

A DISSERTATION ON
*'A Study of Supreme Court Judgements on Electoral
Reforms in India'*

SUBMITTED TO:



As partial fulfilment of requirement of the
LL.M. Degree
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Under the guidance of
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DECLARATION

I, Gyanendra Prasad, declare that this dissertation entitled '*A Study of Supreme Court Judgements on Electoral Reforms in India*' which is being submitted for the award of LL.M. Degree (Constitutional & Administration Law) the outcome of research carried out by me under the supervision and guidance of Dr. Kunal Kishore, Assistant Professor of Institute of Law, Nirma University.

I, further declare that all the information, view, and opinions cited in the dissertation are taken from the existing literature and are duly acknowledged at proper places. I further declare that to the best of my knowledge, the dissertation doesn't contain any part of any work which has been submitted for award of any degree either in this University or in any other University / Deemed University for the award of any other Degree or Diploma or Fellowship.

I further undertake that the contents of the dissertation if found copied I will be solely responsible for the consequences.

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CERTIFICATE

This is to certify that the dissertation on the subject '*A Study of Supreme Court Judgements on Electoral Reforms in India*' has been prepared and submitted by Mr. Gyanendra Prasad, for the award of the Degree of LL.M. and was carried down under my guidance and supervision. I certify that this is his bona fide research which is set up to the standards expected and I recommend it for the submission and evaluation to the examiner.

Date: 03/08/2021.

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LIST OF ABBREVIATIONS

AIMIN	All-India Majlis-E-Ijtihad-UI Muslimeen
Art.	Article
BJP	Bhartiya Janta Party
CEE:	Chief Election Commissioner
CJI	Chief Justice of India
Dy.	Deputy
ECI	Election Commission of India
EVM	Electronic Voting Machine
FIR	First Information Report
FPTP	First Past the Post System
GOI	Government of India
HC	High Court
IPC	Indian Penal Code
LCI	Law Commission of India
MLA	Member of Legislative Assembly
MP	Member of Parliament
MCC	Model Code of Conduct
NOTA	None of the Above
Ors.	Others
PM	Prime Minister
R.P. Act	Representation of People Act.
Sec	Section
SC	Supreme Court
SCC	Supreme Court Cases
U/A	Under Article
U/s	Under Section
VVPAT	Voter Verifiable Paper Audit Trail

A Study of Supreme Court Judgements on Electoral Reforms in India.

Chapter – I

INTRODUCTION

“Good Government is not an accident”

- T.N Seshan¹.

The largest democratic nation in the world is India, and election commission of India (hereinafter ECI) has effectively framed, implemented and conducted the procedures of “*free & fair*” elections. Electoral mechanisms were developed in all democratic countries around the world on the basis of individual’s natural rights. The citizen of India has the “*right to vote*” and it is protected by Indian Constitution under Art. 326. Electoral law ensures that each Indian have “right to vote” once they reached 18 years of age, and no one should be excluded based on caste, creed, sex, gender, faith or other factors, as per the Art. 325 of Indian constitution. “Right to vote” is not only considered as a “statutory right,” but it is also a mechanism for ensuring the duty of the citizens towards the state safeguarding the democratic make-up of society. While the concept of universal adult franchise was only gradually adopted into western societies, it was invoked in India in one stroke to fulfil the promise of the freedom struggle. Elections do not only protect democracy but also invigorates it.

Democracy is one of the best possible forms of government when compared to other forms of government, it is a government elected by the citizens of the nation, allowing each person to vote and choose its representatives regardless of caste, colour, creed, religion, or gender. India does, in fact, have a “*federal system*” with the central

¹ Former Chief Election Commissioner.

and state govt. Under the “Representation of the People Act, 1951,” we have parliamentary and state assembly elections held every five years to administer the administration at both the national and state levels.

The Indian Constitution is the world’s largest written constitution. The part XV” of the Indian constitution established the process for free and fair elections. It is dedicated for election in India which includes the *supervision, regulation and direction* for preparation of electoral rolls as well as to hold elections. Art. 324 of the Indian constitution, establishes the ECI, and it comprises the ‘*Chief Election Commissioner*’ (hereinafter CEC) and other Election Commissioners.

Electoral reforms can be seen as a continuous process aimed at rectifying the flaws and strengthening the structures that are associated with the conduct of elections. The steps to reform signify a commitment to retain and invigorate the democratic culture in the nation. A true democratic nation will look continuously for a way to make the voting as free and fair as possible. The government is formed through public participation in election, and remains accountable to the people of India. However, unlike Switzerland, the people have no right to “recall or reject the representative” on the basis of their incapacity to perform their assigned functions. It is interesting to note that though political representatives cannot be called back on the ground of their incapacity, judges of Supreme Court and High Courts may be removed on the ground of incapacity under clause (4) of Article 124, and sub – clause (b) of clause (1) of Article 217.

Supreme Court is the guardian of the Indian Constitution. Along with its original jurisdiction, the Apex Court has been given additional authority of “*Judicial Review of Administrative Action, Legislative Action and Judicial Review of Judicial Actions*”. The Supreme Court has played a crucial role in the nation’s growth and development. As the protector of Constitution, it is the responsibility of the Supreme Court to exercise constant vigilance over the exercise of powers by different institutions of the State.

The ECI is a constitutional body and there have been several instances when the Supreme Court issued various guidelines for electoral reforms, for example, “the introduction of NOTA button in the EVM,”² “candidates filing their nomination should also file an affidavit which mentions the pending civil and criminal

² People’s Union for Civil Liberties v. Union of India, (2013) 10 S.C.C. 1.

cases against them”³. In India the ECI has worked upon numerous problems and implemented several democratic changes to strengthen and improve democratic participation throughout the years. The Supreme Court has also consistently assisted in the efforts to hold elections in the most transparent manner possible. The two institutions have, together, breathed life into the constitutional promise of democracy.

Statement of Problem

Free and fair election is the cornerstone of Indian democracy and it is part of basic structure of Indian constitution,⁴ ever since the commencement of constitution of India, Election Commission of India have played a very vital role in conducting and supervising election though since then the political structure has changed immensely not only that but the technological changes have transformed the process of election at great length which have called for the electoral reforms.

A rich amount of literature is available on the role of Election Commission in electoral reforms, but there has been very less emphasis on the study of role of judiciary in the electoral reforms, though judiciary have played a very crucial role in reforming the electoral laws of India. The landmark judgments of the apex court have introduced the necessary technological changes in Indian election process,⁵ along with that the judgment of Supreme Court have also facilitated in curbing the numerous challenges such as Criminal background of the candidates,⁶ use of black money, use of muscle powers, bribery. A very limited literature is available in regards to the Model Code of Conduct and on De – criminalization of politics in India. The Model Code of Conduct is very important because it prohibits the political parties and the candidates from doing illegal activities throughout the entire election period. The necessity of the Model Code of Conduct and its implementation has to be understood for conducting free and fair election, hence it becomes imperative to study the judicial pronouncements which tilted the scale of electoral reforms in India and emphasised on the model code of conduct.

³ People’s Union for Civil Liberties v. Union of India, (2003) 4 S.C.C. 399; Satish Ukey v. Devendra Fadnavis, (2019) 9 S.C.C. 1.

⁴ Indra Nehru Gandhi (Smt.) vs. Raj Narain & Anr, A.I.R 1975 S.C. 1590.

⁵ Subramanian Swamy vs. Election Commission of India, S.C.C 2013 S.C (10) 500.

⁶ Union of India vs. Association for Democratic reforms and Anr, S.C.R (3) 2002 S.C 294.

Literature Review

ECI plays a very important role in conducting free and fair elections within the country. With the passage of time, the Indian Judiciary has made a vast contribution in the Electoral Reforms in India. The study reviews the following literature which includes judgments by Indian judiciary in strengthening the role of ECI;

- **Democracy and Election Laws by Anand Ballabh Kafaltiya, Deep & Deep Publication Pvt. Ltd. 2003:** It has comprehensively documented the relationship between democracy and election laws. The author has made an attempt to describe that the entire election legislation, to ensure the cleanliness of electoral process as well as to observe and monitor the electoral process. The complete election procedure starts from the date of issuing of notification. The book also has laid down the observations which were made by the Supreme Court related to the constitutional provision regarding the democracy and the election in India. The author covers matter related to the electoral reforms and its effective implementation of election laws. The present research work will deal with the landmark judgments related to the de – criminalization of politics in India, which wasn't the focus area of the book.

- **Electoral Reforms in India: An Analysis, Shubham Kashyap Kalita:** In the present article the author has briefly discussed the evolution of electoral system in India after Independence and the working of the election system during period of British Rules. The author has further stated about the election laws present in India, and electoral reforms in India. Thus, the present literature lacks for the discussion about the “Model Code of Conduct” and the decision of the Judiciary for the electoral reforms are not discussed. Therefore, in the present research work the author is going to deals with the implementation of Model code of conduct during the entire election process.

- **Electrol Reforms: Supreme Court Guidelines, Ms. Mamta Awariwar:** In this article the author has discussed the landmark decision made by Supreme Court in connection of Electoral Reforms in India. But the author has discussed only one landmark Judgment, which is related to the decriminalization of politics in India. But there has been

various other judgment due to which the electoral reforms were possible which shall be covered in the present research.

- **Electoral Reforms in India – Issues and reforms, Nilesh Ekka:** In the present Article the author has discussed that the “Free & Fair” election is important to safeguard the integrity of democracy in our country. The author has briefly a brief information regarding the committees formed for electoral reforms and has discussed about the criminalization of politics in India. The author has laced to discuss the judgments delivered by the Supreme Court of India to curb the criminalization in politics. Moreover, Model code of Conduct is necessary for conducting “Free & Fair” election, which is not discussed, which shall be covered by the author in the present research work.

- **Introduction to the constitution of India by Durga Das Basu, Lexis Nexis Butterworths Wadhwa Nagpur, 2011:** The book deals with the election laws in details. In Chapter – XXXI, author discusses that at time of establishment of ECI was a single member body. The government just a week before the commencement of the 9th General Election through President’s notification dated 16th October, 1989 made it a multi – member commission. But National Front Government, on assuming charge, amended the rule to make it again a single member body on 2nd January, 1990. On 1 – 10 – 1993, the government through as ordinance to provide for the appointment of two Election Commissioners. Thereafter two more commissioners were nominated. The book is very important for current topic as it provides information regarding ECI in very details. The conversion of election commission of India from one member party to multi – member party is also cover, and the same will be covered by the author in the present research.

- **One day’s Sultan: T.N. Seshan and India Democracy, by David Gilmartin:** in this Article the Author has described very briefly that how the Ex – Election Commissioner T.N. Seshan has widely used his powers for conducting “free & fair” elections in India. T.N. Seshan has cancelled many elections when the Model Code has been violated whether it is by the opposition or by the ruling party. In reality, even throughout his term, Seshan’s power “waxed and waned” in political relation with both the courts and govt. Action of Seshan has made ECI’s assertion to be ‘above’ politics and

control it during election period in order to safeguard the people's vote. The tenure of the Seshan as "Election Commissioner" could also assist us to recognize also the tension inherent in the traditional system of democracy. The work only deals with the changes occurred during the T.N Seshan's tenure, but the judgments related to the electoral reforms are not covered, which shall be covered by the author in the present research work.

- **Identifying Criminals and Crorepatis in Indian Politics: An analysis of Two Supreme Court Rulings, by Ronojoy Sen:** In this Article the Author has discussed the functioning of the ECI and the Supreme Court have an optimistic effect in monitoring election in India, it is insufficient to restore public trust in politicians and combat election corruption. The author has discussed the two cases which has been part of a coalition of forces that have kept up pressure for the enforcement of the electoral law and for more transparency in politics and public life. In fact, both the 2002 and 2003 ruling of the court worksheet based on finding from government appointed committee and came in response to directives from the EC and PILs submitted by civil society organisation. Judgments related to de – criminalization of politics other than mentioned in this work, shall be covered by the author in the present work.

- **Election Commission of India of India, By Ujjwal Kumar Singh and Anupama Roy:** The authors have compiled the first systematic monograph length report of ECI in the response to pressing need for a focus study on Indian political institution. They look at the ECI consistent reputation has a non-partisan constitutional Institution which has a task the administrate the elections in India. ECI is commonly regarded as the governing agency that enforces laws in order to confirm that elections are held successfully and efficiently. The authors have contended that EC has a variety of responsibility not all of which are regulatory. ECI is deeply involved in formulating and enforcing procedural certainty in order to ensure that Democratic principle of election result uncertainty. Innovation in conducting elections which are often seen through the lens of electoral 'management' and 'electoral integrity' has been a part of the deliberate content of elections. The word also looks at the relationship between legal – institutional structures electoral government and the political fields in which they situated within the broader institution matrix of democracy. The authors argue that the latter both limits and

enables the ECI effectiveness in India's shared democratic space. The work also deals with the judgments delivered by the Supreme Court for the violation of model code of conduct.

- **Role of the Supreme Court in electoral reforms by Ravikiran R:** The Electoral system and the laws have to evolve over the period of time to accommodate the changes in the political culture of any country. The procedure of "*electoral reforms*" is fruitful only when there is a synchronization between the election machinery, 'the political group, the candidates and voters at all stages.' Throughout years the ECI has evolved with changing requirements, goals, and equipment. During all the years of invention and development the Supreme Court of India is always behind the ECI. In many instances such as introducing the Moral Code of Conduct, NOTA, in curbing the criminalization of politics, the ECI has heavily depended upon the direction of the Supreme Court. The work has focus on the contribution of the Supreme Court of India in reforming the electoral laws and enriching the democratic space in the country through its directions in various cases but the cases for the violation of Model code of conduct is not covered by the researcher. The importance and the history of the model code of conduct is not covered in this work that shall be covered in the present research.

Objectives

The present study will be conducted with the following objectives:

- a. To examine the role of the judiciary in regards to corrupt practices involved during election.
- b. To examine the impact of judicial decision that aided the Election Commission of India to enforce the Model Code of Conduct (MCC).
- c. To examine the role of the Supreme Court's decisions that has made aware to people about right to know their candidate's background.
- d. To examine how the Election Commission of India has implemented the recommendation made by the Supreme Court.

Significance

ECI and the Judiciary has taken many pioneering steps to inspire the citizen of India to turnout and ensure “free & fair” election, in spite of the fact that the majority of the applicants or their agents are inspired by various unfair methods. The political leaders have failed to impart the political education to the people in our present parliamentary democracy who do not even have a basic literary education. In India the democratic structure has been developed and recognised as an integral part of the Indian Political life, but we must acknowledge that there has been significant shortcoming in practice. The present study will help to improve democracy at the level of the ground level which will help the common man. It will enable officials, judge, researcher, politicians and voters etc. to understand how the judiciary is playing an important role in maintaining the world’s largest democracy by delivering landmark judgment which helps in strengthening the power and the role of ECI in the free and fair elections.

Research Hypothesis

The hypothesis of the present study rest on the presumption that: The current constitutional and the statutory framework regarding the powers and the functioning of ECI is inadequate and so the Judiciary has to intervene and has strengthened the ECI. The judiciary has interpreted the provision of constitution, thereby aided ECI for conducting election in a “Free & Fair” manner.

Scope of the Study

The study limits its scope to understand the contribution of judiciary on the electoral laws, processes and its impact on the powers and functions of ECI. The researcher has gone through various case laws, acts, rules, orders, constituent assembly debates, parliamentary debates, reports, and information provided by the ECI.

Research Methodology

The present research has been carried out using the doctrinal method for which the researcher had examined the constitutional provision, textbooks, journals, commentaries, case laws, reports, studies on electoral reforms and recommendations made by Indian Law Commission on electoral reforms.

Chapterisation

The Present research is divided into Five chapters:

Chapter I: Introduction.

The first chapter provides a comprehensive introduction to the research work undertaken. Herein, the synopsis of the research is provided; which also provide the objectives of the research, the hypothesis the researcher wants to prove, a tentative review of the most relevant literature the researcher has made use of, the methodology of researcher that has been followed in the present researcher, the scope of the research and lastly brief introduction to the general scheme of the contents that the forthcoming chapters will follow.

Chapter II: Election Commission of India: Composition, Structure, Power and Function.

This chapter deals in details with the composition, structure, power and functions of the ECI. The ECI is an independent body which works in accordance with the provisions of the Constitution of India. The chapter also covers the origin of the Election Commission of India.

Chapter III: Election Commission and Effective Implementation of Model Code of Conduct.

This chapter provides the details of the obligation of ECI to effectively implement the model code of conduct. The History of the Model code of conduct is covered in this chapter, which includes for violation of Model Code of Conduct and the steps take by ECI and judgment passed by the Supreme Court is also covered.

Chapter IV: Role of Judiciary in Electoral Reforms.

The chapter provides the role of Judiciary in electoral reforms. The chapter discusses the impact of judicial decisions to curb the criminalisation of politics. It analyses the landmark cases delivered by the Supreme Court.

Chapter V: Conclusion and Suggestion

In the last chapter, the research seeks to highlight how the ECI and the Supreme Court took efforts to decriminalize politics in India. And few suggestions have been given by the researchers for conducting the free and fair election which the ECI should adopt.

CHAPTER – II

ELECTION COMMISSION OF INDIA OF

INDIA: COMPOSITION, STRUCTURE, POWER

AND FUNCTIONS.

“Let us never forget that government is ourselves and not an alien power over us. The ultimate rulers of our democracy are not a President and senators and congressmen and government officials, but the voters of this country.”

- Franklin D. Roosevelt⁷

The word democracy derived from the Greek words ‘demos’, which means people or citizen, and ‘kratein’, which means power.⁸ The people are sovereign in a democracy. Democracy is, in some ways, a popular government; in its representative form. Abraham Lincoln has said “Government is of the people, for the people, and by the people”⁹. In “*People’s Union for Civil Liberties v. Union of India*¹⁰” stated that:

“Democracy is a fundamental component of India’s Constitution, and rule of law and free and fair elections are essential features of democracy. Periodic elections, according to democracy, should be held so that people have the option of re – electing the same representatives or electing new ones. Elections should be free and fair, and voters should be able to vote for the candidates of their choosing. This requires that the elections are neither rigged nor controlled, and that neither the candidates nor their agents are able to use unfair tactics

⁷ Franklin D. Roosevelt, “The Great Communicator” The Master Speech Files, 1898, 1910-1945, 8 (1938) (available on <http://www.fdrlibrary.marist.edu/resources/images/msf/msf01180>, last accessed August, 02, 2021).

⁸ DR. S. R. MYNENI, POLITICAL SCIENCE FOR LAW STUDENT, 326 (Allahabad Law Agency, 3rd edn, 2008).

⁹ *Id.*

¹⁰ *People’s Union for Civil Liberties v. Union of India*, (2009) 3 S.C.C 200.

or malpractices. The Constitution as a sovereign law protect the nation's sovereignty and integrity as a Republic, as well as the democratic way of life through parliamentary structure is based on free and fair elections.”

Election Commission of India of India: Origin

Electoral law constitutes people¹¹. Only free & fair elections can ensure democratic politics in any country. The integrity and transparency of the election process allows citizens in a democracy to meaningfully exercise their choice in the decision-making power of the government.

During the British Raj, we were subjects of the British crown, and any participation in the political life of the nation was a result of grant made by the British Parliament. These grants, however, were made with after much demonstration and representation by the indigenous leaders in India¹². The history of exclusion and oppression in one's own nation gave rise to aspirations for representational, responsive and accountable institutions. This desire to have autochthonous constitution and 'swaraj' served as the origin of parliamentary democracy in India.¹³

The Fundamental Rights Sub – Committee collectively decided that election impartiality and evasion of intercession of executive in law-making responsibilities may be considered as Fundamental Rights. The Sub – Committee also reached the following conclusion¹⁴:

1. “The Constitution must give universal adult franchise;
2. Elections must be free, secret, and periodic;
3. Elections must be supervised by an independent body established under Union Law”.

¹¹ David Gilmartin, FROM THE COLONIAL TO THE POSTCOLONIAL: INDIA AND PAKISTAN IN TRANSITION, (Oxford University, 2007)

¹² M P SINGH, V N SHUKLA'S CONSTITUTION OF INDIA A-4 (2017).

¹³ *Id.*, at 7.

¹⁴ R.P. Bhalla, Election in India, 1950 – 1972, 265 (S. Chand Publisher, 1973).

The constituent Assembly's advisory committee approved the inclusion of an autonomous ECI having powers of 'superintendence, direction and control' over elections, but believed that it should be placed in a portion other than the list of Fundamental Rights.

The Drafting Committee created distinct arrangements for holding of federal and provincial elections in Article 289 of Draft Constitution. June 15, 1949, during the Constituent Assembly's resumed debate on this Article, the Chairman of Drafting Committee, B.R. Ambedkar, suggested a modification replacing Art. 289 with the following provision:¹⁵

“The superintendence, direction and control of the electoral rolls for and the conduct of all elections to Parliament and to the Legislature of every State and the elections to the offices of President and Vice – President held under this Constitution including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections to Parliament and to the Legislatures of States shall be vested in a Constitution.”

He claimed that the new article suggested to place election apparatus in the hands of a sole commission, which would be aided by Regional Commissioners, and would work under the 'supervision, direction, and control' of the ECI, rather than the State Commission, as was previously planned. Dr. Ambedkar was well aware that it was unquestionably a radical transformation. He emphasised that centralising election administration was vital to prevent provincial governments from inflicting injustice on those who did not ethnically, linguistically, or culturally belong to the provinces.¹⁶

Dr. Ambedkar said¹⁷:

“The fundamental rights Committee came to the decision that no promise could be offered to minorities or elections if the voting was put in the hands of the day's administration. Numerous people

¹⁵ INDIA CONST. Art. 324.

¹⁶ DR. AMBEDKAR'S CONSTITUTIONAL ASSEMBLY DEBATES (CAD) Vol. VIII, June 15, 1949, P.905.

¹⁷ B. SHIVA RAO, THE FRAMING OF INDIA'S CONSTITUTION: A STUDY, 539-40. (Universal Law Publishing Co. Pvt. Ltd, 2010).

believed that if polls were held under the guise of Executive authority, which had the power, as it must, to transfer officers from one area to another in order to gain support for a particular candidate who was a favourite of the ruling party or the government at the time, the free election that we all desired would be vitiated.”

Rajendra Prasad made the following observation to the Constituent Assembly at the conclusion of Constitution’s third reading:¹⁸

“One of the risks we shall face is any form of corruption practiced by political parties, candidates, or the government in power.... As a result, it is (good) that our Constitution protects us from this risk and provides for a fair and transparent voting process.”

As a consequence, the member of the fundamental rights committee uniformly took the decision that the best safeguard for the election purity and for fairness in election was to remove the hand of executive from the subject and shall be placed in the hands of an independent body.

The constituent Assembly’s drafting committee considered two distinct options for the makeup of the ECI: (a) either an everlasting organization composed of four or five associates, or (b) an ad – hoc body formed during peak election activity. The drafting committee eventually agreed to take a middle ground approach.¹⁹ The committee recommended that the Chief Election Commissioner be appointed permanently to lead the ECI, which would serve as for managing and coordinating arrangements bye – elections and General Election to legislature in cases of early dissolution.

Composition of Election Commission of India

The establishment of the ECI is governed by Art. 324 of Indian Constitution. The CEC and other Election Commissioners together constitute the Election Commission, according to Article 324(2). The President has been empowered to fix the number of other Election Commissioners. Where Election Commissioners other than, CEC are available,

¹⁸ C.A.D. Vol. XI, Nov.26, 1949, 99.

¹⁹ CONSTITUTIONAL ASSEMBLY DEBATES (CAD) Vol: VIII, June, 15, 1949.

the CEC serves as the Chairman of Election Commission.²⁰ Art. 324 (4) authorises the President to appoint Regional Commissioners to carry out the responsibilities outlined in sub – Clause (1) of Art. 324. The ECI needs to function independently and impartially under Clause (2) of Art.324, without threat of legislative or executive interference. The President determines the ‘salary and conditions’ of working for the CEC and other Election Commissioners, subject to legal provisions and the constitutional guarantee that the CEC’s conditions of working will not be changed to his disadvantage after his employment. Article 324(6) states

“When the ECI so requests, the president or the Governor of the State should make available to the Election Commissioner or a Regional Commissioner such staff as may be necessary for the execution of the responsibilities conferred on the ECI”

Art. 324 (5) further provide the working conditions and duration of the Election Commissioner and Regional Commissioners must be decided by the president as may be deemed by appropriate order, in accordance with the provisions of any law enacted by Parliament. Election Commissioners and Regional Election Commissioners shall be expelled from their office only if CEC recommends it.²¹

The CEC’s term is not dependent on executive discretion. After his appointment, the CEC’s working conditions cannot be changed to his disadvantage. This is similar to the provisions made by the constitution for the posts of President, and judges of Supreme Court and High Court. In some circumstances, the ECI has also power of civil court under the “Code of Civil Procedure, 1908 (5 of 1908)”²². The president appoints the CEC, who is usually an official of the government of India and has been former Secretary to the Government.

It was well within the government’s authority to appoint a multi-member panel. The CEC’s function and responsibilities are not diminished by the presidential order. The organisation and administration system of the Election Commissioner’s Office vary according to each state, based on the size of the state and the amount of effort required.

²⁰ INDIA CONST. art. 324, cl 3.

²¹ H.M. SEERVAI, CONSTITUTIONAL LAW OF INDIA,1163 (Universal Law Publishing Co. Pvt. Ltd, 4th edn, 2015)

²² Representation of the People Act, 1951, § 146.

The Office of the Chief Electoral Officer generally forms part of the State Government Secretariat at the Head Quarters of the State. In accordance with Art. 324 (6) of Indian Constitution, the President or the Governor, shall appoint staff to Election Commissioner or Regional Commissioner, as request made by ECI, whenever required for the discharge of functions conferred on ECI.

The enormous influence that Election Commissioner exercises over the democratic process necessitates an immediate constitutional reform before the CEC's replacement is selected. Tarkunde committee on electoral changes delivered its finding on February 9, 1975, with the following major endorsements:

- A) The ECI has to be a multi – member body comprised of people of unquestionable legitimacy, such as supreme Court or High Court justices. They must be chosen by a committee comprised, and the opposition leader; or by a representation of the opposition acceptable to all parties,
- B) The ECI's stance should be aligned with the provisions of Art 324, Sub-clause 2, covering the selection of additional Commissioners, must be applied (this embraces the selection of the Regional Commissioners also),
- C) The Joint Parliamentary Committee on Electoral Reforms (1972), which included members of the ruling party, made consensus recommendations that should be adopted.²³

The following rules are essential for the smooth conduct of the Commission's discussions and for promoting the cause of free and fair elections.

- a) The ECI must not deviate from the Basic Principles of Harmony in Functioning, constantly bringing impartiality, judiciousness, and the necessity for the Rule of Law to reflect in their decisions.
- b) It must recognise that the basic values of democratic elections can only be served via coordination and collaboration, rather than conflict, with governments at all levels, both at national and state levels, and with electoral apparatus at all levels.
- c) The Commission should remember that by gaining the trust of all political parties and operating freely, it can assure that it will carry out its tasks without fear or favour.

²³ Tarkunde Committee on Multi – Member Commission's Report, 1974.

- d) It is appropriate and ideal to establish a permanent body, similarly to a review committee, comprised of members from national parties to assist and guide the ECI on all matters pertaining to election conduct.
- e) The ECI is likely to be strict in enforcing the MCC's requirements, particularly item VII of MCC, is to be followed by the political group, one who is the ruling party.²⁴

Powers And Functions of The Election Commission of India

The ECI covers a wide range of administrative issues and practical difficulties that are not policy – related, as well as make communication with administrative agencies at the federal and state levels. This is one segment of the ECI's work. Additionally, there is also the accountability for supervising the whole elections procedure by maintaining its integrity and effectiveness.

The ECI will have the authority to set its own rules (involves in establishment of location and hours of its meeting as well as determining whether it is convenient in audience or in privacy).²⁵

The ECI has the authority to hold regular polling and to advise the President on the subject of disqualifying of any MP {Art. 103 (2)}, or Governor on the subject of disqualification of any MLA {Art.192 (2)}. If an area not relating to a constituency was included in the preparation of an electoral roll for that constituency, the ECI has the authority to correct such an error.

The Supreme Court while setting aside an election petition had an occasion to consider the scope of powers of the commission the legal and constitutional position is as follows²⁶:

(a) If there is no law enacted by Parliament or rules enacted under such legislation, the ECI is free to issue any election-related directives.

(b) When a legislation and express Directions are in place, it's not permissible for the ECI to disregard the Legislation or Directions and issue orders that are in direct

²⁴ Ganeshan. K. MULTI – MEMBER POLL PANEL, 12, The Hindu, (8 Oct, 1993).

²⁵ of Representation of the people Act, 1951, § 146 – B.

²⁶ R.P. BHALLA, ELECTION IN INDIA, 1950 – 1972, 22 (S. Chand Publisher, 1973)

violation of the Rule's mandate. In other words, the Commission's powers are intended to augment somewhat than replace the law (including 'Law and Rules') in the areas of '*supervision, direction, and control*' as defined by Art.324.

(c) Where the statute or the regulations are ambiguous, the ECI has unquestionably unlimited powers under Art. 324 to provide any order regarding election conduct.

(d) When the ECI delivers a particular directive to the govt. for permission, as essential by the regulations, the commission is not free to carry out the direction at its discretion, even if the government does not provide its consent.

In 1993, the union government rejected rumours in the media that it was intending to introduce a constitutional change to limit the authority of the ECI amid a dispute about the commission's ability to penalise state personnel created for voting purposes. Sustaining that 'current legislative provisions were enough to deal with all essential concerns' and that 'the Government was satisfying the ECI's standards for a smooth election process'.²⁷

Rather than following the Constitutional provisions for assigning Election Commissioners, the Central Govt. experimented with making the ECI a component of its Secretariat. In 1951 – 52, the Central Government nominated two Regional Commissioners for a six-month period. Despite the president of India's approval of four regional commissioners, no Regional Commissioners were appointed afterwards.

The delegations of ECI's operation are dealt with in Section 19 – A of the R.P. Act, 1951. Dy. Election Commissioner or Secretary of ECI may perform the functions of the ECI under the, the R.P. Act, 1951, and this legislation or the rules made hereof, according to any '*general or special*' directions given by the ECI in this regard. The CEC, Dy. Election Commissioner, or the Secretary of ECI have sole authority over the duties of the ECI under Sec 19 – A.

The ECI, a body independent of political or governmental control, was created by the Constitution to confirm free and fair elections. The ECI looks over all the parliamentary as well as state legislature elections. To avoid injustice being meted out to any one group of people, it was decided that a single control body, devoid of local pressures, should be in charge of the whole voting mechanism throughout the country.

²⁷ Id, *supra* note 21.

The ECI is an important part of the country's election system.²⁸ Under the Constitution and election regulations, the ECI's duties can also be undertaken by Dy. Election Commissioner or a Secretary to ECI, susceptible to such broad or specific directives.²⁹ Not only the commission should be a sovereign and self-governing body, but it should also be devoid of any kind of decision-making control or interference in any subject. By having careful study, the ECI suggested that a clause in R.P. Act, 1951, be introduced along the lines of the following.

“No court shall take cognizance of any crime punishable under sections 129, 134, 134(A) and 136 of this Act unless the ECI or the Chief Electoral Officer of the State or the State Government concerned has given its prior approval.”³⁰ The Commission should undoubtedly have the authority to order investigations to be conducted promptly by an agency of its choice.

The Supreme Court's decision in some circumstances will limit the CEC's “whims and fancies,” but some official reforms made by the Chief Election Commissioner will stay in place.³¹ The Chief Electoral Commissioner's job role was simple: manage the election apparatus according to the legislation of the nation. As a very initial step, the CEC attempted to re-establish the powers granted by the Constitution to the ECI. According to Section 77 of the R.P. Act, 1951, the ECI has the power to examine any contending candidate's election costs.³²

The Supreme Court has observed in *“Mohinder Singh Gill and others vs Chief Election Commissioner and others”*³³ that:

“The constitution guarantees a free and fair election and gives the ECI broad powers of supervision, guidance, and control over the election process. Depending on the circumstances, this duty may include a wide range of administrative and other authorities, responsibilities, and tasks.”

²⁸ Dr. Ambedkar's speech VIII Constitutional Assembly Debate, 15th June, 1949.

²⁹ R.P. Bhalla, *supra* note 23, at 24.

³⁰ Representation of the People Act, 1951.

³¹ K. GOVINDAN KUTTY, *SESHAN: AN INTIMATE STORY*, 241 (Konark Publishers, 1994).

³² K. GOVINDAN KUTTY, *supra* note 28, at 258.

³³ 1978 S.C.R. (3) 272.

Where even the legislation is unambiguous, Art. 324 provides a large reserve of authority to performance in accordance with legislation's stated objective, which is not dissimilar to expediting a free and fair election. Since ECI was established on January 25, 1950, the ECI has been carrying out the duties entrusted to it. Apart from the bi – annual polling of “*state legislative councils,*” ECI has held ‘*seventeen general elections*’ to the Lok – Sabha till date and innumerable polling for the Legislative Assemblies across nation. The ECI has been assigned with the responsibility of holding elections by the Constitution. So, elections are extremely important in a democratic system, and they must be “*controlled and supervised*” by independent and unbiased organization. The ECI has been urging and instructing the Govt. of India to initiate such action as it considers suitable and advantageous in the execution of its obligation and powers under Art. 324 for leading elections in a free and fair method. In 1978, the Supreme Court ruled that Art. 324 serves as ‘*a reservoir of authority*’ to the ECI, allowing it to act independently in situations when parliament’s laws are silent.

Limitations on the Powers of The Election Commission of India

The ECI is charged with ‘*supervising, directing, and controlling*’ the organisation of electoral registers and the hold of elections within the provisions of the Constitution. Depending on the circumstances, this duty includes administrative authorities, responsibilities, and functions. The ECI’s powers are subject to specific limits, according to the Supreme Court³⁴. The following are few of the limits imposed on the ECI’s unlimited powers:

(i) Statutory Provisions:

Whenever Parliament or a state legislature passes a legislation pertaining to or regarding elections, the ECI must follow the rules of such law. The Supreme Court upheld that the ECI’s powers under Art. 324 of the Indian Constitution are subordinate to any Act approved by the legislature, as well as any rules or directives issued under it.³⁵ The Supreme Court decided in “*Mohinder Singh Gill vs. Chief Election Commissioner*” that

³⁴ RAISA ALI, REPRESENTATIVE DEMOCRACY AND CONCEPT OF FREE AND FAIR ELECTIONS, 271 (Deep and Deep Publications, 1996).

³⁵ *Id.*

the Commission is required to operate in accordance with the law's requirements. In the preview of *Mr. K. Ganesan*, former Secretary to the ECI it was said that

*“It is risky to claim any exceptional and absolute powers under Article 324 to deal with topics already addressed in the law, even if provisions are considered inadequate.”*³⁶

(ii) Rules of Natural Justice:

The ECI must remember that it has a responsibility to uphold the rule of law, operate honestly, and be amendable to natural justice principles. As a result, the Commission is required to operate in line with natural justice principles, but the implementation of these principles is contingent on the circumstances, and generalisation is difficult.³⁷

(iii) Judicial Review:

The Supreme Court has said that the ECI's orders are open to judicial review and that its powers are not 'unbridled', as seen in various states on different occasions. The ECI's judicial powers should be based on facts and circumstances of each case.³⁸

Expanding The Powers of The Election Commission of India

In the “*Mohinder Singh Gill & Ors vs Chief Election Commissioner & Ors*”³⁹ case, the Supreme Court considered the scope of the ECI's powers and responsibilities U/A 324 of the constitution. On the basis of several allegations, the ECI declared the poll in the Ferozepur parliamentary seat in the 1977 general elections invalid. The petitioners argued that the ECI could only order a new election at polling stations where the previous election was apparently tainted, not across the whole parliamentary seat. The Supreme Court, however, rejected the petitioner's argument, holding that Art. 324 is an unrestricted provision vesting the ECI with whole accountability for '*national and state*

³⁶ The Times of India, 20 (New Delhi, 6 May 1993).

³⁷ RAISA ALI, *supra* note. 31.

³⁸ *Id.*

³⁹ 1978 SCR (3) 272.

elections’, and that the words “*superintendence, direction, and control*” used in Art. 324 are the widest possible terms.

In “*Kanhiya Lal Omar vs. R.K. Trivedi and Ors*”⁴⁰, the legality of the ‘*Election Symbols (Reservation and Allotment)*’ order 1968 was brought into controversy (1985). It was argued that because the ECI is not restricted by regulation to make legislative orders, the symbols order could not have been issued by Commission. The Supreme Court terminated the aforementioned argument, stating that the ECI had the authority to issue the Symbols Order under Art. 324. Art. 324 (1), which enables ECI to issue all guidelines essential for the ‘*smooth, free, and fair*’ conduct of elections in the country, is a reservoir of powers, and any provision that cannot be linked back to the R.P. Act, 1951 or the “*Conduct of Elections Rules, 1961*” can be traced to Art 324(1).

The Supreme Court has held in another well-known “*Common Cause case Vs. Union of India*”⁴¹ that the term ‘conduct of elections’ in Art. 324 of Indian Constitution is wide enough to cover the powers of the ECI and can give directives that may be needed by political members to make submission before the ECI for analysis of costs incurred or authorised by the party leaders in relation with the elections. The Supreme Court stated in “*Union of India vs. Association for Democratic Reforms and Ors*”⁴² that a citizen has the right to obtain appropriate information about prospective contestants and guided the ECI that all nominee for election to ‘*Parliament or a State Legislature*’ must give in duly sworn affidavit, along with his nomination paper, containing the information referred to above.⁴³

Thus, with the above – mentioned landmark decisions made by the Supreme Court, it has clearly expanded the powers of ECI not only limited for conducting election as per rules framed in the constitution but if there are no rules, ECI can act as a rule making body. It helps ECI to take necessary decisions in order to conduct the election free and fair manner without any political intervention.

⁴⁰ 1988 SCR Supl. (3) 1.

⁴¹ (1996) 2 S.C.C. 752.

⁴² 2002 (3) S.C.R 294.

⁴³ Ravikiran R., Role of the Supreme Court in Electoral Reforms (2020) 2250 – 1940 (P).

Advisory Jurisdiction of The Election Commission of India

The President, in matters related to a MP (under Art. 103), the Governor, in matter of a MLA (under Art. 192), have the power to disqualify elected members of '*Parliament and state legislatures*' for any reason apart from defection, according to the Constitution. However, before making such decisions, the *President or Governor*, as the case shall be, must seek the perspective of the ECI and act in accordance with that view.

In "*Brundaban Nayak vs. ECI and Ors*"⁴⁴, the Supreme Court made it very clear that the '*President and Governors*' are tied up by the ECI's decision in such cases and are not obligated to seek advice from the '*Council of Ministers*'. In "*Shamsher Singh and Ors. Vs. State of Punjab*"⁴⁵, the Supreme Court said that the ECI is responsible for the real adjudication, while the president and governors just sign the order.⁴⁶ Thus, the Supreme Court once again has made it clear with above landmark decision, that the views of the ECI or the opinion of ECI is very important for any matter related to disqualification of MP's or MLA's. The ECI is main authority for anything related to the election in India or even after elections.

Status and Conditions of Service of The Chief Election Commissioner of India and Other Election Commissioners

The role of the CEC in relation to the ECI is not addressed under the existing Constitutional requirements. The CEC shall not be terminated from the ECI, except in the similar method and on the similar criteria as of Justice of Supreme Court, and conditions of service shall not be different to his disadvantage after his appointment, according to Art. 324 (5) of the COI. The Election Commissioners shall not be dismissed from the ECI other than on the sanction of the CEC.⁴⁷

The CEC's position implied that the ECI was expected to conduct elections with a high grade of neutrality. The CEC is at the highest position in the ECI. In a multi –

⁴⁴ Brundaban Nayak vs. ECI and Ors, 1965 S.C.R. (3) 53.

⁴⁵ Shamsher Singh and Ors. Vs. State of Punjab, 1975 S.C.R. (1) 814.

⁴⁶ *Id.*

⁴⁷ SK. MENDURATTA, HOW INDIA VOTES – ELECTION LAWS, PRACTICE AND PROCEDURE, 188 (LexisNexis, 4th edn, 2016).

member Commission, the Chairman must be the CEC.⁴⁸ CEC is primarily accountable for the conduct of all Parliamentary and State Legislature elections. The President of India appoints the CEC and Election Commissioners. They have the same position and working terms as judges of the Supreme Court, although Election Commissioners and CEC are removed in a different way. It is important to know that the safeguard given to the CEC, namely that he can't be expelled without applying the methods which are applicable for the impeachment of a Supreme Court's Justice, is not granted to Election Commissioners, who can be expelled based on the CEC's recommendations. The President further passed an Ordinance on October 1, 1993, establishing the numbers of Election Commissioners other than the CEC.⁴⁹ According to the CEC and other Election Commissioners (Conditions of Service) Rules, 1992, the CEC and the two Election Commissioners get salaries and allowances that are comparable to those of Supreme Court Judges. As a result, the CEC earns the same pay as a Justice of the Supreme Court. The CEC's terms of service cannot be changed to his disadvantage after his appointment, although this protection does not apply to Election Commissioners.

⁴⁸ U.N. GUPTA, INDIAN PARLIAMENTARY DEMOCRACY, 185 (Atlantic Publishers and Distributors, 2003).

⁴⁹ NARENDRA CHAPALGOANKAR, LAW OF ELECTIONS, 10 (All India Reporter Pvt. Ltd., 2nd edn, 1999).

Chapter – III

ELECTION COMMISSION OF INDIA AND **EFFECTIVE IMPLEMENTATION OF MODEL** **CODE OF CONDUCT.**

The Model Code of Conduct (hereinafter MCC) is a legal framework established by ECI for all political parties and for their candidate's conduct along with Candidates contesting elections as Independents during elections, focusing on speeches, polling day, voting booths, election manifestos, processions, and general conduct. These all guidelines were developed or enacted with the cooperation of all political parties who have agreed to follow and implement these ideals enshrined in MCC in both i.e., text and practice. The MCC comes into effect immediately after as soon as the ECI announces the election date, to safeguard and hold free and fair elections of Lok – Sabha as well as of State – legislature. MCC has the intention to prevent communal tensions and unethical activities during the conduct of elections. For instance, a political leader, should not deliver hate speeches that antagonizes any group against other, nor should they make false promises and commitments about development programs that may influence an individual.⁵⁰ The goal of ECI through MCC is to keep the election campaign, evade disputes and clashes between political group and members, which guarantees to maintain law and order during the entire campaign, until unless the results of the particular elections are announced.⁵¹

Historical Evolution of MCC

The fundamental objective of every political party, whether in a *local council or corporation, state legislature, or for the house of people*, is to acquire power. When acquiring power is the main objective, there is a tremendous temptation to employ

⁵⁰ ELECTION COMMISSION OF INDIA, <https://eci.gov.in/mcc/> (last visited July, 03, 2021)

⁵¹ ELECTION COMMISSION OF INDIA, 'Elections in India: Major Events and New Initiatives 1996-2000', (New Delhi: Publication and Division, Election Commission of India, 2000), available at <https://eci.gov.in/files/file/7438-elections-in-india-major-events-new-initiatives-1996-2000/>, (last visited 03 July, 2021).

unethical techniques to get votes. Through passionately discharged election campaign, all political parties strive to draw people in various ways, highlighting their party manifestos and offering lucrative promises to win power. How can we prevent the temptation of political parties to adopt unethical electoral tactics to win elections? There has been controversy across the worldwide over whether political parties or their candidates should be held legally accountable for their unethical behavior. In many countries, MCC has been developed through time as a consequence of a mutual agreement between political parties. MCC is identical to a ‘soft law’, which has been demonstrated to be efficacious in altering organizational and individual attitudes in many areas.⁵²

ECI categorically reported that MCC for the very first time was introduced in “*Kerala State Assembly elections in 1960*”⁵³. Representatives from the major political parties debated and accepted the MCC developed for Kerala Legislature Assembly elections in 1960. During 1962 Lok – Sabha elections, *state governments* were questioned to solicit advice from recognized political parties on the MCC’s acceptance and application. The MCC, was first implemented in the Lok – Sabha elections of 1962 and has been used on a regular basis since then.⁵⁴ During the general election of 1962, the ECI sent MCC to all recognized *political parties and state governments* in order to gain approval from them to abide by it during the conduct of election. Similarly, in 1966, for the city of Madras, an attempt was made to minimize riots and disputes between political parties and their followers by forming a Standing Committee of seven people from various political parties. The Standing Committee is the forum to adjudicate if anyone have a complaint about a MCC violation. Since 1972, the ECI has prepared a MCC for every election, based on previous experiences of Parliament and State Legislatures elections. A MCC was prepared with major changes for the 1991 general election to Parliament, which includes recommendations for political parties to follow

⁵² DR. PAUL G. THOMAS, PROFESSOR, ‘*A Code of Ethics or Code of Conduct for political parties as a potential tool to strengthen electoral democracy in Canada,*’ <https://www.elections.ca/content.aspx?section=res&dir=rec/tech/cod&document=index&lang=e>, last visited 05 July, 2021.

⁵³<https://eci.gov.in/files/file/7455-third-general-elections-vol-i-1962/>

⁵⁴ ‘*Model Code of Conduct and the 2014 General Elections,*’ the PRS blog, <http://www.prsindia.org/theprsblog/?p=3146>, last visited 05 July, 2021.

throughout the campaign and on Election Day.⁵⁵ All political parties and their candidates have been asked to refrain from engaging in corrupt practices or breaking election laws. They are also banned from inciting communal feelings that encourage *mutual hatred* or *cause tension* between various castes and communities. The critique of political groups should be restricted to their guidelines and programs, as well as their historical record and work, rather than personal lives.

The Code of Conduct offers explicit instructions to the dominant political party so that authority and theft of public funds and property do not influence the people. All politicians have equal access to public amenities like maidans, helipads, rest houses, dak bungalows, and other official residences etc. Rest homes and dak bungalows owned by the government are not to be utilized as campaign headquarters or for holding public gatherings in connection with elections. Ministers have also been informed that they are not permitted to use their official visits for political gains. Ministers are also strictly forbidden to grant any financial assistance or payments from public funds, economic aid and grants, inauguration of new schemes and making arbitrary appointments in government or public undertakings, among other things after the notification of election dates.

According to the ECI's statistics, political parties and their candidates have violated the MCC in various elections. A number of complaints have been filed with the ECI claiming MCC breaches. For illustration, in the Second Annual Report, a Central Minister is criticized for breaching the MCC twice in 1984.⁵⁶ Furthermore, many instances for the breach of MCC are mentioned in the reports of the ECI during elections conducted in 1986 and 1987.⁵⁷ The violations of the MCC during election campaigns has been brought to the notice of ECI. The ECI to address these complaints of violation of MCC had launched an inquiry and it found that several unregistered vehicles have been used to transport voters in the Palani parliamentary seat in Tamil Nadu.⁵⁸ Similarly, during election period, the MCC issued a notice to the Uttar Pradesh government for the

⁵⁵ D. D. CHAWLA, CHAWLA'S ELECTIONS, LAW AND PRACTICE, 879 – 83 (4th edn, Bahri Brothers, 1991).

⁵⁶ Election Commission of India, *Second Annual Report 1984* (1985), 46-51.

⁵⁷ Election Commission of India, *Report for the Years 1986 and 1987* (1988), 53-57.

⁵⁸ Times of India, September 23, 1993.

misuse of public funds on advertisement of the ruling party.⁵⁹ In another instance of MCC violations, the state Assembly election in Haryana's Kalka Legislative Assembly was cancelled when the State Government offered welfare packages worth many crores of rupees for the seat after the bye election date was set.⁶⁰

The use of religious appeals and campaigning by religious figures such as Sadhus and Sanyasis, Shahi Imam, Shankracharyas and Granthis, and others has become a regular element to sway the vote of a specific group or caste.⁶¹ The Supreme Court, in **Abhiram Singh v. C D Commachen**⁶², has held that one must enter the political life after shedding the "messy markers of identity" like religion, caste, or race. The court states:

*"an appeal in the name of religion, race, caste, community or language is impermissible under the Representation of the People Act, 1951 and would constitute a corrupt practice sufficient to annul the election in which such an appeal was made regardless whether the appeal was in the name of the candidate's religion or the religion of the election agent or that of the opponent or that of the voters...So interpreted, religion, race, caste, community or language would not be allowed to play any role in the electoral process and should an appeal be made on any of those considerations, the same would constitute a corrupt practice."*⁶³

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Amulya Ganguli, Godman in Politics a Step Backwards in Time, Times of India, July 27, 1993.

⁶² (2017) 2 SCC 629.

⁶³ *Id.*

MODEL CODE OF CONDUCT

The MCC made of eight important provisions which covers the election manifestos as discussed as follows:

1. **General Conduct:** Critique of political groups should be confined to their policies and practices, as well as their history and accomplishments. Actions such as (a) manipulating “*caste and religious*” emotions to win polls, (b) opposing competitors based on unsubstantiated information, (c) purchasing or intimidating voters, and (d) holding rallies or protests outside people’s homes to protest their views are all forbidden.

2. **Meetings:** Groups must notify the city police authority of the meeting's location and time in advance so that the police can make sufficient safety preparations.

3. **Processions:** If two or more politicians are planning gatherings on the same route, the planners must make contact ahead of time to ensure that the ceremonies do not collide. It is prohibited to carry and burn an effigy of leaders of other opposition leaders.

4. **Polling day:** At polling stations, all authorised party employees should be issued identification logo. These shall not include the candidate’s name, emblem, or party title.

5. **Polling booths:** Only registered electorates and with a valid ECI permit will be permitted into voting centres.

6. **Observers:** The ECI will designate monitors to whom contestants can report any issues with the election's conduct.

7. **Party in power:** In 1979, the MCC added some regulations that regulated the behaviour of the ruling party. Ministers must not mix official trips with electoral activities, nor should they utilise official apparatus to do so. To increase the prospects of winning in the elections, the political group shall avoid publicizing at the expense of community purse or utilising authorized reporters to publicise successes. Ministers and other officials must not make any financial promises, such as road building or the facility of drinking water. Other parties should be able to utilise civic places and rooms, which shall not be dominated by the ruling party.

8. **Election manifestos:** These standards, which was inserted in 2013, prevent parties from making assurances that have an excessive effect on electorates and urge that manifesto specify how pledges will be fulfilled.⁶⁴

Purposes of a MCC For Elections

MCC can help ensure fairness and the perception of impartiality in election administration. MCC not only augment regulations, but they may also offer what has been referred to as ‘soft touch regulatory styles that do not emphasise directives’ in another context.⁶⁵ The clauses of any MCC will inevitably be determined by the specific political and social context, as well as the desires that essential should met; in particular, but, the content of a MCC will be resolute by whether it promotes an acceptable outcome in regards to standards for free and fair elections. In overview, a MCC is a tool that promotes freedom and fairness, as well as effective plan, a fair representation and trustworthy process, accountability and transparency, inclusive practises, diminishing antagonistic interactions and the development of a ‘*democratic political culture*’.⁶⁶ A MCC, if efficient, will foster cross – party dialogue and discussion in the welfare of a ‘*good election*’⁶⁷ but also more broadly in encouraging faith amongst contestants and aspirations among the voters. Through the actual channel of a MCC, the regulations pertaining to the hold of free and fair elections can be successfully executed, augmented, and contented. It is frequently claimed that regulations can go a long way toward ensuring that an election is free, but that a MCC is required to assure and sustain its fairness. In practise, the two regulatory alternatives have a lot of overlap when it comes to achieving the same aim.

Analysis of the Role Played by the MCC

The MCC is not a legally enforceable document. Any fraudulent action may only be challenged in the High Court through an ‘*election petition*’ submitted in accordance with the R.P. Act, 1951. The provisions of the MCC cannot be legally imposed in a *court*

⁶⁴Rajas K. Parchure and Manasi V. Phadke, ‘*How Model Is the Model Code of Conduct? A Pre-Poll Voter Survey in Municipal Councils in Maharashtra,*’ 2, Gokhale Institute of Politics and Economics, 2017.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

of law. In an interview with the Times of India, Shri Ram Krishan Trivedi, India's former CEC, stated:

“It's just a friendly agreement between political parties and the Electoral Commission. The MCC will only have moral sanction until it is made into law.”⁶⁸

The subject of relevant legislative sanctions to the MCC has also been discussed between members of political parties and the ECI. The ECI has also proposed amending the R.P. Act, 1951 to include breaches of the MCC as corrupt acts. However, given the considerable time it takes for election petitions to be determined, several political parties feel that labelling breaches of the MCC as corrupt practices will be useless. As a result, it was recommended that a violation of the MCC be treated as a crime under the Act. Furthermore, definite provisions can also be included in R.P. Act 1951 enabling the ECI to give guidelines for the execution of MCC. A similar opinion was also expressed by the Ex – CEC Mr. T.N. Sheshan. He stated that misconducts in the election system might be curtailed by ‘providing teeth’ to the ECI. The ECI must be “answerable to the rule of law.”⁶⁹ The sanctions of the ECI to create lawful provisions to impose the MCC did not find favour with the government. Still, few provisions were incorporated in the R.P. Act 1951. For example, booth capturing has been made corrupt practice,⁷⁰ as well as an offence⁷¹ by amending the R.P. Act in 1989. Likewise, interruption of an election meeting by anybody has also been deemed to be an offence punishable with three months of imprisonment or a fine of up to Rs. 1000, or both.⁷² In 1990, the National Front government of Mr. V.P. Singh attempted to integrate section 124 (Illegal activities) into the R.P. Act 1951 in order to provide legal validity to the certain provisions of MCC. By introducing section 126 – A in R.P. Act 1951, a penalty was also suggested for these illegal actions to strengthen the provisions of MCC.

For us, the journey of MCC in India's electoral history, has not been a pleasant experience. In our political culture, breach of the MCC by candidates and parties does

⁶⁸Times of India, October. 2, 1993.

⁶⁹The Chief Election Commissioner was addressing a meeting on "Democracy in India" Organised by the Rotary Club of Delhi on 21.10.1993. Times of India, Oct. 23, 1993.

⁷⁰ Representation of People (Amendment) Act, 1989, § 123(8).

⁷¹ Representation of the People (Amendment) Act, 1989, § 135 A.

⁷² Representation of the People Act, 1951, § 127.

not get highlighted as an unethical activity during the period of the campaign. Such breaches still gain no currency as a political device to target the wrongdoers throughout the campaign. Lack of sufficient legal sanctions combined with the increasing (and often normalized) cases of violations, pose a threat to holding free and fair elections in India. The incumbent government, or the financially powerful parties get an upper-hand in such matters, leaving the competitive political space unequal. The MCC, therefore, gets largely reduced to a mere preventative measure based on moral sanctions for the political parties to abide by the norms. Lack of adherence to the negotiated set of rules, leaves the MCC divorced of the value that it was designed to play in the electoral process.

However, Mr. T N Seshan was determined, during his term as the CEC, to effectively implement the MCC. He received a lot of backlash when he tried to play an active role in the transformation of the electoral terrain in India. Mr. V.N. Gadgil, a spokesman for Congress at the time, stated,

*“The MCC is neither a statutory code, nor does it have any legislative basis. It has not been enacted by Parliament, and the administration is under no duty to adopt or enforce it.”*⁷³

In an interview with the Blitz, T.N. Seshan stated, “Does it take a judicial punishment to warn you that you should not utter a lie?”⁷⁴ Seshan had made a final decision during the November – December 1993 elections. The MCC was not intended to be a decorative document. Seshan’s determination paid off. Gulsher Ahmed, the Governor of Himachal Pradesh, was forced to return home after it was discovered that he had used or abused his official vehicle to assist his son, who was a candidate in Madhya Pradesh⁷⁵. On the eve of the elections, several orders of appointments and transfers, as well as announcements of so-called development initiatives, were forcefully retracted by Shesan.⁷⁶

Seshan’s legacy was carried on by successive Election Commissioners, who paid close attention to any violations of the MCC. The question whether issuance of any

⁷³ K. GOVINDAN KUTTY, *SESHAN: AN INTIMATE STORY*, 218 (Konark Publishers, 1994).

⁷⁴ *Id.*

⁷⁵ K. GOVINDAN KUTTY, *supra* note 71, at 220

⁷⁶ *Id.*

welfare policy immediately prior to the declaration of the election schedule is against the MCC norms, was yet to be answered by the courts. Kerala High Court's Division Bench judgement in "*Rajaji Mathew Thomas v. ECI of India*"⁷⁷ is important in this regard. The ECI released the election schedule for Kerala's Legislative Assembly on March 1, 2011. After the declaration of election in Kerala, the provisions of the MCC for the direction of political groups become applicable. The Kerala State government, just prior to the declaration of the election schedule, sanctioned a scheme to provide rice at a rate of Rs. 2 per kilogram to all ration card holders, including those classified as BPL and APL, fishermen, scheduled cast, scheduled tribe persons and families under the Asraya Scheme, traditional industry workers, including 40 lakh families working under the national employment guarantee scheme, and traditional industry workers under the Asraya Scheme. The ECI gave an order postponing the scheme's implementation until after the election, claiming that it would disrupt the fair playing field among the political parties fighting the election since it affects voters and offers the ruling party significant political gain. The High Court overturned the order, ruling that policy choices made by the State previous to the issue of the election notice may be executed and that required actions to implement them might be maintained even while the election notification was in effect. Despite the ECI's best attempts to ensure a fair playing field among political parties by implementing the MCC, it is apparent that political parties do not treat it as a mandatory requirement in their practice. In the light of the aforesaid observation, it is imperative that MCC shall be backed with legal sanctions.

In **Ghasi Ram v. Dal Singh**⁷⁸, a petition was filed with the Supreme Court under Sections 123(1), (2), and (7) of R.P. Act, 1951, against the elected candidate Dal Singh. Dal Singh, a minister in the governing party, allegedly participated in "corrupt conduct" by utilizing discretionary money to his advantage before the election, according to the petitioner, whose appeal had previously been dismissed by the state high court. The petitioner alleged that Dal Singh used discretionary money to build a holy tank, community centers, restore Harijan wells, and provide irrigation facilities in some villages, among other things, in order to guarantee voter support for his election, and that this amounted to bribing the voter. The petition was terminated by both the State HC and

⁷⁷ *Rajaji Mathew Thomas v. ECI of India*, 2011 SCC Online Ker 4313; (2011) 6 RCR (Civil) 793.

⁷⁸ *Ghasi Ram v. Dal Singh*, AIR 1968 SC 1191.

Supreme Court because there was insufficient evidence to “fully establish corrupt practice involving bribery,” suggesting that the proof must plainly indicate that an elector was assured or given a reward “to vote or refrain from voting at an election.”⁷⁹

In “*Dr. Ramesh Yashwant Prabhoo v. Prabhakar Kashinath Kumte and other*”⁸⁰ which includes speeches during election given by Bal Thackeray and Ramesh Yashwant Prabhoo to the crowd, the Supreme Court, upheld that the speeches by Bal Thackeray appealing to the electorates on the grounds of religious affinity with insulting orientation to the members of Muslim Community amounted to “promoting or on attempting to promote feeling of enmity and hatred between different classes of citizens on the ground of religion and were of very serious and grave nature”⁸¹. Both Ramesh Yeshwant Prabhoo and Bal Thackeray were disqualified for six years, which is the maximal sentence wherein they could be barred U/s 8 A of R.P. Act, 1951 (disqualification on the ground of practices).⁸²

Several prosecutions have been filed against MCC offenders under particular parts of the IPC, the R.P. Act, 1951 and different state laws against defacing public property, and convictions have been handed out both during and after the MCC has been in operation. For example, during the state legislative assembly elections in Tamil Nadu in April 2011, charges were filed under the IPC, R.P. Act, 1951 against officials of several political parties for violating the MCC.⁸³ Construction of flex displays and digital banner ads without approval, going to campaign in convoys of automobiles without consent and obstructing streets, seeking voter support next to schools, setup of party symbols and pillar candles on government streets, taking out ceremonies without permit, unauthorized distribution of wealth and gift items to electorates, and so on have all been filed as infringements of MCC. In the Tiruchi range, 633 cases were outstanding as of May 2011, with 144 instances concluding in conviction.⁸⁴ Nearly 300 incidents of MCC breaches

⁷⁹ UJJWAL KUMAR SINGH AND ANUPAMA ROY, ELECTION COMMISSION OF INDIA, 204 (1st edn, Oxford University Press, 2019)

⁸⁰Dr. Ramesh Yashwant Prabhoo v. Prabhakar Kashinath Kumte and other, (1996) 1 SCC 130

⁸¹ *Id.*

⁸² *Id. supra* note 77, at 219.

⁸³ *Id. supra* note 77, at 220

⁸⁴ ‘Over 140 Election Violation Cases End Up in Conviction,’ The Hindu, 9 May 2011, <http://www.thehindu.com/2011/05/09/stories/2011050962430500htm>, last visited July, 14, 2021.

were reported in Chennai city police, which went into effect in the second week of February with the ECI's release of poll dates. These included everything from allocation of funds to gang wars to wall trashing. For similar breaches, the Chennai suburbs police received 741 complaints and charged 701 people.⁸⁵

In December 2017, the Chief Judicial Magistrate sentenced BJP MP Jagdambika Pal to one month in prison and a punishment of Rs 100 for violating the MCC by employing more than the permitted number of cars in an electoral rally in Bansi during the 2014 general election. In the 2017 U.P. State polling, Asaduddin Owaisi, leader of the *All-India Majlis-e-Ittehad-ul Muslimeen* (AIMIM), was charged with violating the MCC U/s 171 of the Indian Penal Code (illegitimate payment in relatedness with polling). AIMIM posters were placed on the walls of city property, holy buildings, and commercial stores, as per the police, prompting them to file a formal complaint against him. In 2014, the ECI filed a complaint against BJP prime ministerial candidate Narendra Modi after a sticker with his image was discovered on a pole in Tabha Ghat hamlet. The names of the printer and publisher were not printed on the sticker, which is required by the MCC standards provided by the ECI.⁸⁶In the very same polls, Narendra Modi was charged with attempting to 'influence' voters by holding a press conference near the voting center and flashing the BJP's electoral emblem, 'the lotus', as he exited the poll after placing his vote. The ECI handed a "*show cause*" notice to Rahul Gandhi in December 2017, during the Gujarat assembly election campaign, for giving a TV interview a day before the polling. The ECI also directed state election commission in Gujarat to file a FIR against the regional TV stations that showed Gandhi's interview, as well as to prevent additional stations from broadcasting it till the election process was over.⁸⁷

MCC analysis tells us the chequered history of its implementation. Its effective implementation demands legal sanctions and regulations. The analysis also shows that its effective implementation without statutory force makes it an ideological tool in the hands

⁸⁵ 'Over 1000 Election-Related Police Cases Filed in City and Suburbs, The Times of India, 7 May 2011. Available at <http://articles.timesofindia.indiatimes.com/2011-05-07/chennai/2952010>, last visited July, 14, 2021.

⁸⁶ Nairita Das. 2014. 'Election 2014: Now, Narendra Modi Booked for Violation of Model Code,' 8 April. <https://www.oneindia.com/india/election-2014-now-narendra-modi-booked-for-violation-of-model-code-Ise-1426666.html>, last visited July, 15, 2021.

⁸⁷ *supra* note 77, at 221.

of CEC and election commissioners for desirable electoral reforms. It is also essential that fast-track tribunals are set up which are dedicated to the resolution of the disputes arising out of MCC violations. Such violations need quick and reliable resolution during the period of election, so that the violators are effectively tackled, and equity is maintained in the competitive political space.

Chapter – IV

ROLE OF JUDICIARY IN ELECTORAL REFORMS

“Elections are held to delude the populace into believing that they are participating in Government”.

- Gerald F. Lieberman

Introduction

The phrase ‘WE THE PEOPLE OF INDIA’ appears in the Preamble of the Indian Constitution, emphasising the country’s democratic character. As a result, democratic system prevails in India in the form of popular sovereignty. The role of people’s representatives in the parliament in representing the ambitions and desires of the people indirectly has elicited mixed responses. Empathy, quality, justice, integrity, honesty, and intellectual competence have all been found in short supply among members of India’s legislatures, both at the national and state levels. If our nation persists in the *hands of lawmakers* whose powers remains unchecked, the entire spirit and goal of democracy may be lost. Corruption has been the dominant norm in electoral processes and the executive has not been able to eradicate it. The electoral system needs much awaited reform in candidate’s choice, fundraising, campaign finance, and decriminalisation of electoral process.

Several elements of our voting system have invited increasing criticism in India over the years. In response to few objections, the ECI has made modifications in many areas for instance, the use of VVPAT with the EVM during election so that the voters come to know for whom they have voted. There have also been other committees that

have looked at the key concerns surrounding our voting system and provided recommendations. However, there are a few important concerns that may require legislative action to bring about the necessary adjustments. The ‘Vohra Committee Report’ on ‘Criminalisation of Politics’ as formed to determine the scope of the political – criminal connection and make recommendation how to address the threat. Politics has been criminalised in several ways, the most concerning of which is the large number of elected officials who are facing criminal accusations.

In the last several decades, election finance has become a serious concern. It is commonly assumed that the expense of campaigning for elections has crossed the legal limitations on expenditures. As a result, there is a lack of transparency, rampant corruption, and extensive use of back-money during the conduct of elections.

Electoral Reforms Vis – A – Vis Supreme Court

The notion of free and fair elections, which are supervised, scrutinized, and overseen by impartial authority, lies at the heart of India’s representative democratic system of governance. As an independent body, a strong ECI has been formed to oversee the electoral method. Through many judgements, the Supreme Court has made noteworthy contributions to electoral reforms giving widespread powers to ECI, though the powers of ECI is subject to judicial review. For instance, the ‘*criminalization of politics*’ has been a heated subject as it has a direct impact over voter’s choice and it reflects on procedural integrity of the ECI. Reading the freedom to vote under Art. 19 (1) (a) of Indian Constitution⁸⁸, and imposing the ‘right to get information’ as a fundamental right, the judicial system ushered in a massive electoral reform in the case of “*Association for Democratic Reforms*”⁸⁹ by pronouncing that a proper divulgence of ‘backgrounds’ by candidates in e – voting is required.

The vote cast by a misled or uninformed elector has the capacity to have a negative impact on democracy, the court issued a series of orders requiring candidates to provide information about their personal profile, background, qualifications, and

⁸⁸ People’s Union for Civil Liberties v. Union of India, (2003) 4 SCC 399.

⁸⁹ (2002) 5 SCC 294.

antecedents⁹⁰. Since Supreme Court has been designated as the protector and custodian of the Constitution, it has to play an active role in life of this nation⁹¹. It serves as a watchdog for violations of fundamental rights.

The Supreme Court has met with requirements of the proactive role meant to be performed by the judicial organ to curb criminalisation of politics. The Supreme Court of India issued a landmark decision in *The Chief Election Commissioner etc. vs. Jan Chaukidar (Peoples Watch) & Ors*⁹² on the criminalization of politics. The court ruled that under the R.P. Act, 1951, a person who does not have the right to vote fails to be a voter and is thus unable to stand for election. The facts are such as Art. 326 of the Indian Constitution which states as

“the elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage and every person who is a citizen of India and who is not less than eighteen years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under the Constitution or any law made by the appropriate Legislature on the grounds of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter for any such election.”

An individual is ineligible for enrolment in a voter roll if he being banned from casting voting for a particular period under, the regulation of any legislation pertaining to corrupt activities and other crimes in accordance with polls, according to Sec.16 (1) (c) of the R.P. Act, 1951. The court ruled, “A right to vote is a statutory right; the law grants it and the law takes it away.” People who have been found guilty of a crime are barred from election in legislative elections, including those for the State Legislature and Parliament, as well as all other civic selections. The Court has no qualms to interpret statutes and the laws enacted in accordance to it, holding that people in judicial custody of the police are not eligible for casting votes and so they are barred form elections too. The law temporarily restricts such individuals’ ability to approach the electoral site.

⁹⁰ *Ibid.*

⁹¹ S P Gupta v. Union of India, AIR 1982 SC 304.

⁹²The Chief Election Commissioner etc. vs. Jan Chaukidar (Peoples Watch) & Ors, Civil Appeal No. 3040 – 3041 of 2004.

Voting is a statutory right. 'Right to vote' is a privilege that can be revoked. Even though his name is in the electoral records, the elector would not be qualified in that situation. The name is not expunged, but the right to vote and the qualification to be an elector are taken away while in the lawful police custody. Every citizen of India who is not otherwise disqualified under any legislation enacted by the relevant Legislature on the basis of crime, corruption, or unfair act, shall be not eligible to vote in any such polling. According to the court, a person's ability to vote is immediately halted while they are convicted. The 'right to vote' is just a legislative right, and it is revoked by legislation when a person is convicted. Even though his name is on the electoral records, an elector would not be eligible to vote in such a situation. His name is not removed from the rolls, but he lacks the ability to vote, which is a need for becoming an elector (Article 326). As a result, the individual ceases to be a "voter" and therefore ineligible to participate in election for "House of People" or the "State Legislative Assembly."

In the case of *Lily Thomas vs. Union of India & Ors*⁹³, *Lok Prahari through its General Secretary S.N Shukla vs. Union of India' & Ors* and *Basant Kumar Chaudhari vs. Union of India & Ors*, were the writ petition filed as PIL with the objective of determining subsection (4) of Section 8 of the R.P. Act, 1951 as ultra vires according to the provisions of the constitution. The relevant facts of this case are that the Constituent Assembly sought to put down various prohibitions for people being selected as, a member of either "House of Parliament" as well as a member of the "State's Legislative Assembly and Legislative Council" while drafting the constitution. As a result, Art. 102 (1) of the constitution, which was eventually approved by the Constituent Assembly, established 'disqualifications' for membership in either "House of Parliament," and Article 191(1) established 'disqualifications' for membership in the "State's Legislative Assembly or Legislative council of a State." The word "disqualified" is defined in Sec. 7 of the R.P. Act, 1951, as "disqualified for being chosen as, and for becoming a member of either House of Parliament, the Legislative Assembly, or the Legislative Council of State." Section 8 of the Act, sub-sec, (1), (2), and (3), state that an individual condemned of an offense listed in any of these sub – sec. would be prohibited from the moment of sentencing for the time specified in the sub – section.

⁹³ (2013) 7 SCC 653

“The Apex Court has ruled on disqualification of candidates who were found guilty for any offence and observed whether this was ultra vires to the provision of constitution on those elected members who have appealed against their convictions within three months period and had their appeals pending. The court said that under U/s 8(1), (2), (3) of R.P. Act, 1951, the disqualification was activated on date of conviction for the offences laid down and remained in force. However, as such candidates would have been aware of the forthcoming court order, they were saved, but those who were convicted in future would be subject to legislation.”

The Supreme Court observed that selected members of parliament and the state legislatures who are found guilty for any offences cited in sec. 8(1), (2), (3) and whose appeals are pending, *“should not, in our considered opinion, be affected by the declaration now made by us in this judgment.”* Supreme Court of India held that imprisoned MPs or MLAs who are disqualified under Sec. 8 (1) (2) (3) after the date of the judgment, would *“not be saved by subsection (4) of Section 8 of the Act which we have by this judgment declared as ultra vires the Constitution notwithstanding that he files the appeal or revision against the conviction and /or sentence.”* Thus, the Supreme Court has revoked the sub – sec 4 of sec. 8 of R.P. Act, 1951 so the elected MPs or MLAs shall not take undue advantage of this particular provision once they are found guilty and are removed from their office. The Supreme Court with this decision has tried to decriminalize politics in our nation.

In *Union of India v/s. Association for Democratic Reforms and Ors*⁹⁴ the Supreme Court has given very important guiding principle which are as follows: The ECI is ordered to collect data on affidavits from every politician who is standing in election for MP or MLA as required component of his ‘*nomination paper*’ by giving relevant orders in accordance of its jurisdiction as per Art. 324 of the constitution.

⁹⁴ (2002) 5 SCC 294

- **Criminal background of candidate**

Whether the candidates have been '*condemned, acquitted, or charged*' with a crime any previous criminal offence - if any, and whether he is guilty or be imprisoned or fined?

The Supreme Court of India has issued a directive based on this guideline. Get information about the politician's criminal records background information, the candidate must provide it. During submission of the nomination form, information on the affidavit is required. This material is provided for the benefit of the citizens of the country so that they select a more appropriate representative for their electorate. If the applicant has a criminal history, citizens have the power to decide on a candidate's fate.

- **Criminal charges against candidate**

Six months prior to the submission of documents for election, whether the contenders are suspect in an undecided matter of any crime which is punishable with imprisonment for two year or more, and in which charged is framed or cognizance is taken by the court of law, if so, details have to be submitted before the ECI by the candidate.

As per this recommendation Supreme Court has ordered the ECI to collect the data of all the candidates against whom the criminal charges are incurred so that such individuals can be barred from entering in the sphere of politics. It is the right of People to know about the background of the candidate. This is very appreciable step by which the sphere of politics in our nation could be kept clean and healthy for safeguarding the republic.

- **Financial position of candidate**

The candidate's and his/her spouse's assets (immovable, moveable, bank balance, etc.) as well as dependents' assets. It has been noticed that politicians get wealthier after winning elections, creating a serious threat of corruption to dismantle the democratic ethos of our society.

Is this to say that the candidate's financial situation should be checked and balanced? Does this indicate that the candidate should not acquire property? No, but only in proportion to their official earnings. The Supreme Court issued guidelines to the ECI, which were thereafter applied across India, resulting in a significant electoral reform in the Indian context.

- **Financial liabilities of candidate**

If there were any other liabilities of the candidate contesting for the elections then it is necessary to see whether there is any overdues incurred on him from the govt. depts. or from the govt. financial organizations. The Supreme Court established a rule that it is essential to state on affidavit of the financial liabilities of a candidate while filling out the nomination form to contest an election. During submission of documents for polling, such an individual must present no dues certificate.

- **Educational background of candidate**

The nation's leadership must be imaginative; it determines the country's fate, growth, and development. However, the constitution makes no mention of educational qualifications as the essential criterion for candidates contesting the elections. All applicants are hereby now required to provide information about their educational backgrounds. So, the voters have the opportunity to elect highly competent members to the representative assemblies of the people.

Supreme Court decision in this landmark judgement has made it mandatory for all the candidates contesting the election to file an affidavit providing all the relevant details for the informed choice made by the voters during the elections. The Supreme Court noted that information on candidates in the electoral process aided freedom of expression and Speech Art. (19) (1) (a), as well as the constitutional 'right to vote'.

“The achievement of the voter's freedom of expression is the casting of a vote in favour of one or the other candidate.”

The Supreme Court did not find Sec. 33B of R.P. Act, 1951 (3rdAmendment) Act, 2002 to be constitutional because it

“Imposes a blanket ban on distribution of information other than that spelled out in the statute, regardless of the necessity of the hour or future exigencies and expedients.” The restriction shall be applicable even in the case that the information disclosed was “deficient and insufficient.”

The Supreme Court noted that there was “no compelling justification for excluding the pending cases in which the court has taken cognizance from the purview of disclosure” while supporting the sufficiency of Sec. 33A on the ‘*right to information*’ regarding pending cases. The court stated that elected member’s declarations of ‘*assets and liabilities*’ to the “*Speaker or Chairman*” of Parliament were unsuccessful in promoting voter’s ‘*right to information*’ and their ‘*freedom of speech*’ in voting. The court believed that the Parliament “ought to have created a provision” for elected candidates and their families to disclose their ‘*assets and liabilities*’ at the time of nominations. The court stated that, “Failure to do so has resulted in a violation of assurance under Article 19(1) (a).

The Supreme Court of India in *People’s Union for Civil Liberties vs. Union of India & Ors*,⁹⁵ directed to use ‘none of the above’ (NOTA) and said it is “very significant in a democracy” so that the voters might discard a contender in election in a secret manner. The court in this landmark judgement has stated that

“When political groups discover that a substantial amount of people are expressing dissatisfaction with the candidates they are putting forth, a structural shift will occur, forcing political groups to hold the will of the people and field candidates who are identified for their integrity”.

The court further added that existing voter who rejects the contenders has articulated his or her displeasure mostly by not giving vote to them, which gave a chance to “unscrupulous elements to impersonate the dissatisfied voter and cast a vote, be it a negative one.” The apex court further noted that a negative vote would send a strong message about voter dissatisfaction. The decision held that the NOTA button was the same as the Unsubscribe selection in the method of a key for MPs to cast vote, as “the

⁹⁵ 2013 SC 161

voter is in reality stating that he is boycotting from voting because he does not deem any one of the candidates to be deserving of his vote.”

The Supreme Court ruled that because democracy is a fundamental component of our constitutional structure, there can be no doubt that free and fair elections are the only way to ensure the establishment of a strong democratic rule. The term “fair” refers to everyone having an equal chance. The Constitution’s grant of universal adult suffrage to Indian citizens has enabled these millions of individual voters to cast ballots and so participate in the country’s administration. For democracy to exist, the best possible individuals must be picked as the people’s representatives to ensure the country’s good administration. This is best accomplished by people with high moral and ethical principles who win an election with a majority of votes cast in their favour. Thus, in a healthy democracy, voters should be given the option of selecting “*none of the above*” (NOTA), by which the political groups will be forced to nominate a good contender. This incident demonstrates the critical necessity for ‘*negative voting.*’ Choice is at the heart of democracy. This option can be better represented by allowing voters to express themselves without reservation and placing the fewest constraints on their freedom to do so. The inclusion of a NOTA button on EVMs will facilitate successful political involvement in the current democratic system, and voters will be strengthened. We think when one comes this opportunity to cast a negative vote at a time when election campaign is in full flow would help to maintain the integrity of the democratic process while also achieving one of its goals, namely, broad public involvement.

In “*Krishnamoorthy vs Shiv Kumar & Ors*”⁹⁶ The Supreme Court contended that a candidate’s declaration of criminal records constituted a “categorical necessity” as required by law. Nondisclosure obstructs the free exercise of electoral rights by preventing voters from making an informed decision, therefore infringing on their “right to vote.” Because the contender would be aware of any pending matter against him in which cognisance has been taken or charges have been filed, failure to disclose them during the nomination process “would amount to undue influence and, as a result, the election is to be declared null and void by the Election Tribunal under Section 100(1) (b) of the 1951 Act.”

⁹⁶ AIR 2015 SC 1478.

In *Public Interest foundation & Ans. V/s. UOI*,⁹⁷ a PIL was put up before Supreme Court of India to disqualify the electoral candidates upon the framing of charges. Public Interest foundation has filed this petition and made arguments that the lawbreakers should not become the Lawmaker and the parliament or the state legislation cannot be a paradise for people of criminal backgrounds in. The petitioners have prayed that the MLAs and the MPs against whom the charges are framed for heinous or grievous offences(s) shall be disqualified and the direction should be given to the election commission of India to deregister, non – registration of the registration or the non – registration of the political parties if they themselves are associated with such person against whom the charges are framed. And the candidates against whom the charges are framed, shall not be allowed for contesting election. The apex court was of view that they cannot legislate, and the court, at the outset, perused Art. 102 and 191 of Indian Constitution and made observation that it was very clear that for the disqualification of the elected MPs or MLAs, parliament has to make law. The court referred to *Lily Thomas v. UOI*⁹⁸ and was of the opinion that the views expressed in this case was correct, the parliament has the exclusive jurisdiction to lay down disqualification for the membership.

“It was noted that apart from the grounds of disqualification as mentioned in the articles herein mentioned, parliament has provided certain grounds of disqualification U/s 8, 8A, 9, 9A, 10 and 10A of the R.P. Act, 1951. Besides these, there are no other grounds for disqualification, and there can’t be any.”

Therefore, there are specific and certain ground for the disqualification. In such condition the law is very specific. Moreover, the court has referred the cases *Union of India v. Association for Democratic Reforms*⁹⁹ and *Resurgence India v. Election Commission of India*¹⁰⁰, and was inclined to say that the best people should be available for election, as democratic system requires that candidates have no criminal records, and voters have a right to know about their backgrounds, assets, and other information. In a

⁹⁷ (2019) 3 SCC 224.

⁹⁸ (2013) 7 SCC 653.

⁹⁹ (2002) 5 SCC 294.

¹⁰⁰ (2014) 14 SCC 189.

democratic nation, criminalization of politics is really terrible and lamentable situation, hence the Apex Court issued the following direction:

- *Every candidate is required to fill up the form as given by the ECI and no particular shall be left out by the candidates.*
- *The criminal cases pending against the candidate shall be written in bold letters.*
- *If any candidate stands in election from a particular party, he/she is required to give information about the cases pending against them to the party.*
- *The concerned party are required to put information on their website with regards to the criminal background of the candidate, if any.*
- *The candidate and the concerned party shall give declaration minimum for three time in widely circulated local national newspapers as well as in electronic media about their criminal background.*

Moreover, the court gave direction to the parliament to make strong laws, and made compulsory to all political parties to remove all such individuals against whom the framing of charges is been done for heinous and grievous offences and shall not allow such individuals for contesting elections for both seats of MLA, MP. This in attentive and plausible view, would go a long way in achieving decriminalisation of politics and usher in an era of immaculate, spotless, unsullied and virtuous constitutional democracy. As stated by the Court, the above directions were issued with immense anguish, for the Election Commission cannot deny a candidate to contest on the symbol of a party. It is true that false cases are foisted on prospective candidates, but the same can be addressed by the Parliament through appropriate legislation. The writ petition was disposed of accordingly.

Further in the case of *Rambabu Singh Thakur v/s Sunil Arora & Ors*,¹⁰¹ a 'contempt petition' was filed raising serious issues related to the criminalization of politics in India and attention was towards the disregards of the directions of a constitution bench which was laid down in *Public Interest foundation & Ans. V/s. UOI*¹⁰². The Court held that,

¹⁰¹ (2020) 3 Supreme Court Cases 733: (2020) 2 Supreme Court Cases (Cri) 215 : 2020 SCC Online SC 178.

¹⁰² (2019) 3 SCC 224: 2018 SCC online SC 1617

“On a perusal of the documents placed on record and after submissions of counsel, it appears that over the last four general elections, there has been an alarming increase in the incidence of criminals in politics. In 2004, 24% of the Members of Parliament had criminal cases pending against them; in 2009, that went up to 30%; in 2014 to 34%; and in 2019 as many as 43% of MPs had criminal cases pending against them.”

The court also noted that the political parties offer no explanation as to why candidates with pending criminal cases are selected as candidates in the first place, therefore court issue the following directions in exercise of its constitutional powers under Articles 129 and 142 of the Constitution of India:

- 1) It shall be mandatory for political parties [at the Central and State election level] to upload on their website detailed information regarding individuals with pending criminal cases (including the nature of the offences, and relevant particulars such as whether charges have been framed, the concerned Court, the case number etc.) who have been selected as candidates, along with the reasons for such selection, as also as to why other individuals without criminal antecedents could not be selected as candidates.*
- 2) The reasons as to selection shall be with reference to the qualifications, achievements and merit of the candidate concerned, and not mere “winning ability” at the polls.*
- 3) This information shall also be published in: (a) One local vernacular newspaper and one national newspaper; (b) On the official social media platforms of the political party, including Facebook & Twitter.*
- 4) These details shall be published within 48 hours of the selection of the candidate or not less than two weeks 4 before the first date for filing of nominations, whichever is earlier.*
- 5) The political party concerned shall then submit a report of compliance with these directions with the Election Commission within 72 hours of the selection of the said candidate.*
- 6) If a political party fails to submit such compliance report with the Election Commission, the Election Commission shall bring such non-compliance by the political*

party concerned to the notice of the Supreme Court as being in contempt of this Court's orders/directions.

In the case of Union of India v. Association for Democratic Reforms¹⁰³ petition was filed before the High Court of Delhi seeking direction for implementation of the recommendations made by Law Commission in its 170th Report to make electoral process fairer, transparent and to reduce the distortions and evils that have crept into Indian political system. It also contended that despite reports of Law Commission and Vohra Committee, successive governments have failed to take any action, therefore the high court must direct government to pass suitable amendments to R.P. Act, 1951 and Conduct of Election Rules, 1961. With the suggestions made the Law Commission and the Vohra Committee it was stated that the Election Commission must necessitate all applicants to reveal personal background data to the general populace, such as criminal record, academic credentials, personal economic specifics, & several other data needed to assess a candidate's potential and abilities. Declaring that it is inappropriate in the spirit of democratization to keep a candidate's past hidden, the Election Commission was instructed by the Delhi High Court to gather such data for the interest of the electors. The Union of India appealed the judgment to the Hon'ble Supreme Court claiming that the election commission & the High Court does not have such authority and that electors had no access to such data. The Supreme Court after perusing all the legal aspects, held that,

“There are ample powers conferred by Article 32 read with Article 142 to make orders which have the effect of law by virtue of Article 141 and there is mandate to all authorities to act in aid of the orders of this Court as provided in Article 144 of the Constitution. The Court made two major decisions in this case that are:”

- (1) *Whenever the legislature remains quiet on a matter and an institution [in this context, the ECI has been awarded execution discretion, the court considers that the institution has the jurisdiction to release instructions or directives to cover the vacuum unless an appropriate legislation on the matter is adopted, &*

¹⁰³ (2002) 5 SCC 294

(2) People should have a right to be informed regarding government officials, which stems from the principle of freedom of speech & expression also encompasses the right to be informed concerning the histories of applicants for government position.”

The Supreme Court of India affirmed the ruling of High Court, requiring the Election Commission to gather and disseminate to the general populace background data about the applicants who are competing for office, comprising financial details, criminal history, and academic qualifications. The court further stated that the right to be informed regarding public authorities stems from the freedom of expression guaranteed by the Indian Constitution.

In *Dr. Subramanian Swamy vs. Election Commission of India*¹⁰⁴ The ECI considered introducing a paper trail of the vote after adopting of ‘*Electronic Voting Machines*’ (henceforth, EVMs), which was experimentally tested. The outcomes of the implementation of the “*Voter Verified Paper Audit Trail*” (VVPAT) system in Nagaland’s Noksen Assembly seat were reviewed by the Supreme Court, and the ECI stated that “*VVPAT*” was magnificently deployed in 21 voting booths. Unless a candidate requests it, the paper slips created by “*VVPAT*” will not be calculated by the Returning Officer. The ECI, on the other hand, had numbered the paper slips in Noksen to ensure that there was no contradiction in the pilot case. With the success ration of VVPAT, the ECI plan is to carry it out in stages across the country, and requested government approval for “the purchasing of 20,000 units of VVPAT [10,000 each from M/s Bharat Electronics Limited (BEL) and M/s Electronics Corporation of India Limited (ECIL)] costing about Rs. 38.01 crore.” The paper trail, according to the court, offered proof of the voter’s vote and that was essential for free and fair elections. The Supreme Court also stated that the inclusion of the ‘paper trail’ will achieve voter trust in EVMs. VVPAT was seen to have the potential to re – establish voter trust and with which the election mechanism is further open and transparent.

The introductions of Affidavits, EVMs, VVPATs, and NOTA helped to fast track the processes of electoral reforms by the Supreme Court which strengthened the efforts and gave legislative, regulative support and legal enforcement to maintain ethical conduct

¹⁰⁴ 2013 SC 9093, 406.

of elections in free, fair and transparent manner to the ECI for the curb on criminalisation of politics.

The Supreme Court in *Common Cause (A Registered Society) v. Union of India and others*¹⁰⁵ dealt with election expenses incurred by political parties and submission of return and the scope of Article 324 of the Constitution, where it was contended that cumulative effect of the three statutory provisions, namely, Section 293-A of the Companies Act, 1956, Section 13-A of the Income Tax Act, 1961 and Section 77 of the Representation of the People Act, 1951, is to bring transparency in the election funding and people of India must know the source of expenditure incurred by the political parties and by the candidates in the process of election. It was held that election in the country are fought with the help of black money and once elected to power, it becomes easy to collect more black money, which is used for retaining power and that this vicious cycle has polluted the political system of our democratic nation. The Court was of opinion that,

*“...The political parties in their quest for power spend more than one thousand crores of rupees on the General Election (Parliament alone), yet nobody accounts for the bulk of the money so spent and there is no accountability anywhere. Nobody discloses the source of the money. There are no proper accounts and no audit. From where does the money come nobody knows. In a democracy where rule of law prevails this type of naked display of black money, by violating the mandatory provisions of law, cannot be permitted...”*¹⁰⁶”

The bench quoted Mr. R. V. Pandit, a writer and an economic analyst to highlight the corruption in the county as in the following words,

“Most politicians are not interested in honest money funding for elections. Honest money entails accountability. Honest money restricts Pending with legally sanctioned limits (which are ridiculously low). Honest money leaves little scope for the candidate to steal from election funds. Honest money funding is limiting. While the politicians want money for election, more importantly, they want money for themselves - to spend to hoard, to get rich. And this they

¹⁰⁵ AIR 1996 SC 3081

¹⁰⁶ AIR 1996 SC 3081.

can do only if the source of money is black. The corruption in quest of political office and the corruption in the mechanics of survival in power has thoroughly vitiated our lives and our times. It has sullied our institutions. The corrupt politician groomed to become the corrupt minister, and, in turns the corrupt minister set about seducing the bureaucrat. Think of any problem our society or the country is facing today, analysis it, and you will inevitably conclude, and rightly that corruption is at the root of the problem.”¹⁰⁷

Reports of Law Commission on Observation for Electoral Reforms.

To codify suggestions on election improvements, the Law Commission reviewed the Supreme Court interpretations of the statutes and incorporated observations about the ‘electoral processes. The Law Commission made three significant recommendations in 1999, 2014, and 2015, proposing reforms varying from election financial reform to an alternate voting system. In its 2014 report, Law Commission cited the court’s decision in *Ashok Shankarrao Chavan v/s Dr. Madhavrao Kinhalakar & Ors.*¹⁰⁸, in which it says that “money power plays a significant role” and it is disappointing to see that the citizens are “willing to sell their votes for a few hundred rupees.”¹⁰⁹ The Apex Court has raised concerns over it, that the Citizens were “taken for a ride”¹¹⁰ by corrupt people who wanted to win elections and seize power as MPs or MLAs “by hook or crook”.¹¹¹ The analysis of perspectives stated in “*Law Commission reports*” on ‘electoral laws, disqualification, and changes’ are as follows.

(a) **Reform of the Electoral Law (1999):** In 1999, the Law Commission of India’s (hereinafter LCI) in its 170th Report on ‘*Reform of Electoral Laws*’ recommended changes to provision and said “that the current assembly seats would be filled by direct election, with a further 25% of the entire quantity should be chosen using the List

¹⁰⁷ AIR 1996 SC 3081.

¹⁰⁸ AIR 2014 SC 5044, 5045, 5078.

¹⁰⁹ Notice of Motion, Association for Democratic Reforms v. Union of India & Anr. 2014, https://adrindia.org/sites/default/files/ADR_Writ_Election_Expnditure.pdf, last visited July,18, 2021.

¹¹⁰ Supra 111, at para 55.

¹¹¹ Ibid.

Scheme.¹¹² The List Scheme was designed to view the whole country as a sole unit, after the LCI reversed its previous position on regional entities.¹¹³ The Lok Sabha seats were to be frozen for 25 years, according to the R.P. Act, 1951, First Schedule. A constitutional amendment was enacted as a result of this. Article 81, clause 3 should be amended to lock the current Lok Sabha seats until 2025, rather than the year 2000.¹¹⁴

The Law Commission also proposed an alternate election system in which a winner must get 50% of legitimate votes plus one (50 percent +1) in his / her constituency. Experts believed that this change, along with negative vote, would assure “election purity, excluding criminals and other undesirable elements, and serving to diminish the role and importance of caste and religion.”¹¹⁵ Voters would be allowed to vote down unpopular candidates put forward by political parties. The Commission believed that in such an environment, political parties and politicians would appeal to a broader voter base with their “ideologies and programmes rather than caste or religious vote banks.”¹¹⁶

(b) **Electoral Disqualification (2014):** The Law Commission examined the problem of electoral disqualifications in its 244th Report on Electoral Disqualification (2014)¹¹⁷, which was relied on the decision of the Supreme Court in PIL “*Public Interest Foundation & Ors. V. Union of India and Ors.*”¹¹⁸ Only two political parties responded to the report’s first consultation paper, according to the report’s opening chapter, one of which being Welfare Party of India. Only two political parties and three local parties responded to the second discussion paper, along with the “*Zoram Nationalist Party*” and the “*People’s Party of Arunachal Pradesh.*”¹¹⁹ The LCI gave suggestions on ‘disqualification’ requirements and if fraudulent affidavits shall be used as a grounds for such ‘disqualifications.’¹²⁰ First, the LCI considered whether applicants should be ‘disqualified’ if they are convicted of police charges or if charges are framed against

¹¹² Supra 111, at para 9.1,

¹¹³ Id., at para 9.8

¹¹⁴ Id., at para 9.9

¹¹⁵ Id., at para 9.29

¹¹⁶ Id., at para 8.5

¹¹⁷ Law Commission of India, Government of India, *170th Report on Reform of the Electoral Laws*, 1999, <http://lawcommissionofindia.nic.in/lc170.htm#> at para 9.1, last visited on July, 19, 2021.

¹¹⁸ *Public Interest Foundation & Ors. v Union of India and Anr.*(W/P Civil No. 536 of 2011) quoted from Law Commission of India, Government of India, Report No. 244: Electoral Disqualifications, 2014.

¹¹⁹ Jagdeep S. Chhokar, “*Revisiting India’s electoral reforms*”, <<http://www.livemint.com/Opinion/VJe9yfsux8vLD33rOgOn0N/Revisiting-Indias-electoral-reforms.html>> (accessed on 18 July, 2021.)

¹²⁰ Supra 121, at 50-54.

them, concluding that “disqualification upon conviction has proven to be incapable of curbing the growing criminalisation of politics” due to trial and conviction delays.¹²¹ The LCI also believed that dismissal at the phase of filing charges in a police report was improper owing to insufficient judicial scrutiny at that time. This had “great promise in limiting the development of criminalization of politics” provided legal protections against abuse were in place.¹²² To avoid abuse, the LCI recommended that only offences with a maximum penalty of five years or more be included, that charges brought up to one year since the date of investigation of nominees for an electorate be ignored, and that the clause be in effect until the trial judge acquits the defendant or for a six - year period, whichever comes first. If charges are filed against ‘*MPs or MLAs*’, the proceedings must proceed on a daily basis and be completed within a year.¹²³ When it came to whether submitting completely bogus affidavits should result in disqualification, the Commission felt that there were inadequate regulatory protections and strongly suggested amending the R.P. Act, 1951 to include strengthened sentences of at least two years, to also include guilty verdict U/s 125 A as one bases for ‘*disqualification,*’ and to include submitting inaccurate affidavit as corrupt practice u/s 123 of R.P. Act, 1951. The LCI also requested a week between the final day for nomination and the day of paper examination to allow for “filing of objections to nomination documents.”¹²⁴

(c) ***Electoral Reforms (2015):*** The 255th Report on Electoral Reforms (2015)¹²⁵ of the Law Commission was published a year later. The Commission’s suggestions on election funds says that election costs should be recorded from the date of notification, not just certain date of nomination, and that companies who make political donations should gain permission from their ‘*Annual General Meeting*’, not only the ‘*Board of Directors*’.¹²⁶ The Commission concluded that proportional voting was fairer as an election system, but the “First-Past-The-Post system” (hereinafter, FPTP) was more steady. Other countries’ experience revealed that changing the electoral system would require India to mix direct and indirect elections, which would result in an increase in the

¹²¹ Ibid, at 50

¹²² Id

¹²³ Id

¹²⁴ Id

¹²⁵Law Commission of India, Government of India, *Report No. 255: Electoral Reforms, 2015*, <http://lawcommissionofindia.nic.in/reports/Report255.pdf>, 2015, last visited on July, 19,2021.

¹²⁶ Supra 128, at 215.

number of Lok Sabha seats, which “raises worries about its efficient functioning.”¹²⁷The LCI also recommended that ECI be strengthened¹²⁸, that paid news be prohibited¹²⁹, that opinion polls be prohibited¹³⁰, and that forced voting be prohibited.¹³¹ The report dismissed dismissing elections based on a majority of ‘*None of the Above (NOTA)*’ votes, claiming that “democratic accountability, the motivating factor behind the right to dismiss, can be successfully accomplished by determining the change in democratic horizontal accountability, actual political democratic system, and decriminalisation.”¹³² The LCI also opposed the power to recall, believing that it would result in an “excess of democracy” that would jeopardise the independence of elected candidates and minority interests. It is believed that the right “raises instability and confusion, increases the risks of abuse and exploitation, and is difficult and costly to execute in reality, particularly in an FPTP system.”¹³³ The LCI on the other hand, favoured the use of a vote totalizer in counting to “avoid voter intimidation in regions where voting patterns in each voting centre can be identified” and to combat “fears of bullying and victimisation.”¹³⁴

¹²⁷ Ibid, at 218

¹²⁸ Ibid, at 219

¹²⁹ Ibid, at 219-220.

¹³⁰ Ibid, at 220-221.

¹³¹ Ibid, at 221

¹³² Ibid, at 222

¹³³ Ibid, at 222-223

¹³⁴ Ibid, at 223

**Recommendation by Election Commission and Committees for
Decriminalization of politics.**

1. Disclosure of criminal antecedents of candidate.

At present,

“Rule 4A of the Conduct of Election Rules, 1961, says that each candidate shall file an affidavit (form 26 appended to Conduct of Elections Rules, 1961) regarding (i) cases, if any, in which the candidate has been accused of any offence punishable with imprisonment for two years or more in a pending case in which charge frame has been done by the competent court. (ii) cases of conviction for an offence other than any of the offences mentioned in Section 8 of R.P. Act, 1951, and sentenced to imprisonment for one year or more.”¹³⁵

Furthermore, in accordance with the supreme court’s judgment the Election Commission on March 27, 2003, has issued an order that the candidates shall file an additional affidavit stating (i) information relating to all cases pending in which cognizance has been taken by the court, (ii) assets and liabilities and (iii) educational qualification. The affidavit is given in a form prescribed by the Election Commission of India.

Sec. 125 – A of R.P. Act, 1951 states the penalties for withholding or providing incorrect information on Form 26, which amount to imprisonment of up to six months or fine, or both. ECI in its report of 2004, entitled Proposed Electoral Reforms has noted that “in some cases, the candidates leave some of the columns blank...there have been cases where candidates are alleged to have given grossly undervalued information.”

Therefore, the ECI has made recommendation, in the Proposed Election Reform’s report 2004, that an amendment should be made in Sec. 125 – A of R.P. Act, 1951, which would provide more severe punishment for hiding or giving wrong information on

¹³⁵ Conduct of Election Rules, 1961, Rule 4 A.

Form 26 of Conduct of Election Rules, 1961 for which the punishment shall be of two year and removing the alternative punishment of imposing fine on the candidate.

A report by law Commission on Reforms of Electoral Laws, 1999, proposed that an amendment be made in R.P. Act, 1951, to insert a new section 4A after section 4 to make declaration of assets and criminal cases pending against candidate, and qualification necessary for the membership to the house of People.¹³⁶

2. **Cases pending against the candidate.**

The ECI in its 2004 report has proposed that sec. 8 of the R.P. Act, 1951 should be amended to disqualify candidates who are accused of an offence which are punishable with imprisonment of 5 years or more even when trial is pending for such offence, but the competent court must have framed charges against that individual. It was also suggested by the commission that the candidate could be disqualified if any case is filed against him before six months of election. Furthermore, it was proposed that candidate shall be disqualified if found guilty by a Commission of Enquiry.

The National Commission in chapter 4 of its report has proposed that amendment for sec. 8 of R.P. Act, 1951, that if any candidate is accused for an offence punishable by imprisonment of 5 year or more shall be disqualified on the expiry of a period of one year from the date of charge framed against him, and if not cleared during that one period, he shall remain disqualified until the trial is completed. It was also recommended that if any candidate is convicted by a court of law and punished for six months or more, he shall be disqualified during the period of punishment and additionally six years after his release. Candidate infringing this provision should be disqualified and the political parties who select such individual with having the knowledge of his criminal background, such political parties shall be derecognised and deregistered. The commission also suggested that if any individual is convicted for any heinous crime like murder, rape, smuggling, dacoity, etc., such individuals shall be banned from contesting elections. The last proposal made by the commission was for the establishment of the special courts which shall decide the cases against whom charges are pending and take the matter to special court, which can decide if there was any prima facie case justifying the charge

¹³⁶ CORE – COMMITTEE ON ELECTORAL REFORMS, BACKGROUND PAPER ON ELECTION REFORMS, 7 (The Election Commission of India, 2010)

frame. Special courts shall be constituted at the level of High Courts and the appeal for such decisions shall be made in the Supreme Court.

The Law Commission in its report of 1999 took a separate stand and suggested that sec. 8 of R.P. Act, 1951 shall remain unchanged. And new sec. 8B should be added, which would provide a separate set of penalties for electoral offences and offences having a bearing upon the conduct of election u/s 153 A and 505 of IPC and serious offences punishable with death or life imprisonment. The proposed sec. 8B would provide the framing of charges shall be on the ground of disqualification and this disqualification shall last for a period of five years or till the individual is acquitted of those charges, whichever events happens earlier. If any candidate is found guilty, they shall be disqualified automatically u/s 8.¹³⁷

3. *Curbing the cost or campaigning*

The observation was made by the Indrajit Gupta Committee of state funding of election 1999, and the National Commission to Review the working of the Constitution 2001, that many tools used for election campaigning like wall writing, rallies on public property, use of loudspeakers, are not only expensive but also all these are public nuisance. Restriction over such activities can reduce both the public nuisance and reduction in amount required for contesting elections. Therefore, with respect to these activities the committee has recommended that an appropriate law should be enacted which shall provide penalties or reasonable restrictions for damaging the public or private properties by the candidate, political parties or by their agents through painting of slogans, putting banners, wall writing, hoisting of flags (except at party offices, party offices, public meeting and other specified places) etc.

Developments in Electoral Reforms in India

In general, there are different point of views to look at '*democratic reforms*' in India: one that is necessary to improve the march of '*democracy*' in society, and the other that might jeopardise the democratic endeavour. Currently, the prevailing approach in understanding about political reforms is fundamentally a 'managerial-bureaucratic'

¹³⁷ Ibid at 138

viewpoint that seeks to confine the democratic system for the general public in some way or another. However, any serious debate of electoral reform must always be framed in the context of India's current democratisation process. Any electoral reform movement must prioritise those disorders and malpractices that obstruct the democratic process overhauling the administrative and procedural changes to steer it in the right direction.

Many electoral reforms have been suggested in order to re – establish public faith in the electoral processes. Number of civil society organisations have also done a lot of substantial research in this field of electoral reforms, which has helped considerably in enriching the public debate on the subject. Our recent experience demonstrates the need of developing a political consensus across different political parties on MCC and decriminalisation of politics, so that they do not distribute tickets to the individuals who have criminal backgrounds. The recommendations of different ‘commissions and studies on ‘electoral improvements’ are most suited to managerial-bureaucratic reforms focused primarily at making election administration easier but also limiting the electoral system itself. Some of these suggestions that have been adopted such as planned increase in the ‘*security deposit*’ and require percentage of votes to save the deposit are unquestionably steps in the right direction.

The final finding that emerges from this in-depth examination of the judgements of the Supreme Court, LCI Report, Reports of Committees on Electoral Reforms suggest that it has not been paper tigers but became the conduit for one of the most dramatic democratic transformations in modern Indian history. The democratization process embraced the lower classes who have been excluded from power-sharing and decision-making for generations. In this context, the difficulty of thinking about electoral reforms is to consider measures that will expand and enhance the process for them. In this context, the government has accepted and declared January 25 as ‘National Voter’s Day’ on the 20th of January, 2011.

The ECI has also agreed to launch a nationwide attempt to determine all legal voters who turn 18 on January 1 of each year in all 8.5 lakh polling stations located across whole nation. This commencement is intended to instil in the young a feeling of civic responsibility, strength, pride, and involvement, as well as encourage them to use their newly gained franchised during the elections. ‘New voters’ aged 18 and above shall be registered in voting booths areas around the county as part of the Voters’ Day celebrations.

Elections are essential to democracy, and the constitution contains detailed rules outlining the method for holding elections. It correctly highlights the need of lowering election costs while also recognising the necessity for serious consideration of lowering the number of politicians and parties.

Efforts taken by the ECI to curb Electoral Malpractices

There is widespread dissatisfaction with the use of government cars and apparatus by those in power during elections. This is nothing more than a candidate abusing his or her position. The ECI has prohibited the following acts.

- **Ban on the use of Official Vehicles:**

Use of any kind of official vehicle, personnel or machinery for electioneering. The kind of vehicle used included air, sea or ground belonging to Central or State governments.¹³⁸

- **Ban on Government Advertisements:**

Advertisements at the cost of public exchequer, regarding the achievements of the party or government in power.

- **Ban on Political Announcements:**

The ECI has prohibited candidates from making any financial announcements, laying foundation stones, or promising to build new roads and bridges, among other thing.

- **Ban on Ad – hoc Appointments and Transfers:**

The ECI also prohibits ‘ad – hoc’ appointments in government or public corporations during election seasons, as well as transfers of public employees from one location to another.

¹³⁸T.S. Sankaran, “Electoral reforms: A farce and an opportunity”, (Economic and Political Weekly, Vol. 29, No, 27, 2nd July, 1994, 1635 <<https://www.jstor.org/stable/4401418>> accessed on 19 July, 2021.

- **Ban on unauthorized entry into polling station or place of counting:**

Unless he or she is a minister, a contending candidate, or an approved agent, any unauthorised individual visiting a polling station or location of counting is strictly prohibited by the ECI.

- **Ban on Communal Differences:**

Attempting to exaggerate existing disparities, foster mutual hatred, or generate friction between various castes, communities, religious, or linguistic groupings.

- **Ban on mixing official work with campaign:**

Observing the propensity of political parties and their followers in government agencies, the ECI strongly barred the combination of official employment and election campaigning.

- **Ban on Personal Criticism:**

Other parties' censure, created on unsubstantiated claims or concerning private lives unrelated to the public 'activities' of leaders, employees, or other parties, is forbidden.

- **Ban on Traffic hindrance:**

Traffic obstruction is forbidden in the name of political party rallies and processions during the election campaign.

- **Ban on use of Communal worship in propaganda:**

It is completely illegal to use '*temples, mosques,*' or any other house of worship for electoral publicity, including '*speeches, postures,*' and other forms of electioneering.

- **Ban on using public property for electioneering:**

The ECI has prohibits the use of any *public or private land, building, compound wall,* or other structure without the consent of the property owner for the purpose of raising flags, putting up posters, affixing signs, or writing slogans, among other things.¹³⁹.

ECI has made significant progress in trying to bring election reforms to reality. However, the actual ramifications were quite complex. Since the adoption of the constitution in 1950, the question of electoral reforms has been at the centre stage but the

¹³⁹ Vijya Sinha, "Electoral Reforms", Pioneer (6th Oct, 1994)

reforms can only succeed by interweaving the contemporary political processes with the electorate's experience and expectation from the electoral process.¹⁴⁰

¹⁴⁰ Supra note, 147.

Chapter – V

CONCLUSIONS & SUGGESTIONS

Over the last two decades, the Indian political process has seen an increased participation of candidates having criminal backgrounds contesting the elections. The ECI appealed to the Indian Government on several occasions, asking it to make required amendments in R.P. Act, 1951, to make it even more difficult for people with criminal records to participate in elections for parliament or state assembly, but government decided not to comply. Many ‘*citizen groups, newspapers, and magazines*’ have reported incidents of candidates having criminal antecedents contesting elections because of the lack of a legislative framework to curb the “*criminalization of politics.*” Criminal’s access to electoral politics must be limited at all costs. It will completely degrade the system if it is not controlled. The Parliament has attempted to alter legislation such as the IPC and the R.P. Act, 1951 but the effort has been fruitless. The Supreme Court has also attempted to curb the evil, yet the problem persists. The Court has said clearly that it does not favour the political corruption. It states that people who disobey the law should not be permitted to establish laws. The problem, in fact, has its origins in the country’s democratic structure. A lack of political determination to address the issue persists. Political parties, for their part, do not have faith in carrying out ‘ethical’ conducts during the electoral contests. They should work together to prevent ‘*criminalization of politics*’, the minimum sentence for any electoral offence shall not be less than two years. With the initiative taken by the Supreme Court now the candidates contesting for the election now have to submit the affidavit, in which they have to mention about civil and criminal matters pending against them. And, regardless of whether or not he was tried and/or convicted in a court of law, he should be disqualified if the information provided establishes a criminal case. Special courts should be established to hear cases of criminal offence of people’s representatives. It is necessary to establish special courts to hear cases of criminal offences against people’s representatives.

For the purpose of clarity, electoral malpractices may be divided into three categories b: “rule manipulation, voter manipulation, and voting manipulation.” Modification of rules

refers to the distorting of electoral regulations in order to assist a certain party or candidate in an election. Electoral regulations are influenced to some level in nearly all states, democratic and non-democratic alike, but electoral rule tampering is a kind of electoral malpractice. The voters can be manipulated in two forms “efforts to distort voter’s preferences and efforts to sway preference expression.” Voter’s choices are influenced by a range of illegal campaigning techniques, including misleading campaign tactics, actions that breach campaign finance rules, the use of public funds to promote a candidate or party's campaign, and significant prejudice in media coverage of political parties. These methods are intended to influence voter’s real preferences. The other major method of voter manipulation is to change how voters express their choices at the polling station, either by vote – buying or bullying, in order to increase the vote share of a certain political party.

Electoral Malpractice is a major concern in Indian elections. However, electoral malpractice has largely been dealt with statutory recognition to contain it, it is also a moral question whether political parties should subject the concern of the electoral malpractice to decaying public morality or not.

Indeed, the case of corrupt practise under Sec. 123 is handled similarly to a criminal offence. The burden of proof in an election petition prosecution is the same as in a criminal proceeding, and the election petitioner bears the burden of proof. In a civil trial, the majority of the evidence doctrine states that the accused does not have to lead any defence evidence. It's something you can do if you want to. In a ‘criminal proceeding,’ the “*burden of proof*” of allegation is always to remain silent. The prosecution should demonstrate the defendant beyond a reasonable doubt in a criminal proceeding. When an election petition alleges that a candidate has engaged in corrupt behaviour, the “*burden of proof*” shifts on the returning candidate to deny the allegations. Thereafter, the court must decide whether the election petitioner was involved in the claimed corrupt activity against the returning candidate.

As the watchdog of the constitution the Apex Court has aided the ECI to conducting free and fair elections and have also strengthened the ECI. The various landmark judgments delivered by the Supreme Court have helped ECI to decriminalize the politics in India. The introduction and use of VVPAT with the EVM machine on the day of polling has made the election transparent and had brought faith of people again in

the process of election. The ECI has made many recommendations to the GOI to amend the provision of the “R.P. Act,” 1951, but due to non – willingness of the political parties the amendment could not be done. The decision of the Supreme Court for the candidates for submitting the affidavit during filling of nomination, was also a great initiative by the Judiciary, so that the people come to know the background to whom they are voting and what are their education and financial status at the time of filling the nomination. The direction given to ECI by the Supreme Court for the introduction of NOTA button in the EVM Machine is also a big step in electoral reforms. The NOTA button is placed that if any citizen is not willing to vote any of the candidate for the election, then they have the choice to choose “none of the above”. And votes given to NOTA when counted after polls, will hamper the political parties and they will understand that the people are not happy with their candidate and hence in the next election the political party will choose the candidate who will work for the people.

The ECI introduces MCC in a good faith for carrying out the election in a free and fair manner. But the MCC has remained as a friendly agreement between the political parties and ECI. The status of MCC since 1960 till date is like a formal agreement though the Judiciary has punished the candidate for violating the MCC during the election campaign, but the ratio is very less.

1) Suggestions on electoral system in free and fair manner:

- The ECI faces a difficult challenge in conducting free and fair elections in such a large country. The electoral machinery's success or failure is determined by the competence of election workers and the seriousness with which citizens use their political rights. To strengthen its impartiality and independence, the ECI should create a distinct and independent election department to eliminate unfair activities.
- Individuals with criminal charges or corrupt practises shall not be permitted to campaign in India's elections in order to ensure 'free, fair, and unbiased elections.' To reduce political corruption, election funding should only be distributed through political parties. Furthermore, the media should play a impartial role in guaranteeing free and fair elections and the protection of democracy by disseminating true facts during the elections.
- And within boundaries of the law, every citizen should use his or her voting right without being coerced. The voter's confidentiality should be preserved without being manipulated by anybody. Money power, on the other hand, has a significant impact on voting behaviour. As a result, we must not be lured to misuse our voting rights.

2. Suggestions on Aspects of electioneering and Electoral Machinery:

- Before the polls, all political groups shall be given an equal opportunity to use 'television and radio' for electoral propaganda. The distribution of broadcasting time for electoral purposes should be agreed upon by political parties and the media. With the progress of science and technology, campaigning should be expanded to include the use of social media such as Whatsapp and Facebook to keep voters informed about the election process.
- Free transportation of voters from a candidate's home to a polling booth should be considered as a form of electoral malpractice. For the future, laws pertaining to this electoral malpractice should be updated and made more effective. The

legislation governing the fraudulent practise of giving free transportation to and from polling stations for voters should be amended and implemented.

- To achieve free, fair, and unbiased general elections, the ECI should not give up to undue pressures from the ruling parties to declare the election schedule.

3. Suggestions on Election programme:

- The Elections to '*Parliament and State Legislative*' Assemblies should be held concurrently to reduce the enormous expenditures spent by the political parties and the ECI. As far as feasible, the voting date for Parliamentary and Assembly Constituencies should be the same.
- The ECI shall carefully establish the poll calendar in cooperation with the Central and State Govt., and only the announced holidays should be considered public holiday.
- After the deadline for filing nominations has passed, the nominations should be scrutinised the next day. As a result, the deadline for withdrawing nominations should be shortened by two days, and the electoral campaign should go no more than 15 days.

4. Suggestions on poll:

- Public hearings shall not be held in any polling location throughout the 48 hours period concluding with the time declared for the poll's conclusion. No need to ban on holding the public meetings after the polling is completed, thus, the Acts related to prevention orders after elections should be changed accordingly.
- Voting 'officials' on duty should be permitted to vote at the closest polling station if they are not eligible to vote at the voting place where they are eligible to vote.
- Model code of conduct should be enacted by the parliament as legislation or it should be made a statutory code, so that in case of violation of MCC the candidate

or the political party shall be punished with a ban for one from contesting election for that particular year.

5. **Suggestions on Election Expenses and petitions:**

- Election costs should not be incurred by anybody except the candidate or his electoral manager, according to the law. It is provided a full return of such costs, which should be included in the audited financial statements. As a result, the legal provisions must be spelled out in more depth in order to be effective. Given the current legislative rules governing election expenditures, the ECI should take the appropriate procedures to ensure that election expenses are properly audited.
- The use of big banners, posters, processions, and protests should be restricted in order to decrease election costs. The use of amplifiers for electoral advertising should be restricted on city roads and sidewalks.
- The political decision request ought to be brought promptly to the State's nearest High Court all together for political decision issues to be settled rapidly. Simultaneously with the correction of the constituent law accommodating clear preliminary of political decision petitions by the High Court, Article 324 Clause 1 of the constitution in regards to the arrangement of electing councils for the goal of doubts and questions that emerge out of or in relation with races to 'Parliament and State' assemblies should be adjusted.

6. **Suggestions to strengthen Democracy:**

The following ideas are made in order to strengthen 'democracy,' as well as to address the difficulties that the ECI of India is experiencing.

- The present practice of the selection of CEC who are close to the ruling party must be done away with to guarantee the impartiality of the ECI. The CJI, PM, and the Leader of the Opposition Party in Parliament should form a committee to find persons suitable to the post. The CEC should not be given office of profit after his term of office has finished.

- Without the help of the national and state government's employees, the ECI is now able to update and compile accurate electoral rolls. The ECI should have its own personnel at both the national and state levels to oversee the preparation of electoral rolls.
- The ECI should be granted additional administrative and financial capabilities so that it can better execute its duties and obligations, and it should be recognised as a distinct department to ensure seamless operations in the preparation of electoral registers and election administration.

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