

ROLE OF RIGHT TO INFORMATION ACT, 2005 AS A TOOL FOR ELECTORAL REFORMS

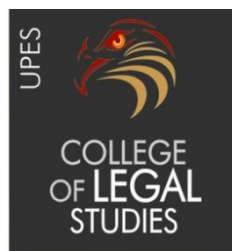
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CERTIFICATE

This is to certify that the research work entitled “**Role of Right to Information Act, 2005 as a tool for Electoral Reforms**” is the work done by **Mayank Goswami** under my guidance and supervision for the partial fulfilment of the requirement of B.A., LL.B. (Hons.) degree at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

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DECLARATION

I declare that the dissertation entitled “**Role of Right to Information Act, 2005 as a tool for Electoral Reforms**” is the outcome of my own work conducted under the supervision of Ms. Sujata Bali, 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.

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Table of Contents

(I)LIST OF ABBREVIATIONS	1
(II)TABLE OF CASES	2
1.INTRODUCTION	4
1.1 OBJECTIVES OF RESEARCH:	9
1.2 RESEARCH HYPOTHESIS:	10
1.3 RESEARCH METHODOLOGY:.....	10
2.CONSTITUTIONAL AND OTHER PROVISIONS FOR ELECTORAL REFORMS.....	11
2.1 CONSTITUTIONAL PROVISIONS.....	12
2.1.1 ELECTION COMMISSION (Article 324):	12
2.1.2 ONE GENERAL ELECTION ROLL FOR EVERY CONSTITUENCY (Article 325):	13
2.1.3 SYSTEM OF ADULT SUFFRAGE (Article 326):.....	13
2.1.4 ENACTMENT OF LAWS WITH RESPECT TO ELECTIONS (Article 327 and Article 328):.....	13
2.1.5 SETTLEMENT OF ELECTION DISPUTES (Article 329):	14
2.2 AMENDMENTS TO THE INDIAN CONSTITUTION REGARDING ELECTION PROCESS	15
2.2.1 The Constitution (Nineteenth Amendment) Act, 1966:	15
2.2.2 The Constitution (Thirty-ninth Amendment) Act, 1975:	15
2.2.3 The Constitution (Fifty-second Amendment) Act, 1985:	16
2.2.4 The Constitution (Seventieth Amendment) Act, 1991:.....	18
2.2.5 The Constitution (Seventy-third Amendment) Act, 1993:.....	18
2.2.6 The Constitution (Seventy-fourth Amendment) Act, 1993:.....	20
2.3 PROVISIONS OF LAW RELATING TO OFFENCES AND CORRUPT PRACTICES IN CONNECTION WITH ELECTIONS	20
2.3.1 ELECTORAL OFFENCES CONCERNING MEETINGS:	21
2.3.2 OFFENCES CONCERNING VEHICLES.....	22
2.3.3 CONCERNING OFFICERS/PERSONS INVOLVED IN ELECTION DUTY	22

2.3.4 AT OR NEAR POLLING STATION ON THE DATE(S) OF POLL	23
2.3.5 AGAINST CARRYING OF ARMS:	24
2.3.6 AGAINST TAMPERING OF EVMS/BALLOT PAPERS:	24
2.3.7 AGAINST DENYING SOMEONE RIGHT TO VOTE:.....	25
2.3.8 CHECKING THREAT/INDUCEMENT OF VOTERS:	25
2.3.9 AGAINST HARMING A PUBLIC SERVANT ON DUTY:.....	27
2.3.10 CONCERNING PAMPHLETS/POSTERS//HANDBILLS/ PLACARDS:	28
2.3.11 CORRUPT PRACTICES:	28
2.4 SPECIAL PROVISION RELATING TO INCOME OF POLITICAL PARTIES:.....	29
3.ELECTORAL REFORMS AND ITS DEVELOPMENT IN INDIA.....	32
3.1 SOME ISSUES IN ELECTORAL POLITICS OF INDIA:.....	33
3.2 HISTORY OF ELECTION REFORMS IN INDIA:	38
3.2.1 GOSWAMI COMMITTEE ON ELECTORAL REFORMS, 1990	39
3.2.2 VOHRA COMMITTEE REPORT, 1993.....	40
3.2.3 IYER COMMITTEE, 1994	41
3.2.4 INDRAJIT GUPTA COMMITTEE ON STATE FUNDING OF ELECTIONS, 1998	41
3.2.5 LAW COMMISSION REPORT ON THE ELECTORAL LAWS, 1999.....	42
3.2.6 NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION, 2001.....	43
3.2.7 ELECTION COMMISSION OF INDIA WITH PROPOSED ELECTORAL REFORMS, 2004	43
3.2.8 THE SECOND ADMINISTRATIVE REFORMS COMMISSION, 2008.....	45
3.3 RECENT REFORMS:.....	46
3.3.1 NOTA (None of the Above):.....	47
3.3.2 The Latest on Point:.....	48
4.ROLE OF RIGHT TO INFORMATION ACT FOR ELECTORAL REFORMS....	50
4.1 MOVEMENT FOR A RIGHT TO INFORMATION LAW	52

4.1.1 Movement towards Transparency:	52
4.1.2 The Freedom of Information Act, 2002:	53
4.1.3 Enactment of Right to Information Act, 2005	54
4.2 RIGHT TO INFORMATION IN INDIA AND PROCESS OF ELECTORAL REFORMS	56
4.2.1 Public Authority:	57
4.2.2 Right to Information under the Act:	57
4.2.3 Supreme Court and Right to Information:	60
4.2.4 Role of Central Information Commission:	61
4.2.5 Essence of the decision:	62
4.2.6 Effect of decision:	63
4.2.7 Reaction of Political Parties:	63
4.2.8 Current Status:	65
5.ELECTORAL REFORM AND JUDICIAL PROCESS	67
5.1 SUPREME COURT TOWARDS ELECTORAL REFORMS	69
5.2 CENTRAL INFORMATION COMMISSION TOWARDS ELECTORAL REFORMS	75
6.INTERPRETATION OF DATA	77
6.1LIMITATIONS OF STUDY	79
6.2ANALYSIS OF DATA	80
6.2.1ANALYSIS OF SAMPLE	80
6.2.2ANALYSIS OF THE DATA COLLECTED	82
6.2.3Interview with Mr. Shailesh Gandhi	90
6.3FINDINGS	92
7.REVIEW OF EXISTING LITERATURE	94
8.COMPARITIVE ANALYSIS OF POLITICAL PARTIES	100
8.1ON THE BASIS OF CRIMINAL BACKGROUND	100
8.2ON THE BASIS OF FINANCIAL BACKGROUND	105
9.CONCLUSION AND SUGGESTIONS	109
9.1Conclusion:	109

9.2SUGGESTIONS WITH RESPECT TO ROLE OF RTI IN ELECTORAL REFORMS	112
9.3SUGGESTION WITH RESPECT TO ELECTORAL PROCESS	116
10.BIBLIOGRAPHY	121

LIST OF ABBREVIATIONS

AICC	... All India Congress Committee
AIR	... All India Reporter
BJP	... Bhartiya Janta Party
BSP	... Bahujan Samaj Party
C.E.C	... Chief Election Commissioner
CIC	... Central Information Commissioner
CPI	... Communist Party of India
CPI (M)	... Communist Party of India Marxist
E.C	... Election Commission
ECI	... Election Commission of India
INC	... Indian National Congress
NCP	... Nationalist Congress Party
RTI	... Right to Information
SCC	... Supreme Court Cases
SC	... Supreme Court
SCALE	... Supreme Court Almanac.

TABLE OF CASES

1. A Registered Society v. Union of India 706 1996 SCALE (3)258.....	49
2. A.K.M. Hassan Uzzaman & Ors v. Union of India 1982 (2) SCC 218.....	4
3. Anil Bairwal v. Parliament of India CIC/AT/A/2007/01029.....	66,76
4. Ankul Chandra Pradhan v. Union of India AIR 1997 SC 2814.....	13
5. C.O.M. J.T. Girls Degree College v. State of U.P AIR 2004 All. 267.....	14
6. Dhara Singh Girls High School, Ghaziabad v. State of U.P., AIR 2008 All. 92.....	55
7. Dinesh Trivedi v. Union of India, (1997) 4 SCC 306.....	60
8. Dr. P. Nalla Thampy Terah v. Union of India AIR 1985 SC 1133.....	71
9. Dr. Subramaniam Swamy v. Election Commission of India WRIT PETITION (C) NO. 406 OF 2012.....	74
10. Durga v. E.C., State of U.P AIR 2002 All. 274.....	14
11. Gadakh Yashwantrao v. Gala Sahib Vikhe Patil (1994) 1 SCC 682.....	110
12. Jyoti Basu v. Debi Ghosal AIR 1982 SC 983.....	13
13. Kanwar Lal Gupta v. A.N. Chawla AIR 1975 SC 308.....	70
14. Kesavananda Bharati v. State of Kerala (1973) 4 SCC 225.....	16,68
15. K Prabhakaran v. P. Jayarajan AIR 2005 SC 688.....	69,71
16. Lal Babu Hassain v. Electoral Registration Officer AIR 1995 SC 1189.....	13
17. Lily Thomas v. Union of India Writ Petition (CIVIL) No. 490 of 2005.....	46,73
18. Lok Prahari v. Union of India Writ Petition (CIVIL) No. 231 of 2005.....	46,73
19. Minerva Mills v. Union of India AIR 1980 SC 1789.....	16
20. Mohinder Singh Gill & Anr vs. The Chief Election Commissioner 1978 AIR 851.....	12,71
21. N.P. Ponnuswami v. Returning Officer AIR 1952 SC 64.....	13
22. PUCL v. Union of India WRIT PETITION (CIVIL) NO. 161 OF 2004.....	47,48,73
23. Reliance Petrochemicals Ltd. v. Indian Express, AIR 1989 SC 190.....	60
24. Resurgence India v. Election Commission of India & Anr WRIT PETITION (CIVIL) NO. 121 OF 2008.....	72

25. Secretary, Ministry of I&B GOI v. Cricket Association of Bengal, AIR 1995 SC 1236.....	60
26. Shiv Kirpal Singh v. V.V. Giri AIR 1970 SC 2097.....	71
27. State of U.P v. Raj Narain & Ors 1975 AIR 865.....	15,60,61,68,69
28. Subhash Chandra Agarwal v. Indian National Congress & Ors., Decision no. CIC/SM/C/001386.....	61,62,75
29. Union of India v. Association for Democratic Reforms (2002) 5 SCC 294.....	61, 65, 72

CHAPTER I

INTRODUCTION

“Power is the spoiler of men and it is more so in a country like India, where the hungry stomachs produce power hungry politicians.” -J.P. Naik

Only an year ago, the biggest democratic exercise was witnessed by the world, ever held on this planet, when India went to polls in April, 2014 for constituting the 16th House of the People, the lower House of Indian Parliament. The huge nature of the exercise can be contemplated from the fact that at an average more than 814.5 millions of adult Indian citizens¹, men and women, took part in the concerned electoral exercise. Voting was held at nearly one million polling booths, spread throughout the length and breadth of the country — numerous at the high mountain ranges of the Upper Himalayas and Vindhyas, in the vast deserts of Rajasthan, Kach region of Gujarat and in the tiny Islands of Andaman & Nicobar and Lakshadweep Islands, deep into the Bay of Bengal and the Arabian Sea. These polling booths were taken care by nearly 5 million polling personnel, excluding nearly one million civil police officers, which were deployed for maintenance of general law and order and smooth polling process, along with providing security to electors, polling personnel and polling materials, at polling stations and counting centres.²

Millions and billions of adults, who took part in these elections, have once again shown unquestioned faith in democracy, which was adopted by our India as the system of governance when it got independent Sixty-Nine years ago. General elections taking place to the House of the People or Lok Sabha and to the Assemblies of the States have shown to the entire world that for the past six decades of elections in India, democracy has taken firm roots and flourished in our country. India has been rightly described by our Supreme Court as an "Oasis of Democracy"³.

Elections at regular intervals is one of the significant characteristic of a democratic setup as they constitute the most important pillar of Democracy. They act as a medium through which the attitudes, values and beliefs of the people towards

¹Number of Registered Voters in India reaches 814.5 Mn in 2014', IANS, 23rd Feb, 2014, <http://news.biharprabha.com/2014/02/number-of-registered-voters-in-india-reaches-814-5-mn-in-2014/>

² *Ibid*

³ A.K.M. Hassan Uzzaman & Ors v. Union of India 1982(2) SCC 218

their political environmental reflection. Citizens of a nation are granted a right to elect their own government and constitution of India confers right on that government to govern the mass who has elected it. Elections are like a tool in the hands of the citizens for selecting and controlling their representatives. Elections are a medium through which the voters signify their faith in the elected government from time to time and be done with it when the need is felt. It symbolises the sovereignty of the citizens of a nation and provide legitimacy to the authority of the government. Hence, genuine and regular elections are a must for the success of a democracy.⁴

Maintaining secrecy as well as accountability does not go hand in hand. In a responsible government where all agents of the public must be responsible for their conduct, there is no scope for secrets. Voters must be given the right to have information about every public dealing or act done by their candidate as everything done by their representatives is at the end of the day for the betterment of the citizens. However, it has generally been seen that the public functionaries need to be reminded time and again about the representative character of their job by insisting that they should inform the public every detail of their activities at every relevant point of time. Thus, it has now widely been recognized that openness and accessibility of people to the information about the functioning of government is essential to the health of a democracy. The blanket of secrecy that has from the past hidden the activities of the government is being removed continuously in a tremendous way and it has a significant effect on the working of the government in a free society.⁵

Free and fair elections are the founding stones of democracy. And to make sure that elections in India are conducted in a fair manner, where all political parties and candidates have a level playing field and adult franchise can be practiced secretly without fear and according to their free will, the Constitution makers have entrusted the task of conducting elections for Parliament, the Legislature of every State and to the Offices of President and Vice-President of India, to the honourable Election Commission of India. The Election Commission of India can, justifiably, take pride in having discharged its constitutional duty and obligation of conducting free and fair

⁴ Kaur Sumandeep, “ *Election Reforms in India: The Proactive Role of Election Commission*”, 25 November, 2008, MAINSTREAM, VOL XLVI, NO 49

⁵ Jain Anshu; “Access to Information within the Ambit of Right to Information Act, 2005: Loopholes and Possible Remedies”(Ph.D Thesis, RGNUL, Punjab), p. 3

elections in the country, which has earned for India a commendable reputation in the international community as one of the most stable democracies in the world.

Indian democracy is an ideal democracy for the developing nations around the globe. Free and fair elections are the hallmark of a perfectly well functioning democracy. While we are undoubtedly proud of being the second largest democracy, there are a number of areas which need to be strengthened for us to realise the true potential of a well functioning democracy. Even after the commendable working of the Election Commission of India, our democratic setup is in a dire need of slight changes regarding, from the selection of candidates to the manner in which funds are raised and spent in election campaigns and mostly the rampant drawback lies in the criminalisation of politics in the Indian political scenario.

It has been mentioned by almost all the recent committees on politics and political reforms that the issue of criminalisation has to be addressed as soon as possible. Criminalisation of politics has numerous forms, however the most troublesome is thought to be the increasing number of elected candidates with pending criminal charges against them. Furthermore, the financing of elections has become a major issue in the past few decades. It has been figured out that the cost of contesting elections has climbed far above the legal limit of spending. This practice has caused lack of transparency, widespread corruption, and the pervasiveness of the so-called 'black money'.

The role of finance in elections is increasing at an alarming rate, and is taking more and more outrageous form. There has been instances of voters being bribed and paid news being fed to the public in the 2009-2010 elections. The fear is that the electoral process in the future may well stand compromised just for the sake of 'winnability.' Election process also reflects a growing discontent between the governed citizens and several of those candidates who rise to chair by means of financial clout and covert muscle power. The Election Commission of India has addressed the issues of criminality in politics and dangers of huge overspending in elections as a part of reform measures recommended to the governments. However, the response over two decades has not been adequate.

The founders of India as a nation chose Parliamentary democracy as the appropriate model for such a vast and diverse country like India actually is. The general elections in India are a mammoth exercise, with over 700 million voters, and about one million polling booths in the country. This is an awe inspiring effort and is everywhere hailed as an ideal model for the conduct of free and fair elections.⁶

A Model Code of Conduct governs the affairs of the acts done by the political parties and contesting candidates on the basis of a consensus among political parties. It is a document which is regarded as by most of the democratic countries as a singular contribution by the Election Commission of India for the cause of free and fair election in the whole of India and for the benefit of the whole world and the democratic setup being followed by different countries all over the globe. It provides rules and regulations for the political parties including ruling parties, both at the Centre and at the States level, to ensure that a level playing field is provided and it is kept at vigil that the ruling party does not misuse its official position for the purposes of its election campaign. It also prescribes guidelines as to how the political parties and contesting candidates should conduct the election campaign.⁷ It is made to have a healthy campaign, avoid clashes and conflicts between the supporters of different political parties and maintain law and order during the campaign and even after the campaign and until the results are declared and even after that. Keeping in view the last few years, the Election Commission has been sternly enforcing the model code of conduct and ensuring its strict observance by the ruling parties, at the Centre and in the States, so as to provide a level playing field, for all parties and candidates in the electoral battlefield.

Several aspects of our democracy and electoral system has been under the concern of our policy makers. Several changes has been brought about by the Election Commission in response to these concerns. Huge number of recommendations have been made by several legal committees regarding the major issues pertaining to our

⁶ “*Background Paper of Electoral Reforms*”, Report prepared by the Core Committee on Electoral Reforms, December 2010, Legislative Department, Ministry Of Law and Justice Government Of India
⁷ “*Elections in India: Major Events and New Initiatives 1996-2000*”, Published by Publication Division, Election Commission of India, 2000

electoral system. However some issues must be addressed by the legislature itself to bring about the desired changes.⁸

The introduction of Electronic Voting Machines was one of the most significant step taken by the Election Commission to make the election process smooth, easier and most importantly transparent and out of the reach of manipulations. Elections from Parliamentary and Assembly constituencies to the House of the People and the State Legislative Assemblies were hitherto being held under the traditional system of ballot papers and ballot boxes. The Commission has brought about significant improvement in the election procedure by taking advantage of the scientific and technological advancements.

Despite of number of efforts by the government in the electoral processes, a number of non serious political parties mushroomed all over India and got themselves registered with the commission. However even after having a legislation on elections and registration of political parties in 1989, many of them did not even contest elections ever after their registration.⁹ The Commission has always been working for a healthy growth of political parties but they also have to reciprocate in a positive manner and see that the political system is not rendered a plaything by proliferation of non-serious parties, and becomes a cause for confusion among the electorate.

A milestone in the electoral reforms, directly or indirectly, in my view was the enactment of the Right to Information Act in 2005 with a view to set out a practical regime for securing information regarding any matter of public importance. and thus gave a powerful tool to the citizens to get information from the Government as a matter of right. The commencement of the RTI regime ten years back marked the dawn of a new era. This is a very comprehensive law which covers almost all matters of governance and has the widest possible reach, being applicable to not only Governments, but all public authorities and at all levels- Union, State, district and local as well as recipients of government grants. Not only has this Act provided the citizens of India with the right to seek information from government authorities but has also acted as a catalyst in the political and electoral reforms.

⁸ *Supra* Note 6

⁹ *Supra* Note 7

1.1 OBJECTIVES OF RESEARCH:

Research plays a very important role in any progressive society. As a matter of fact, it is the very foundation of development. In my thesis, I have attempted to analyze and deliberate upon the statutory provisions as well as the judicial decisions pertaining to the Election reforms with special reference to Right to Information Act, 2005. In the process, I have discovered some loopholes for which I have tried to suggest some modifications and possible amendments to existing state of affairs.

As noted in the introductory part, every citizen of a democracy such as India has the right to know as well as to be informed on how the government is functioning. Government runs on the money paid by people as taxes. People, therefore, have a legitimate right to know as to how their hard earned money is being used and for what purposes. Government exists to serve them. Citizens have a right to know how they are being governed.

The objective of this research on Electoral Reforms and Role of Right to Information Act is to understand the role of this significant piece of legislation and Constitutional Provisions which regulate the conduct of Elections in India. An analysis of legislations and various provisions of law related to election laws in India has been undertaken to study the developments made in combating political corruption and abuse of power journey and to bring political parties under the transparency regime. The objectives of this research have been categorically divided into following areas:

- To evaluate the role of elections in a democratic setup
- To analyse the efficacy of existing provisions of law with respect to transparency in elections
- To evaluate the role of Right to Information in Electoral Reforms
- To study the current scenario of Elections in India and the developments made so far.

1.2 RESEARCH HYPOTHESIS:

It is hypothesized that access of information to the voters is the hallmark of free and fair election furthering a healthy democracy.

1.3 RESEARCH METHODOLOGY:

The researcher has adopted doctrinal research as his research methodology on the topic “Right to Information as a tool to Electoral Reforms” which is based on evaluation of existing literature, statutes and related Constitutional provisions and analysis of the legal doctrine and how it has been developed and applied. The design of the research is exploratory in nature wherein attempts have been undertaken to describe and evaluate key issues with our electoral system in India over a certain period of time.

The method of research includes a strong appreciation and analysis of facts on various areas including history, legislations and cases responding to different facets and regimes of political corruption and malpractices, by requiring greater levels of disclosure and transparency for political parties in India. To gain a rich understanding of the research perspective, the researcher has attempted Comparative analysis of various political parties with respect to the levels of transparency and disclosure of funding of the parties and criminal records of its members. Collection of data would entail both the primary and secondary sources and would be an ensemble of both qualitative and quantitative data.

The researcher has attempted to highlight significance of right to information in electoral process and has examined how critical it is to balance the freedom of information with the strategic concerns of the country. There has been an attempt to indicate the necessity of having access to information as integral to freedom of expression and for ensuring the meaningful participation of people in the governmental decision-making process, which in turn shall ensure good governance. It is a humble attempt at contributing towards this subject which is of utmost importance in today’s time and age, both nationally as well as internationally.

CHAPTER II
CONSTITUTIONAL AND OTHER PROVISIONS FOR
ELECTORAL REFORMS

“Organising free and fair elections is more important than the result itself”

-Fatos Nano

The preamble to the Constitution of India declares that the people of India have resolved to constitute India into a sovereign democratic republic with the four-fold objective, namely, to secure to all its citizens, justice: social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity and to promote among them all fraternity, assuring the dignity of the individual.¹⁰

As is apparent from the provisions in Part V and Part VI of the Constitution, we have made for ourselves a parliamentary manifestation of government designed on the British model. Notwithstanding, whether in a parliamentary type of government or a Presidential structure, in fact in every vote based system, the methodology of election ought to be free, reasonable and impartial. Luckily, our Constitution and the Representation of the People Act, 1950 and Representation of the People Act, 1951 try to accommodate a free and reasonable decision.

India has a far reaching structure of laws to regulate and behavior its decisions. The formal lawful structure for all these cases lays on specific provisions of the Constitution, the Representation of the People Act 1950, the Representation of the People Act 1951, the Presidential and Vice-Presidential Elections Act 1952, the Delimitation Act 1972, and the different tenets and regulations contained and requests issued under these statutes. Furthermore, certain provisions of the Indian Penal Code and a couple of different acts are depended

¹⁰ “117th Report on the Reform of Electoral Laws”, May, 1999, Law Commission of India, Part I, Relevant Legislative Provisions, available at [http://www.lawcommissionofindia.nic.in/lc170.htm#RELEVANT LEGISLATIVE PROVISIONS](http://www.lawcommissionofindia.nic.in/lc170.htm#RELEVANT_LEGISLATIVE_PROVISIONS), Retrieved on 20th March, 2015

upon to accommodate discipline and also exclusion of applicants and individuals from the different Houses.¹¹

2.1 CONSTITUTIONAL PROVISIONS

Part XV of the Constitution entitled as "elections" constitutes a code in itself, giving the foundation to the institution of suitable laws and the setting up of a suitable hardware for the conduct of elections.¹²

Laws relating to the decisions in India as contained in Part XV of the Indian Constitution (Articles 324 to 329) articulate all the parts of directing races beginning from incorporation of names in appointive move to detailing of laws relating to races.

2.1.1 ELECTION COMMISSION (Article 324):

The Election Commission of India is the only entity that has been given the authority to supervise, direct and control elections.¹³ As per Article 324, the Election Commission ought to contain the Chief Election Commissioner (CEC) and other Election Commissioners, who will be selected by the President. Under Article 324(1) of the Constitution of India, the Election Commission of India, *inter alia*, is vested with the power of superintendence, direction and control of directing the elections to the offices of the President and Vice-President of India. Point by point procurements are made under the Presidential and Vice Presidential Elections Act, 1952 and the principles made there under.

Explaining the scope of and powers of the Election Commission, the Apex Court in *M.S. Gill v. C.E.C*¹⁴, said that fundamentally the Legislature needed to casing standards with respect to the superintendence, control and conduct of elections, any hazy area not concerned by the guidelines, the Election Commission could manage with the approbation of the Government.

¹¹ "A Consultation Paper on Review of Electoral Law, Processes and Reforms Options", National Commission to Review the Working of Constitution, 2001.

¹² Kumar Narendra, "Constitutional Law of India", 5th Edition, 2006, Allahabad Law Agency

¹³ Shubhojit, "Indian Constitution: Elections Related Provisions", December 19, 2014, Political Corner, available at <http://www.elections.in/political-corner/indian-constitution-election-related-provisions/>, Retrieved on 20th March, 2015

¹⁴ AIR 1978 SC 851

The Commission, the court ruled, couldn't behave overriding the procurement of the Act and the Rules.

2.1.2 ONE GENERAL ELECTION ROLL FOR EVERY CONSTITUENCY (Article 325):

As indicated by Article 325, each supporters will have one constituent move for both Parliamentary and Assembly elections and no individual might be incorporated or prohibited from electoral rolls on grounds of religion, race, caste and sex.

Segment 22 of the Representation of People Act, 1950 enables the Electoral Registration Officer of a voting demographic to erase the name of an individual from the Electoral Roll on specific grounds. It has been held that such erasure must be carried out when providing for the individual concerned important chance of being heard and in the wake of taking after imperative system.¹⁵

2.1.3 SYSTEM OF ADULT SUFFRAGE (Article 326):

The act of directing decisions to the Parliament and state councils on the premise of adult suffrage is cherished in Article 326. It further expresses that each person who is a resident of India and has achieved the voting age should be qualified for be enrolled as a voter. The exemption can happen if the individual is excluded on the ground of "non resident, unsoundness of psyche, crime, corrupt or unlawful practice."¹⁶ It has been held that *right to vote or stand as a candidate for election* is a creature of statute or special law and must be subject to limitations imposed by it.¹⁷

2.1.4 ENACTMENT OF LAWS WITH RESPECT TO ELECTIONS (Article 327 and Article 328):

The Parliament considers **Article 327** as an anchor for formulating any law for matters pertaining to elections to either house of the Parliament or the State

¹⁵ Lal Babu Hassain v. Electoral Registration Officer AIR 1995 SC 1189

¹⁶ Pylee MV, "An Introduction to the Constitution", 2nd Reprint, 1995

¹⁷ Ankul Chandra Pradhan v. Union of India AIR 1997 SC 2814, Jyoti Basu v. Debi Ghosal AIR 1982 SC 983; N.P. Ponnuswami v. Returning Officer AIR 1952 SC 64

Legislatures. The Article gives Parliament the power to formulate laws regarding the preparation of electoral rolls, delimitation of constituencies and relevant processes.

The procurements of Article 327 are being imitated in Article 328 that engages the state governments to build new laws on "all matters identifying with, or regarding, the decisions" to the state assemblies. As a sign of the legislature's government structure, the Indian Constitution ensures each state the ability to make procurements relating to the readiness of discretionary rolls and other important matters.

In exercise of powers conferred by Article 327, Parliament has enacted the Representation of the People's Act, 1950 and 1951 and the Delimitation Commisiin Act, 1952. The Election Commission is to act not inconsistent with these Acts.¹⁸

2.1.5 SETTLEMENT OF ELECTION DISPUTES (Article 329):

To keep the judiciary from picking up supremacy and intruding in matters of administration, the Constitution has included Article 329. The Article forbids courts' intrusion in electoral matters. No court can question the legitimacy of any law identified to keep the judiciary from picking up supremacy and interceding in matters of administration, the Constitution has included Article 329. The Article precludes courts' obstruction in electoral matters. No court can scrutinize the legitimacy of any law identified with "*the delimitation of constituencies or the allotment of seats.*"

Any challenge can be made against an election, only when once the election is over, and it has been held that it can be taken by an election petition only filed under the Representation of People Act, 1951 and will not be accepted by way of a writ petition.¹⁹

¹⁸ C.O.M. J.T. Girls Degree College v. State of U.P AIR 2004 All. 267

¹⁹ Durga v. E.C., State of U.P AIR 2002 All. 274

2.2 AMENDMENTS TO THE INDIAN CONSTITUTION REGARDING ELECTION PROCESS

2.2.1 The Constitution (Nineteenth Amendment) Act, 1966:²⁰

One of the critical suggestions made by the Election Commission in its Report on the Third General Elections in India in 1962, and acknowledged by the Government was to the abrogate the decision tribunals and trial of election petitions by High Courts.

This Amendment Act was gone to offer impact to the previously stated goal and given to nullification of Election Tribunals in India and empowered trial of decision petitions by High Courts. It revised provision (1) of Article 324 of the Constitution, which accommodates vesting of the power of superintendence, direction and control of elections with the Election Commission. The nineteenth Amendment evacuated the procurement identifying with the power of "the arrangement of election tribunals for the choice of questions and debate emerging out of or regarding decisions to Parliament and to the Legislatures of States"

2.2.2 The Constitution (Thirty-ninth Amendment) Act, 1975:

The Thirty-ninth Amendment of the Constitution of India placed the election of the President, the Vice President, the Prime Minister and the Speaker of the Lok Sabha beyond the scrutiny of the Indian courts. It was passed during the Emergency of 1975-1977.²¹ It was moved by the Congress government headed by Indira Gandhi to preempt a hearing by Supreme Court of India concerning the setting aside of Gandhi's election by the Allahabad High Court on the grounds of corrupt electoral practices.²²

However, later in the *Minerva Mills v. Union of India*²³, this amendment was removed and the doctrine of basic structure was reinforced from the *Kesavananda Bharati v. State of Kerala*.²⁴

²⁰ Statement of Objects and Reasons appended to the Constitution (Twenty-first Amendment) Bill, 1966 which was enacted as the Constitution (Nineteenth Amendment) Act, 1966.

²¹ *Supra* Note 13

²² *State Of U.P v. Raj Narain & Ors* 1975 AIR 865

²³ AIR 1980 SC 1789

²⁴ (1973) 4 SCC 225

2.2.3 The Constitution (Fifty-second Amendment) Act, 1985:

The Constitution (Fifty-second Amendment) Act, 1985 prevalently known as the Anti-Defection Law came into power w.e.f. 1 March 1985. It revised articles 101, 102, 190 and 191 of the Constitution with respect to relax of seats and preclusion from enrollment of Parliament and the State Legislatures and included another timetable i.e. the Tenth Schedule to the Constitution setting out specific procurements as to exclusion on ground of absconding.

The objectives sought to be achieved by this amendment were that:²⁵

- a) **Elected members of Parliament or a State Legislature:** An elected member of Parliament or a State Legislature, who has been elected as an applicant set up by a political gathering and a designated part of Parliament or a State Legislature who is a part of a political party at the time he sits down or who turns into an individual from a political gathering inside six months after he sits down would be precluded on the ground of surrender in the event that he willfully gives up his participation of such political gathering or votes or avoids from voting in such House in spite of any heading of such gathering or will be ousted from such gathering.
- b) **Independent members of Parliament or a State Legislature:** An independent member of Parliament or a State Legislature shall also be disqualified if he joins any political party after his election.
- c) **Nominated member of Parliament or a State Legislature:** An elected member of Parliament or a State Legislature who is not an individual from a political party at the time of his designation and who has not turn into an individual from any political party before the expiry of six months from the date on which he takes his seat should be precluded if he joins

²⁵ Statement of Objects and Reasons appended to the Constitution (Fifty-second Amendment) Bill, 1985 (Bill No. 22 of 1985) which was enacted as THE CONSTITUTION (Fifty-second Amendment) Act, 1985.

any political party after the expiry of the said time of six months.

- d) **Spilts and Mergers:** The Bill also suggests suitable provisions regarding disintegration, and mergers of political parties.
- e) **Procedure with respect to presiding officer:** A special provision has been included in the Bill to enable a person who has been elected as the presiding officer of a House to sever his connections with his political party.

The address with reference to whether an individual from a House of Parliament or State Legislature has ended up subject to the proposed exclusion will be decided by the directing officer of the House; where the inquiry is with reference to the managing officer himself, it can't avoid being chosen by an individual from the House chose by the House for that sake.

2.2.4 The Constitution (Seventieth Amendment) Act, 1991:

By virtue of the Seventieth Amendment an Explanation was sought to be inserted in Article 54 to provide that reference to "State" in articles 54 and 55 would include the National Capital Territory of Delhi and the Union territory of Pondicherry for constituting the electoral college for election of the President. This would enable the elected members of the Legislative Assembly created for the Union territory of Pondicherry under the provisions of article 239A and of the Legislative Assembly of the National Capital Territory of Delhi under article 239AA to be included in the electoral college.²⁶

2.2.5 The Constitution (Seventy-third Amendment) Act, 1993:

Despite the fact that the Panchayati Raj Institutions have been in presence for a long time, it has been watched that these organizations have not been capable to get the status and poise of feasible and responsive individuals' bodies due to various reasons including nonappearance of general races, delayed supersessions, deficient representation of weaker segments like Scheduled Castes, Schedule Tribes and ladies, lacking devolution of forces and need of monetary assets.²⁷

The key changes brought by seventy-third Amendment Act are as follows:²⁸

- i. It included a new Part relating to Panchayats in the Constitution to accommodate in addition to a variety of other things, Gram Sabha in a town or gathering of towns; constitution of Panchayats at town and other level or levels; direct decisions to all situations in Panchayats at the town and middle of the road level, if any, and to the workplaces of Chairpersons of Panchayats at such levels; reservation of seats for the Scheduled Castes and Scheduled Tribes in extent to

²⁶ Statement of Objects and Reasons appended to the Constitution (Seventy-sixth Amendment) Bill, 1992 (Bill No. XXX of 1992) which was enacted as THE CONSTITUTION (Seventieth Amendment) Act, 1992

²⁷ Kumar Dnyanesh, "What are the important points of 73rd and 74th Constitutional Amendments(India)", available at <http://www.preservearticles.com/2011092814252/what-are-the-importance-points-of-73rd-and-74th-constitutional-amendments-india.html>, Retrieved on 25th March, 2015

²⁸ Statement of Objects and Reasons appended to the Constitution (Seventy-second Amendment) Bill, 1991 which was enacted as the Constitution (Seventy-third Amendment) Act, 1992.

their populace for enrollment of Panchayats and office of Chairpersons in Panchayats at every level;

- ii. reservation of not less than one-third of the seats for women;
- iii. fixing period of Five years for Panchayats and having elections within a time span of six months in the event of dissolution of any Panchayat;
- iv. disqualification of membership for Panchayats elections;
- v. devolution by the State Legislature of forces and obligations upon the Panchayats as for the arrangement of arrangements for financial improvements and social equity and for the usage of improvement plans;
- vi. sound fund of the Panchayats by securing authorisation from State Legislatures for gifts in-help to the Panchayats from the Consolidated Fund of the State, as additionally task to, or appointment by, the Panchayats of the incomes of assigned charges, obligations, tolls and expenses;
- vii. setting up of a Finance Commission inside one year of the proposed change and from that point each 5 years to survey the money related position of Panchayats;
- viii. auditing of accounts of the Panchayats;
- ix. forces of State Legislatures to make procurements with regard to races to Panchayats under the superintendence, bearing and control of the boss appointive officer of the State.

2.2.6 The Constitution (Seventy-fourth Amendment) Act, 1993:

In numerous States nearby bodies got to be frail and ineffectual by virtue of a mixed bag of reasons, including the inability to hold consistent decisions, delayed supersessions and deficient devolution of forces and capacities. Accordingly, Urban Local Bodies are not ready to perform viably as lively majority rule units of government toward oneself.

Having regard to these inadequacies, it was considered necessary to incorporate the provisions relating to Urban Local Bodies in the Constitution, particularly for-²⁹

- i. putting on a firmer footing the relationship between the State Government and the Urban Local Bodies with respect to-
 - a. the functions and taxation powers; and
 - b. arrangements for revenue sharing;
- ii. ensuring regular conduct of elections;
- iii. ensuring timely elections in the case of supersession; and
- iv. Providing adequate representation for the weaker sections like Scheduled Castes, Scheduled Tribes and women.

2.3 PROVISIONS OF LAW RELATING TO OFFENCES AND CORRUPT PRACTICES IN CONNECTION WITH ELECTIONS

Section 21 of the Indian Constitution drafted by the Constituent Assembly had specified for a temporary parliament. The temporary parliament ordered Representation of People's Act 1951, so that general races could be led by guidelines said.³⁰

Representation of Peoples Act, 1951 is a demonstration instituted by the Indian provincial parliament before first general elections in 1952. The People's

²⁹ Statement of Objects and Reasons appended to the Constitution(Seventy-third Amendment) Bill, 1991 which was enacted as the Constitution (Seventy-fourth Amendment) Act, 1992

³⁰Reddy Shrikant, "*Salient features of Representation of Peoples Act*". October 12, 2013, available at <http://srikanthreddysalkuti.blogspot.in/2013/10/salient-features-of-representation-of.html>, Retrieved on 25th March, 2015.

Representation Act accommodates the conduct of elections in India. The demonstration additionally manages points of interest like capability and exclusion of individuals from both places of Parliament (i.e. Lok Sabha and Rajya Sabha) and the State councils (i.e. State Legislative Assembly and State Legislative Council).³¹

The acts were amended several times, but one of the notable amendments is the Representation of the People (Amendment) Act, 1966, which abolished the election tribunals and transferred the election petitions to the High Courts whose orders can be appealed to Supreme Court.³² However, election disputes regarding the election of President and Vice-President are directly heard by the Supreme Court.

The Act is of exceptional importance to the smooth working of Indian vote based system, as it checks the entrance of persons with criminal foundation into the agent bodies. To guarantee that elections are held in free and reasonable way empowering men of high and good moral qualities to win, it has set out specific rules of discretionary ethical quality and denied certain acts of commission and exclusion, which harm the virtue of elections and have tainting impact and vitiating impact on the result of decisions. Some of these demonstrations have been marked as "corrupt practices" while the others have been termed as "electoral offenses".³³

2.3.1 ELECTORAL OFFENCES CONCERNING MEETINGS:³⁴

1. **Sec 125 of the Representation of the People Act, 1951 and Section 153A of the Indian Penal Code, 1860:** Promoting or attempting to promote on ground of religion, race, caste, community or language, feeling of enmity or hatred, between different classes of the citizens of India.

Punishment: 3 years imprisonment or fine or both.

2. **Sec 126 of the Representation of the People Act, 1951:** Prohibition of public meetings during period of forty eight hours ending with the hour fixed for the conclusion of the poll : No person shall – (a) convene, hold or attend, join or

³¹ “*Law Relating to Elections*”; Universal Law Publishing. p. 4. ISBN 9788175348356. Retrieved 25th March 2015.

³² *Supra* Note 31

³³ RS Rama Dei and Mendiratta SK, “*How India votes: Election Laws, Practice and Procedure*”, p. 773,743, 1st Edition, 2000, Butterworths India, New Delhi.

³⁴ “*Provisions of Law Relating to Offences and Corrupt Practices in Connection with Election*”, Election Laws and ECI Instructions, Election Commission of India.

address any public meeting or procession in connection with an election; or (b) display to the public any election matter by means of cinematograph, television or other similar apparatus; or (c) propagate any election matter to public by holding, or by arranging the holding of, any musical concert or any theatrical performance or any other entertainment or amusement with a view to attracting the members of the public thereto, in any polling area during the period of forty-eight hours ending with the hour fixed for the conclusion of the poll for any election in the polling area.

Punishment: 2 years imprisonment or fine or both.

3. **Sec 127 of the Representation of the People Act, 1951:** Acting or inciting others to act in disorderly manner at a public meeting, for the purpose of disturbing the meeting.

Punishment: 6 months imprisonment or fine or both.

2.3.2 OFFENCES CONCERNING VEHICLES³⁵

Sec 133 of the Representation of the People Act, 1951: If any person illegally hires or procures any vehicle for the free conveyance of any elector other than the candidates himself, member of his family or his agent, to or from any polling station commits an offence.

Punishment: 3 months imprisonment and fine.

2.3.3 CONCERNING OFFICERS/PERSONS INVOLVED IN ELECTION DUTY³⁶

1. **Sec 128 of the Representation of the People Act, 1951:** Every officer, clerk, agent, or other person who performs any duty in connection with the recording or counting of votes at an election shall maintain the secrecy of the voting. Its violation constitutes an offence.

Punishment: 3 months imprisonment or fine or both.

³⁵ *Supra* Note 31

³⁶ *Supra* Note 31

2. **Sec 129 of the Representation of the People Act, 1951:** No official connected with conduct of elections shall do any act (other than giving of vote) for the furtherance of the prospects of election of any candidate.

Punishment: 6 months imprisonment or fine or both.

3. **Sec 134 of the Representation of the People Act, 1951:** Breach of official duty, without reasonable cause, by any person involved in any duty in connection with an election.

Punishment: Fine upto Rs. 500/-.

4. **Sec 134A of the Representation of the People Act, 1951:** Any person in the service of the Government acting as an election agent or a polling agent or a counting agent of a candidate at an election.

Punishment: 3 months imprisonment or fine or both.

2.3.4 AT OR NEAR POLLING STATION ON THE DATE(S) OF POLL³⁷

1. **Sec 130 of the Representation of the People Act, 1951:** Prohibition on the date(s) of poll of :- (a) canvassing in or near polling station; or (b) soliciting the vote of any elector; or (c) persuading any elector not to vote for any particular candidate; or (d) persuading any elector not to vote at the election; or (e) exhibiting any notice or sign (other than an official notice) relating to the election.

Punishment: Fine upto Rs. 250/-.

2. **Sec 131 of the Representation of the People Act, 1951³⁸:** Any person shouting in a disorderly manner or using loudspeakers, megaphones etc. so as to disturb the poll, in or around the polling station can be arrested and such apparatus seized by any police officer. On the orders of the Presiding Officer, Police can arrest the offender. **Punishment:** 3 months imprisonment or fine or both

³⁷ *Supra* Note 31

³⁸ *Ibid*

3. **Sec 132 of the Representation of the People Act, 1951:** Misconduct by any person in the polling station, or disobedience of lawful directions of the presiding officer may result in that person being removed from the polling station by any police officer on duty. Any person who has been so removed from a polling station re-enters the polling station without the permission of the presiding officer can be arrested.

Punishment: 3 months imprisonment or fine or both.

2.3.5 AGAINST CARRYING OF ARMS:³⁹

Sec 134B of the Representation of the People Act, 1951: No person, other than the Returning Officer, the presiding officer, any police officer or any other person appointed to maintain peace and order at the polling station who is on duty at the polling station, shall, on a polling day, go armed with arms. If he does so, he commits an offence.

Punishment: 2 years imprisonment or fine or both.

2.3.6 AGAINST TAMPERING OF EVMS/BALLOT PAPERS:⁴⁰

1. **Sec 135 of the Representation of the People Act, 1951:** If the Presiding officer of a polling station has reason to believe that any person has removed ballot paper or EVM out of polling station, such officer may arrest or direct a police officer to arrest such person and may search such person or cause him to be searched by a police officer. On the orders of the Presiding Officer, Police can arrest the offender.

Punishment: 1 year's imprisonment or fine or both.

2. **Sec 135A of the Representation of the People Act, 1951:** Booth capturing is an offence. 'Booth capturing' includes – (a) seizure of a polling station or a place fixed for the poll by any person making polling authorities surrender the ballot papers or voting machines; or (b) allowing only his or their own supporters to exercise their right to vote and prevent/coerce others from free exercise of their right to vote; (c) seizure of a place for counting of votes.

³⁹ *Supra* Note 31

⁴⁰ *Ibid*

Punishment: 3-5 years imprisonment and fine and if the offence is committed by person in government service, and 1 to 3 yrs and fine for others.

3. **Sec 136 of the Representation of the People Act, 1951:** If any person fraudulently defaces or fraudulently destroys any ballot paper or EVM or the official mark on any ballot paper or EVM or puts into any ballot box anything other than the ballot paper, or pastes any paper, tapes etc. on the symbol/names/ballot button of EVM for the purpose of the election commits an offence.

Punishment: 2 years imprisonment or fine or both and if the offence is committed by any officer or clerk employed on election duty, and 6 months imprisonment or fine, for others.

2.3.7 AGAINST DENYING SOMEONE RIGHT TO VOTE:⁴¹

Sec 135B of the Representation of the People Act, 1951: Non-granting of paid holiday to the employees entitled to vote on the date of the poll by the employer.

Punishment: Fine upto Rs. 500/-.

2.3.8 CHECKING THREAT/INDUCEMENT OF VOTERS:⁴²

1. **Sec 3(1) (vii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989:** Whoever forces or intimidates a member of SC/ST not to vote or to vote a particular candidate or to vote in a manner other than that provided by law commits an offence.
2. **Sections 171B/171E of the Indian Penal Code, 1860 and Section 123(1) of the Representation of the People Act, 1951: Bribery.**—(1) giving a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or accepting either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right, is the offence

⁴¹ *Supra* Note 31

⁴² *Ibid*

of bribery. (2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification. (3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.

Punishment: 1 year's imprisonment or fine or both

3. **Sections 171C/171F of the Indian Penal Code, 1860 and Section 123(2) of the Representation of the People Act, 1951:** *Undue influence at election:* Voluntarily interfering or attempting to interfere with the free exercise of any electoral right is the offence of undue influence. Also, threatening any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or inducing or attempting to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual pleasure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter.

Punishment: 1 year's imprisonment or fine or both.

4. **Sections. 171D/171F of the Indian Penal Code, 1860:** *Personation at elections:* Applying for a voting paper or votes in the name of any other person, whether living or dead, or in a fictitious name, or who having voted once at such election applies at the same election for a voting paper in his own name, and whoever abets, procures or attempts to procure the voting by any person in any such way, is an offence of personation at an election.

Punishment: 1 year's imprisonment or fine or both.

5. **Sec 171G of the Indian Penal Code, 1860:** Making or publishing any statement purporting to be a statement of fact which is false in relation to the personal character or conduct of any candidate is a crime.

Punishment: Fine

6. **Sec 171H of the Indian Penal Code, 1860:** Incurring or authorizing expenses on account of the holding of any public meeting, without the general or special authority in writing of a candidate or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate.

Punishment: Fine which may extend to five hundred rupees.

7. **Sec. 505(2) of the Indian Penal Code, 1860:** Making, publishing or circulating any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill will between different religious, racial, language or regional groups or castes or communities.

Punishment: Imprisonment upto 5 years and fine.

8. **Section 125A of the Representation of the People Act, 1951:** Filing of false affidavit, or concealing any information in the affidavit filed by the candidate.

Punishment: Six months imprisonment or fine or both

9. **Section 31 of the Representation of the People Act, 1950:** False declaration in connection with preparation, revision or correction of electoral roll, or inclusion or exclusion of any entry in or from the electoral roll.

Punishment: 1 year imprisonment or fine or both

2.3.9 AGAINST HARMING A PUBLIC SERVANT ON DUTY:⁴³

Section 332, 333, 353 of the Indian Penal Code, 1860: This section criminalises the act of voluntarily causing simple or grievous hurt or assault to deter a public servant from discharging his duty.

Punishment: Imprisonment from 2 to 10 years and fine.

⁴³ *Supra* Note 31

2.3.10 CONCERNING PAMPHLETS/POSTERS//HANDBILLS/ PLACARDS:⁴⁴

Section 127A of the Representation of the People Act, 1951: Printing or publishing any election pamphlets, poster, handbills or placards which does not bear on its face the name and the address of the printer and the publisher is an offence.

Punishment: Six months imprisonment or fine upto Rs.2000/- or both.

2.3.11 CORRUPT PRACTICES:

Section 127A of the Representation of the People Act, 1951: The following shall be deemed to be corrupt practice for the purposes of this Act:⁴⁵

- i. Bribery as defined in clause (1) of section 123 of the Representation of the people Act, 1951.
- ii. Under influence as defined in clause (2) of the said section,
- iii. The systematic appeal by a candidate or his agent or by any other person, to vote or refer in from voting on grounds of cast, race, community or religion or the use of or appeal to, religious symbols or, the use of or appeal to, national symbols such as the national flag or the national emblem , for the furtherance of the prospects of that candidate's election.
- iv. The publication by a candidate or his agent or by other person of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of nay candidate being a statement reasonably calculated to prejudice the prospects of that candidate' election.

⁴⁴ *Ibid*

⁴⁵ “*Corrupt Practices and Electoral Offences*”, State Election Commission Delhi, available at http://www.delhi.gov.in/wps/wcm/connect/doi_t_dsec/Delhi+State+Election+Commission/Home/Acts+and+Rules/Delhi+Municipal+Corporation+Act+1957/Chapter++2+The+Corporation/Corrupt+Practices+and+Electoral+offences, Retrieved on 25th March, 2015.

- v. The hiring or procuring whether on payment or otherwise of any vehicle or vessel by a candidate or his agent or by any other person for the conveyance of any elector (other than the candidate himself, and the member of this family or his agent) to or from any polling station provided in accordance with the rules made under this Act.
- vi. The holding of any meeting in which intoxication liquors are served.
- vii. The issuing of any circular, placard or poster having a reference to the election which does not bear the name and address of the printer and publisher thereof.
- viii. Any other practice which the Central Government may by rules specifies to be a corrupt practice.

2.4 SPECIAL PROVISION RELATING TO INCOME OF POLITICAL PARTIES:

1. Section 13A of Income Tax Act, 1961: Any income of a political party which is chargeable under the head "Income from house property" or "Income from other sources" or "Capital gains" or any income by way of voluntary contributions received by a political party from any person shall not be included in the total income of the previous year of such political party:

However the limitations to this rule are that:⁴⁶

- a. such political party shall keep and maintain such books of account and other documents as would enable the Assessing Officer to properly deduce its income there from;
- b. in respect of each such voluntary contribution in excess of twenty thousand rupees, such political party keeps and maintains a record of such contribution and the name and address of the person who has made such contribution; and

⁴⁶ Proviso, Section 13A of Income Tax Act, 1961

- c. the accounts of such political party are audited by an accountant as defined in the *Explanation* to sub-section (2) of section 288 of the Income Tax Act, 1961.
- d. Further, that if the treasurer of such political party or any other person authorised by that political party in this behalf fails to submit a report under sub-section (3) of section 29C of the Representation of the People Act, 1951 for a financial year, no exemption under this section shall be available for that political party for such financial year.

2. Section 182 of Companies Act, 2013: Prohibitions and restrictions regarding political contributions.

- a. no Government company; and
- b. no other company which has been in existence for less than three financial years, shall contribute any amount or amounts, directly or indirectly,
 - i. to any political party; or
 - ii. for any political purpose to any person.

A company, not being a company referred to in sub-section (1), may contribute any amount or amounts, directly or indirectly,

- i. to any political party; or
- ii. for any political purpose to any person:

Provided that the amount or, as the case may be, the aggregate of the amounts which may be so contributed by a company in any financial year shall not exceed seven and a half per cent of its average net profits during the three immediately preceding financial years.

Without prejudice to the generality of the provisions of sub-sections (1),⁴⁷

- a. a donation or subscription or payment caused to be given by a company on its behalf or on its account to a person who, to its knowledge, is carrying on any activity which can reasonably be regarded as likely to effect public support for

⁴⁷ Sub-section 2, Section 182 Companies Act, 2013

a political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose;

- b. the amount of expenditure incurred, directly or indirectly, by a company on advertisement in any publication (being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like) by or on behalf of a political party or for its advantage shall also be deemed,
 - i. where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party, and
 - ii. where such publication is not by or on behalf of but for the advantage of a political party, to be a contribution for a political purpose to the person publishing it.

Every company shall disclose in its profit and loss account any amount or amounts contributed by it to any political party or for any political purpose to any person during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party or person to which or to whom such amount has been contributed.⁴⁸

If a company makes any contribution in contravention of the provisions of this section,⁴⁹

- a. the company shall be punishable with fine which may extend to three times the amount so contributed; and
- b. every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

⁴⁸ Sub-section 3, Section 182 Companies Act, 2013

⁴⁹ Sub-section 4, Section 182 Companies Act, 2013

CHAPTER III

ELECTORAL REFORMS AND ITS DEVELOPMENT IN INDIA

“The purpose of politics is to give people tools to make the most of their lives.”

-Bill Clinton

Where politics is an art and act of exercising political powers, election is the means of legitimating those powers. Democracy can indeed function only upon this faith that elections are free and fair and not rigged and manipulated, that they are effective instruments of ascertaining popular will both in reality and in form and are not mere rituals calculated to generate illusion of difference to mass opinion, it cannot survive without free and fair elections. The election at present are not being hold in ideal conditions because of the enormous amount of money required to be spent and large muscle power needed for winning the elections.

However the initial three elections from 1952 to 1962 in India were free and fair, but a drastic decline was seen in the standards in the fourth general elections in 1967.⁵⁰ Till fourth general elections no such events were reported. All Over these years, Indian electoral system has suffered serious infirmities. The election scenario in our country is the source of political corruption. The drawback in its working appeared for the first time in 5th general elections in 1971 and such activities multiplied in the further elctions which were held in eighties and afterwards.⁵¹ It has been seen that most of the candidates and parties participate in the eections with a pprime motive of winning irrespective of values and morals.in my opinion an ideal condition should promote a public spirited, honest and upright person to contest a election and represent people. But actually, it does not happen and such an honest person has minimum chances of winning and getting elected.

After every election some electoral reforms regarding electoral procedure, were made by Election Commission in its general election report. Though, after the fourth general elections in late nineties electoral reforms became a matter of national importance. Alarming incidents of electoral malpractices like instances of booth

⁵⁰ Jain M.P; *“Indian Constitutional Law”*, Butterworths and Wadhawa, Reprint 2012, p.872.

⁵¹ Shukia Subhash (2008) *“Issues in Indian Politics”*, New Delhi: Anamika Publishers, p.219.

capturing, snatching ballot papers, intimidation or luring of against muscle and money power, etc., demanded numerous electoral reforms. Election Commission initiated electoral reforms in 1970 and a walked forward to suggest several reforms after its study. It has even sent a draft bill to the parliament to give effect to the proposed reforms through proper legislation.

To add upon the attempts of the Election Commission of improving the electoral procedure, on the lines of suggested draft bill, the government introduced a bill to amend the provision of Representation of the People's Acts, 1950 and 1951. The proposed bill was introduced in Lok Sabha in 1973, unfortunately with dissolution of the Lok Sabha in 1977, the bill died or lapsed. As an organ of his "*total revolution*", Jayprakash Narayan made several attempts on electoral reforms. On the part of the Citizens for Democracy, an organization founded by Jayprakash Narayan and V. M. Tarkunde, the former set up a committee with the latter as its Chairman. This committee submitted its recommendations in 1975 after several meetings with other organisations and its representatives. Narayan, through this initiative brought a necessary awareness among the masses regarding the needed electoral reforms in the political, media and concerned arena.⁵²

3.1 SOME ISSUES IN ELECTORAL POLITICS OF INDIA:

The elections these days does not take place with the spirit they were supposed to take place due to the huge amount spent and large muscle power used by the candidates and the parties contesting elections to win the elections. The major problems which the elections face in the path of electoral system in India are: money power, muscle power, criminalisation of politics, poll violence, booth capturing, communalism, castism, non-serious and independent candidates etc.

- **Money Power:**

Money plays a crucial role in elections these days. Money is spent like anything during elections not only to influence the voter choices illegitimately but also to fulfil the other criterion regarding legitimate expenditure required to contest an election in large constituencies in India. The 2014 elections were

⁵² K. Sumana K, "*Electoral Reforms in India*", Lecture in Public Administration, Dr. B. R. Ambedkar College, Bagh Lingam Pally, Hyderabad, available at http://www.theglobaljournals.com/ijar/file.php?val=July_2014_1404223806__94.pdf, Retrieved on 15th March, 2015

said to be the most expensive election in Indian election's history and even if we consider the legitimate expenses of contesting an election it comes out to be too high as it requires to meet so many people, visiting hundreds of people and employing a number of people. Around Rs 313 crore in cash was seized by Election Commission during this period. Election Commission had deployed surveillance and flying squads and intercepted cash along with liquor and narcotics as part of the central poll body's directive to check black money use and illegal inducements to the electorate. In the cash seizures list, Andhra Pradesh leads the tally with over Rs 153 crore announcement of the 16th general elections followed by Karnataka with over Rs 28 crore, Maharashtra with over Rs 25.67 crore), Tamil Nadu with over Rs 25.05 crore and Uttar Pradesh with Rs 24.07 crore. The total cash seizure stood at Rs 3,13,31,76,868.⁵³

- **Muscle Power:**

Mainly the products of muscle power are Violence, pre-election intimidation, post election, victimisation, most of the riggings of any type, booth capturing both silent and violent. Such practices have been seen in many parts of the country like Bihar, Western U.P., Maharashtra etc and this virus is spreading into the other parts of India as well like in Andhra Pradesh and its neighbouring states. Criminalisation of politics and politicisation of criminals, freely indulged in now, are like two sides of the same coin and are mainly responsible for the manifestation of muscle power at elections.⁵⁴ Criminals have been successful in winning elections by use of muscle power and it is encouraging such acts.

- **Criminalisation of Politics:**

Newspapers are blotted with the news of the number of criminals involved in the field of elections and sponsored by every party. The prime motive which is seen in involvement of criminals in elections is the discontinuation of the cases against them or their being dropped or not

⁵³ "Over Rs. 313 crore seized during polls, Andhra tops the list"; available at <http://www.rediff.com/news/report/-ls-election-over-rs-313-crore-seized-during-polls-andhra-tops-the-list/20140512.htm> , Retrieved 18th August, 2014.

⁵⁴ Gupta, S.C. (2004).151Essays,Meerut.

proceeded with. Their success rate at elections is basically due to their financial clout. Political parties support criminals with fund and in return expect protection and political patronage.⁵⁵ It has been estimated roughly that twenty percent of candidates have criminal records in any state commission: powerful gangsters and mafia dons have proved that they can use their muscle power to convert it into votes, often at gun point. Voters in numerous regions in the country are convinced with power to vote for the local strongman. Tickets were offered to contest elections to the candidates with criminal records even by some reputed National Parties. All these instances reported time and again show that democracy in India has largely failed to be what it was meant to be because the electoral system has been perverted. Our political system have been done away with because the criminal record holders and corrupted contestants have entered it.⁵⁶ Criminalisation of politics has now become an all pervasive phenomena. There was a time when some politicians used criminals for booth capturing to help themselves win elections but today those criminals have entered politics and have begun entering parliament as well as the state legislatures.

- **Financing of election exceeding the legal limit:**

It has been aptly put by a wise men that roots of corruption lie in the candidates. The statutory limit is Fifteen Lakh for a Lok Sabha seat , depending on the constituency and the number of voters, Rs. Three to Six lakh for state legislatures and it also depends upon the area, however it is Rs. Seventy Five Thousand for municipal corporates. It must be observed that these amounts which are fixed by the statute are far less than the actual expenses incurred by the candidates and political parties. For the candidates does not have so much funds, the finance comes from big business houses and the underworld on the basis of quid pro. Once the candidate becomes an MP, MLA or a Minister, he has to reciprocate to his donors in a big way. Such practice is supposed to be the root cause of corruption in electoral system.⁵⁷

⁵⁵ Summer, Kaul (2002), '*Who wants to cleaner Electoral System? Not the Politicians*', Parliamentary Affairs, August Bangalore, p. 13.

⁵⁶ *Supra* Note 53

⁵⁷ "*Criminalisation of politics: A Matter of concern*", Lawz Bureau, Lawz Magazine, Vol 12 No. 7 Issue 143, July 2013

- **Booth capturing:**

An example of how booth capturing is done generally: A polling centre will be captured by members of a certain political party, by filling it with some of the party loyalists. Typically they illegally vote at the booth captured by them even when they are not registered to vote there. By keeping the booth occupied, votes for an opposing party are kept lower, and people who have the legitimate right to vote may not be able to wait for an extended time to cast their vote, or they may be so intimidated by fierce seeming mobs capturing a booth that they simply don't vote.⁵⁸

The Election Commission of India lost some of its bright image, in 2014 Lok Sabha Elections, over reports of rigging and booth capture in West Bengal, UP and Bihar and its ill handling of the high profile Benaras elections.⁵⁹

- **Large-scale rigging of elections:**

Rigging means using fraudulent methods during voting process to harness votes by any party in the elections. This has been witnessed in the Odisha elections this time. Such practice has been seen in several other parts of India and it puts a big question mark over the conduct of free and fair elections in the one of the biggest democracies of the world, India.⁶⁰

A TV media channel⁶¹ telecasted how a group of men entered a polling booth in Aul Assembly Constituency of Kendrapara district of Odisha on April 17, 2014 and threatened people to cast their vote as per their order and in simple words they took over the booth.

⁵⁸ *Supra* Note 57

⁵⁹ "2014 Lok Sabha elections: Spats, rigging charges spoil EC's poll party", May 16, 2014, TNN, available at <http://timesofindia.indiatimes.com/news/2014-Lok-Sabha-elections-Spats-rigging-charges-spoil-ECs-poll-party/articleshow/35174600.cms>, Retrieved on March 17, 2015

⁶⁰ Sabat, Amrita, "Rigging in Indian Elections 2014", April 21, 2014, available at <http://amritasabat.blogspot.in/2014/04/r-rigging-in-indian-elections-2014.html>, Retrieved on March 17, 2015

⁶¹ "Focus Odisha exposes Rigging in Aul in Kendrapara", April 18, 2014, Breaking News Online, available at <http://www.breakingnewsonline.in/odisha/1419-focus-odisha-exposes-rigging-in-aul-in-kendrapara>, Retrieved on March 17, 2015

- **Abuse of religion and caste:**

It is a known fact that religion has an effect on all the arenas of life. However religion and religiously political forces have affected the domestic politics of a country irrespective of its geo-politics, economic growth and the system of governance. Religion is the new rule of governance now and is gaining more importance as the time is passing and has become an identity mark and a tool for political mobilization to which a country like India with number of religious sects at the same place, is not untouched by its effect. The influence made by the presence of the religious-political parties like Vishva Hindu Parishad and Bajrang Dal, indicates the effect of religion in framing the political ideologies. However religion should not be the only indice to measure the depth and scope of politics for social welfare.⁶²

- **Vote Bank Politics:**

Vote bank policy in politics is the practice of generating and maintaining vote banks with the use of divisive politics. This branch of politics divide the masses on the basis of certain common interests and force them morally to vote for their favourable candidate, which is often against their better judgement by themselves. It is considered dangerous to the country. In India, vote banks tend to be along the lines of religion, caste or language. However, elections in India have a great deal in the supports through vote bank policies. Often the B.J.P. is criticised for such practice due to their hindu ideologies and an inclination towards the orthodox Hinduism practice. Moreover, Prime Minister Narendra Modi has accused Home Minister Sushil Kumar Shinde in 2015 of playing vote bank politics by giving in written to almost all chief ministers of the states to be careful while arresting the minorities.⁶³

⁶²Md. Iftakharul Islam and Kaniz Marzia; “*Abuse of the Religious Sentiment to Gain Political Purpose in Bangladesh*” Volume 8, Issue 4 (Mar. - Apr. 2013), PP 15-21

⁶³ Sanyal Prasad, “*Narendra Modi accuses Home Minister Sushil Kumar Shinde of vote bank politics*”, January 12, 2014, NDTV, India, available at <http://www.ndtv.com/india-news/narendra-modi-accuses-home-minister-sushil-kumar-shinde-of-vote-bank-politics-547588>, Retrieved on 19th March 2015

- **Tampered Electronic Voting Machines:**

Recent research at Argonne National Laboratories demonstrates that if a malicious actor is able to gain physical access to a voting machine, it can be a simple process to manipulate certain electronic voting machines, such as the Diebold Accuvote TS, by inserting inexpensive, readily available electronic components inside the machine.⁶⁴

A hardware of a voting machine can be tampered to directly affect the total votes and even tampering the software of the machine can be done to add some code soas to affect the counting of votes or converting the votes to the favoured candidate,⁶⁵.kinds of election frauds even involve giving access to machine to some unauthorized personnel by the election official to tamper the voting process.even sone voting machines require a smartcard to gain access to its operations, and the frauds have reached to the level of using fraudulent smartcards to get access to these machines to manipulate the counts of the votes or tamper the machines favourably before the election process even commences.⁶⁶

3.2 HISTORY OF ELECTION REFORMS IN INDIA:

The voyage of debasement in race methodology did not come to pass for the majority of a sudden however continuously in a period compass of quite a few years. At first the necessity of cash was felt for battling and since the larger part voters were ignorant masses along these lines, electioneering was obliged to be on an extensive scale. The hopefuls got bolster, help and accounts from crooks and muscle men. Era and amassing of cash obliges a hearty backing from the administration and these have a tendency to include the organization too in the political web. Before long the crooks included in non- bailable and cognizable offenses themselves began partaking in legislative issues since they could without much of a stretch win the decisions by dangers and intimidation. The skirmish of tally got to be clash of slugs. Furthermore,

⁶⁴ Vijayan, Jaikumar; "Argonne researchers 'hack' Diebold e-voting system", September 28, 2011, Computerworld. Retrieved 19th March, 2015

⁶⁵ Kevin Bonsor and Jonathan Strickland, "Voter Fraud, Networking and Operational Transparency", available on <http://people.howstuffworks.com/e-voting2.htm>, Retrieved on 19th March, 2015.

⁶⁶ *Ibid*

when these sorts of individuals try to turn into the piece of our privileged assembly, what better changes would we be able to anticipate from our legislature?

Taking cognizance of these shortcomings several commissions came up with the proposal for reformation of Electoral process in India including *Goswami Committee on Electoral Reforms 1990*, *Vohra Committee Report 1993*, *Iyer Committee 1994*, *Indrajit Gupta Committee on State Funding of Elections 1998*, *Law Commission Report on the Electoral Laws 1999*, *National Commission to Review the Working of the Constitution 2001*, *Election Commission of India with Proposed Electoral Reforms, 2004* and *the Second Administrative Reforms Commission 2008*. These committees first outlined the alarming divergence and irregularities of the Election process and then made recommendations for its implementation.⁶⁷

3.2.1 GOSWAMI COMMITTEE ON ELECTORAL REFORMS, 1990

The main recommendations of the Committee were as follows:⁶⁸

- a three-member election commission and appointment of the Chief Election Commissioner in consultation with the Chief Justice of India and the leader of the opposition and the appointment of other Election commissioners in consultation with Chief Election Commissioner;
- a fresh de-limitation of the constituencies on the basis of 1981 census and rotation of seats reserved for SCs and STs;
- issuing of multi-purpose photo identity cards to voters;
- disallowance of contesting by candidates from more than two constituencies;
- the raising of security deposits of independent candidates and forfeiture of security deposits of all candidates failing to secure at least ¼th of the votes polled;
- a statutory status to the model code of conduct formulated by the Election Commission;
- introduction of electronic voting machine;

⁶⁷ *Supra* Note 6

⁶⁸ Extracts from Report submitted by National Committee for Review of Working of Constitution, March 31, 2002, Chapter 4, Electoral process and Political Parties, available at, http://www.ahsd.in/Electoral%20Reforms_Compndium.pdf, Retrieved on 20th March, 2015

- legislative measures against booth-capturing, rigging and intimidation of voters;
- limited state-funding in kind to recognized political parties, to begin with;
- transportation of voters, carrying of fire arms, sale and distribution of liquor on poll day to be cognizable electoral offence in law;
- restriction of disqualification under the anti-defection law to voluntary resignation and violation of party whips only in cases of vote of confidence, money bills and vote of thanks to the President;
- A review of the electoral system by a standing Committee of the Parliament and by an expert Committee.

3.2.2 VOHRA COMMITTEE REPORT, 1993

It was in this background and in the midst of affirmed charges of debasement including legislators and general view of criminalisation of governmental issues, that the legislature of the day delegated on 9 July, 1993, a Committee headed by Shri N.N. Vohra, the then Home Secretary, Government of India, to take load of all accessible data about the exercises of wrongdoing syndicates/mafia associations who supposedly had created connections with and were being ensured by some Government functionaries and political identities. The Committee in the wake of considering the matter exhibited its answer to the Government of India which laid it before both Houses of Parliament on 1 August 1995. The report was talked about in the Houses of Parliament in August, 1995.

The Committee in its report, inter alia, pointed out that “*the nexus between the criminal gangs, police, bureaucracy and politicians*”⁶⁹ had come out clearly in various parts of the country. The current criminal equity framework, which was basically intended to manage the individual offenses/wrongdoings, was not able to manage the exercises of the mafia; the procurements of law as to monetary offenses were discovered to be powerless and there were unconquerable legitimate challenges in appending/usurping the properties obtained through mafia exercises.

The report recommended setting up of a nodal org under the Ministry of Home Affairs, Government of India, to be taken care of straightforwardly by the Union

⁶⁹ *Supra* Note 67

Home Secretary, who might be supported by one or more chosen officers of the Ministry for the examination and aggregation of all data got from diverse brainpower organizations.⁷⁰

3.2.3 IYER COMMITTEE, 1994

The Iyer Committee recommended⁷¹ that a law should ensure inner-party democracy in all political parties. It likewise repeated a lawful assent for fitting review and records. Other than it proposed the organization of a Commissioner to analyze and choose whether a political party was advancing communalism or in any capacity acting against the Constitution.

3.2.4 INDRAJIT GUPTA COMMITTEE ON STATE FUNDING OF ELECTIONS, 1998

The Indrajit Gupta Committee on State Funding of Elections, 1998, supported the thought of state subsidizing of races on guideline, expressing that The Committee see full avocation protected, legitimate and on ground of open interest, for award of State subvention to political party, to make such conditions where even the gatherings with humble monetary assets may be capable to contend with those who have predominant money related assets.

It added two limitations, namely:⁷²

- i. such funds could not be doled out to independent candidates, and only to national and state parties having granted a symbol and proven their popularity among the electorate, and
- ii. in the short-term, State funding may be given only in kind, in the form of certain facilities to the recognised political parties and their candidates. However, despite strongly backing full State funding of elections principle, it stated that only partial State funding would be possible in the short-term given the prevailing economic condition of the country.

It was seen by both the Indrajit Gupta Committee on State Funding of Elections, 1998, and the National Commission to Review the Working of the

⁷⁰ *Supra* Note 6

⁷¹ *Supra* Note 68

⁷² *Supra* Note 6

Constitution, 2001, that a large portion of the instruments utilized for battling –, for example, divider works, revives on open property, utilizing amplifiers for crusading – are unreasonable, as well as an open aggravation. Checking these exercises can both lessen the general population disturbance brought on by them furthermore decrease the measure of cash expected to battle decis. For this purpose the Committees suggested⁷³ that a suitable law should be authorized giving disciplines or sensible restrictions against hurting or polluting open or private property by hopefuls, political social occasions, or the pros, through painting of aphorisms or raising cut-outs and amassing or setting up banners and buntings, divider works, lifting of standards (except for at get-together working environments, party working environments, open get-togethers and other decided spots), etc.

3.2.5 LAW COMMISSION REPORT ON THE ELECTORAL LAWS, 1999

The recommendations of the Law Commission could be summed up as follows:⁷⁴

- Inclusion in the Representation of People’s Act, 1950 to regulate the formation, functioning and income-expenditure accounts of political parties and to avoid their splintering and ensure internal democracy.
- Scrapping of explanation I to section 77(1) of the Representation of People’s Act, 1950 to make the electoral system more representative, fair and transparent making it obligatory for every candidate to declare his/her assets and of his/ her spouse and dependent relations as well as provide particulars regarding criminal cases pending against them.
- On state of funding of political parties, recommendations of the Indrajit Gupta Committee subject to certain changes, be adopted.
- In case of electoral offences and certain other serious offences, framing of a charge by the court should itself be a ground for disqualification in addition to conviction. Relevant provisions of the Criminal Procedure be amended to check false complaints.
- List system on the German model for 25% or 50% additional seats and concept of negative vote.

⁷³ *Supra* Note 6

⁷⁴ *Supra* Note 68

3.2.6 NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION, 2001

The National Commission to Review the Working of the Constitution, 2001, rightly noticed that "The discretionary methodology starts with the readiness of electing rolls. On the off chance that the rolls are inadequate or deficient, the entire methodology is vitiated." Thusly, the Commission had prescribed in its 2001 report that a mechanized online database ought to be made by the Election Commission.⁷⁵ In such a framework, every voter would be given a novel bar-coded ID number, allocated forever. This bar-coded ID card and number could be checked at the surveying stall by a hand held gadget. The electing comes in this framework could be arranged at the panchayat or area level. Alongside this, the Commission additionally prescribed that the undertaking of electing move arrangement ought not be copied as it is presently, potentially by entrusting it to an outside office under the supervision of the Election Commission. A concentrated, mechanized framework could accommodate the simple open accessibility of the appointive moves also. The National Commission to Review the Working of the Constitution suggests that the Election Commission ought to have the force under Section 58A of the Representation of the People Act, 1951, to arrange a new decision, void the race results, or request a re-survey in such cases. It further prescribed that the Election Commission ought to make utilization of electronic observation hardware as an obstacle to stall catch or intimidation of voters.⁷⁶

3.2.7 ELECTION COMMISSION OF INDIA WITH PROPOSED ELECTORAL REFORMS, 2004

The Election Commission of India, based upon the views and recommendations of various committees, has recommended the following reforms to secure free and fair elections:

- For keeping persons with criminal foundation from getting to be lawmakers, the Commission has made a proposition for precluding (from challenging race) a man against whom charges have been encircled by a Court for an

⁷⁵ *Supra* Note 6

⁷⁶ *Ibid*

offense deserving of detainment of 5 years or more. Under the current law (as on 2004) (Section-8, the Representation of the People Act, 1950) there is a preclusion once a man is indicted and sentenced to detainment of two years or all the more (on account of specific offenses specified in sub-areas (1) of Section-8, conviction itself prompts exclusion, even with no sentence of detainment). The Commission's proposition is for preclusion even before conviction, if the court has surrounded charges. As a safety measure against foisting false cases on the eve of decision, it has been recommended that just those cases in which charges are encircled six months preceding a race ought to be considered for that decision.⁷⁷

- The Commission has recommended that lawful procurements be made to manage the working of political party and the Commission ought to be enabled to control enlistment and additionally de-enrollment of political party.⁷⁸
- The political party ought to be legitimately needed to get their records inspected yearly. The reviewed records ought to be placed in broad daylight area. There ought to be straightforwardness in the raising money and use of political party.⁷⁹
- For six months preceding the date of expiry of the term of the House, there ought to be a boycott on promotions on accomplishments of the Government. Notices/spread of data on destitution reduction and wellbeing related plans could be exempted from the boycott.⁸⁰
- In the tally paper and on the ticket unit, after the particulars identifying with the last candidate, there ought to be procurements for a section 'none of the above' to empower a voter to reject all applicants on the off chance that he so craves⁸¹

⁷⁷ “Important Electoral Reforms Proposed by the Election Commission”, 15th July, 1988, Reiterated in November, 1999, July, 2004 and October, 2006, Election Commission of India, available at http://eci.nic.in/eci_main/electoral_ref.pdf

⁷⁸ *Ibid*

⁷⁹ *Supra*

⁸⁰ *Supra*

⁸¹ *Supra*

- On account of general race, there ought to be a boycott against exchanging any decision related officer without the simultaneousness of the Commission for a time of six months before the expiry of the term of the House.⁸²

3.2.8 THE SECOND ADMINISTRATIVE REFORMS COMMISSION, 2008

The report "Ethics in Governance" of the Second Administrative Reforms agreed with the suggestion of the Election Commission. The Second Administrative Reforms Commission suggested in detail that:

"Special Election Tribunals" ought to be constituted at the provincial level under article 329B of the Constitution to guarantee expedient transfer of decision petitions and debate inside a stipulated time of six months. Every tribunal ought to include a High Court judge and a senior common worker with no less than 5 years involvement in the behavior of decisions (not beneath the rank of an Additional Secretary to the Government of India/Principal Secretary of a State Government). Its order ought to be to guarantee that all decision petitions are chosen inside a time of six months as gave by law. The Tribunals ought to regularly be set up for a term of one year, extendable for a time of 6 months in remarkable circumstances.⁸³

The Election Commission and "Ethics in Governance" report of the Second Administrative Reforms Commission additionally both prescribed that the issue of exclusion on grounds of surrender ought to be chosen by the President/Governor concerned under the guidance of the Election Commission, as opposed to depending on the objectivity of the choice from the Speaker.⁸⁴

⁸² *Supra* Note 77

⁸³ "Ethics in Governance", January 2007, Fourth Report , Second Administrative Reforms Commission, Government of India

⁸⁴ *Supra* Note 6

3.3 RECENT REFORMS:

In July, 2013 the Honorable Supreme Court of India decided that Parliamentarians and State Legislators who were declared guilty genuine law violations, importance conveying a prison term of two years or more would be banned from challenging races. The court struck down Section 8 of the Representation of the People Act, 1951 which permitted indicted for Parliament and Legislative Assemblies to proceed in office while their advances ventured through courts frequently for inconclusive periods.⁸⁵

Be that as it may, the Government, sponsored by backing from all political party, had presented a charge, the Representation of the People (Second Amendment and Validation) Bill, 2013, in Parliament⁸⁶ to over-ride this Supreme Court judgment and afterward passed the doomed Ordinance which now stands withdrawn.⁸⁷

On 1 October 2013, Rasheed Masood became the first MP to lose his membership of parliament under the new guidelines, when he was sentenced to four years imprisonment for cheating, forgery and corruption.⁸⁸ The most celebrated case has been the conviction of Chief Minister of Tamil Nadu Jayalalithaa with four years' simple imprisonment and a fine of Rs. 100 crore for corruption after an epic 18-year-long legal battle.⁸⁹

⁸⁵ Lily Thomas v. Union of India Writ Petition (CIVIL) No. 490 of 2005; Lok Prahari v. Union of India Writ Petition (CIVIL) No. 231 of 2005

⁸⁶ “*Bill for no immediate disqualification of convicted MPs, MLAs*”, 30th August 2013, 07:01 PM, Press Trust of India, New Delhi, Indian Express, available at <http://www.newindianexpress.com/nation/Bill-for-no-immediate-disqualification-of-convicted-MPs-MLAs/2013/08/30/article1759870.ece>

⁸⁷ Gupta Smita, “*Ahead of fodder case verdict comes ordinance to protect lawmakers*”, September 25, 2013, The Hindu, New Delhi

⁸⁸ Sengupta Subhajit and Arunima, CNN-IBN, “*Congress's Rasheed Masood jailed for 4 years in MBBS seat scam, loses RS seat*”; October 1, 2013, IBN Live, available at <http://ibnlive.in.com/news/rasheed-masood-jailed-for-4-years-in-mbbs-seat-scam-loses-rs-seat/425697-37-64.html>, Retrieved on March 20, 2015

⁸⁹ Sruthisagar Yamunan and Krishna Prasad, “*Jayalalithaa sentenced to four years in jail, fined Rs. 100 crore*”, September 27, 2014, The Hindu, Bangalore, available at <http://www.thehindu.com/news/national/tamil-nadu/jayalalithaa-sentenced-to-four-years-in-jail-fined-rs-100-crore/article6452659.ece>, Retrieved on March 20, 2015.

3.3.1 NOTA (None of the Above)⁹⁰:

This choice was presented in the electronic voting machines in India after the milestone judgment conveyed by the Supreme Court in PUCL v. UoI⁹¹. The privilege to vote in India is a statutory right. The opposite of this, i.e. the privilege not to vote, while keeping up mystery was guaranteed vide a request to the Supreme Court by PUCL. Since the appeal documented by PUCL (Peoples Union For Civil Liberties) was a Writ Petition under Article 32, the Court needed to judge its practicality, as it was battled that Right to Vote is viewed as a statutory right. The Court held that albeit Right to vote is a statutory right, the choice taken by the voter is a feature of Freedom of Expression under Art. 19(1)(a). Crucial Right of the right to speak freely and outflow under 19(1)(a) and statutory directly under S. 79 of Representation of People Act, 1950 is disregarded if right not to vote is denied. Consequently the Court held that the Writ Petition is viable.

The primary preference of the joining of NOTA is maintaining and distinguishment of the privilege of the residents to not make a choice while keeping up mystery amid such forbearance. The genuine soul of majority rules system lies in the privilege of the natives to have the capacity to pick their agents intermittently. Clearly the closures of majority rules system can be met just when greater part of the natives practice this privilege. In any case, in the meantime it must be guaranteed that the subjects are not urged to pick the best from the most noticeably bad which tragically is the situation as a rule. This is precisely what NOTA tries to accomplish.⁹² The main impetus behind the choice of the Supreme Court in PUCL versus UOI⁹³ was the way that presentation of NOTA in EVMs would urge the political party to venture candidates with an as it were "clean foundation" in the different voting demographics. NOTA is a capable gadget in the hands of the voters who, if disappointed with the nature of the candidates may decide to utilize it. This thusly has the impact of a steady weight on the political party to guarantee that just qualified and suitable candidates speak to their political party in the races. The result of this whole method: "a much

⁹⁰ Letter dated 31st October, 2013, "*Dissemination of Information Regarding None of the above (NOTA) Option on the EVM*", No.491/SVEEP/87/2013(NOTA), Election Commission of India, available at http://eci.nic.in/eci_main1/SVEEP/NOTAoptiononEVM_20112013.pdf, Retrieved 21st March, 2015.

⁹¹ WRIT PETITION (CIVIL) NO. 161 OF 2004

⁹² *Ibid*

⁹³ *Supra*

cleaner political future for India". In any event this was the whole thought behind the Supreme Court passing a Judgment⁹⁴ for presentation of NOTA. The points of interest of NOTA are clearly various as have been expressed in the previous segment. Anyway proportional down the profits tone line –NOTA is a stage forward in accomplishing the finishes of majority rules system.

3.3.2 The Latest on Point:

The 255th report of the Law Commission (March 2015) notice suggestions for decision money changes that incorporate laws controlling race use, commitments, and revelation and a similar investigation with laws in United Kingdom, Germany, United States of America, Australia, Japan, Philippines on electing use, exposure, and commitment. The Commission likewise examined alternate parts of Election law and concocted the report.⁹⁵

The Law Commission proposed change to the tenth Schedule of Constitution to vest the capacity to prohibit a MP or MLA on ground of fleeing in the President or the Governor, as the case may be, as opposed to the Speaker (Lok Sabha or assembling) or Chairman (Rajya Sabha or Legislative Council). The President/Governor would, nevertheless, simply catch up on the direction of the ECI. Such a measure, the commission feels, would help ensure the uprightness of the Speaker's office.

The Commission examined the NOTA and Right to reject and prescribed, "The Law Commission as of now rejects the expansion of the NOTA rule to acquaint a privilege with reject the candidate and discredit the decision in situations where a dominant part of the votes have been surveyed for the NOTA choice. Notwithstanding, the issue may be rethought again later on." The Commission likewise inspected the Right to Recall and inevitably prescribed that it is not for such a right in any structure.⁹⁶

⁹⁴ PUCL v. Union of India WRIT PETITION (CIVIL) NO. 161 OF 2004

⁹⁵ Pathak Gaurav, "*Law Commission rejects 'Right to recall' and Right to reject, suggests barring independent candidates in Elections in its 255th report*", March 12, 2015, available at <http://www.livelaw.in/law-commission-rejects-right-to-recall-and-right-to-reject-suggests-barring-independent-candidates-in-elections-in-its-255threport/>

⁹⁶ *Ibid*

The Commission further recommended that:⁹⁷

- a. All parties to submit the names and addresses of all their donors (regardless of the amounts or source of funding) for contributions greater than Rs. 20,000 through a new section 29D, RPA. A maximum of up to Rs. 20 crore or 20% of the party's entire collection, whichever is lower, can be anonymous;
- b. The ECI to upload all the annual returns of the parties (under section 29E) and the district election officer to upload the election and contribution expenses of candidates (under section 78A) and keep the same on record for public inspection for three years.
- c. Parties to submit election expense accounts within a specified period after every Parliamentary or State election, pursuant to the Supreme Court's judgment in *Common Cause, A Registered Society v. Union of India*⁹⁸ and the ECI's notifications on election expenses and transparency guidelines through a new section 29F."⁹⁹

⁹⁷ *Supra* Note 95

⁹⁸ 706 1996 SCALE (3)258

⁹⁹ *Supra* Note 95

CHAPTER IV

ROLE OF RIGHT TO INFORMATION ACT FOR ELECTORAL REFORMS

“The key to the successful functioning of any democratic polity is the ability of a citizen to observe and evaluate the functioning of elected representative and make an informed judgment of their performance. This evaluation is predicated on the easy availability of the necessary information for a citizen to arrive at an assessment.”¹⁰⁰

Since 1947, the year of autonomy, decisions have been held consistently to choose delegates to the Parliament and state governing bodies (with voting for the most part staying around the 60% imprint for the parliamentary races), the exchange of energy to progressive governments has been smooth, the military has all through been under regular citizen control, keeping in mind secessionist developments exist even now (the most strident one being in the condition of Jammu and Kashmir), numerous have either faded away, or at any rate, their power has brought down. On the political front also, the Congress party, which for quite a few years appreciated complete control over the Parliament and most state assemblies, can no more claim to be the sole illustrative of the will of the individuals as communicated through decision results.¹⁰¹

Other national and territorial gatherings have developed in quality, with the Congress getting to be essentially a political non-substance in numerous states. Alongside this, the media in India is truly autonomous and vocal, and flexibilities of affiliation and gathering are ensured, empowering critical political spaces for difference and contestation against the state. In aggregate then, it does appear that in the six decades since autonomy, majority rules system, in any event in the procedural sense, has been standardized and has flourished in India – a condition that is unrealistic to change or be tested soon. Despite the fact that the proceeded with

¹⁰⁰ From the Prime Minister’s intervention during the debate in the Lok Sabha on the RTI Act, 11 May 2005, available at <http://www.rtiindia.org/forum/85-prime-minister-lok-sabha-speech-right-information-bill.html>. Retrieved 22 February 2015.

¹⁰¹ Kumar, Devesh, “*Election Results 2014: Narendra Modi’s clean sweep*”, May 16, 2014, NDTV Elections, available at <http://www.ndtv.com/cheat-sheet/election-results-2014-narendra-modis-clean-sweep-states-562245>, Retrieved 22 February, 2015.

activities and impact of Maoist gatherings crosswise over huge swathes of the nation remain a matter of sympathy toward the standard political and financial foundation.

This union of a strong vote based structure has been rightfully noted in the media. At the point when "the world's largest democracy" goes to the surveys, it is taken after with eager investment internationally. For the last national decisions in the nation in 2014, the worldwide media slid in full compel.¹⁰² Celebratory pieces showed up with unerring consistency in daily papers over the world, now and again in wonderment of the sheer logistical practice in holding free and reasonable decisions over a boundless topography, including an electorate that would be the third biggest populace of the world in the event that it was taken as a different nation.¹⁰³ Developments in the advances of directing races are additionally being done, with electronic voting machines grew indigenously (with talks of these being sent out) and conveyed across the country in 2009 to make the decision handle faster, less expensive and more clean.

Indeed as there is an expansive accord on the thought that formal just organizations have now settled profound establishes in India, there is maybe a significantly more noteworthy agreement and concern on the restrictions of the act of majority rule government in India, particularly regarding the structures and locales inside which the masses connect with or are not able to do as such with fair standards, structures, methodologies and results all the more considerably.

The Law commission of India in its 170th provide details regarding "Reforms of Electoral Laws" suggested that¹⁰⁴ if popular government and responsibility constitute the center of our sacred framework, the same ideas should likewise apply to and tie the Political Parties which are fundamental to parliamentary vote based system. It is the Political Parties that structure the Government, man the Parliament and run the administration of the nation. It is hence, important to present inside

¹⁰²The total electorate for the 2014 general election in India was 832,717,189 as per data from the Election Commission of India. This is more than the combined population of the United States and countries of the European Union. See http://eci.nic.in/eci_main/archiveofge2014/12%20%20State%20wise%20Voter%20Turnout.pdf, Accessed 22 February 2015

¹⁰³*Ibid*

¹⁰⁴ "170th Report on the Reform of Electoral Laws", May, 1999, Law Commission of India, Part I, Relevant Legislative Provisions, available at [http://www.lawcommissionofindia.nic.in/lc170.htm#RELEVANT LEGISLATIVE PROVISIONS](http://www.lawcommissionofindia.nic.in/lc170.htm#RELEVANT_LEGISLATIVE_PROVISIONS), Retrieved on 25th March, 2015

majority rules system, budgetary straightforwardness and responsibility in the working of the Political Parties. A political party which does not regard popularity based standards in its inner working can't be relied upon to regard those standards in the administration of the nation. It can't be fascism inside and just in its working outside.

4.1 MOVEMENT FOR A RIGHT TO INFORMATION LAW

4.1.1 Movement towards Transparency:

Verifiably talking, a development for the privilege to Information first started in Rajasthan, in 1990, when an association called 'Mazdoor Kisan Shakti Sangathan' (MKSS) was enrolled on May Day in 1990. Its individuals were minimal laborers and landless specialists of town Dendungri in Rajasthan who chose to battle for their wages amid starvation and needed straightforwardness in the record in order to battle debasement. Nikhil Dey, a Non- inhabitant Indian from the United States of America, began open listening to or Jan Sunvai and shook the very establishment of the customary syndication, mediation and debasement of the authorities who were keeping up the starvation record.¹⁰⁵

The MKSS requested that the duplicates of all archives identified with open works be made accessible to them for an open review. The critical archives were the summon move, which recorded the participation of the specialists, the wages due and paid, the bills and vouchers which identify with buy and transportation of materials. The Collector acknowledged the appeals of the activists however the town advancement officers declined to follow the composed headings of the Collector and went on strike. Gradually, the disturbance spread to the whole condition of Rajasthan.¹⁰⁶

On fifth April, 1995, the Chief Minister of Rajasthan declared in the administrative gathering that his legislature would be the first in the nation to present upon each resident the privilege to acquire for a charge, photograph duplicates of all

¹⁰⁵ Gehlot, Dinesh; "A Critique of the Rajasthan Right to Information Act, 2001"; 2004; Rajasthan Patrika, 5 August (Hindi)

¹⁰⁶ *Ibid*

authority archives identifying with neighbourhood improvement lives up to expectations.¹⁰⁷

Prior to 1997, securing data from open records was generally subject to managerial brochures, and no reasonable law existed for getting data, keeping in mind the end goal to fortify the majority rule republic, it has gotten to be important to set out strategies for gaining such data, and all things considered the techniques were advanced to conform to Articles 19 and 21 of the Constitution, so that it might be reasonable and sensible.¹⁰⁸

The need to authorize a law on right to data was perceived consistently in the Chief Ministers Conference on "Effective and Responsive Government" hung on 24th May 1997 at New Delhi. In its 38th Report identifying with Demands for Grants of the Ministry of Personnel, Public Grievances and Pension, the Parliamentary Standing Committee on Home Affairs prescribed that the Government ought to take measures for authorization of such enactment. Right to Information is a feature of the Fundamental Right to Free Speech and Expression; consequently, the State Legislatures passed the law for the authorization of the said Right.¹⁰⁹

4.1.2 The Freedom of Information Act, 2002:

The Freedom of Information Act, 2002, was instituted by the Government of India to accommodate flexibility to each resident to secure access to data under the control of open powers, reliable with open enthusiasm, to advance openness, straightforwardness and responsibility in organization and in connection to matters associated therewith or accidental thereto.¹¹⁰

To make the Government more straightforward, and responsible to general society, the Government of India delegated a Working Group on the Right to Information and Promotion of Open and Transparent Government under the Chairmanship of H.D. Shourie. The Working Group was requested that analyze the

¹⁰⁷ Jain Anshu, "Access to Information within the Ambit of Right to Information Act, 2005: Loopholes and Possible Remedies"(Ph.D Thesis, RGNUL, Punjab), p. 113

¹⁰⁸ *Ibid*

¹⁰⁹ Statement of Objects and reasons, Freedom of Information Act, 2002

¹¹⁰ "Detailed Analysis of the Indian Freedom to Information Act, 2002 & Recommendation for Amendments", Common Wealth Human Rights Initiative, July 2004

possibility and requirement for either undeniable Right to Information Act or its presentation in a staged way.¹¹¹

The draft Bill put together by the Working Group was along these lines pondered by the Group of Ministers constituted by the Central Government to guarantee that free stream of data was accessible to the general population, while entomb alia, ensuring the national investment, sway and trustworthiness of India, and cordial relations with outside States.

Be that as it may, despite the fact that the Bill included new procurements like altering the time-furthest reaches of forty eight hours forever and freedom related data, yet it experienced various imperfections. Essential amongst which was the way that it strengthened the controlling part of the administration authorities who held wide optional forces to withhold data. Further, it gave clearing exceptions and there was neither a punishment procurement nor any kind of procurement for the constitution of Information Commission.¹¹²

The National Democratic Alliance led by Bharatiya Janta Party worked again on the Shourie Draft to give final words to the Freedom of Information Bill, 2000 and it was presented in the Lok Sabha on 25 July, 2000.¹¹³ Then again, even after the Presidential consent, the Act couldn't be informed in the Official Gazette. It was felt that this Act did not satisfy the yearnings of the nationals of India. The requirement for a more noteworthy and more viable access to data was the need of hour and it was believed that the thought to make Freedom of Information Act, 2002 more dynamic, participatory and significant was advanced.

4.1.3 Enactment of Right to Information Act, 2005

In perspective of the noteworthy changes proposed in the then existing Freedom of Information Act, 2002, the administration chose to annulment the same and another enactment was proposed to give a viable system to effectuating the privilege to data.

¹¹¹ Thomas, E.C.; "*The Right to Information act- A Cleansing Effect*", 16th January, 2013m available at <http://pib.nic.in/feature/feyr2003/fjan2003/f160120031.html>, Retrieved on 25th March 2015

¹¹² Supra Note 11

¹¹³ Supra Note 8

At last after a ton of talk and pondering, the Right to Information Act, 2005, was gone by both the places of the parliament in the late spring session of 2005. It came into power in totality with impact from twelfth October, 2005 and came to be viewed as a breakthrough in the historical backdrop of social enactment to confer data to subjects of India in regards to working of the legislature and its enterprises and so on to make them more straightforward as an aftereffect of which defilement, if not killed by any means, would be checked as it were. Area 31 of the Right to Information Act, 2005 canceled the Freedom of Information Act, 2002.¹¹⁴

The basis behind of the Right to Information Act, 2005 is to attain to straightforwardness and responsibility inside government apparatus as has been imagined in the target of the enactment which states it to be a "Demonstration to accommodate setting out the useful administration of right to data for residents to secure access to data under the control of open powers, with a specific end goal to advance straightforwardness and responsibility in the working of each open power, the constitution of a Central Information Commission and State Information Commissions and for matters joined therewith or accidental thereto."¹¹⁵

Thusly, from the scrutiny of the items and purposes behind authorizing the Right to Information Act, 2005 it is obvious that the administration sought to build a viable administration of right to data for residents to have entry to data under the control of open powers, so as to advance straightforwardness and responsibility in their working.¹¹⁶

¹¹⁴ Barowalia, J.N.; *“Commentary on the Right to Information Act”*, Universal Law Publishing Company, Delhi, 2006, p. 18.

¹¹⁵ Statement of Objects and Resaons, Right to Information Act, 2005

¹¹⁶ Dhara Singh Girls High School, Ghaziabad v. State of U.P., AIR 2008 All. 92.

4.2 RIGHT TO INFORMATION IN INDIA AND PROCESS OF ELECTORAL REFORMS

The Right to Information Act brings into sharp focus issues around common society, deliberative vote based system, support, voice and responsibility inside the bigger talk of just developing in India. A quick look at the opening proclamation of the Act itself is revealing. It states:

“Whereas the Constitution of India has established democratic Republic;

Also, though majority rule government obliges an educated citizenry and straightforwardness of data which are imperative to its working furthermore to contain debasement and to consider Governments and their instrumentalities responsible to the represented;

Also, though disclosure of data in genuine practice is liable to clash with other open diversions including productive operations of the Governments, ideal utilization of constrained monetary assets and the safeguarding of privacy of sensitive data;

Also, though it is important to fit these clashing investments while saving the centrality of the popularity based perfect;

Presently, along these lines, it is convenient to accommodate outfitting certain data to natives who yearning to have it.”¹¹⁷

It is significant here that the essential reason for the Act is stated regarding majority rule government and the accomplishment of its standards. Subsequently the opening proclamation itself sets up the Right to Information Act, 2005 solidly inside the talk of vote based system and its extending. In the famous and scholarly talks around the RTI in India, the Act, its creation, and its utilization reliably summon vote based system in a virtual conflation of the two.¹¹⁸

“A real instrument of popular government is the privilege to data. It is a method for producing open cooperation in administration, which is at the heart of vote

¹¹⁷ Preamble, Right to Information Act, 2005

¹¹⁸ Sharma Prashant; “*Democracy and Transparency in the Indian State: The making of the Right to Information Act*”, Routledge, 2014

based system. Races are a method for doing it yet popular government itself implies open investment in administration. Once the decisions are over and we get a legislature in force, then what do we do? Sit at home? No, we need to partake. How does one do that? We have the Right to Information Act.”¹¹⁹

The ambit of the Right to Information Act, 2005 covers the two Houses of Parliament, State assemblies, the Supreme Court, High Court, Subordinate Courts including their authoritative workplaces, Constitutional Authorities like Election Commission, Comptroller and Auditor General, Union Public Service Commission and so forth. Just household and outside private bodies working inside the nation have been rejected from the domain of the Act.¹²⁰

4.2.1 Public Authority:

A “public authority”¹²¹, responsible under the Right to Information Act, 2005, is any power or body or establishment of self government built or constituted by or under the Constitution; or by some other law made by the Parliament or a State Legislature; or by notice issued or request made by the Central Government or a State Government. The bodies possessed, controlled or generously financed by the Central Government or a State Government and non-Government associations significantly financed by the Central Government or a State Government likewise fall inside the meaning of open power. The financing of the body or the NGO by the Government may be immediate or circuitous.¹²²

4.2.2 Right to Information under the Act:

A national has a privilege to look for such data from an open power which is held by the general population power or which is held under its control. This privilege incorporates investigation of work, archives and records; taking notes, removes or

¹¹⁹ Then Chief Information Commissioner Wajahat Habibullah in an interview to Frontline magazine, Volume 27 - Issue 18, August 28-September 10, 2010.

¹²⁰ Sharma Prashant; “*The Right to information Act in India: The Turbid World of Transparency Reforms*”; Ph.D Thesis, Department of International Development, London School of Economics and Political Science, London, October 2012

¹²¹ Section 2(h), Right to Information Act, 2005

¹²² “*Guide on Right to Information Act, 2005*”, Ministry of Personnel, Public Grievances & Pensions; Department of Personnel and Training; Government of India, available at http://www.mofpi.nic.in/H_Dwld.aspx?KYEwmOL+HGOC3PktBWCmTRa5aMHH7uT6BV0hU4XftgSBo6t5yowVJ=

ensured duplicates of reports or records; and taking guaranteed specimens of material held by general society power or held under the control of general society power.¹²³

It is essential to note that just such data can be supplied under the Act which as of now exists and is held by the general population power or held under the control of the general population power. The Public Information Officer shouldn't make data; or to translate data; or to tackle the issues raised by the candidates; or to outfit answers to theoretical inquiries.¹²⁴ The Act gives the citizens a right to information at par with the Members of Parliament and the Members of State Legislatures. According to the Act, the information which cannot be denied to the Parliament or a State Legislature, shall not be denied to any person.

Though, Right to Information Act, 2005 does not give a blanket provision and enlists the sort of information which has been exempted from public disclosure.¹²⁵ Sub-section (2) of segment 8, be that as it may, gives that data exempted under sub-section (1) or exempted under the Official Secrets Act, 1923 can be revealed if open enthusiasm for exposure overweighs the mischief to the ensured investment.

The classifications of data where there is no commitment to make exposure to any national under Sub-Section 1 of Section 8 of the Right to data Act, 2005 is:

- a. information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
- b. information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
- c. information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- d. information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a

¹²³ Section 2(j), Right to Information Act, 2005

¹²⁴ Supra Note 24

¹²⁵ Sub-section (1) of section 8 and section 9 of the Right to Information Act, 2005

third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

- e. information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
- f. information received in confidence from foreign government;
- g. information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
- h. information which would impede the process of investigation or apprehension or prosecution of offenders;
- i. cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers: Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over: Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;
- j. information which relates to personal information the disclosure of which has not relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

The data which, in typical course, is excluded from divulgence under sub-section (1) of Section 8 of the Right to Information Act, 2005 would stop

to be exempted if 20 years have passed after event of the occurrence to which the data relates.¹²⁶ Nonetheless, the accompanying sorts of data would keep on being absolved and there would be no commitment, even after failure of 20 years, to give any citizen:¹²⁷

- i. information disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interest of the State, relation with foreign state or lead to incitement of an offence;
- ii. information the disclosure of which would cause a breach of privilege of Parliament or State Legislature; or
- iii. cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other Officers subject to the conditions given in proviso to clause (i) of sub-section(1) of Section 8 of the Act.

4.2.3 Supreme Court and Right to Information:

For over two decades, the Supreme Court of India has perceived the privilege to data as a naturally ensured basic right, settled under the Article 19: Right to the right to speak freely and declaration and Article 21: Right to life of the Constitution. The court has perceived the privilege to get to data from government offices is key to majority rules system.¹²⁸

Before passing of this Act, the Supreme Court has already laid down in many cases that a citizen has a right to receive information regarding matters of public concern,¹²⁹ and that citizens have the right to know about the affairs of the Government, which, having been elected by them, seek to formulate sound policies of governance aimed at their welfare.¹³⁰ In *Union of India v. Association for Democratic*

¹²⁶ Sub-section (3) of section 8 of the Right to Information Act, 2005

¹²⁷ Supra Note 24

¹²⁸ Slough P and Rodrigues, C 2005; “*Indian’s Right To Information Movement Makes A Breakthrough, Open Government: A Journal on Freedom of Information*”; Volume 1; Issue 1 published on 21st March, P. 1.

¹²⁹ See, for example: *State of U.P. v. Raj Narain*, AIR 1975 SC 865; *Reliance Petrochemicals Ltd. v. Indian Express*, AIR 1989 SC 190; and *Secretary, Ministry of I&B GOI v. Cricket Association of Bengal*, AIR 1995 SC 1236.

¹³⁰ *Dinesh Trivedi v. Union of India*, (1997) 4 SCC 306.

*Reforms,*¹³¹ the Supreme Court held that a voter has a privilege to think about the precursors of his candidate as a piece of his directly under Article. 19(1)(a). One sided information, disinformation, misinformation and non information will similarly make a dishonorably educated citizenry, which makes majority rule government a joke, as vote based system obliges appropriately educated citizens who can make positive commitments in administration.

Equity K. K. Mathew of Supreme Court of India said that 'In an administration where all the specialists of people in general must be in charge of their behavior, there can be yet couple of insider facts. The individuals have a privilege to know each open demonstration, everything that is carried out in an open manner, by their open functionaries. The obligation of authorities to disclose or to legitimize their demonstrations is the boss shield against persecution and defilement.'¹³²

4.2.4 Role of Central Information Commission:

In India, the whole political framework in India spins around the Political Parties. They perform an open capacity and are chosen by open and are known as 'agents of open'. Thusly, owing to this contention as of late there have been requests to proclaim political party as 'public authority' under section 2(h) of the RTI Act.

The individuals who advance this recommendation contend that by goodness of forces presented on the Election Commission of India under Article 324 of the Constitution read with area 29A of the Representation of People Act, 1951, and Rules 5 and 10 of the Conduct of Election Rules, 1961, and different forces vested in it, the Election Commission of India made and proclaimed the Election Symbols (Reservation and Allotment) Order, 1968. Under this Order, Election Commission apportions images to different Political Parties. The Election Commission is an instrumentality of the State. Portion of race images by the Election Commission to different Political Parties is, along these lines, suggestive of the general population character of the Political Parties.¹³³ Furthermore, the Political Parties get huge tax exemptions under section 13 A of the Income Tax Act, 1961, which amounts to

¹³¹ (2002) 5 SCC 294.

¹³² Justice K.K. Mathew, Supreme Court of India: State of UP v. Rajnarain, AIR 1975 SC 865

¹³³ Senior Advocate, Shri Prashant Bhushan, CIC, 26th September, 2012: Mr. Subhash Chandra Agarwal v. Indian National Congress & Ors., Decision no. CIC/SM/C/001386

indirect financing of the Political Parties in terms of Section 2(h)(d)(i) of the RTI Act.¹³⁴

In compatibility to this, the Central Information Commission in its historic point judgment on third June, 2013, reported a choice holding that AICC/INC, BJP, CPI (M), CPI, NCP and BSP as open powers under segment 2(h) of the RTI Act. The CIC choice is the first that makes political party, at any rate the six national gatherings, subject to examination and that too by citizens on the loose.¹³⁵

4.2.5 Essence of the decision:

The essence of the decision¹³⁶ is that these six national gatherings are "open powers" under the RTI Act, nothing all the more, nothing less. The Commission has watched that if not entirely inside the letter of any specific procurement, yet at any rate, in soul, these political party can be said to have been constituted by their enrollment by the Election Commission of India, a certainty much the same as the foundation or constitution of a body or establishment by a fitting government.

In the said choice (supra), it was further watched that the following characterization under which these political party can be put is what is given in Section 2(h) (ii) of Right to Information Act, 2005. As indicated by this procurement, any non-legislative association which is considerably financed, straightforwardly or in a roundabout way, by stores gave by the fitting government would turn into an open power with the end goal of the Right to Information Act.

The justification of Central Information Commission for holding the political party as 'public authority' inside the importance of Section-2(h) of the Right to Information Act, 2005 is three-fold.¹³⁷

- i. Indirect substantial financing by the Central Government;
- ii. Performance of public duty by the Political Parties; and

¹³⁴ *Supra* Note 133

¹³⁵ Mr. Subhash Chandra Agarwal v Indian National Congress & Ors., Decision no. CIC/SM/C/001386

¹³⁶ *Ibid*

¹³⁷ Para 62, Mr. Subhash Chandra Agarwal v Indian National Congress & Ors., Decision no. CIC/SM/C/001386

- iii. Constitutional/legal provisions vesting Political Parties with rights and liabilities.

4.2.6 Effect of decision:

By holding the political party as open powers the Diaspora of exposure from political party has extended to a critical degree. In the light of this choice, now a political party is excessively bound by the commitments of the Right to Information Act, 2005 and hence is subjected to open investigation.

The "obligation of Public Authorities" are indicated in Section 4 of the Right to Information Act, 2005. The CIC's choice now puts all the political party under the domain of Section 4, which is normally alluded to as the 'proactive disclosure' proviso, really has two particular purposes. One requires each open power to "keep up all its records rightfully classified and listed in a way and the structure which encourages the privilege to data under this Act", and alternate requires the general population power "to give as much data suo motu to people in general at customary interims through different method for interchanges, including web, so that general society have least depend on the utilization of this Act to acquire data".¹³⁸

Section 6 of the Right to Information Act, 2005 gives each national the privilege to request any data from any open power and which would now ipso facto apply on political party. Further, if any data is looked for by any national of India the political party should, as speedily as could reasonably be expected, and regardless inside 30 days of the receipt of the appeal, either give the data on installment of such expense as may be recommended or reject the solicitation for any of the reasons indicated in section 8 and 9".¹³⁹

4.2.7 Reaction of Political Parties:

The outcome of the decision seemed ballistic. It appeared that a tempest had hit the whole political foundation. A few observers even went to the degree of saying that the choice could destabilize and pulverize the whole political framework. Others called it "adventurism". The AICC General Secretary Janardan Dwivedi said that "*It*

¹³⁸Chokkar, Jagdeep; "*Political Parties get it all wrong on Right to Information*", June 19, 2013; Governance Now, available at <http://www.governancenow.com/news/regular-story/political-parties-get-it-all-wrong-right-information>, Retrieved on 26th March, 2015

¹³⁹ Section 7, Right to Information Act, 2005

is not acceptable. We totally disagree with it. Such adventurist approach will create a lot of harm and damage to democratic institutions.”¹⁴⁰

To conquer the upheaval of political party in August 2013, the Manmohan Singh's legislature acquainted a Right with Information (Amendment) Bill in Lok Sabha overriding shock and dissents which proposed to expel political party from the extent of the law. In September 2013 the Bill was conceded to the Winter Session of Parliament. A parliamentary board upheld entry of a Bill which looks to keep political party out of the ambit of the RTI Act and invalidate a Central Information Commission (CIC) request to that impact under the straightforwardness law. "The board considers the proposed revision is a right venture to address the issue for the last time. The board of trustees, accordingly, suggests for going of the Bill," the Standing Committee on Law and Personnel said in its report tabled in Parliament.¹⁴¹

The announcement of items and reasons of the Bill watches that the legislature considers that the CIC has made a liberal understanding of Section 2 (h) of the said (RTI) Act in its choice. It focuses that there are now procurements in the Representation of People's Act, 1951 and in addition the Income Tax Act which manage straightforwardness in the money related parts of political party and their applicants. "Proclaiming a political party as open power under the RTI Act would hamper its smooth inner working. Further, the political adversaries may abuse the procurements of RTI Act, in this way antagonistically influencing the working of the political party," the Bill peruses.¹⁴² As per the current status, the Right to Information (Amendment) Bill, 2013 stands lapsed.¹⁴³

¹⁴⁰ *“Political Parties under RTI: Congress rejects CIC order”*; June 4, 2013, THE HINDU, New Delhi, available at <http://www.thehindu.com/news/national/congress-rejects-cics-rti-order/article4781292.ece>, Retrieved on 26th March, 2015

¹⁴¹ *Supra*

¹⁴² Statement of objects and Reasons, The Right to Information (Amendment) Bill, 2013

¹⁴³ Current Status: Lapsed, Ministry of Personnel, Public Grievances and Pensions, Government of India, status available at <http://www.prsindia.org/billtrack/the-right-to-information-amendment-bill-2013-2854/>. Accessed on 26th March, 2015

4.2.8 Current Status:

Very nearly 20 months have passed when the full seat of the CIC had passed a milestone request making six noteworthy political party liable to the residents of India under the Right to Information Act, 2005. Anyway even as 2014 has drawn close, nothing has changed on the ground. Political party have altogether declined to be put under the straightforwardness law guaranteeing that as they don't go under the meaning of 'open powers', so they are out of the domain of the RTI.

The Central Information Commission (CIC) on second December, 2014 has coordinated the presidents or general secretaries of 6 political party including the Congress and the BJP to show up before it on the seventh of January, 2015 to talk about methods for them being incorporated under the Right to Information Act, 2005. This was the second knowing about the Commission subsequent to the June third request but again no gathering delegate was available. The Central Information Commission (CIC) has saved its decision on resistance by political party with its prior request (June third, 2013) pronouncing the six National Parties as Public Authorities and bringing them under the domain of the Right to Information Act 2005.¹⁴⁴

Aside from the political upheaval owing to the CIC request dated 03.06.2013, on July 8, 2002, an all-gathering meeting was held in New Delhi, went to by 21 political party. The meeting consistently chose that a choice of the Supreme Court declared on May 2, 2002 which obliged applicants challenging decisions to submit sworn testimonies unveiling criminal arguments pending against them, their advantages and liabilities, and their instructive capabilities, won't be permitted to be executed and, if essential, the Representation of the People Act, 1951 will be revised in the then progressing session of parliament. The Representation of Peoples Act, 1951 was in fact changed however the correction was struck down as "illegal" and "invalid and void" by the Supreme Court on March 13, 2003, and the accommodation of affirmations got to be law and still holds.¹⁴⁵

¹⁴⁴ Narendra, "*Political parties continue brazen defiance of CIC order*"; January 10, 2015, available at <http://www.merinews.com/clogArticle/political-parties-continue-brazen-defiance-of-cic-order/15903406>

¹⁴⁵ Association for Democratic Reforms v. Union of India & Another in Writ Petition (civil) No. 515 of 2002

Political Parties are a novel foundation of the advanced established State. These are basically common society establishments and are, subsequently, non-legislative. Their uniqueness lies in the way that despite being non-administrative, Political Parties come to wield or specifically or by implication impact, activity of legislative force. It is this connection between State power and Political Parties that has expected basic noteworthiness in the setting of the Right of Information – an Act which has brought into center the goals of straightforwardness in the working of State organizations. It would be clever to contend that straightforwardness is useful for all State organs, yet not very great for the Political Parties which control the most critical of those organs. Case in point, it will be a false notion to hold that straightforwardness is useful for the organization however not sufficient for the Political Parties which control those organizations through political officia.¹⁴⁶

¹⁴⁶ Mr. Anil Bairwal v. Parliament of India CIC/AT/A/2007/01029 & 01263-01270

CHAPTER V

ELECTORAL REFORM AND JUDICIAL PROCESS

“The little man, exercising his franchise with a little pencil on a little piece of paper in a little booth, yet having the power to make and unmake governments, is a symbol that has inspired votaries of democracy”

-Winston Churchill

Over a time of six decades has passed since India received a far reaching and settled arrangement of laws and settling. The substantive and procedural laws established have every now and then stood the test of time. With changes in the public eye and desires of individuals these laws have dependably been subjected to suitable alterations now and again. The most commendable part in this administration has been of legal which has interpreted the laws, inside four corners of the Constitution of India, with a specific end goal to indulge the changing needs of the general public.

A standout amongst the most vital standards of just majority rule administration is the vicinity of established points of confinement on the degree of government force. Such cutoff points incorporate intermittent races, insurances of social equality, and an autonomous legal, which permits residents to look for security of their rights and review against government activities. These cutoff points help make limbs of government responsible to one another and to the individuals. An autonomous legal is imperative for safeguarding the principle of law and is, along these lines, most essential feature of great administration¹⁴⁷

The legal framework has an essential part to play eventually in guaranteeing better open administration. There may be a plenty of regulations, standards and techniques yet when debate emerge, they must be settled in a court of law. There is no range where the judgments of Supreme Court have not played a noteworthy commitment in the administration whether it be – environment, human rights, sexual

¹⁴⁷ Justice Y.K. Sabrawal, Chief Justice of India (2005-2007) in *“Role of Judiciary in Good Governance”*

orientation equity, training, minorities, police changes, decisions and cutoff points on constituent forces of Parliament to revise the Constitution.^{148,149}

No Democratic type of Government can be effective without an arrangement of free and reasonable decisions directed, checked and controlled by an autonomous organization. We have in position a high controlled Election Commission as an independent body to manage the constituent methodology. Legal has made critical commitments through different declarations to attachment escape clauses and block the likelihood of ill-use by the candidates.¹⁵⁰

The Supreme Court of India in the case of **Keshavnanda Bharti**, 1973¹⁵¹, held by dominant part that the force of correction of the constitution contained in Article 368 does not allow modifying the essential structure of the Constitution. All the seven judges who constituted the dominant part likewise concurred that popularity based setup was a piece of the essential structure of the constitution Democracy proposes that there ought to be periodical race, so that individuals may be in a position either to re-choose the old agents or, on the off chance that they so pick, to change the delegates and choose in their spot other agent. Popular government further thinks about that the decisions ought to be free and reasonable, so that the voters may be in a position to vote in favor of hopefuls of their decision. Majority rule government can in reality work just upon the confidence that race are free and reasonable and not fixed and controlled, that they are compelling instruments of finding out prominent will both actually and structure and are not minor ceremonies figured to create dream of defe particle emerges whether an individual from a House of Parliament has gotten to be precluded for participation, the choice of that House might be taken and should be last.¹⁵²

Very little contention is expected to demonstrate that unless there be a hardware for determining a race debate and for going into the assertions that races were not free and reasonable being vitiated by misbehaviors, the procurement that a

¹⁴⁸ *Ibid*

¹⁴⁹ Ezekwesili, Oby; "Corruption, national development, the Bar, and the Bench" , Part 4, 2012 Nigeria Bar Association Conference, Abuja, Nigeria, August 28, 2012

¹⁵⁰ *Ibid*

¹⁵¹ (1973) 4 SCC 225

¹⁵² Smt. Indira Gandhi v. Raj Narain AIR 1975 SC 2299

hopeful ought not turn to acts of neglect would be in the way of a negligible devout wish with no lawful authorization. It is further plain that if the legitimacy of the race of a candidate is tested on a few grounds, the said decision can be proclaimed to be substantial just on the off chance that we give a gathering to going into those grounds and endorse a law for arbitrating upon those grounds. In the event that the said gathering finds that the grounds progressed to test the decision are not decently established or are not sufficient to negate the race as per the recommended law or rejects the appeal to test the decision on some other ground, in such an occasion it can be said that the decision of the returned applicant is substantial.¹⁵³

5.1 SUPREME COURT TOWARDS ELECTORAL REFORMS

There exists a plenty of points of reference wherein the Courts have issued a scope of charges for law implementation, managing an exhibit of parts of races and non-law based working of political partys. The noteworthy and milestone legal choices, which have introduced methodology of electing changes in India and have been fruitful in coddling the needs of a capable creating popularity based setup like India, have been articulated as under:

1. In **Smt. Indira Gandhi v. Raj Narain**¹⁵⁴, the court while declaring the 1975 Lok Sabha elections of Smt. Indira Gandhi null and void observed *"Authorisation means acceptance of the responsibility. Authorisation must precede the expenditure. Authorisation means reimbursement by the candidate or election agent of the person who has been authorised by the candidate or by the election agent of the candidate to spend or incur. In order to constitute authorisation the effect must be that the authority must carry with it the right of reimbursement."*

Section 77 of Representation of People Act, 1951 obliges a contender to keep a different and right record of all consumption "regarding the race caused or approved by him or by his decision operators" between the date of his selection and the date of assertion of the consequence of the race. The hopeful is obliged to keep up record of just that use which he or his race operators may have approved before the use was really brought about, which

¹⁵³ *Infra* Note 160

¹⁵⁴ AIR 1975 SC 2299

would suggest that the applicant or his decision specialists embraced to repay the costs which may have been approved by him or his race specialists to be spent at the race. So as to constitute a degenerate practice as considered by Sections 77 and 123(6) of Representation of People Act, 1951, it is important to argue essential realities demonstrating authorisation or undertaking of repayment by the applicant or his decision specialists. A simple dubious and general proclamation that the hopeful and his laborers with his assent burned through cash in decision in abundance of the reasonable roof would not be sufficient to constitute degenerate practice.

2. In **Kanwar Lal Gupta v. A.N. Chawla**¹⁵⁵ the Apex Court held that what S. 77(1) of Representation of People Act, 1951 endorsed was the acquiring as well as the approving of intemperate consumption and that such authorisation may be suggested or express. The Court held that when a political party supporting a candidate acquires use regarding his race as recognized from use on a general gathering publicity, and the applicant purposely exploits it or takes an interest in the project or action or agrees to it or quiet submission to it, it would be sensible to deduce that he impliedly approved the political party to bring about such consumption and he couldn't get away from the meticulousness of the roof by saying that he had not caused the use and the political party had done as such. The aftereffect of the judgment was that the use acquired by political party regarding the general party promulgation was regarded to have been caused by the hopeful himself.
3. In response to the above stated decision¹⁵⁶ of the Supreme Court, the Parliament altered Section 77 of the Representation of the People (Amendment) Act, 1974 by adding two clarifications to the Section. Clarification 1 sets out that any use caused or approved regarding the decision of a candidate by a political party or by any affiliation or group of persons or by any individual other than the applicant or his race specialists should not be considered to be acquired or approved by the hopeful or his decision

¹⁵⁵ AIR 1975 SC 308

¹⁵⁶ Kanwar Lal Gupta v. A.N. Chawla AIR 1975 SC 308

operators. The validity of the Amending Act was upheld by a Constitution Bench of this Court in **Dr. P. Nalla Thampy Terah v. Union of India**¹⁵⁷.

4. In **Shiv Kirpal Singh v. V.V. Giri**¹⁵⁸ a Constitution Bench of the Supreme Court of India held that the interpretation "free practice of the electing right" does not imply that voter is not to be impacted. This declaration must be perused in the setting of a decision in a fair society and the applicants and their supporters should characteristically be permitted to campaign bolster by all real and lawful means. This activity of the privilege by an applicant or his supporters to peddle backing does not meddle or endeavor to meddle with the free practice of the appointive right. What does sum to meddle with the activity of an electing right is "tyranny over the brain".

*“Declaration of public policy or a promise of public action or promise to develop the constituency in general do not interfere with free exercise of electoral rights as the same do not constitute bribery or undue influence.”*¹⁵⁹

5. In **K Prabhakaran v. P. Jayarajan**¹⁶⁰ the Apex court observed that the purpose of enacting disqualification under section 8 (3) of the Representation of People Act, 1950 is to prevent criminalisation in politics. The Court observed that,

“The individuals who violate the law ought not make the law. As a rule the reason tried to be accomplished by sanctioning preclusion on conviction for specific offenses is to keep persons with criminal foundation from going into legislative issues and the house – a capable wing of administration. Persons with criminal foundation do dirty the methodology of race as they don't have numerous a holds banned and have no reservation from reveling into guiltiness to win accomplishment at a decisi.”

6. In **Mohinder Singh Gill Case**¹⁶¹ at the point when the Supreme Court translated Article 324 of the Constitution to put unbridled powers in the ECI to lead and administer decisions, it watched that "the Constitution mulls over free

¹⁵⁷ AIR 1985 SC 1133

¹⁵⁸ AIR 1970 SC 2097

¹⁵⁹ Shiv Kirpal Singh v. V.V. Giri AIR 1970 SC 2097

¹⁶⁰ AIR 2005 SC 688

¹⁶¹ Mohinder Singh Gill & Anr vs. The Chief Election Commissioner 1978 AIR 851

and reasonable race and vests thorough obligations of superintendence, heading and control of the behavior of races in the Election Commission. This obligation may cover powers, obligations and capacities of numerous sorts, regulatory or other, contingent upon the circumstances.”

7. Further as a most huge advancement on the subject of Electoral Reforms Treating, the Supreme Court held the privilege to vote as likened to the right to speak freely and representation under Article 19(1)(a) of the Constitution and implementing the "privilege to get data" as "a characteristic right" spilling out of the idea of majority rules system, in the case of **Association for Democratic Reforms**¹⁶².

The legal realized a major appointive change by holding that a legitimate exposure of the precursors by hopefuls in decision in a law based society may impact keenly the choices made by the voters while throwing their votes. Watching that making of a choice by a misguided and non-educated voter, or a voter having an uneven data just, is certain to influence the majority rules system truly, the court gave different headings making it required from hopefuls at the decision to outfit data about their own profile, foundation, capabilities and predecessors.

8. Because of the previously stated judgment¹⁶³ of the Apex Court, the brilliant lawmakers discovered a path around. They cleared out clear sections which requested data which were uncomfortable. The SC in 2013 put an end to this practice. A seat headed by Chief Justice P Sathasivam decided that if a hopeful left segments clear, then the returning officer could dismiss the designation papers. This ruling in **Resurgence India v. Election Commission Of India & Anr**¹⁶⁴ was the reason that Narendra Modi was forced to acknowledge a few days ago that he was indeed married.¹⁶⁵
9. In July, 2013 the most imperative judgment on appointive changes originated from a seat headed by Justice A K Patnaik. Petitions were documented in

¹⁶² Union of India v. Association for Democratic Reforms and Anr. (2002) 5 SCC 294

¹⁶³ *Supra* Note 170

¹⁶⁴ WRIT PETITION (CIVIL) NO. 121 OF 2008

¹⁶⁵ Chari, Mridula; *our judgments by India's outgoing Chief Justice taht have changed national life*"; All News, April 16, 2014, available at <http://www.scroll.in/article/661693/Four-judgments-by-India's-outgoing-chief-justice-that-have-changed-national-life>, Retrieved on 22nd March, 2015

Supreme Court by Lily Thomas and an NGO Lok Prahari in 2005. The solicitors requested that the court put aside the statement 8(4) of the Representation of the People Act, 1950 in light of the fact that this condition permitted the sitting MPs and MLAs to keep on being chosen delegate actually when they get indicted in a court of law. The petitions asked that this extraordinary protection gave in the statement 8(4) is ultra vires to the Constitution of India. The Apex Court decided that a MP or MLA would be excluded instantly in the wake of being sentenced in a genuine offense and sentenced to two or more years in jail. Prior, the MPs and MLAs could keep on clutching their seats in Parliament or the gathering until three months have passed from the date of conviction request or by just documenting a bid against the request of conviction and sentence.¹⁶⁶

10. '*None of the above*' option was presented in the electronic voting machines in India after the point of interest judgment conveyed by the Supreme Court in **PUCL v. Union of India**¹⁶⁷. The privilege to vote in India is a statutory right. The opposite of this, i.e. the privilege not to vote, while keeping up mystery was asserted vide a request to the Supreme Court by PUCL. The Supreme Court expressed that other than cleaning up legislative issues, the choice of negative vote would cultivate more noteworthy investment among voters as this would attract to the surveying stalls the individuals who generally don't vote in light of the fact that they are not fulfilled by the applicants challenging decisions. The privilege to a negative vote would urge them to visit the surveying stations and express their misery by practicing their decision of dismissal. The Court felt that this would likewise add to cutting down mimic in voting.

Then again, since the appeal documented by PUCL (Peoples Union For Civil Liberties) was a Writ Petition under Article 32, the Court needed to judge its practicality, as it was fought that Right to Vote is viewed as a statutory right. The Court held that albeit Right to vote is a statutory right, the choice taken by the voter is an aspect of Freedom of Expression under Art. 19(1)(a). Major Right of the right to speak freely and representation under

¹⁶⁶ Sub-section (3) renumbered as sub-section (4) by Act 1 of 1989, s. 4 (w.e.f. 15-3-1989)

¹⁶⁷ WRIT PETITION (CIVIL) NO. 161 OF 2004

19(1)(a) and statutory directly under Section 79 of Representation of People Act, 1951 is abused if right not to vote is denied. Subsequently the Court held that the Writ Petition is viable.

11. The Supreme Court on 8th October, 2013, solicited the Election Commission from India (EC) to produce a printed record containing the subtle elements of the vote cast to guarantee races are more straightforward. "We are fulfilled that the paper trail is an essential necessity of free and reasonable decisions" said Chief Justice P. Sathasivam. "The certainty of the voters in the EVMs can be attained to just with the presentation of the paper trail." The summit court's judgment in **Dr. Subramaniam Swamy v. Election Commission of India**¹⁶⁸ came because of an open investment prosecution documented by the Bharatiya Janata Party's (BJP's) Subramanian Swamy who had guaranteed that EVMs were not straightforward, inferring that this made it feasible for them to be fixed so that while the voter supposes he hosts voted in favor of Gathering A, the machine enlists a vote in favour of Party C. Dr. Swamy had requested that the court coordinate the commission to give a printed receipt to each voter.

In perspective of the contentions set forth by the applicant the Apex court said that the EVMs will now must be furnished with voter certain paper review trail, or VVPAT, which is "an arrangement of printing paper trail when the voter makes his choice, notwithstanding the electronic record of the ticket. The paper record created will have a serial number, name and image of possibility for whom the vote was thrown. The judgment additionally said that "EVMs with VVPAT framework guarantee the precision of the voting framework. With goal to have fullest straightforwardness in the framework and to restore the certainty of the voters, it is important to situated up EVMs with VVPAT framework".

This was launched as a pilot project in 2015 Delhi Vidhan Sabha Election in the constituencies of New Delhi and Delhi Cantt.

¹⁶⁸ WRIT PETITION (C) NO. 406 OF 2012

5.2 CENTRAL INFORMATION COMMISSION TOWARDS ELECTORAL REFORMS

In one of the significant judgements, **Mr. Subhash Chandra Agarwal v. Indian National Congress & Ors.**¹⁶⁹, the Central Information Commission (CIC) announced a decision holding that AICC/INC, BJP, CPI (M), CPI, NCP and BSP are public authorities under section 2(h) of the RTI Act. The essence of the decision is that these six national parties are “public authorities” under the Right to Information Act, 2005.

In light of this the "commitments of open powers" as determined in Section 4 of the Right to Information Act, 2005 will stretch out to political parties moreover. Segment 4, which is usually alluded to as the 'proactive exposure' condition, really has two particular purposes.:

- a. It requires each public authority with the importance of Right to Information Act, 2005 to "keep up all its records appropriately listed and recorded in a way and the structure which encourages the privilege to data under this Act";¹⁷⁰ and
- b. It also requires the public authority “to provide as much information *suo motu* to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information”.¹⁷¹

Notwithstanding, this choice of CIC has met solid feedback and all the political parties, being referred to, have been dodging the court summons. A few pundits even went to the degree of saying that the choice could destabilize and demolish the whole political framework. Political parties have by and large declined to be put under the straightforwardness law guaranteeing that as they don't go under the meaning of 'open powers', so they are out of the domain of the Right to Information Act, 2005.

¹⁶⁹ Decision no. CIC/SM/C/001386

¹⁷⁰ Clause a, Sub-section 1, Section 4 of Right to Information Act, 2005

¹⁷¹ *Ibid*

Central Information Commission in its prior decision in **Mr. Anil Bairwal v. Parliament of India**¹⁷² has created a connection between State power and Political Parties that has expected basic criticalness in the setting of the Right of Information Act, 2005 which has brought into center the goals of straightforwardness in the working of State foundations. It would be flippant to contend that straightforwardness is useful for all State organs, yet not very great for the Political Parties which control the most vital of those organs. For instance, it will be a deception to hold that straightforwardness is useful for the administration yet not sufficient for the Political Parties which control those organizations through political officials.¹⁷³

These late changes and improvements are a consequence of legal activism. Then again, it needs to be a consolidated exertion by the governing body, legal and the decision commission to ensure free and reasonable decisions to further guarantee that India turns into a fruitful popular government. Time has desired the individuals and concerned native to raise the pitch for these electing changes which will go far in brining the appointive framework to the control of individuals and drive out the components illegitimately financing races and shape government approaches to support them. It will likewise diminish the extent of collecting dark cash by the corporate, government officials, civil servants, hoodlums etc.

¹⁷² CIC/AT/A/2007/01029 & 01263-01270

¹⁷³ *Supra* Note 152

CHAPTER VI

INTERPRETATION OF DATA

This study is based on a descriptive research design, with an aim at determining the pattern of voting and the level of satisfaction amongst the citizens of India with respect to the present electoral system and the elected representatives. For this, the researcher has used the following tools:

- **Content Analysis**

It helped in providing with the primary data used in the analysis thereby enabling the determining the trends and patterns in the problem area. The researcher has also recorded the views and suggestions put forth by the sample electorate for the purpose of this research.

- **Interview**

The interview conducted was qualitative in nature and mostly the questions asked were open ended in nature along with being completely structured.

CONTENT ANALYSIS

Content analysis is a method for summarizing any form of collected data by counting various aspects of the data. This method was employed to find out the said pattern of voting and the level of satisfaction amongst the citizens of India with respect to the present electoral system and the elected representatives for this study. The quantitative data thus obtained facilitated the comparison of trends required for the study.

The choice of this method is therefore apt as the study intends to find out the mood of the people and their satisfaction with the political parties and the process of elections which operate in present day. For this study, the researcher has indentified a sample of people ranging from age group of 16 years to 55 years or above who belong to both private and public sector employment and some are also students. The sample includes people who represent the working class, the young graduates and students so as to obtain a diversified and optimum analysis of the subject. Since the study deals

with electoral process and the associated transparency, so level of satisfaction amongst the electorate and their suggestions was the only criterion for the analysis.

The data has been collected through questionnaire (annexed at the end of the thesis) which contains close ended questions with multiple choice questions and also two open questions which deal with the suggestions with respect to electoral reforms and improvement in scope of working of the Right to Information Act, 2005 respectively. The data thus gathered has been then analyzed on the basis of responses recorded for each question to find out the views and opinions of the people though the sample which is reflective of the voting population of India.

INTERVIEW

To get a better perspective on the research problem I approached a Former Information Commissioner, Mr Shailesh Gandhi who assisted with his invaluable insights. He helped me to obtain a first hand opinion on the topic which went to a great extent in removing bias and strengthening the objectivity of the findings.

The questions asked were open ended and a qualitative feedback was collected. The interview however, followed a structured format consisting of open ended questions.

LIMITATIONS OF STUDY

- The study is only representative in nature and is not an exhaustive one.
- The study has been conducted in an urban setup of Delhi and the data collected is from the population which represents only the educated class of people employed in business, government sector and private sector.
- Since the study makes use of only one sample therefore comparative analysis with other class of people belonging to different strata of society during the same time is not possible.
- The study is based on the sample of twenty eligible voters belonging to different age groups and varied educational qualifications and occupations. The sample has been selected through stratified random sampling and it therefore cannot give any specific views but only generalized comments.
- During the research it was observed that the last Lok Sabha Elections in the year 2014 and Delhi Legislative Assembly elections 2015 have also influenced the mindset of people, in particular the youth, belonging to the region where the research was conducted.

ANALYSIS OF DATA

ANALYSIS OF SAMPLE

The sample of this research design consists of 20 subjects in totality that represents the educated voting population and belongs to various age groups ranging from 18 years and above.

ANALYSIS OF SAMPLE BASED GENDER

<u>SEX</u>	MALE	FEMALE	TRANSGENDER
Number of People	11	09	00

Total number of people: 20

ANALYSIS OF SAMPLE BASED AGE

<u>AGE- GROUP</u>	16-20 YEARS	20-30 YEARS	30-40 YEARS	40-55 YEARS	55 YEARS AND ABOVE
Number of People	03	05	01	06	05

Total number of people: 20

ANALYSIS OF SAMPLE EDUCATIONAL BASED QUALIFICATION(S)

<u>EDUCATIONAL QUALIFICATION</u>	HIGH SCHOOL	GRADUATE	POST GRADUATE	PhD
Number of People	03	10	06	01

Total number of people: 20

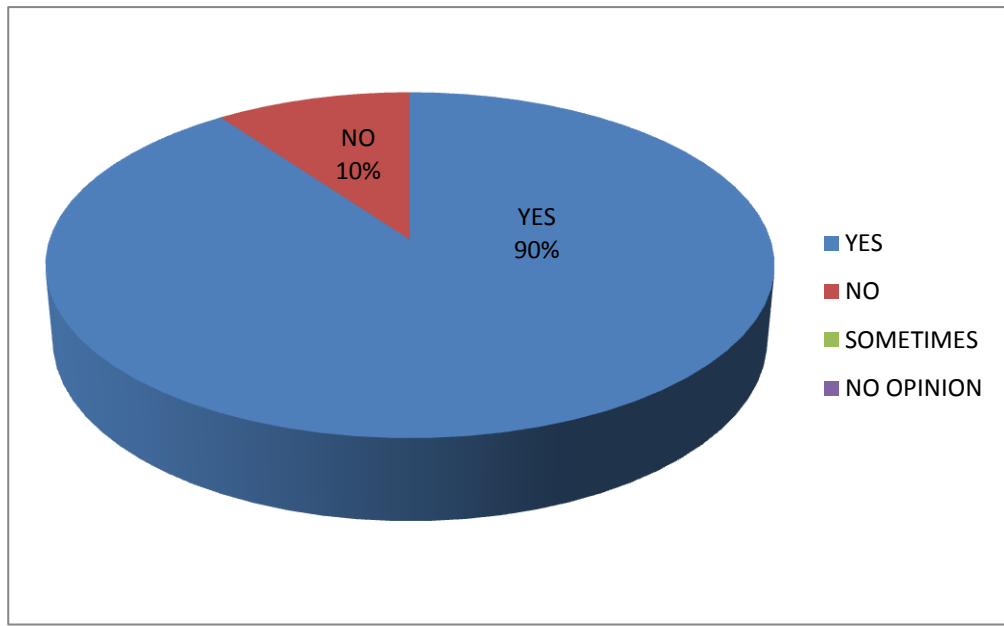
ANALYSIS OF SAMPLE BASED ON OCCUPATION

<u>OCCUPATION</u>	PUBLIC SECTOR	PRIVATE SECTOR	BUSINESS/SELF EMPLOYED	STUDENT
Number of People	07	04	03	06

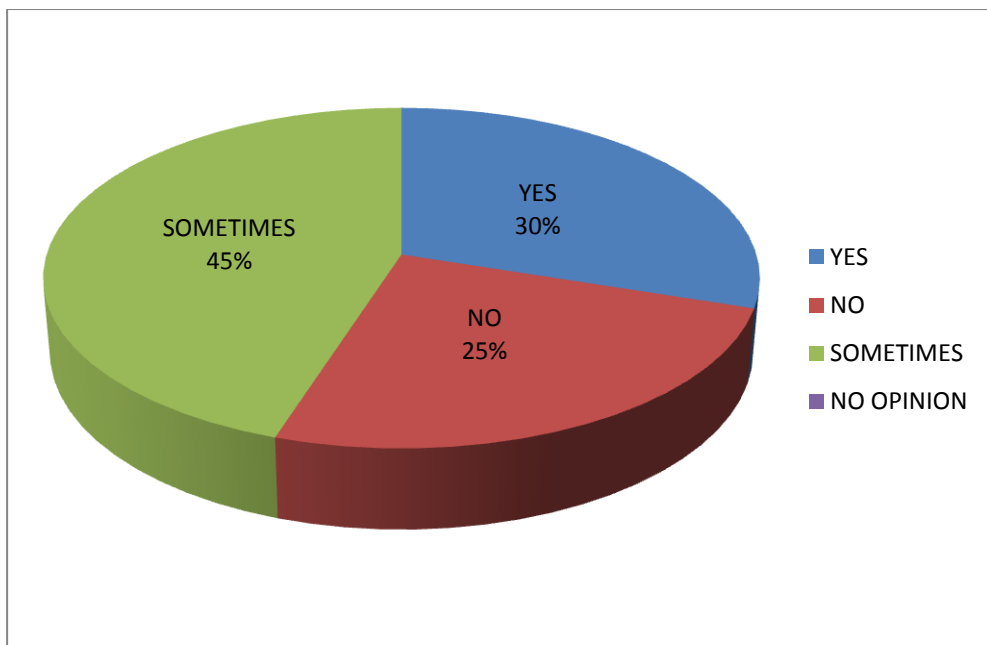
Total number of people: 20

ANALYSIS OF THE DATA COLLECTED

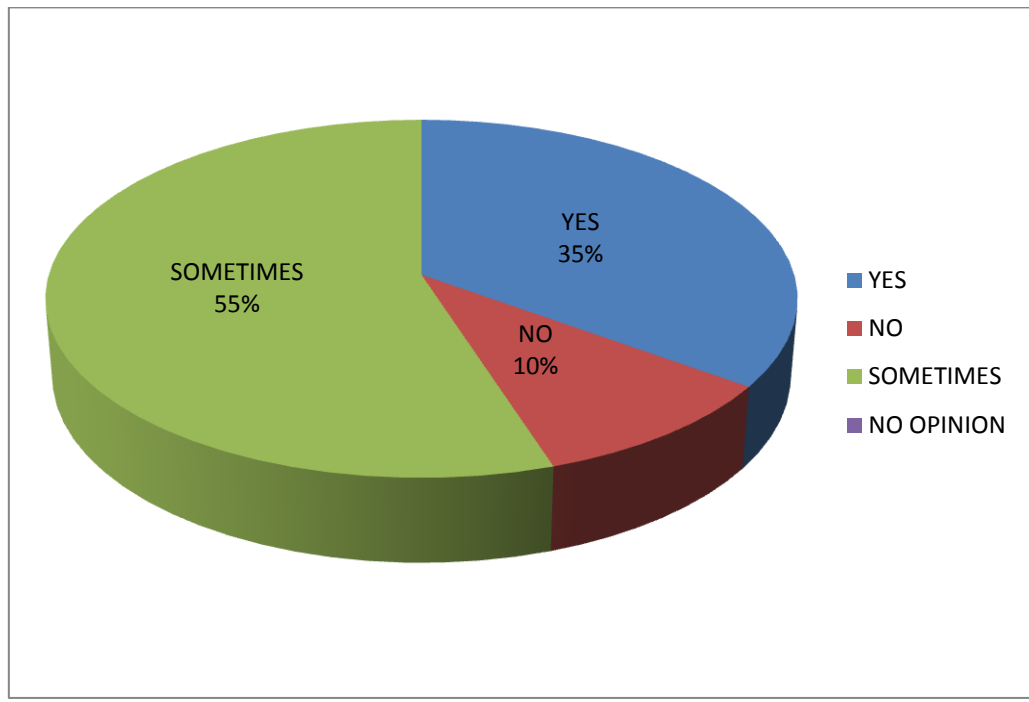
QUESTION 1: DO YOU VOTE?



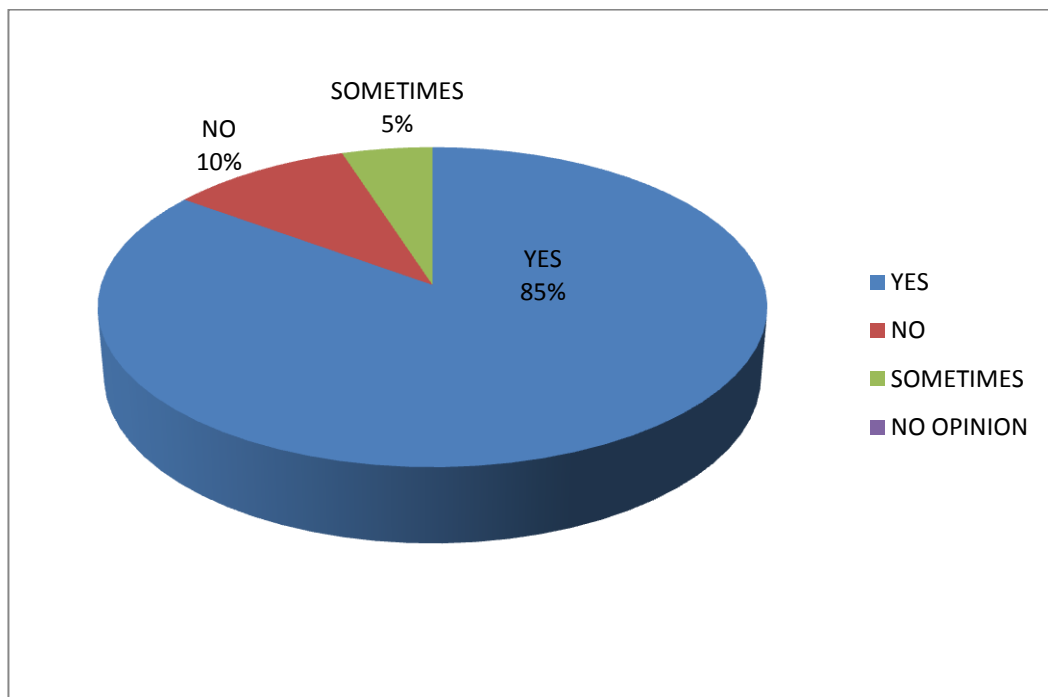
QUESTION 2: ARE YOU SATISFIED WITH THE CANDIDATES WHO CONTEST ELECTIONS?



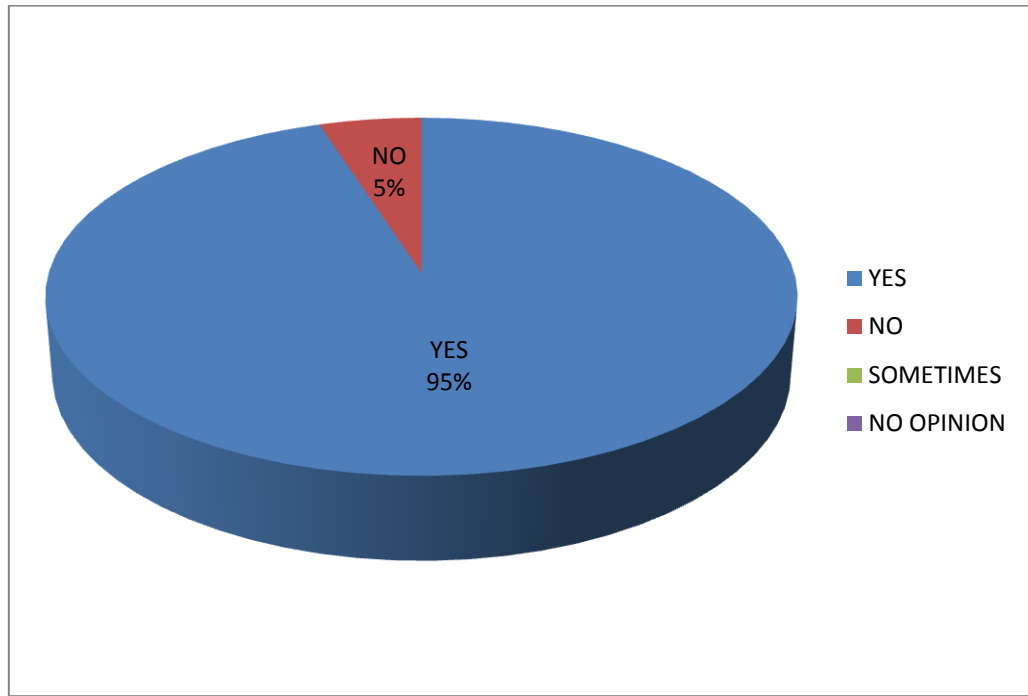
QUESTION 3: ARE YOU SATISFIED WITH THE ELECTED CANDIDATES?



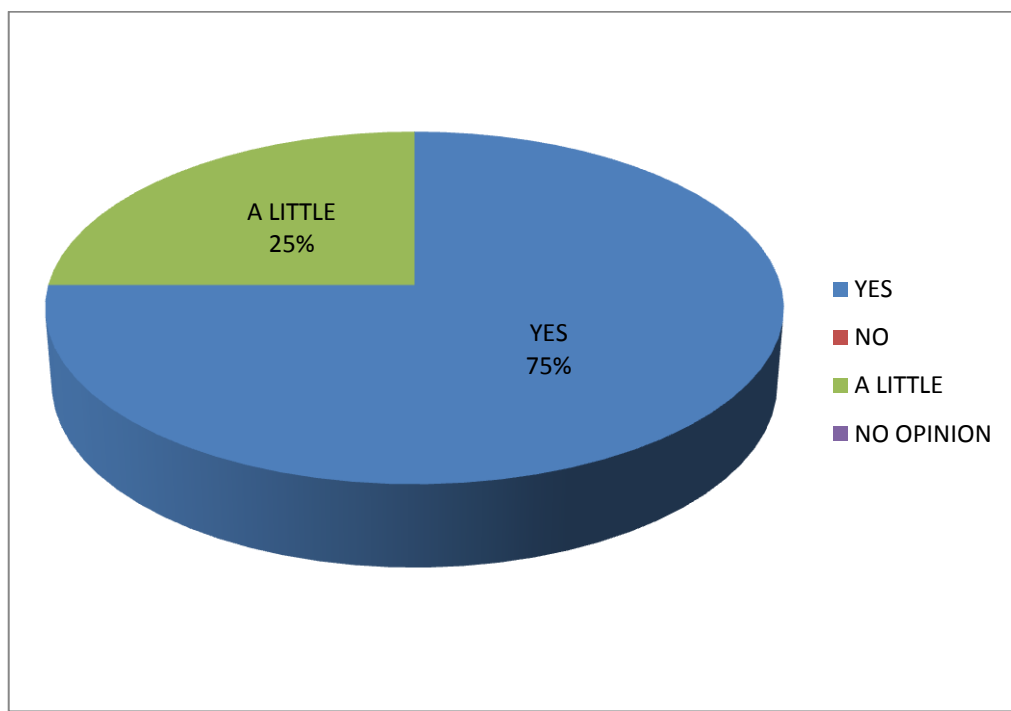
QUESTION 4: DO YOU THINK ELECTORAL REFORMS ARE A NEED OF HOUR?



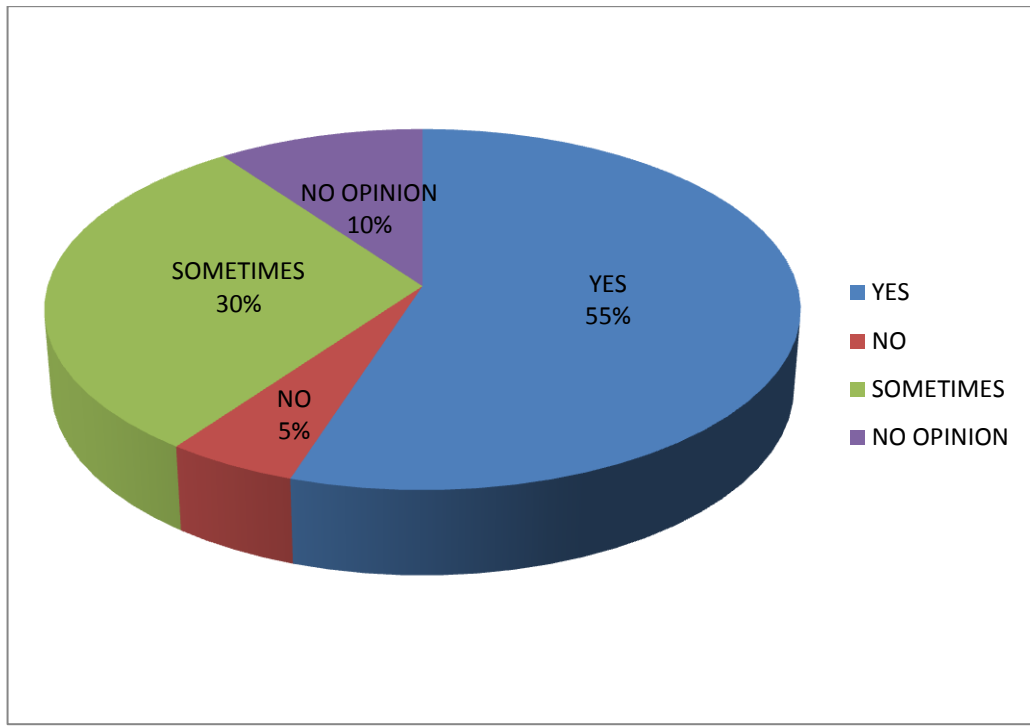
QUESTION 5: DO YOU AGREE THAT POLITICAL PARTIES SHOULD MAINTAIN THEIR ACCOUNTS, GET THEM AUDITED AND MAKE THEM OPEN FOR PUBLIC SCRUTINY?



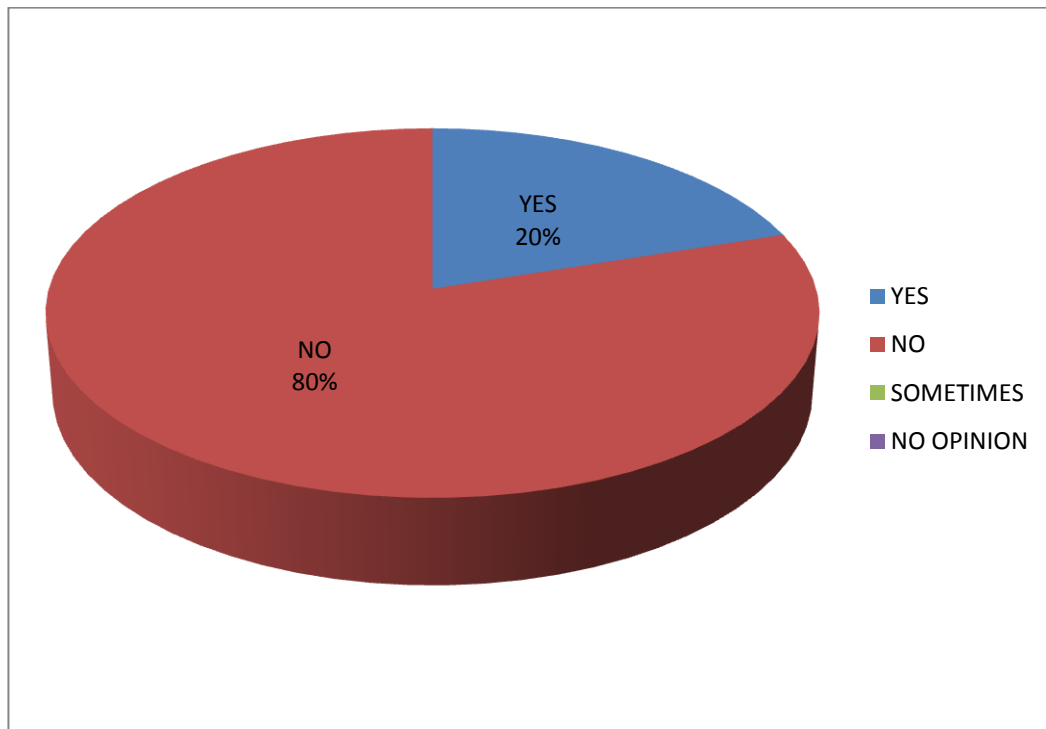
QUESTION 6: DO YOU KNOW ABOUT RIGHT TO INFORMATION ACT, 2005 (RTI)?



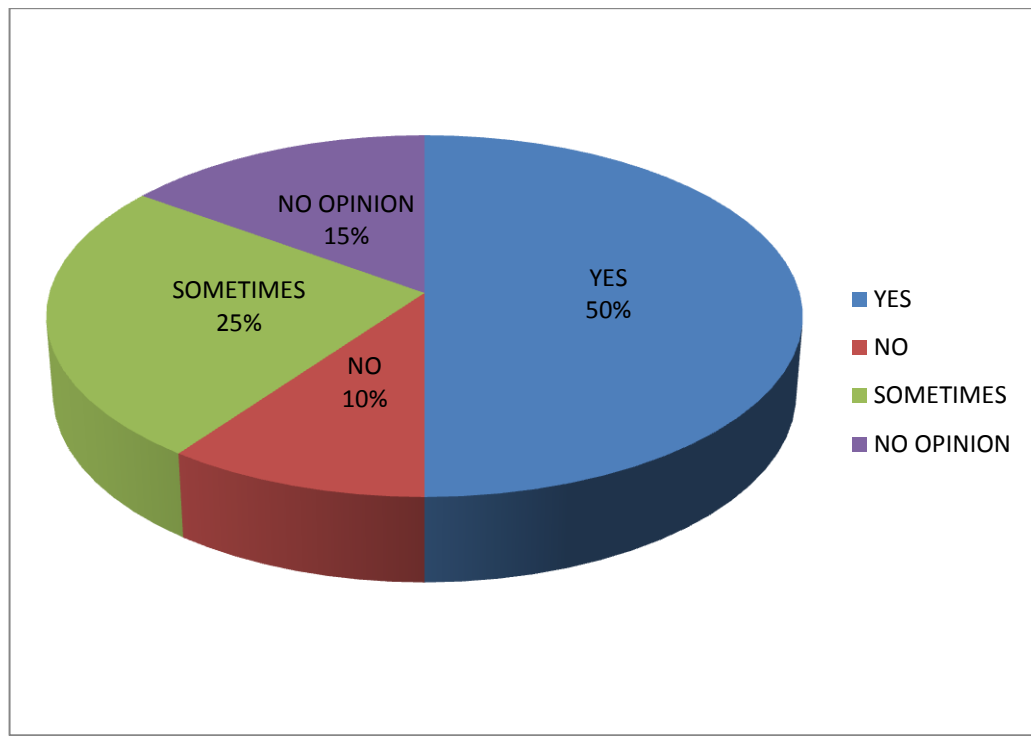
QUESTION 7: IF YES, DO YOU THINK IT DOES ANY GOOD?



QUESTION 8: HAVE YOU EVER USED IT?



QUESTION 9: CAN IT BE USED TO BRING ELECTORAL REFORMS?



QUESTION 10: PLEASE GIVE ANY SUGGESTION FOR ELECTORAL REFORMS.

ANALYSIS: From the answers recorded during the survey; it could be observed that majority of people insist upon a fairer, more transparent and a far more accountable system of affairs. Analysis of the questionnaires (annexed to the thesis) point towards the below mentioned reforms which represent the aspirations of people from political parties:

- i. The most important reform would be to remove 2 C's i.e. corruption and criminality in order to bring in more transparency and culture of responsibility.
- ii. Public debates, organised in a structural manner should be introduced.
- iii. Portfolios allocated to the candidates upon elections should be in line with the qualification of the person.

- iv. Election manifestoes released should not be of misleading name and titles; they should be released at least one month before the polling date and should be registered on affidavit at the time of nominations.
- v. State funding of election should be adopted.
- vi. Donations of parties no matter how small should happen via cheques and should be made public and audit of such financial accounts should be made compulsory.
- vii. Stricter and more straighten laws should be formed to curb the problem of ever increasing filing of bogus nominations.
- viii. Task force teams should be created which monitor the movement of functions of the parties during campaigning.
- ix. Tickets to contest elections should be allotted on the basis of honesty and to people who have a record of social work. Thrust should be given on belief in equality, freedom of expression and secularism; not on economic power as well as '*bahubal*'.
- x. Any candidate with serious criminal cases pending against him/her (like rape, murder, extortion etc.) should not be allowed to contest and he/she should be de-registered from the party forthwith.
- xi. Along with NOTA, people should be given '*right to re-call*' so that they are not forced to choose best amongst the worst.

However, contrary to this, a very sharp eyed remark has been recorded where it is suggested to eliminate NOTA and bring in a structure where prime focus should be to promote good leaders so that people don't feel the need to have such an option altogether.

- xii. India should adopt two party system and candidates should be decided by general public.
- xiii. Voting procedure still needs to be simplified for there is excessive as well as superfluous paperwork and documentation. The postal vote procedure is cumbersome and ineffective for it never reaches the soldiers and people of election duty on time. This defeats their right to vote and choose their representatives.
- xiv. Like China, it should be obligatory for elected candidates to secure 50% of the total votes polled and the system of first past the post should be eliminated.

From the above analysis, the picture which emerges leads us to the conclusion that the citizens of India quest for a transparent working and operation of political parties for they are the ones who run the government and also enjoy absolute tax rebates in the donations they receive from the public and thus are invariably responsible to the public at large.

QUESTION 11: SUGGEST FOR IMPROVEMENT OF RTI ACT IN ELECTORAL REFORMS.

ANALYSIS: The analysis of the answers recorded indicates towards a situation wherein the prime problem in hand is the lack of awareness amongst people with respect to Right to Information Act as a possible tool to bring electoral reforms.

Major responses recorded on this subject recommended that there should be awareness campaigns for the same which would attract more and more people to participate in politics and use their right to vote wisely.

Since the Right to Information Act was specifically created for the purpose of extracting information available in public domain it should be amended to cater to the present needs of society and to the further its application on political parties. Provisions should be made that enable people to seek information about parties, their accounts and the usage of funds. Appropriate amendments will resolve the problem of political parties denying supplying information on the ground that they are independent bodies and consequently are not within the meaning of ‘public authorities’ under Right to Information Act.

A demand for *suo moto* disclosures and day by day polling expenditures to be put on the websites of the political parties has also been recorded. People should be empowered to investigate all the expenses accrued by political parties. Right to Information Act should be used as grievance petition.

It is observed that the majority of voting population put thrust on transparency in political parties wherein if any government work or contract etc. is to be done or given then every detail should be made public by displaying boards mentioning therein the nature of work, source of material, how much material to be used, how much time to be taken in completion of work etc; so that transparency is there. Once we achieve this, there will no need of invoking Right to Information Act. However, a few have expressed dissent with the some by stating that Right to Information Act will in no way be able to deliver much a electoral reforms.

Another remarkable suggestion comes from a fresh graduate, wherein appeal has been made to expand the scope of Right to Information Act to the extent of encompassing information pertaining to a situation where no government is formed even after elections or in cases of Hung-Assembly. This is backed by the argument that longer delay in forming government shakes the belief of people in the candidates they have voted for and hence they should be entitled to have information regarding the progress and status with respect to the same. Furthermore, the scope of information should include access to water bills, telephone bills, electricity bills etc. of politicians for they utilize government accommodations and property and are also privileged with various forms of rebates and concessions.

It is, however, pertinent to note that upon analysis of the data recorded the researcher has come to the conclusion that importance of Right to Information Act as a tool to electoral reform is still undermined and this approach is hardly known to general public. Need of hour is to pursue innovative approaches and create effective means that enable better elections and thus promotes better democratic governance.

Interview with Mr. Shailesh Gandhi

Mr Shailesh Gandhi is a Former Information Commissioner who served Central Information Commission from 18th September, 2008 till 6th July, 2012. Even after his retirement from the Commission he is a vigorous RTI Activist who has benefitted the citizens of India through Right to Information. Major achievements of Mr. Gandhi, to this effect, have been to enlighten Citizens regarding the details of Chief Minister's Relief Fund, brought an end to the practice of giving away of Public cash of more than 1000 crores in re-development of Crawford business, helped control political obstructions and interferences in Police transfers, and to enhance the administration in Government to move towards Swaraj.

Recently, during 11th Annual National Conference on Electoral and Political Reforms, Kolkata while lambasting the election spending disclosures submitted by candidates in Lok Sabha 2014 elections, proposed that *“if limits on electoral spending by the candidates are removed then a few candidates may end up revealing their actual spending in the elections. The self-sworn affidavits of at least winners and runners-up candidates should be verified by the Income Tax Department.”*

Q1 Since the advent of Right to Information Act, 2005, it has been successful in bringing the element of transparency in government machinery. How do you think the scope of RTI can expand in next 5 years?

A) In terms of bringing transparency in government, it has just begun to show that it is possible to do this. This journey has just begun and it has a long way to go. It will become effective when *suo moto* disclosures as required under Section 4 of the RTI Act are done in the letter and spirit of the law.

Q2 Since you have been a part of the Apex body under Right to Information Act, in your opinion what are the positive changes that this Act has brought? To what extent has it been successful in achieving its objective?

A) The biggest change it has brought about is empowering individual citizens. Slowly but surely there is the beginning of acceptance in government bodies that they are answerable to citizens and this shows how it can slowly change the paradigm and equation of power. However, its progress could have been

faster. In the absence of a culture for transparency, Right to Information has to be the instrument of change.

Q3 In your opinion, does the present Election process in India calls for any reformative measures?

A) The primary reform which is necessary is to change the present first past the post system to partly combine a system of ‘proportional representation’. Reservations for women should be implemented. Artificial limits on election expenses which are flouted by everyone should be removed.

Q4 Recently, in June 2013 CIC held six national parties including INC, BJP, BSP as Public authorities under section 2 (h) of the Act. How far are you satisfied with CIC’s reasoning of subjecting political parties to scrutiny under RTI Act and that too by public at large?

A) The CIC’s rationale is right and the political parties should champion the cause of transparency and accountability by embracing RTI. They are not thinking of a better India and are being extremely short sighted by not obeying statutory orders and exposing themselves as law breakers.

Q5 In your opinion, is it possible to bring electoral reforms through Right to Information Act, 2004?

A) RTI can build public pressure for electoral reforms by demonstrating through information how the present system is not delivering accountability to citizens.

Q6 How do you suggest we can use Right to Information Act, 2005 for furthering electoral reforms?

A) By exposing the current shortcomings and slowly making the system recognise its responsibility to be accountable to citizens.

Q7 In the light of Right to Information Act, 2005, how would you suggest a citizen of India to seek electoral reforms?

A) By exposing the current shortcomings.

FINDINGS

From the above analysis of data, one aspect on the subject that stands out clearly is the high degree of dissatisfaction amongst the population as regards transparency in election funding and expenditure is concerned. The predominance of muscle power, money power and all other unethical method powers pollute and corrupt the politics and leads towards a system that is completely apathetic towards the interest and welfare of common man.

Another fact that comes to surface is the lack of awareness amongst the general public that political parties are subject to disclosing all information through Right to Information Act, 2005. This is proven by the researcher as a matter of fact for the reason that, during the survey, a trend was observed where a major segment was either unaware about the aforementioned fact or believed it to be nothing but a yet another redundant provision capable of bringing no change whatsoever. Nevertheless, it should also be noticed that despite this it is recorded that popular opinion demands the political parties to be within the ambit of this beneficial piece of legislation.

In the analysis of the data recorded from the identified sample, different aspects are seen dominating the views of the general public as per following pattern:

- **People exercising right to vote:** Yes (90%), No (10%)
- **Level of satisfaction with the candidates:** Yes (30%), No (25%), Sometimes (45%)
- **Level of satisfaction with the elected candidates:** Yes (35%), No (10%), Sometimes (55%)
- **Electoral Reforms- a need of hour:** Yes (85%), No (10%), Sometimes (5%)
- **Demand for transparency and public scrutiny of accounts:** Yes (95%), No (5%)
- **Knowledge of Right to Information Act, 2005:** Yes (75%), A Little (25%),
- **Opinion on its efficacy:** Yes (55%), No (5%), Sometimes (30%), No Opinion (10%)

- **Level of its operation amongst general public:** Yes (20%), No (80%)
- **Right to information as a possible tool to electoral reform:** Yes (50%), No (10%), Sometimes (25%), No Opinion (15%)

Here again, it could be observed that 45% of the voting population is seldom satisfied with the candidates they vote for and an overwhelming majority i.e. 85% believe that given the present of affairs electoral reforms are a need of hour. Apart from a few, 95% individuals support the idea of bringing the accounts of the political parties in public domain and thereby subjecting them to public scrutiny.

However, it is pertinent to note that though 75% of the population has knowledge of Right to Information Act, 2005 still only a minor part of the population representing only 25% of the total sample actually uses it. The importance of the Right to Information Act is still undermined owing to lack of awareness and also low level of utilization of this beneficial piece of legislation. The worth of RTI as a tool for electoral reforms is further established by the compilation of the analysis where it could be noticed that more than half of the population is in favour of bringing political parties within the purview of RTI. It is also assumed that the dissent recorded might be a product of low level of awareness amongst the general public. Interestingly, there is an ironic pattern recorded in which though 55% of the population believes that Right to Information is a valuable legislation for bringing transparency yet only as many as 20% of the people actually use it for the purpose of bringing in a culture of responsible government.

CHAPTER VII

REVIEW OF EXISTING LITERATURE

To complete the present thesis, the researcher has collected, condensed and reviewed a bundle of literature. Since the topic of the present thesis pertains to Electoral reforms with special reference to Right to Information Act, 2005. It can be easily said that there is no dearth of literature on the subject. In the following paragraphs, the researcher has attempted to review some of the most prominent works that have been consulted in construction of the present thesis.

One of the first books on the subject, that has been reviewed is “*An Introduction to the Constitution*”, written by M.V. Pyle. The book has been written in a simple and a lucid style and is easy to comprehend. The book is very informative for it contains the relevant portions of Constitutional provisions pertaining to Elections in India. The work has enabled the researcher to gain an understanding of the operation of Election Commission of India within the four walls of Constitution.

Another critical and analytical commentary on the subject has been attempted by RS Rama Dei and Mendiratta SK, in his book entitled “*How India votes: Election Laws, Practice and Procedure*”. The book offers a systematic description of the Election Process in the form of a narrative and properly arranged exhaustive commentary under the relevant headings. The book covers the entire development of the law ranging from the Representation of People’s Act, 1950 to relevant provisions of Indian Penal Code, 1860. This book has been divided into eighteen parts. The relevant parts with respect to the present thesis are Part I containing commentary on the Historical Background of the elections, Part II containing the provision regarding Parliament of India, Part V and VI covering Election Machinery and Delimitation of Constituencies and Part XVI and XVII which deals with Corrupt Practices and Election Disputes respectively. Another unique feature of the book is that there is a synopsis given under each section and all the important decisions delivered by the Supreme Court have been included in it.

“*Provisions of Law Relating to Offences and Corrupt Practices in Connection with Election*”, published by Election Commission of India an exhaustive

commentary on the subject of electoral offences and corrupt practices in elections. The topic has been dealt with from various angles in an exhaustive manner by referring to all the relevant provisions of Representation of People's Act, 1950 and Indian Penal Code, 1860.

M.P. Jain's; "*Indian Constitutional Law*", is another book which is written in a very simple language and has also been presented in a logical sequence. The book is indeed very informative, reader friendly and is easy to comprehend. It has benefited the researcher the developing a lucid understanding of the constitutional setup with respect to elections in India.

"*Constitutional Law of India*" is a book written by Narendra Kumar. Chapter 31 of the book entitled "*elections*" extensively deals with the setting up of Election Commission and its functions thereof. Further brief extracts of relevant Constitutional Amendment Acts as elaborated in Chapter 39 of the book have recorded systematic changes and developments in the Election scenario of India.

An immensely exhaustive scholarly exposition on the subject of right to information a doctoral thesis submitted by a scholar of RGNLU, Patiala entitled "*Access to Information within the Ambit of Right to Information Act, 2005: Loopholes and Possible Remedies*". The researcher therein has dealt with the right to information from various angles, that is, from the meaning of the right in general to the *Right to Information Act, 2005 vis-a-vis* interpretation of statutes and fundamental rights in particular. It has an entire part dedicated to the right to information and the obligations of public authorities. Apart from this, all state legislations, rules and historical background relating to the RTI have been vividly explained which helps in developing the understanding the background with respect to the enactment of the most celebrated legislation i.e. Right to Information, 2005.

Apart from a number of books and commentaries, the researcher has also incorporated and referred to a large number of articles and write-ups published in the prominent journals, newspapers and the periodicals prepared and published by various departments and committees of the Government of India. Electoral Reforms and Right to Information is one of the most potent issues of our times and hence almost every other day there are newspaper reports on the topic.

One of the articles on the topic is one written by Sumandeep Kaur entitled “*Election Reforms in India: the Proactive Role of Election Commission*” published on 25 November, 2008 in *Mainstream*, Volume XLVI, No. 49. In this article, the author has elaborated the efforts undertaken by the Election Commission of India in indentifying the problems in Electoral Process and has envisaged the reforms undertaken with respect to same. It goes on to detail as to how free and fair elections are quintessential to a healthy and prosperous democracy.

Another interesting article on the subject is “*Electoral Reforms in India: Issues and Recent Reforms*” written by Dr. Keshwara Reddy and published in ISSN (online), Volume 3, Issue 8 on August 2014. This article describes the issues prevalent in electoral politics, history of Electoral Reforms in India and initiatives by the Election Commission of India. It says that without free and fair elections, democratic machinery would be meaningless. The author has emphasized upon the fact that democracy means the rule of the people and for the people to have influence in the government, the citizens must be informed about what is going on and criminalisation in politics should be totally eradicated.

An article entitled “*Criminalisation of politics: A Matter of concern*” published in Lawz Bureau, Lawz Magazine, Volume 12 No. 7 Issue 143 in July 2013 talks of the Criminalisation in politics as the matter of alarm for it has a major role in deteriorating the essence of democracy. The writer also touches upon the illicit financing in the elections and the role of prominent industrialists and pressure groups polluting the process through heavy donations with ulterior motives. The author maintains that the root of electoral corruption lies in the candidates. However, the author has failed to suggest and put forward any Electoral reforms which might be helpful in combating this situation.

The researcher has also relied upon various publications issued by the Election Commission, Law Commission and various committees set up to this effect. One of the richest sources of literature published on the subject is “*Background Paper of Electoral Reforms*” prepared by the Core Committee on Electoral Reforms, December 2010, by the Legislative Department, Ministry of Law and Justice Government of India. The paper talks about the various Committees like Vohra Committee, Goswami Committee etc. which mark the development of Electoral

reforms in India. It has further recorded the problems associated with the electoral process and has advanced reforms which ought to be adopted in order to secure free and fair elections. The report by the committee has analysed in suggestions proposed by the Election Commission and has put forth opinions on efficacy of the same.

On the topic of Electoral Reforms another significant publication is the one issued by the Election Commission of India on “*Important Electoral Reforms Proposed by the Election Commission*” on 15th July, 1988 which has been again reiterated in November, 1999, July, 2004 and October, 2006 by the Election Commission of India. This Commission has elaborated on the reforms like Negative Voting, measures to combat Criminalisation, review of Anti-defection law, disclosure of information by candidates etc.

“*Ethics in Governance*” published by Second Administrative Reforms Commission, Government of India on January 2007, and “*117th Report on the Reform of Electoral Laws*”, prepared by Law Commission of India and published on May, 1999 are yet another vital pieces of literature which have expressed concerns with respect to sullied electoral process in India and have advised reforms which have the potential to bring in an element of transparency and good governance in the Electoral process. Similarly, “*A Consultation Paper on Review of Electoral Law, Processes and Reforms Options*” prepared and reported by the National Commission to Review the Working of Constitution, 2001 talks about the magnitude of electoral exercise in India and the problems associated. The report has also suggested reforms options and has addressed the issues of political morality.

The researcher has also recorded the then Prime Minister, Mr Man Mohan Singh’s views on RTI, while delivering the inaugural address noteworthy. He admitted the need for a ‘critical look’ at the information law to ensure that it does not adversely affect articulating their views. Such remarks of the Prime Minister are ironic at a time when his own party is battling corruption charges and is vehemently opposing the CIC’s decision to categorise political parties as public authorities under the Right to Information Act, 2005. Some of his own ministers have said that the Right to Information Act is affecting government functioning and the approach of the Central Information Commission has been designated as ‘adventurist’ in nature. He said that there is a need to remember that a point of view brought under public

scrutiny and discussion in an isolated manner may sometimes present a distorted or incomplete picture of what really happened in the process of making the final decision.

The journals on which the researcher has relied are All India Reporter and Supreme Court Cases. Apart from this, the researcher has recorded relevant CIC decisions with respect to political parties available on Information Decisions (online). The researcher has heavily drawn upon the judicial precedents to mark the progress which India has witnessed in reforming the arena of Elections.

Another journals which provided a lot of valuable information on the subject of Right to Information are “*Commentary on the Right to Information Act*” written by J.N. Barowalia and “*Democracy and Transparency in the Indian State: The making of the Right to Information Act*” written by Prashant Sharma. These articles touch upon almost all facets of the RTI. The authors maintain that the transparency and accountability in government are essential pre-requisites of a meaningful governance promoting social welfare.

The researcher has also recorded the opinions and observation of Ex-Chief Information Commissioner Wajahat Habibullah which appeared in an interview with Frontline magazine on August 28-September 10, 2010. In addition, the researcher has documented the observation made by Justice K.K. Mathew, Supreme Court of India in the much debated case of State of UP v. Raj Narain (1975). Furthermore, the researcher has made a mention to the arguments set forth by Senior Advocate, Shri Prashant Bhushan before the Central Information Commission justifying the application of Right to Information Act, 2005 on political parties and holding them as “public authorities” within the meaning of Section-2(h) of the said Act.

Websites such as the official websites of the various States as well as of the Central Information Commissions, Election Commission of India, Association for democratic reforms, Commonwealth Human Rights Initiative, righttoinformation.org, www.prsindia.org etc. also contain useful and updated information. The researcher has immensely benefitted from the information uploaded on the said websites. Apart from this, the researcher has also recorded the news articles which papered online on the official websites of various media houses like NDTV India, Live Law, The HINDU, Governance Now, IANS etc.

The Researcher wishes to state that the review of the existing literature summarized above is only an illustrative one and is in no way an exhaustive one. Apart from the literature referred to above, many more articles, books, commentaries, digests, journals, periodicals and websites have been consulted by the researcher but have not been mentioned here due to paucity of space as well as for the sake of brevity. The details of all these publications are available in the bibliography appended to the thesis.

CHAPTER VIII

COMPARITIVE ANALYSIS OF POLITICAL PARTIES

ON THE BASIS OF CRIMINAL BACKGROUND¹⁷⁴

Contestants having Criminal Charges: Total number of candidates considered were 8163 , among whom 1398 or 17% candidates have declared criminal charges against themselves. During Lok Sabha 2009 elections, 1158 (15%) candidates had declared criminal charges against themselves out of 7810 contestants.

Contestants having Grievous Criminal Charges: 889 or 11% candidates have pronounced genuine criminal cases including cases identified with homicide, endeavor to murder, communal disharmony, kidnapping, unlawful acts against ladies and so on. Out of 7810 applicants analyzed amid Lok Sabha 2009 decisions, 608 or 8% contestants had pronounced genuine criminal bodies of evidence against themselves.

Contestants having charges related to murder: 57 applicants have pronounced cases identified with homicide. Out of these 12 applicants have been fielded by BSP, 4 hopefuls have been fielded by BJP, CPI (ML) L and SP every, 3 candidates by RJD and JD(U) every, 1 candidate by INC, AAP, AITC, and CPI(M) every and 12 candidates are independents.

Candidates with cases related to Attempt to Murder: 173 candidates have pronounced instances of endeavor to murder. Out of these, 19 candidates have been fielded by BJP and CPI(ML)L every, 18 candidates by BSP, 14 applicants by SP, 7 applicants by AAP and JD(U) every, 6 by AITC and INC, 5 candidates by RJD, 4 by JVM(P), 2 by CPI(M) and DMK every and 28 applicants are independents.

Candidates with cases related to Crimes against Women: 58 contestants have pronounced bodies of evidence identified with unlawful acts against ladies. 6 candidates have pronounced instances of assault. Out of 58 applicants with arguments identified with wrongdoings against ladies, 6 applicants have been fielded by BSP, 3 candidates by AITC, BJP, INC and SP every, 2 applicants by JD(U), 1 contestants by

¹⁷⁴ Candidates' affidavits obtained from the ECI website (www.eci.nic.in, www.adrindia.org and www.myneta.info) with nomination papers is the source of this analysis.

AAP, CPI, CPI(ML)L, MNS, RJD, Shiv Sena and YSRCP every and 18 applicants are independents.

Candidates with cases related to causing Communal Disharmony: 54 applicants with cases identified with creating shared disharmony. Out of these, 18 contestants were fielded by BJP, 3 applicants by CPI(ML)L and BSP every, 2 candidates by AAP, SP and INC every, 1 contestants by RLD, YSRCP and TRS every and 6 contestants are Independents.

Candidates with cases related to Robbery and Dacoity: 57 applicants have proclaimed cases identified with burglary and dacoity. Out of these, 10 applicants have been fielded by BJP, BSP and SP every, 3 candidates by AAP, 2 contestants by INC, JD(U) and RJD every, 1 applicant by AITC, CPI(M), DMK and MNS every and 9 applicants are Independents.

Candidates with cases related to Kidnapping: 40 candidates have proclaimed cases identified with Kidnapping. Out of these, 6 candidates have been fielded by BSP and SP, 4 contestants by INC, 3 applicants by BJP and DMK every, 2 candidates by AITC and CPI(ML)L every, 1 applicant by AAP, JD(U), LJP, MNS and RJD every and 5 applicants are independents.

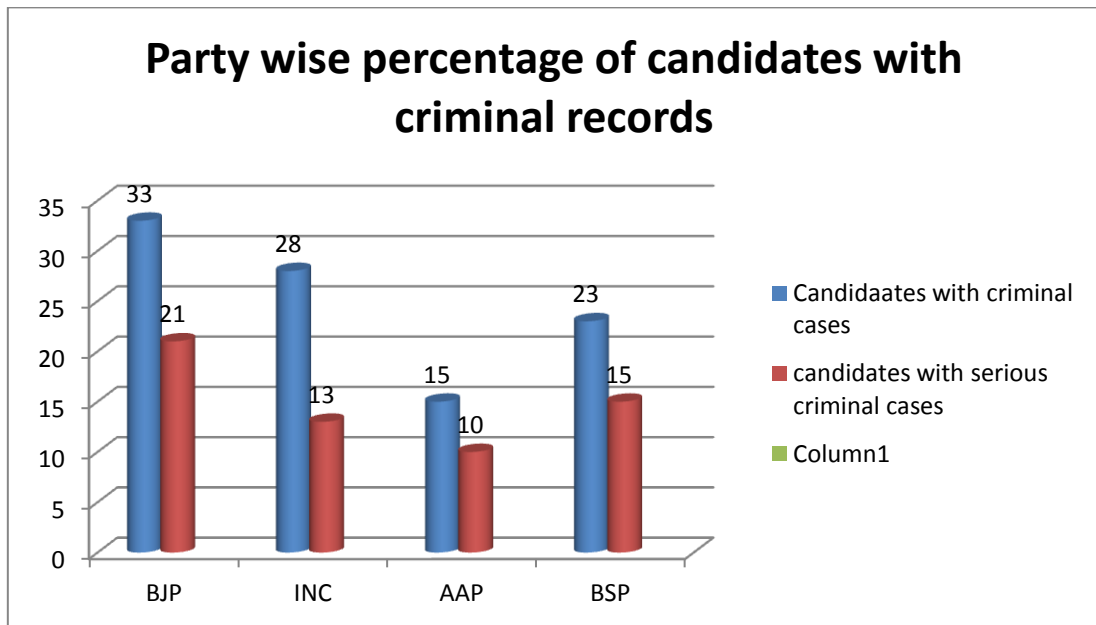
Party wise Candidates with Criminal Cases:

- 128 (28%) out of 462 contestants from INC,
- 140 (33%) out of 426 candidates from BJP,
- 65 (15%) out of 427 applicants from AAP,
- 114 (23%) out of 501 contestants fielded by BSP and
- 307 (10%) out of 3182 Independent contestants have pronounced criminal arguments against themselves in their affirmations.

Party wise Candidates with Serious Criminal Cases:

- 61 (13%) out of 462 contestants from INC,
- 89 (21%) out of 426 candidates from BJP,
- 42 (10%) out of 427 applicants from AAP,
- 75 (15%) out of 501 applicants fielded by BSP and

- 188 (6%) out of 3182 Independent contestants have proclaimed genuine criminal bodies of evidence against themselves in their testimonies.



ANALYSIS BASED ON DECLARED CRIMINAL CASES¹⁷⁵

Out of the 8163 candidates dissected, 1398 (17%) applicants have announced criminal bodies of evidence against themselves. 889 (11%) hopefuls have proclaimed genuine criminal cases including cases identified with homicide, endeavour to murder, public disharmony, grabbing, wrongdoings against ladies and so forth.

PARTY WISE BREAK UP OF CANDIDATES WITH DECLARED CRIMINAL CASES

128 (28%) out of 462 candidates from INC, 140 (33%) out of 426 hopefuls from BJP, 65 (15%) out of 427 applicants from AAP, 114 (23%) out of 501 hopefuls fielded by BSP and 307 (10%) out of 3182 Independent applicants have proclaimed criminal arguments against themselves in their sworn statements. The following table provides the party wise details of candidates with self-declared criminal cases:

PARTY NAME	NO. of candidates analyzed	Candidates with declared criminal cases	%age with declared criminal cases	Candidates with declared serious cases	%age with declared serious cases
BJP	426	140	33%	89	21%
INC	462	128	28%	61	13%
AAP	427	65	15%	42	10%
BSP	501	114	23%	75	15%

¹⁷⁵ Candidates' affidavits obtained from the ECI website (www.eci.nic.in, www.adrindia.org and www.myneta.info) with nomination papers is the source of this analysis.

PARTY WISE CANDIDATES WITH CASES RELATED TO MURDER

PARTY	No. of candidates analyzed	No. of candidates with murder cases	IPC Sections considered
BJP	426	4	IPC Section 302- Murder IPC Section 304B- Dowry Death
INC	462	1	
AAP	427	1	
BSP	501	12	

CANDIDATES WITH CASES RELATED TO ATTEMPT TO MURDER

PARTY	No. of candidates analyzed	No. of candidates with cases of attempt	IPC Sections considered
BJP	426	19	IPC Section 307- Attempt to murder
INC	462	6	
AAP	427	7	
BSP	501	18	

ON THE BASIS OF FINANCIAL BACKGROUND¹⁷⁶

Crorepati Candidates: Out of the 8163 candidates dissected, 2208 (27%) are crorepatis. Out of 7810 candidates examined amid Lok Sabha 2009 decisions, 1249 (16%) applicants were crorepatis.

Party-wise Crorepati Candidates:

- 365 (79%) out of 462 candidates in INC,
- 309 (73%) out of 426 applicants in BJP,
- 192 (45%) out of 427 contestants in AAP,
- 161 (32%) out of 501 contestants in BSP and
- 342 (11%) out of 3182 Independent applicants have proclaimed resources worth more than Rs. 1 crore.

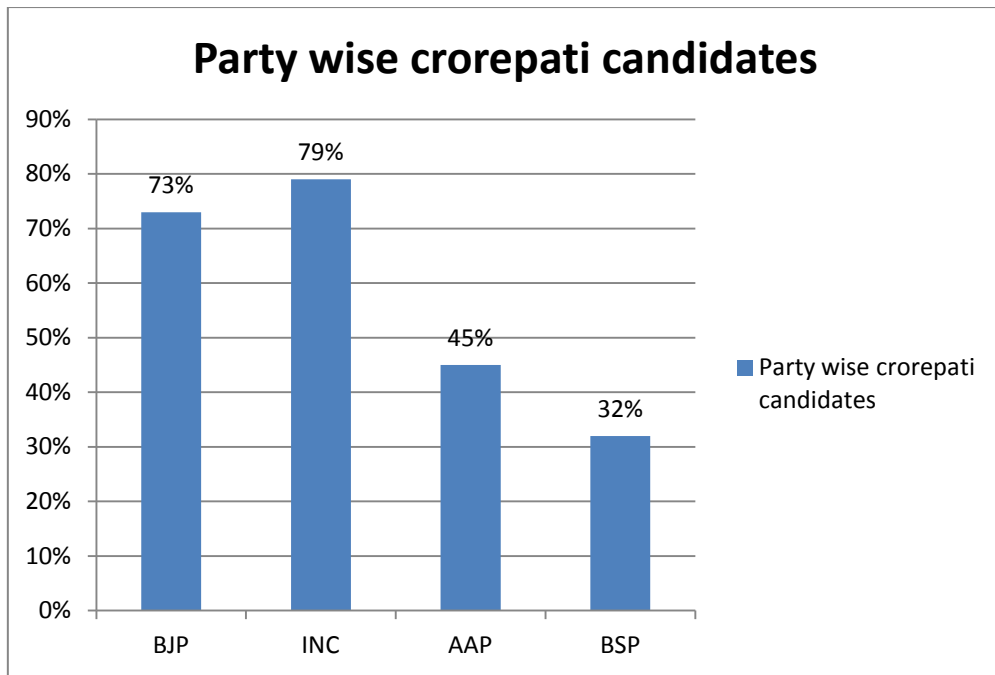
Average Assets*: The average assets holding per candidate, contesting in the Lok Sabha 2014 elections, is Rs.3.16 crores.

Party-wise Average Assets*: Among registered political parties, the normal resources every possibility for 461 INC candidates is Rs 13.27 crores, 426 BJP applicants have normal resources of Rs.10.32 crores, 427 AAP hopefuls have normal resources worth of Rs.2.77 crores and 501 BSP candidates have normal resources of Rs. 3.53 crores.

¹⁷⁶ Candidates' affidavits obtained from the ECI website (www.eci.nic.in, www.adrindia.org and www.myneta.info) with nomination papers is the source of this analysis.

*The average assets of a candidate contesting the Lok Sabha 2014 elections is approximately 3 crores.

* *Ibid*



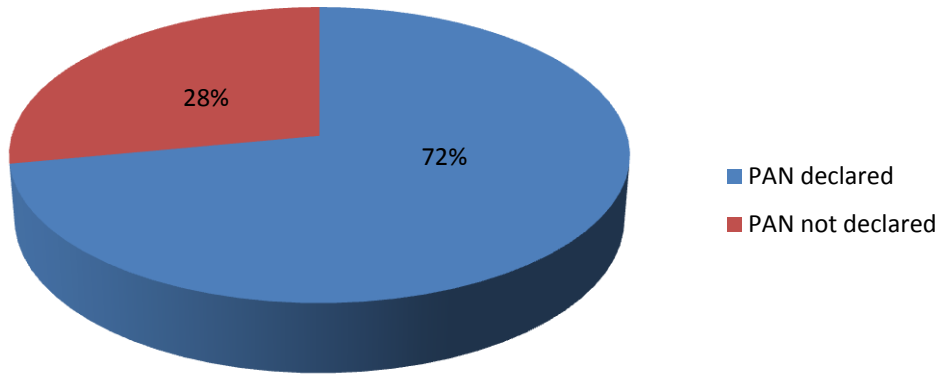
Crorepati Candidates with no PAN: 100 contestants with aggregate resources worth more than Rs. 1 crore have not announced PAN subtle elements.

Candidates with High Income as declared in ITR*: 100 applicants with aggregate resources worth more than Rs. 1 crore have not pronounced PAN points of interest.

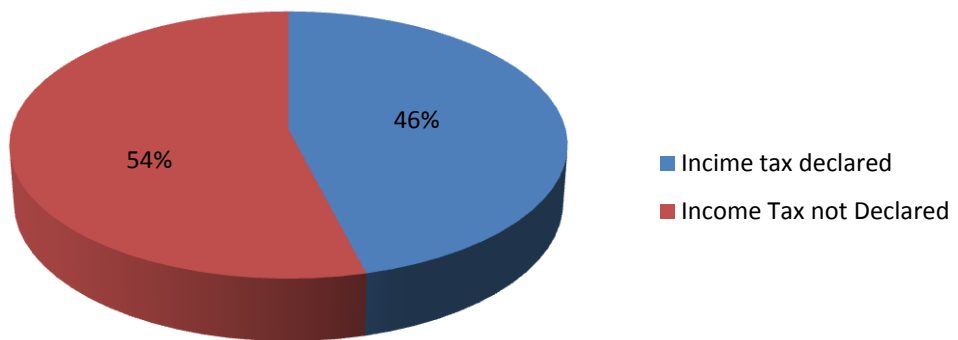
Candidates who have not declared Income Tax Details*: 4427 (54%) candidates out of 8163 dissected have not proclaimed wage charge details.* Some applicants may be exempted from documenting Income Tax Returns

Candidates with High Assets who have not announced Income Tax Details: 293 applicants with resources worth more than Rs. 1 crore, have not pronounced Income Tax Details.

PAN Details



Income Tax Details



ANALYSIS BASED ON ASSETS¹⁷⁷

PARTY WISE CROREPATIS

PARTY	No. of candidates analyzed	No. of crorepati candidates	%age of crorepati candidates
BJP	426	309	73%
INC	462	365	79%
AAP	427	192	45%
BSP	501	161	32%

¹⁷⁷ Candidates' affidavits obtained from the ECI website (www.eci.nic.in, www.adrindia.org and www.myneta.info) with nomination papers is the source of this analysis.

CHAPTER IX

CONCLUSION AND SUGGESTIONS

“If we are going to spend a lot of money to deal with the problem of 200 million guns in the country owned by 650 million gun owners, we ought to have a system which will work and catch criminals.”

-John Dingell

Conclusion:

On the attainment of independence in 1947 and on becoming a sovereign democratic republic in 1950 India went to the polls for its first general elections to Parliament and State Legislatures in 1951-52.¹⁷⁸ The founding fathers of the Constitution of India had straightaway adopted Universal Adult Suffrage as the Fundamental Principle of election to the lower houses of Parliament and State Legislatures, though in many other democracies including Britain women had to struggle hard for centuries for their voting rights. It was only in 1918 that the British women of the age of 30 years or more got their right to franchise, though the main population enjoyed the voting right at the age of 21 years and the British Parliamentary system was in vogue from 13th century. The universal adult suffrage in Britain came later in 1928.

Another notable feature of the Indian Constitution was the abolition of Communal Representation and of Separate electoral roles based on religion unlike during the British rule. Nearly 173 million adult Indian citizens were brought on common electoral rolls to be eligible to exercise their franchise in over 196 thousand polling stations spread over the length and breadth of the country, in the first general elections.¹⁷⁹ Many pessimistic views were expressed before the conduct of such a gigantic exercise, unpatrolled in the history of mankind till then. But the success of those elections silenced the critics and the subsequent successful conduct of 16 more general elections to the House of the People and more than 300 general elections to the state legislative assemblies since then have proved the prophets of doom wrong.

¹⁷⁸ Nohlen, D, Grotz, F & Hartmann, C (2001) *Elections in Asia: A data handbook*, Volume I, p572

¹⁷⁹ *Supra* Note 83

But no Constitutional order or system of government can ever be said to be perfect. The Former President of India Shri R. Venkataraman has expressed his unhappiness over the existing system.¹⁸⁰ Like any system of government no electoral system can also be regarded as perfect, forever. The electoral system in India is not exception either. It has its own short comings too, and electoral reforms to remove or rectify those drawbacks are always an ongoing process. The whole nation is seriously concerned about criminalisation of politics. An unholy nexus between politicians and criminals is not new as several politicians have taken the help of criminals for rigging elections in their favour. As has been discussed in the foregoing chapters, the muscle power has been misused for capturing booths on the day of poll and even for intimidating voters from coming to polling stations. So long as Parliament does not intervene and take some remedial measures to eradicate this malice from our election system, one of the remedies suggested by some well meaning people is that, the political parties should themselves make introspection and refuse to give tickets to those who are known for their involvement in crimes as political parties cannot profess ignorance or lack of awareness to the antecedents of the candidates setup by them.

It is not only the muscle power but the money power is also eroding the electoral system. Big money, mostly black, is playing a pernicious role in electoral battles. Not only the common people at large, but even the apex court of the land has expressed concern in the matter and observed that the existing law does not measure up to the existing realities. The Supreme Court went to the extent of observing in **Gadakh Yashwantrao v. Gala Sahib Vikhe Patil**¹⁸¹ that if the present law is not tightened ‘*it may be advisable to omit the provision to prevent the resort to indirect methods for its circumvention and subversion of the law, accepting without any qualm the role of money power in the elections.*’

Time has now come when a certain minimum education qualification must be prescribed for those who aspire to be chosen as representatives of the people in the august Houses of Parliament and state Legislatures. With the world having entered the new millennium, it may not be fair to the country, and to the progress it has made in

¹⁸⁰ See the address of Shri R. Venkataraman at the Bhartiya Vidya Bhawan, Bangalore in the seminar of electoral reforms on 8th April, 2000

¹⁸¹ (1994) 1 SCC 682

all fields including literacy, during the last seven decades of independence, to say that people are illiterate and no education qualification can still be fixed for its Parliamentarians and Legislatures. What should be such minimum educational standard is for the Parliament to decide in its collective wisdom, but a beginning should be made.

Though, it is quite common to put almost the entire blame for the current state of affairs on the so-called political class in the country. But those who blame them entirely overlook the fact that this political class emerges from the society only. They are not developed in vacuum or in isolation. It's the citizens who do not make use of the benefit furnished to them. Therefore, one way to change the behaviour of the political class would be to change the system in which they have to operate. This is where electoral reforms become important. Over the years, several measures have been taken by Parliament to amend the laws relating to elections and also judiciary has played a praiseworthy role with a view to check the aforementioned forces. Yet, the improvement has only been limited and adherence to the laws regulating election process is highly unsatisfactory and lamentable.

In light of the above discussion, it is apparent that the role of Election Commission of India in conduction free and fair elections has become more crucial for the consolidation of Indian democracy. This could be realised by strengthening the hands of Election Commission of India and plugging those loopholes that permit the Executive in interfering with the work of the Commission. An Election Commission that is able to assert its role and stand up to the political pressures exerted by the government and various political institutions would significantly contribute to enriching of the content and quality of the Indian democracy.

These Political institutions encompass three kinds of entities- elected institution of the state such as Parliament, non-elected institutions of the state such as bureaucracy, police, judiciary and armed forces and the organisation of civil society such as press and myriad professional and other associations.¹⁸² In the final analysis, it would appear that the process of institutional decay is ending and a place of institutional reinvigoration has begun especially because Indian civil society has

¹⁸² Kumar, B.Venkatesh; "*The Indian Journal of Political Science*" Vol. 63, No. 1 (March 2002), p. 85

become much more powerful than it was before. Additionally, the institutions with overseeing responsibility, namely the Election Commission and the judiciary, have begun to represent the urges of civil society much more effectively than before.

Finally, the success of reforms would depend upon the working of and adherence to the system on the part of the electoral machinery at all levels- the political parties, the candidates and the electorate. An independent press and enlightened public opinion have no substitute and their role is crucial in pushing through reforms. Furthermore, the most important element which has the potential of furthering free and fair elections is the element of introspection and internal democracy within the political parties.

SUGGESTIONS WITH RESPECT TO ROLE OF RTI IN ELECTORAL REFORMS

Right to Information is gotten from our essential right of interpretation under Article 19. In the event where we don't have data on how our Government and Public Institutions capacity, we can't express any educated conclusion on it. This has been acknowledged by different Supreme Court judgments, since 1977. Every one of us acknowledge that the opportunity of the press is a key component for a popular government to capacity. It is advantageous to comprehend the basic supposition in this decently dug in conviction. Why is the opportunity of the media considered as one of the crucial highlights for a majority rule government? Popular government rotates around the essential thought of Citizens being at the core of administration and a standard of the individuals. We have to characterize the significance of the idea of opportunity of the press from this major reason. It is clear that the fundamental purpose behind a free squeeze is to guarantee that Citizens are educated. In the event that this is the principle explanation behind the supremacy given to the flexibility of the press, it obviously spills out of this, that the Citizens Right To Know is principal. Likewise, since the Government is run for the benefit of the individuals, they are the legitimate managers who have a privilege to be educated specifically.

Right to Information Act, 2005 is a codification of this essential right of Citizens. The privilege existed since the time India turned into a republic, yet was hard to implement without going to Court. The Act and its tenets characterize a configuration for ordering data, a period inside which data must be given thirty days,-

strategy for giving the data, a few charges for applying,-Rs.10,-, and a few exclusions of data which won't be given. There is some charge for giving the data,-regularly Rs. 10 for an A4 size paper; the standard is that charges ought to be least, - all the more as a token. They are not in the slightest degree illustrative of the expenses, which may be caused. Residents can request data by getting Xerox duplicates of reports, authorizations, arrangements and choices. Assessment of records can likewise be carried out and tests can be requested. All authoritative workplaces of open powers need to select 'Open Information Officers (PIO).' Citizens request data to the Public Information Officer of the concerned office. On the off chance that it is not gave or wrongly cannot, the Citizen can go in engage an Appellate Authority who might be an authority in the same division, senior to the PIO. On the off chance that this too does not give an agreeable result, one can speak to the State or Central Information Commissioner, which is an autonomous Constitutional Authority, being secured under the Act. In the event that the PIO declines to take the application, or postponements giving the data he is obligated to pay a punishment of Rs. 250 every day from his pay. Accordingly RTI accommodates a period bound and characterized procedure for Citizens to get to data about all moves made by Public powers. The punitive procurements on the PIO are the genuine teeth of the Act, which guarantee that the PIO can't treat Citizen's requests for data in a carefree way.

Another vital viewpoint is that in India we have not given admiration and noticeable quality to the privileges of the individual Citizen. Genuine vote based system is inconceivable until we perceive the loftiness of the individual Citizen. In the event that individual Citizens are engaged to guarantee more prominent responsibility and straightforwardness in administration, it can achieve a real change. There has been no vehicle accessible for individual residents to effect the administration structure. In a framework smelling with debasement and getting to be progressively harsh to the issues of the impeded Citizenry, the Right to Information has indicated guarantee of engaging Citizens to get responsibility and go about as a master of great administration. The Right to Information is accessible to each Citizen, and can be utilized by individual Citizens from their own particular houses. It is additionally genuinely economical to utilize; it doesn't presuppose getting together in gatherings. Since Citizens work as people, they don't need to make the bargains needed in keeping up the gatherings. Residents, with no association, fortify the rule of the

Individual Citizen being at the middle of Democracy. At whatever point, there are real issues which uncover absence of administration as far as legitimate open approach, or debasement, Citizens will meet up on a specific issue. The quality of this Common great will manufacture a stronger and more moral Civil Society.

As we request subtle elements of unlawful Acts, furthermore about the premise and laws taking into account which moves are made, we will have the capacity to change ourselves into a genuinely participative vote based system, which meets expectations for the Citizens. We as people have the force and the obligation of bringing Good administration by utilizing and spreading the utilization of Right To Information. Going past ceasing debasement and getting the Citizens their legitimate because of, Information likewise fits being utilized by Citizens to address issues of Governance and a balanced premise for open arrangement. Indian Citizens have a chance to acknowledge "Swaraj" – genuine and illuminated organization toward oneself, which they missed in 1947. The obligation of guaranteeing that the RTI Act will convey its potential rests with us. We have to fabricate an attention to grab this opportunity through a supported crusade a National Campaign for People's Right to Information. In the event that we can get a million customary clients of the Right To Information the country over, we can realize a significant positive change in the administration of India.

Access to data laws ought to give clear direction to open hirelings with reference to how to react to demands when the data is not held by the general population body, regardless of the fact that it identifies with its capacities and obligations. On the off chance that data does not exist, open authorities ought to be arranged to advise the requester. Such reactions are a key part of open government and can structure the premise of useful dialog between the organization and people in general about the kind of data required so as to move forward government productivity and expand the nature of choice making and arrangement making

1. Public Authorities ought to have the obligation to advise the information commissioner or comparable oversight assemblage of occasions when solicitations were declined for not providing sought information. Such necessities are especially critical in transitional and creating nations like our own where information management can be lacking.

2. Making files of the data held by specific bodies, and making these lists open can significantly help data officers in fast recovery of endless supply of an appeal, or in brisk ID of the nonexistence of data. Such lists ought to likewise list the titles of archives subject to arrangement under different laws, with a specific end goal to encourage demands for these archives and audit of the need of the arrangement as indicated by the standards built by the access to Information Technology law.
3. Proactive straightforwardness and the posting of materials on government sites encourages access to data, however can't in them self ensure the privilege of access to information. At the very least, where requesters do have Internet access, authorities ought to give careful URLs, an administration which involves little exertion and no cost. Landing pages are not sufficient. Where requesters don't have Internet access, the legislature body must print out the pertinent pages and give them to the requesters (charging any standard replicating expenses accommodated local law). Such commitments ought to be obviously expressed in applicable enactment and rules.
4. A standard piece of preparing in any access to information regime is to guarantee that public authorities comprehend the assumption of openness, and that exclusions must be connected when data hurts an interest which is protected and is not overridden by a public interest.
5. Public authorities must always keep in mind that refusals can only be written and never oral and however the state must justify the refusals for the relevant exemptions.
6. Public information officers, or the officers with same power, ought to have the power to choose information to be provided or information ought to just be denied after an internal review prepared by the senior authorities so to guarantee that exceptions have been appropriately connected.
7. The national council, a data commission or chief, or other observing bodies or authorities accused of directing usage of access to information laws ought to,

in a convenient way, survey the issuance, by public authorities and bodies performing public functions, of composed refusals for appeals for information to guarantee that absolutions are being connected properly and that disavowals of solicitations are not being based upon improper charges, requests to illuminate demands, request regarding why the information is being asked for, and so forth.

8. The training at Public Authorities for providing information should include direction in the partial release of information or partial production of documents, to ensure that non-harmful information in classified documents can be released into the public domain for larger public interest.

SUGGESTION WITH RESPECT TO ELECTORAL PROCESS

The dominant role of money in elections, which is taking more and more outrageous forms, is deeply worrying. There are fears that the electoral process in the future may well stand compromised at the altar of '*winnability*'. The process is also reflective of a growing disconnect between the governed and several of those who are elected by means of financial clout and covert muscle power. The subject of criminality in politics as well as the dangers of huge overspending and enigmatic political funds is part of the reforms package that Election Commissions have been addressing from time to time. However, to our much despair, the response over two decades has been inadequate.

Some of the recommendations and suggestions which have been widely discussed in various forums and have found acceptability among various policy-making organisations including the Election Commission of India are discussed below. It is high time that they are implemented in the earnest to achieve a democracy which in true spirit reflects the idea of a Government which is "*of the people, by the people, for the people*" as propagated by Abraham Lincoln.

1. **Reform of electoral finance:** Although statutory points of restrictions were expanded in 2011 to Rs. 40 lakhs for a parliamentary seat and Rs. 16 lakhs for assembly elections, levels of genuine spending surpass these breaking points. The Election Commission does it best by posting upwards of 2000 senior officers as guardians amid a parliamentary elections, yet disregarding such an

extensive apparatus, the candidates and their respective political parties use stealth for furthering their illicit motives.

Obviously, raising the fiscal roof every now and then won't be the answer. In 1972, the Joint Parliamentary Committee on Amendments to Election Laws recommended that the state accept the weight of authentic election costs of political party. In 1978, the Tarkunde Committee reverberated the requirement for some electoral costs being taken up by the Government. The Dinesh Goswami Committee (1990) proposed state financing in kind. The Law Commission Report in the year 1999 indicated fractional state subsidizing. In 2004, a plan for state funding was proposed by the President APJ Abdul Kalam in his address to the Joint Session of Parliament. Be that as it may, when the Election Commission held an all-party meeting in February 2006 to talk about the Centre's proposition on state funding and welcomed the six recognised national and 44 recognised State-level political parties, on the proposition of financing not in cash however in facilities, the greater part view was that this would just add to the benefit of bigger political parties.

The reality of the matter is that in numerous well set vote based systems the extent of state funding has been expanding versus private financing. However in India, it would require the solid will of the national parties to consider distinctive models where state funding can be supplemented by corresponding broadcast in the electronic media, which the Election Commission can oversee. The Election Commission of India must additionally be enabled to de-register non-genuine or non-serious political parties and the Representation of People Act, 1950 be revised to provide for stricter punishments for violation of the provisions of electoral laws brutally rebuff discretionary infringement.

2. **Dealing with criminalization:** As respects managing those with criminal precursors, the Election Commission of India has on numerous occasions addressed the Government of India to suspend through enactment those against whom charges stand encircled for appalling offenses. In any case, parliamentary boards hold that such a procurement is subject to abuse by party

in force looking for revenge. They propose special courts and expedient trials rather, yet these proposals have not yet been deciphered and applied. Many a times, numerous parliamentarians secretly acknowledge that the "winnability" actuates a party to offer tickets to those against whom criminal cases are pending. Obviously this mirrors the extending gap between the administration of a political party from those it tries to represent.

3. **Abolish the first-past-the-post system:** This has been amongst the most generally examined electoral reform in India. Multi-cornered challenges have turned into a standard in India instead of a special case because of the increment in the quantity of regional and smaller parties. There have been cases in the state assembly elections where a candidate has been pronounced winner with the triumph edge of under 100 votes. Aside from this irregularity, much of the time, a candidate wins by securing only 30-35 of the aggregate number of votes casted. Henceforth he or she can't be regarded to be a decision of greater part of the electorate. To beat this shortcomig, the first-past-the-post framework ought to be supplemented with a two-stage election procedure. In this, a second round of elections will be held if none of the candidates in the conflict is able to secure 50 percent of the aggregate number of votes sin the first round. The two candidates who have acquired the most extreme number of votes in the first round will battle in the second round. Whoever between the two gets more than 51 percent of the aggregate votes in the second round shall be proclaimed the victor.
4. **Check on number of registered parties:** This move is essential on the grounds that the small or regional political parties are much more exposed to "ideological movements". The election commission ought to be offered with powers to de-recognise smaller political parties on the premise of their performance. An alternate move to accomplish this objective would be to expand the base number of minimum individuals that are expected to structure a political party.
5. **Amount of security deposit to be increased:** This move is important to put under scrutiny the quantity of non-serious candidates challenging union and state assembly elections. Such a move has been taken in the past and has

indicated sought results. However lately, the quantity of candidates battling in the elections has demonstrated an expanding development and henceforth there is a need to survey the minimum amount of security to be deposited.

6. **Making false declarations in election affidavits should be a punishable offence:** This is important to guarantee transparency about the profile of applicants in elections, a large portion of whom have criminal cases against them on charges of grave offences like abducting and homicide. Anybody giving false data in the testimonies and affidavits ought to be suspended from contesting elections for a term of five years which may be expended in exceptional circumstances.
7. **Ban on publication of opinion polls results:** To guarantee free and fair elections in India, the Election Commission of India holds the elections in diverse phases so that the available security staff is successfully sent for conduction elections. Broadcasting the opinion poll results will have an effect on the voting pattern in the upcoming elections. Correspondingly, the opinion polls that are undertaken before the election likewise impacts the voting pattern. Henceforth there is a need to put a total restraint on conducting opinion polls by various media agencies and subsequently publishing the results till all the phases of elections are concluded.

From an analysis of the foregoing chapters and the above suggested reforms it could be deduced that there has been a lot of judicial activism to resolve the problems associated with sullied electoral process. The apex institutions of the country have realised the dire need of changing the current system of affairs and a progressive shift towards fairer and transparent elections has been witnessed. However, in a country like India where the abuse of rules, regulations and directions is also widespread what is required is to penalise the offenders with serious sanctions and also disqualification. The constant interference of Executive in Judiciary and Elections Commission and process of nullifying the judicial pronouncements by way of amendments needs to be checked. To illustrate, the unanimous decision of six national political parties towards non-adherence to the order of Central Information Commission¹⁸³ which

¹⁸³ *Supra* Note 136

sought to bring political parties within the purview of the Right to Information Act, 2005 demonstrates the pitiable and unfortunate state of affairs this country is in. Shunning way from accountability and transparency is nothing but a *prima facie* evidence as to the corrupt and illegal practices being undertaken with the political parties.

BIBLIOGRAPHY

PRIMARY SOURCES

BARE ACTS –

- Representation of Peoples Act, 1950
- Representation of Peoples Act, 1951
- Right to Information Act, 2005
- Indian Penal Code, 1860
- Companies Act, 2013
- Income Tax Act, 1961

REPORTS --

- “*Provisions of Law Relating to Offences and Corrupt Practices in Connection with Election*”, Election Laws and ECI Instructions, Election Commission of India.
- “*Background Paper of Electoral Reforms*”, Report prepared by the Core Committee on Electoral Reforms, December 2010, Legislative Department, Ministry Of Law and Justice Government Of India
- “Important Electoral Reforms Proposed by the Election Commission”, 15th July, 1988, Reiterated in November, 1999, July, 2004 and October, 2006, Election Commission of India.
- “*Ethics in Governance*”, January 2007, Fourth Report , Second Administrative Reforms Commission, Government of India
- “*117th Report on the Reform of Electoral Laws*”, May, 1999, Law Commission of India,

- “*A Consultation Paper on Review of Electoral Law, Processes and Reforms Options*”, National Commission to Review the Working of Constitution, 2001.

ARTICLES-

- Sharma Prashant; “*Democracy and Transparency in the Indian State: The making of the Right to Information Act*”, Routledge, 2014
- Kaur Sumandeep, “*Election Reforms in India: The Proactive Role of Election Commission*”, 25 November, 2008, MAINSTREAM, VOL XLVI, NO 49.
- Dr. Keshwara Reddy, “*Electoral Reforms in India: Issues and Recent Reforms*”, ISSN (online), Volume 3, Issue 8, August 2014.
- “*Criminalisation of politics: A Matter of concern*”, Lawz Bureau, Lawz Magazine, Vol 12 No. 7 Issue 143, July 2013.

SECONDARY SOURCES

BOOKS –

- Jain M.P; “*Indian Constitutional Law*”, Butterworths and Wadhawa, Reprint 2012.
- Pylee MV, “*An Introduction to the Constitution*”, 2nd Reprint, 1995
- RS Rama Dei and Mendiratta SK, “*How India votes: Election Laws, Practice and Procedure*”, 1st Edition, 2000, Butterworths India, New Delhi.
- Shukia Subhash (2008) “*Issues in Indian Politics*”, New Delhi: Anamika Publishers, p.219
- Barowalia J.N.; “*Commentary on the Right to Information Act*”, Universal Law Publishing Company, Delhi, 2006.

WEBSITES REFERRED –

- <http://www.lawcommissionofindia.nic.in>
- <http://www.eci.nic.in>
- <http://www.livelaw.in>
- <http://www.adrindia.org>
- <http://www.myneta.com>
- <http://www.timesofindia.indiatimes.com>
- <http://www.breakingnewsonline.in>
- <http://www.ndtv.com>
- <http://ibnlive.in.com>
- <http://www.thehindu.com>