office and which weakens the true spirit of the democracy. This amendment was included in the ten schedule of the constitution. This amendment act of 1985 amended Articles like 101, 102, 190 an d191 of the constitution of India regarding the disqualification of membership of Parliament and the state legislature. In the tenth schedule, there are provisions which prevent the breach of faith of the electorate. When any party choses any

¹⁰⁵Subhash C. Kashyap, PARLIAMENTARY PROCEDURE: LAW, PRIVILEGES, PRACTICE AND PRECEDENTS 779 (3rd edn., 2014)

¹⁰⁶ See *Constitution* (Thirty-second Amendment) Bill, 1973, Statement of Objects and Reasons

candidate and sends him to parliament or legislature, then the voter does not see only the candidate but they also see the ideologies of the party and agree to that. But then after winning the election, the candidate leaves the political party or acts contrary to the ideologies of the political party, then it becomes malafide and the candidate also loses the confidence of the voters. The voters do all these things in the lure of good office. They don't have the feeling of serving to the society. The 10th schedule provides that a MP or MLA belonging to any political party shall be disqualified of continuing as such member, if he has voluntarily given up his membership or votes or abstains from voting in the house and does not follow the directions issued by his political party and acts against the direction issued by the party without taking prior permission from the party. Paragraph 2(2) states that an independent candidate if after winning the election alone joins the political party, then the person will be stand disqualified. Paragraph 2(3) states that nominated member of the house shall be disqualified for being member of the house when the six months are expired from the date of taking oath.

E. Strengthening the Office of the Election commission of India

The election commission of India is a body formed under the Article 324(1) of the constitution of India. The commission has the following powers of supervision and maintenance of the electoral rolls. The commission is also empowered to make guidelines and rules for the election commission of India. The ECI consist of Chief election commissioner and other members as President specify. By the order dated 1st October 1993, President fixed two other members in the election commission. Many committees after that examined the decision and of the opinion that three members committee is good for carrying out the functions of ECI. Three member committee will ensure the smooth and effective functioning of the ECI. The sub clause (5) of the constitution ensures the independence of the ECI from external factors mainly from the political interference. The CEC will be removed on the grounds of judge of a Supreme court of India. The other members of the commission shall be treated on the same footing as regional commissioners. The tenure of the commissioners and CEC will be decided by the Supreme Court. Every member should be removed by guidelines and suggestion from CEC. The office of election commission is very important, as they govern the whole electoral process of the country. The 2004 report of the ECI specifically said that, the wording of Article 325(5) is not proper and the amendment

should be made to this section. The removal procedure of the election commissioners should be on par with the CEC¹⁰⁷. In 1991, parliament enacted the chief election commissioners and other Election commissioners (conditions of service) act where by the retirement age of CEC was fixed at 65 years with salary and other benefits equal to supreme court judge, where by other election commissioners' age was fixed at 62 and are no par with the high court judge. But then there was an amendment to the section 10 of this act in 1993, where it was provided that the salaries and other benefits should be equal and at par with CEC, and in three member committee each member has the equal say. The Supreme Court in T.N Seshan CEC Vs Union of India¹⁰⁸ said that the CEC is not superior to the Election commissioners, if it considers that CEC word his final, then he would render the other election commissioners non-functional. The court also made a point that Regional commissioners should be equal than EC's and necessary changes should be made in Section 324(5) to reflect it.

F. Paid News and Political Advertising

Paid news during election campaign are used like nothing these days. Parties to publicize themselves pays the advertising companies to show certain facts on television. The serious problem of paid news can be understand by the fact that, during the assembly elections of 2011-2013, the ECI has 1727 confirmed cases¹⁰⁹ of paid news. All leading media houses see this kind of advertising as revenue generation model. Earlier advertisements were not the priority of the media houses but these days, it is the major thing through media houses work¹¹⁰. These days in media houses there is no independence of journalist. As journalist are now controlled by the management¹¹¹. There is no legal definition of the paid news but it is defined by the sub-committee of the Press council of India Report as “any news or analysis appearing in any media for consideration”. Political advertising is connected with activities and it is used to promote any particular political party or candidate. It is basically used to appeal the public at large. Paid news is kind of promoting any particular thing. The difference between the paid news and political advertising is significant. Paid news is communicated to the audience as any normal news. News reporting is supposed to be objective and neutral. These kind of news can change the voter's decision. It is important that the difference between the news and advertising is known to the audience. If paid content is shown as news

¹⁰⁷ ECI, Proposed Electoral Reforms, D.O. No. 3/ER/2004 (2004) (hereinafter “ECI 2004 Reforms”)

¹⁰⁸ (1995) 4 SCC 611

¹⁰⁹ Election Commission of India, Handbook for Media, General Election to the 16th Lok Sabha, 2014, para 3.5,

¹¹¹ Ref. APUWJ submissions to the Press Council of India (2010)

then it harms the structure of the election. In addition to the deception of the voters, candidates pay for paid news to hide the expenditure incurred by them. In advertising, everything is scrutinised. Free and fair elections are the backbone of the democracy but these days paid news and political advertising is effecting the election process. In recent times, parties hire different advertising agencies for the promotion of their candidates or parties. Hiring such big agencies for huge election campaign requires huge money. Expenditure on these activities is huge and it crosses the limit. Political advertising raises lot of issues regarding election expenditure. In the case of Ashok Chavan vs Madhavrao Kinhalakar¹¹², Mr Chavan did not include the expenditure on paid news in his election expenditure. As there is no law on this, so this issue raises lot of contention. In India, the situation is so worse, the media houses provide packages to candidates during the time of election which include cover stories, negative stories of opponents. According to one of the ECI survey, this market has worth of Rs 500 crore¹¹³. So, to curb this, there is urgent need to make law on this. In many reports, it is suggested that it should come under the offence under Representation of People's act, 1951.

G. Opinion Polls

The opinion polls are the predictions of the future election result. There are various agencies who conducts this opinion polls to know, what will be the result in future. The media also houses conducts these kinds of surveys during elections process. There surveys are done prior to voting and on the day of voting also by seeing the voting pattern. If all the voting take place in the single day, then publication of voting creates no problem. But then the polling takes place in the span of two three dates, then the result of these opinion polls can affect the voting in different areas. Then the political parties who are not coming with good results in polls may object for its publication. These results are also known as exit polls. To govern these polls with some rules and procedures, the commission issued guidelines in 1998. The guidelines was challenged in court which was later rejected by the Supreme Court. The court is of the view that commission has no power to provide guidelines in this regard. The commission just do the meeting with the political parties to discuss about these opinion polls. In recent Lok Sabha elections 2014, lot of opinion were conducted. In most of the opinion polls showed that the BJP will come to power this time and it happened. So their

¹¹² 8 SLP (C) NO.29882 OF 2011.

¹¹³ SLP (C) NO.29882 OF 2011. 239 Vidhi Choudhary and Utpal Bhaskar, Election Commission Pegs Paid News Market at Rs. 500 Crore, LIVE MINT, 2nd February 2013,

trustworthiness and accuracy is subject to debate. Many times these opinion polls are backed by the political parties who vote to create an impression in the mind of others that they are already winning, so they can change the voting pattern.

There is the view that these opinion polls should not be allowed from the day of issue of calling elections and till the poll gets completed. The Exit polls should not be published till the time the election of the last phase is completed. In 2004, the commission after consulting the political parties recommends to the law ministry that there must be some laws regarding this in the Representation of the People Act, 1951. The law ministry consulted the Attorney General of India who said restriction cannot be imposed on these as it amounts to a breach of Art 19 of the constitution. He suggested there can only be some guidelines on this matter. The guidelines that these polls should provide a whole lot of complete information to the public and should promote free and fair. The voters also should see the election process as the views and they should not change their personal choice on this.

H Right to Recall

The right to recall is the feature of direct democracy in which the people who choose the candidate and elect them can also take them down. If any elected representative is not working and is involved in corruption, then the candidate can file a petition in the court to remove that member from the post only if a certain percent of people file this application. This is a very alarming and good option. The member who once elected thinks that, they are free for five years have to lose their seat in real sense. This is a kind of action which the public can take if they feel cheated. This provision is currently there for local elections in Chhattisgarh, Madhya Pradesh and Rajasthan¹¹⁴ and there are demands to include this in state and national elections. There is nothing known about the use of this right. Right now it has no procedural framework. The following things are not defined i.e. the minimum period, if any after which recall can be initiated, the percentage of electors need to sign the petition, the grounds for initiating recall and condition upon which recall can be based¹¹⁵. There are many positives and negatives of this right. The positives being that it will improve the public trust in governance as the politicians will deliver good and reduce instances of corruption. This

¹¹⁴ Section 47 of the Chhattisgarh Nagar Palika Act of 1961 provides for the right to recall of elected presidents for non-performance. The recall process is initiated when $\frac{3}{4}$ of the total elected representatives within the urban bodies write to the district collector demanding recall.

¹¹⁵ V.S. Rama Devi and S.K. Mendiratta, HOW INDIA VOTES: ELECTION LAWS, PRACTICE AND PROCEDURE, 1167 (3rd edn. 2014).

right also deters the candidates from spending excess money during election due to the fear of being rejected. This right provides a kind of monitoring to the members by the voters¹¹⁶. Its negatives include that it can lead to excess of democracy and it undermines the independence of the candidate. As former Attorney General of India, Mr. Soli Sorabjee points out, recall “subjects the elected member to the supervision and control of his constituency. That would impair the free and independent discharge of his function”¹¹⁷

K. NOTA. And Right to Reject

It is the right where people can reject all the candidates, if they think that they are not capable of being elected. It was first discussed in the 170th Election commission report in 1999 as part of the alternative method of election. Because of practical issues the recommendation were not taken into account. Then the ECI proposed this in 2001 and wanted it to be introduced in EVMs but Rule 49O of the Election Rules made it impossible to protect the secrecy of voting for those who wanted to abstain. They proposed a legislative amendment to Rules 22 and 49B of the Election Rules to introduce “NOTA” as an option¹¹⁸. But because of the inaction by the government of India, the People’s Union for civil liberties filed a PIL on this issue in 2004. In 2013, the Supreme Court struck down Rules 41(2) & (3) and 49O of the Election Rules as being ultra vires section 128 of the RPA and article 19(1)(a) of the constitution as it is violative of the right to secrecy¹¹⁹. The court duly mentioned that the secrecy in casting votes should be duly recognised and it is necessary for strengthening democracy¹²⁰. It is also essential to maintain the purity of elections. The Supreme Court thought that with the introduction of NOTA the public participation would increase. People can be able to cast the neutral or negative vote and which is fundamental to the strength of the democracy.

L Government sponsored Advertisements

It has been seen that on the eve of election, the Central and various State Governments embark on an advertisement spree in the guise of providing information to the public. The expenditure on such advertisements is obviously incurred from the public exchequer. It is

¹¹⁶ Sonika Bajpayee, Right to Recall Elected Representatives, 6(1) INDIAN L.J. (2013)

¹¹⁷ Soli Sorabjee, It’s a Tightrope Walk, HINDUSTAN TIMES, 2 nd September 2011,

¹¹⁸ ECI 2004 Reforms

¹¹⁹ The Court in People’s Union of Civil Liberties v Union of India, (2013) 10 SCC 1, [34] observed “Therefore, secrecy is an essential feature of the “free and fair elections” and Rule 49-O undoubtedly violates that requirement”

¹²⁰ PUCL v Union of India, (2013) 10 SCC 1, [26]. The Court relied on its previous decisions in *Kuldip Nayar v Union of India*, (2006) 7 SCC 1 and *S. Raghbir Singh Gill v S. Gurcharan Singh Tohra*, (1980) Supp SCC 53.

common knowledge that the advertisements are released with an eye on the elections, to influence the electors. In the Model Code of Conduct for the Guidance of Political Parties and Candidates, there is a clause [item VII (iv)] which prohibits issue of advertisement at the cost of public exchequer during election period, for the prospects of the party in power.

The Model Code of Conduct comes into operation only from the date on which the Commission announces an election. The advertisements released prior to the announcement of elections, as is the practice usually resorted to, cannot be prohibited under the Model Code. Apart from the fact that public money is spent for partisan interests of the party in power in such advertisements, this practice is also contrary to the spirit of free and fair election, as the party in power gets an undue advantage over other parties and candidates. The Commission proposes that where any general election is due on the expiration of the term of the House, advertisements of achievements of the governments, either Central or State, in any manner, should be prohibited for a period of six months prior to the date of expiry of the term of the House and in case of premature dissolution, the date of dissolution of the House. Here, advertisements / dissemination of information on poverty alleviation and health related schemes could be exempted from the purview of such a ban.

There is also the practice of putting up banners and hoardings in public places, depicting achievements of governments. This should be banned, if possible. Otherwise, there should be specific provisions that name or symbol of any political party or photograph of any of the leaders of the party should not appear on such hoardings/banners.

CHAPTER VI

CONCLUSION AND SUGGESTIONS

6.1 Conclusion

Electoral politics of any country plays a major role in the stability of the country. If any kind of flaws come in the electoral process, then these needs to be corrected through necessary reforms from time to time. Electoral reforms are the transformation in the electoral systems to improve the expressions of public desires in the form of result. Free and Fair elections are indispensable for the healthy and clean democracy. Electoral system of the country forms the basis part of the Indian democracy as the government draws its authority and power from the will of the people. People of the country choose its representatives in the democratic form of government .India has the indirect form of setup and the citizen have the sovereign and exclusive power to elect the government. The failure on the part of legislature to curb the criminalization and communalism is destroying the democracy. The political class of the country has started to think that they are above law and because of this thinking they are going towards criminality of politics. In the government of centre and state, people with criminal records are the members and they form part of the government. People who already broke the law are there to devise the law. This is such an irony in the Indian politics. This indeed is the true and practical functioning of Indian Politics.

The electoral process of the country is fast losing its integrity and sanctity because of the criminalisation and the corrupt practices prevailing in the country. In the eyes of normal layman person, the political leaders are considered to be most corrupt. Earlier there use to be the impression, that people join politics for public service but now a days people want to join politics to hold good office and earn maximum money. These is whole lot of shift in the political class and how normal people perceive politics. The political system of the country is so corrupt and irregular, that reforms are needed to combat with the wrong changes. So the reforms are required to change the scenario prevailing in the political world. The immediate action is required to curb the criminalization and the wrongful acts on the parts of the leaders. With the changing time and new technology, level of corruption, criminalization is also increasing at fast pace. People in the political world taking out new techniques to earn maximum money through wrong means. The people in the society, civil society groups, journalists, and other persons who observes the process have been playing an very important and vital role in taking out number of the weaknesses of our existing system. The election commission is set up under the constitution of India as the independent body to strengthen the political system of our country. In recent years, a number of committees has been set up and have examined several aspects of our electoral process and have also recommended number

of important changes to the system. Some of these recommendations mentioned have been implemented and yet there is much more to be done.

6.2 Recommendations

Value based Polics

These days in political system, there is no proper values and ideologies which the candidates follows. The candidates are doing wrong practices for the sake of winning in the elections. There should be value based politics. The parties should follow some kind of ideologies and they should stick by it. The parties should never deviate into any bad practice which is not in consonance with the parties own principles. The candidates should keep their values intact and should do any kind of corrupt practice.

Laws on Internal Democracy

There should be nay law which governs the internal democracy of the parties. Regarding this there is no provision in the Representation of people act 1951. Every party has its own internal system and some party does not have. Like Aam Aadmi party has its own Lokpal. There should be law on this regard. If not for all parties, then it should definitely be there fot the regional parties

Ambit of RTI, 2005

The parties should come under the Right to Information act, 2005. There expenditure and funding should come under the ambit of RTI act, 2005. The existing government does not

want the parties should come under RTI as there is some information relating to national interest. And there is exception the act that, in RTI you cannot seek information relating to national interest. So then the whole purpose of the act will be defeated.

Right To Recall

The right to Recall should come up with various ad-up. The lacunas should be filled up by making it law and guidelines should also be provided for its implementation.

Problem of Booth capturing

The problem of booth capturing should be minimised to the extent that it does not effect the proper functioning of electoral system. The booth capturing is sin in the process. It totally hampers the very purpose of the constitution.

Sepration of politics from religion

The religion should be separated from the politics. The politics based on religion gets dirty. Political parties should and candidates during election should not use religion as to increase their vote bank. The religion based politics only effects the voters. Every party just wants to create their vote banks by targeting the various religious group. The babri masjid demolition case is the best example of this

CHAPTER VII

REFERENCE AND BIBLIOGRAPHY

References

- Dr Bimal Prasad Singh, “Electoral Reforms in India- Issues and challenges”, International Journal of Humanities and Social Science Invention (ISSN NO-2319-7722).
- Bhagat, Anjana Kaw, Elections and Electoral Reforms in India, New Delhi, Vikas Publishing House Private Limited
- Mahesh Rangarajan and Vijay Patidar, India: First Past the Post on a Grand Scale, International Institute of democracy and Electoral Assistance.
- Sankaran.T.S. “Electoral Reforms: A farce and an opportunity” Economic and Political weekly (July, 1994)
- Anil Nauria. “The Hindutva Judgment” Economic and Political weekly (Jan, 1996)
- Ram. P.R. “Hindutva A way of Life” Economic and Political Weekly (March 1996)
- Kamala Prasad. “Supreme Court and Administration of Elections” Main stream (August, 1995)
- by Joseph Minatteur “Election Law - Annual Survey of Indian Law” Journal of Indian Law Institute, (1976)
- Madhok Balraj “Electoral Reforms” Journal of Constitutional and Parliamentary Studies, (1984)
- Parasher S.C. “Electoral Reforms and Democracy” Journal of Constitutional and Parliamentary Studies, (1984)
- Madhu Rao Chowdary “Four decades of Indian Democracy” Journal of Constitutional and Parliamentary studies, (1993)
- Vajpai. S.L “The Aspects of the Election Administration”. The Indian Journal of Public Administration, (1991)

- Government of India, Ministry of Law and Justice, Law Department “Background Paper on Electoral Reforms” December, 2010.
- Government of India, Ministry of law and Justice, Law department “Report of the committee on Electoral Reforms” May, 1990.
- Government of India, Law commission of India, Electoral Disqualifications, February 2014 <http://lawcommissionofindia.nic.in/reports/report244.pdf> accessed on 10th November 2014
- Ministry of Law and Justice “Background Report on Electoral Reforms”, (2010)
- Government Of India, Law Commission of India, “Report on Electoral reforms”, Report no 255(March 2015).
- Government of India, Ministry of Law and Justice, Law Department “Background Paper on Electoral Reforms” December, 2010.
- Government of India, Ministry of law and Justice, Law department “Report of the committee on Electoral Reforms” May, 1990.
- Election Commission of India, “Proposed Electoral Reforms” http://eci.nic.in/eci_main/PROPOSED_ELECTORAL_REFORMS.pdf.
- Government of India, ‘Vohra Committee Report on Criminalisation of Politics, Ministry of Home Affairs’ (1993) <http://indiapolicy.org/clearinghouse/notes/vohra-rep.doc> accessed 13 January, 2014

Books

- Agarwal, R.C. “Principles of Political Science” (1982)
- Bhalla R. P, “Election in India”
- Govindan Kutty. K, “Seshan an Intimate Story

News Paper:

- Ganesan.K, “Multi-Member Poll Panel” The Hindu (8 Oct, 1993)
- Ganesan.K, “Center and Seshan” The Hindu (12 July, 1993)
- Madhur Limaye, “Walter of judicial decisions” The Hindu (20 Apl, 1994)

- Madhu Limaye. “Poll Panel and Constitution” The Hindu (12 May, 1994)
- Krishna Iyer. V.R, “Reform of the Electoral Process” The Hindu (27 May, 1994)
- Krishna Iyer. “Political Parties and the Election Commission” V. R. The Hindu (15 Nov, 1994)
- Ganesan. K. “Poll Pannel The Tasks Ahead” The Hindu (29July, 1995)
- Ganesan .K “Electoral Reforms” Indian Express (26 Aug, 1994)
- Madhu Dandawathe, “On Seshan’s Touchstone” Indian Express (7 Nov, 1994)
- Apte A. S. “Need for cleansing Root from within” News Time (18 Aug, 1994)
- Subhash C. Kashyap, “Challenge and Response Electoral Reforms” Hindustan Times (7 Aug, 1994)
- Jayalalithaa Disproportionate Assets Case (Business standard) available at http://www.business-standard.com/article/current-affairs/jayalalithaa-s-disproportionate-assets-case-5-things-to-know-114092700375_1.html
- Liquor goes freely on Delhi election(The Hindu) available at <http://www.thehindu.com/news/cities/Delhi/liquor-flows-freely-on-delhi-election-eve/article5421288.ece>
- The Hindu centre of politics and Public Polity, “Crimilization of Politics” availableat;<http://www.thehinducentre.com/verdict/get-the-fact/article5962667.ece> (accessed on 16th November, 2014)