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## **I. INTRODUCTION:**

*The Economic Intelligence Unit (EIU) has released the Democracy Index of 2019 and out of 167 Countries; India has been ranked at the 41st place with a score of 7.3/10. The reason behind its low ranking is the fundamental weakness which the Country is facing due to various reasons. In India, Elections for the Centre are conducted every 5 years, according to a prescribed set of rules and regulations.*

## **II. GOVERNMENTAL STRUCTURE OF INDIA:**

### **II.I Structure of the Union Government:**

India has a Parliamentary form of Government. The President of India is the head of the state and exercises his powers directly or through the officers subordinate to him.

### **II.II Structure of the State Government:**

The State Legislature comprising of Vidhan Sabha and Vidhan Parishad is headed by the Chief Minister of that particular State whose election process is similar to the Prime Minister. The Chief Minister is also responsible for electing the Governor of the State Legislature.

## **III. REQUIREMENTS OF FREE AND FAIR ELECTIONS:**

*The constitution of India has mentioned many requirements for conducting free and fair elections but the major requisites are:*

### **III.I Free And Independent Authority:**

In order to conduct elections an authority is needed; this authority should be independent and free from any political interference.

### **III.II Rules And Regulations:**

The set of rules and regulations required for governing the elections will be held by the authority appointed to conduct the elections.

### **III.III Redressal Mechanism:**

If any doubts or disputes arise during the conduct of elections, a redressal mechanism is needed in order to address those doubts and resolve disputes.

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#### **IV. ELECTION COMMISSION OF INDIA:**

Several methods have been adopted by the lawmakers in order to ensure free and fair elections and one of them is appointing a commission for conducting elections known as the Election Commission of India. Article 324 of the Constitution of India provides for the appointment of EC and vests various functions in it.

#### **V. STRUCTURE OF THE ELECTION COMMISSION:**

The Election Commission was established in 1950 and at that time it had just one member known as the Chief Election Commissioner but later in 1989 before the elections its membership was increased to three members in total but its membership was again changed to one member after the Elections. Later in 1993, it was made a Multi member Commission by adding two more members to it. Now it consists of one Chief Election Commissioner (CEC) and two other Election Commissioners. All three members have the same powers and are appointed by the President of India on the advice of the Council of Ministers for a term of 6 years or they continue their office till the age of 65. The members of the Commission usually are retired IAS officers.

#### **VI. ELECTION:**

Election is the act of choosing an individual usually for holding public office through free will of the people in a Representative Democracy. The Word Election is derived from the Latin verb “*legere*” meaning “*to choose*”. According to Chamber’s Law Dictionary, “*election*” means the public choice of a person for office, usually by the votes of a constituent body. According to Webster’s Dictionary, election connotes the act of choosing a person to fill an office or position by vote. According to Black’s Law Dictionary, “*election*” means the process of selecting a person to occupy a position or office usually public office.

Free and Fair elections constitute the foundation of Democracy which reflects the will of the people. The nature of any particular system of law is a reflection of the spirit of people who evolved it. The Constitution of India preserves the rights of every voter. The Constitutional provisions provide protection as well as freedom of choice to every voter. Art. 14 of the

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Constitution of India read with art. 326 give the voters equality in the form of ‘one person one vote’. When we talk about Electoral reforms then we are not only talking about the fundamental right of millions of voters to have Free and Fair elections but we are also bringing into picture the collective right of those Citizens to have a leader whose credibility is not tainted by any misdeeds. The urgency of Electoral reforms is further aggravated by the fact that every delay in bringing Electoral reforms is infringing the Fundamental rights of Millions of Citizen. In a Democratic Society or Country like India where the people of the Country are considered as Sovereign, which in practical terms is otherwise. Hence it is important to conduct free and fair election so that the people may feel Sovereign in the true sense. ***Thus, the following postulate has to be observed to ensure Free and Fair Elections.***

- 1. Legitimate Process*
- 2. Indicates the Will of the People*
- 3. Acceptability amongst People and Alliances*
- 4. Successful Government*

Here under it is important that the election process in totality should be a legitimate process. So that it shows or indicates the will of the people. Further strict measures should be taken to restrict the practices of booth capturing, threat, coercion, bribery and all other tactics which actually stops a person from freely casting his / her vote or from equally contesting elections with other candidates. Further it is to be pointed out that the result of the elections must be acceptable to people which is possible only if the above-mentioned malpractices related to elections are restricted. Lastly, it is important to note that the party elected should be able to successfully govern the country for a period of 5 years. It should not a create situation where elections are held before the completion of its term as it happened during the rule of BJP under Atal Bihari Vajpayee where he had to vacate his office within a period of 13 days due to passing of vote of no confidence by other parties. Such a situation creates a political crisis which is not a part and parcel of a Democratic Country. A Democratic Country must have a Government which is by the people, of the people and for the people.

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## **VII. HISTORICAL EVOLUTION PRE-BRITISH RULE:**

During the Pre-British rule, a person became a King by either conquest or by the will (choice) of the people thereafter until the dynasty came to an end the succession of kingship was governed by the rule of primogeniture i.e., *the right of the eldest son to become the king*. Further there have been instances when a person was made king out his own strength and skill. the best example of the same can be Chatrapati Shivaji and there have been also cases where the younger son of the king succeeded to the thrown of his father i.e., Chandra Gupta nominated his younger son to become the King due to his ability and skills.

## **VIII. BRITISH RULE:**

During the British rule the turning point came into Constitutional and political history of India where by the 1858 Act led to the dis-allowance of the east India company to exercise the political power in India. Under the Act the Governor General of India was given the power to take the political decision no power was given to the provinces. Then the Act of 1861 introduced a dynamic change which associated Indians in making law for the country. But the power given to the Indians was restricted. Later on, the Morley Minto reforms provided for the representation on the basis of caste, community keeping in mind the empowerment of the minority in India but the process of indirect elections in India did not make the Elected Governmental Officials responsible towards the people as they served the crown and enjoyed their office on the pleasure of the crown. Then the Government of India Act, 1915 was passed to make the officials responsible to the people by introducing the system of Direct Elections.

The said Act which was amended twice in 1916 and 1919 also prescribed the qualifications for being a voter which included academics, paying of taxes etc. Lastly the Government of India Act, 1935 was enacted which led to the preparation of electoral roll on the basis of residence and ownership of property. Further different rules were prescribed for each state or province. His Majesty had the ultimate power to decide for delimiting a constituency, qualification of voter and candidate and other matters related to the same. Further the act just

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looked to promote the idea of democracy but in its essence, it was not democratic because though it provided for the election of Council of Ministers by the people and the Governor was to act in after taking advice from the Council of Ministers. But a lot of power was left on the discretion of the Governor hence making it undemocratic. A vast study of the electoral process in India shows the inclusion of the choice of people from Pre-British Raj for electing their leader and the during the British Raj qualifications of voters and candidates were also laid down, representation of minority was also recognised, the concept of delimiting constituency was also developed which means the process of electoral system was progressing with the passing of each Act. But nowhere there is a mention of anybody which would conduct elections therefore it would be appropriate to say that free and fair elections was myth during the British times as many important decision were left on the whims and fancies of Britishers.

### **IX. POST-INDEPENDENCE:**

After more than 300 Years of British Rule, India achieved independence on the night of 14th August 1947. The main aim of the leaders in post independent India was to conduct free and fair elections and for the said purpose various committees were appointed to advise the government in matters relating to election and also curb the malpractices which were prevalent during the British period. Free and Fair elections is one of the basic element pillar of any Democratic Country so as to achieve this goal the Constitutional advisors submitted its first draft on October,1947 under this the draft XI dealt with Elections. Later on, after a detailed study of the draft by the Drafting Committee they made a revised version of the same under which part XIII dealt with ‘Elections’ which gave all the necessary powers to the Election Commission to conduct Elections

### **X. INDIA’S FLAWED ELECTORAL SYSTEM: AN OBSTACLE TO EFFECTIVE DEMOCRACY:**

In the words of George Bernard Shaw *“Democracy is a form of Government that substitutes Election by the incompetent many for appointment by the Corrupt Few”*. The first General Elections in India were held in the year 1952 and the adoption of Universal Adult Franchise



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was a landmark step for a newly independent and underdeveloped State. It was adopted to further the idea of majority participation coupled with Free and Fair Elections. But in recent years, certain issues regarding electoral process have come up at an alarming trend which if not reformed might jeopardise our Democratic Structure Freedoms. Politics in India was once a moral act, but today it has become full of scandals. There is less passion, colour and earthiness than before. The loss of faith in Politics and De-politicisation due to increasing role of finance, exploitation of electorate (*on the basis of caste and religion*), switching political parties, criminalisation of Politics, Corruption and other such problems have deteriorated our Democratic Structure.

## **XI. CRIMINALIZATION OF POLITICS:**

The Preamble of our Constitution aims to provide ‘*Political Justice*’ to the people. When the criminal elements are becoming a part of the Legislature then securing any form of justice may it be Social, Economic or Political is a hollow promise. The Sovereign of India is being crippled by these criminals by use of threats, fear and violence. It is evident from the declarations made by candidates in the 2009 General Elections which showed that 275 serious criminal cases were pending against 76 of the successful Candidates in the XV Lok Sabha Elections. Over the last two decades the influence of criminals in the political arena has shown a tremendous increase. Earlier these criminal elements used to influence the elections from outside but now they have become a part of it by contesting the elections themselves. Once an accused is elected during the trial period, he uses his advantageous position to dilute the case or pressurizes the Government to withdraw the prosecution against him. In *Anukul Chandra Pradhan, Advocate, Supreme Court vs. Union of India*<sup>1</sup>, the apex court noticed that Criminalization of politics is the bane of Society and negation of Democracy. It is subversive of Free and Fair elections.

In the case of *Dinesh Trivedi, M.P. vs. Union of India*<sup>2</sup>, SC dealt with N.N. Vohra Committee report and its implementation which addressed the problem of the growing nexus

<sup>1</sup> AIR 1997 SC 2814.

<sup>2</sup> (1997) 4 SCC 306.

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among Politicians, Bureaucrats and Criminals and its effects on the Civil Society. The Court further held that an independent body should be formulated to look into the matter and it should also be given necessary powers to investigate into these matters and if feasible establish Special Courts to take cognizance of such matters with the consent of Union Government. The recommendation of establishing Special Courts for the speedy trial of cases against politicians has been repeatedly being brought up by many Committees. The National Commission to Review the Working of the Constitution further improved the above recommendation by suggesting that the Special Courts should be constituted at the level of High Court and their decision should be appealable to the Supreme Court only.

The criteria of being '*convicted*' before being disqualified from contesting elections has also been questioned by various Committees. If the candidate has been charged by the court for an offence whose punishment is 3 years or more then he should be disqualified for 6 years from contesting elections and if the candidate is charged for serious offences like murder, rape, dacoity and other such offences then the disqualification should continue till the case is pending in the Special court and if he is convicted then the ban should continue throughout life. Therefore, the relevant amendments should be made in s.8 of the Representation of People act, 1951. The suggestion given by The Law Commission of inserting section 8B to Representation of People Act, 1951 should also be implemented to cleanse the political arena from weed of Criminalization. In *People's Union for Civil Liberties vs. Union of India*, the Supreme Court held that the criminal antecedents of the candidates including their assets and liabilities should be available to the voters so that they can make a wise decision which serves their best interest. The Voter's Fundamental right to know the criminal antecedents of the Candidates emanates from the Constitution of India and therefore a mere amendment in the Election Laws cannot abridge the right of the Voters.

## **XII. ROLE OF MONEY POWER:**

*"We have rights, as individuals, to give as much of our own money as we please to charity; but as members of Congress, we have no right so to appropriate a dollar of public money."*

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David Crockett, Member of Congress, 1827-31, 1832-35. Human weakness for unaccounted money and wealth has accounted for a fall in moral and ethical values in society. When money enters in politics then it jeopardizes the future of a country especially the poor people which almost account to 70% in India. The contesting of elections in India is very costly affair as the candidates exceed the limits of expenditure in elections by 20 or 30 times as prescribed by the electoral laws.

The Election Commission has fixed expenditure limits for both MP and MLA elections. At present a candidate can spend between Rs. 15-25 lakhs on an MP election and between Rs 5-10 Lakhs for MLA elections. It is further compulsory for every candidate to present his accounts to the election commission at the end of elections if the same is not followed then it is considered as a ‘*Corrupt practice*’ *this has been elucidated by the Supreme Court as follows:*

*“... The object of the provision limiting the expenditure is twofold. In the first place, it should be open to any individual or any political party, howsoever small, to be able to contest an election on a footing of equality with any other individual or Political party, howsoever rich and well financed it may be, and no individual or political party should be able to secure an advantage over others by virtue of its superior financial strength...”*

It is an established fact that all the Candidates without any doubt exceeds the limit prescribed and the same is spent on the transportation which includes the cost of fuel, printed pamphlets, posters, banners, mikes and loud speakers. Further the expenditure includes the buying of tickets, Liquor or food cost which is spent on the voters to buy their votes and also the cost of hiring of muscle men to threaten, intimidate voters which as a whole renders the process of Election unfair. The Supreme Court has held in *L.R. Shivaramagowde vs. P.M. Chandrashekar*<sup>3</sup>, that the Commission can go into the correctness of the account of election expenses filed by the candidate and disqualify a candidate under Section 10A of the Representation of the People Act, 1951 in case the account is found to be incorrect or untrue.

<sup>3</sup> 1998 Supp (3)SCR 241.

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In ***Common Cause vs. Union of India***, the Supreme Court addressing the blatant use of black money in organising election rallies held that in a democracy where rule of law prevail such open show black money cannot be permitted. Any expenditure incurred in an election campaign would be presumed to have been incurred by the candidate. However, they said, an *"entry in the books of account of a political party, maintained in accordance with Section 13A of the Income Tax Act, showing that the party has incurred expenditure in connection with the election of a candidate may by itself be sufficient to rebut the presumption"*.

The question may arise if the limit is prescribed in relation to expenditure, then how the candidates can exceed such limit. The answer to this lies in the section 77 of the Representation of People Act 1951 which provides that money spent by Political parties, friends, supporters will not be included in the expenses of the candidate. Further the other defect of Section 77 is the accounting interval between the date of nomination and the date of declaration of result. Therefore, s.77 of Representation of People Act, 1951 should be amended to include all the expenditures that is incurred during election process and to reduce the burden of the Election Commission during Elections.

***The Indrajit Gupta Committee (1998)*** recommended that the candidates should be given free time on radio, TV and other such means so that they spend less on campaigning. ***The Law Commission (1999)*** further recommended that a National election fund should be created out of the Consolidated fund of India in order to specifically subsidize election expenses and more generally to support legitimate political activity. The suggestion is to pay at the rate of Rs. 5 or 10 for each vote polled by a political party in any Constituency provided they have polled at least 2% of the votes cast. The view of the Goswami Committee on banning corporate or company donations can largely deter the corrupt practices of the political parties. The National Commission to Review the Working of the Constitution has criticised the Goswami Committee Report by saying that it would increase the illegal transfer of money but NCRWC should have also kept in mind that putting ceilings on such donations is also not deterring these Politicians. Therefore, this ban on donations should be implemented and the

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source of income of these Political parties should be state funding and the extravagant show on these Election rallies would be curtailed when the Election Commission takes the advertisement of the political parties in its hands.

### **XIII. FIRST PAST THE POST SYSTEM - (FPTPS):**

In a Parliamentary Democracy a Government is formed when it is chosen by the majority i.e., the candidate that gets the majority votes wins the Election. But here in India it is not necessary that the winning candidate gets the Majority vote 50% such a system is known as FPTP System. The Multiplicity of parties in India has resulted in the majority of Legislators getting elected on a Minority vote i.e., they do not represent the will of the Majority. There are States where 85% to 90% of the Legislators have won on a Minority Vote (*i.e., by having obtained less than 50% of the votes cast*). In many Cases Candidates have won by getting less than 20% of the total votes cast in their constituency. To quote a few examples: in Uttar Pradesh, over the last three Assembly elections an average of only 11% Legislators won on a majority vote. In other words, almost 90% Legislators won on a Minority Vote. The same proportion for Bihar is 18% and 82%; for Madhya Pradesh it is 40% and 60%; for Assam 29% and 71% and for Karnataka 31% and 69%. Only Tamil Nadu displays a different characteristic where a large proportion of Legislators have won on a majority vote 1991 - 90%, 1985 - 83%.

A question may arise as to what has led to the mushrooming of all these Regional Parties. In the Indian Political System there have been two major players namely the Indian National Congress and Bhartiya Janta Party. It seems that all the great and dynamic leaders belonging to these parties have a right to succeed to their parent's chair. This System can be compared to the Law of primogeniture of the ancient times i.e., the right of the son to succeed his father's throne. This System has actually made the Election Political system like a family business whether or not he has the required qualifications. The extensive practice of this system has denied people the right of equal opportunity to contest Elections. Thus, the denial of equal opportunity and non-fulfillment of the goals towards various regions and caste has

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compelled all such people to make their own representative stand in the Election so that at least their aspirations and needs are fulfilled. Lastly, it would be appropriate to state that today we are living in an indirect Monarchy and still call ourselves as the World’s largest Democracy. The Tarkunde Committee spoke of the possibility of adopting the mixed system a combination of the Proportional Representation and Plurality System. The Law Commission of India proposed one major change that the “List System” in addition to the ‘first-past-the-post-system’ being followed presently and the removal of parties securing less than 5% votes. All these recommendations have ignored the ground reality and further it will lead to the formation of weak coalition Governments which in turn will lead to conflict of ideologies. In order to remove the flaws, present in the FPTP system the procedure of alternative voting should be adopted which has also been suggested by the National Commission to Review the Working of the Constitution. In the second approach it may be suggested that the system of Contingent voting can also be followed to show the will of the majority. The system contingent vote is used to elect the President of Sri Lanka and to elect mayors in England.

#### **XIV. CONCLUSION:**

Politics in India was once a moral act, but today it has become full of scandal. Elections are basic means by which the people of a Democracy bend Government to their wishes. In both their symbolism and their reality free elections distinguish democratic regimes. They occupy a prominent place in the Political faith of Democratic orders. The morale of a Democracy depends in part on the maintenance of the belief that elections really serve as instruments of popular Government. ***Based on the above research the following recommendations are being submitted:***

- *In India the concept of negative voting is mentioned under the conduct of election rules, 1961. Due to the exclusion of the option of ‘none of the above’ on the EVM the voter’s right of secret ballot which is guaranteed under section 128 of Representation of People Act, 1951 is being violated. Further it is submitted that such violation is abridging Art. 21 (3) of Universal Declaration of Human Rights and Art. 25 (b) of International Covenant for Civil and Political Rights both has been ratified by India.*

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- *An Independent Body should be established to further the objective given under Article 6 of the United Nations Convention against Corruption to curb the rising corrupt practices in our Country.*
- *To give effect to article 1 clause (b) of United Nations Convention against Corruption, Representation of People Act, 1951 should be amended which provides for returning of assets earned through Corrupt practices.*
- *Election Commission has the power to disqualify a candidate. The High Court and Supreme Court should also be given the power to disqualify under Writ Jurisdiction.*
- *Contingent voting or Alternative voting should be adopted instead of FPTP System.*
- *Section 77 of Representation of People Act should be amended to include all the expenses that are incurred during election process by the candidate for the purpose of auditing and the assessment of assets and liabilities should continue throughout of the Year.*
- *Setting up of special courts for the speedy trial of cases against candidates and elected politicians.*
- *Organizing proper education and training programmes to promote fairness amongst public officials to further the objective of art 7 of United Nations Convention against Corruption.*
- *The Chief Election Commissioner and the Election Commissioners should be elected by a Collegium.*
- *10. The Committees formed to give recommendations on election laws or electoral reforms should be appointed by the independent body mentioned in recommendation no. 2.*
- *The Candidates should be disqualified from contesting elections if charges are framed against him by the Court and not on the basis of Conviction.*
- *Media is supposed to be the watchdog of Democracy hence it should cover real issues effecting people and not indulge in Paid News.*

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