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## **Electoral Reforms and Democratic Consolidation in India**

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### **Abstract**

*There are three important ingredients to democratic consolidation and positive, progressive transformation in India: all inclusive public policy, social-political justice and Electoral politics. Barbara Boxer, Junior United States Senator from California rightly quoted, “we have fought for social justice. We have fought for economic justice. We have fought for environmental justice. We have fought for criminal justice. Now we must add a new fight- the fight for electoral justice.” The electoral justice is a need of today’s modern power-politics. In order to protect the democratic structure from withering out it is necessary to introduce changes that would protect the fundamental machinery of Electoral system which form an essential part of the foundation of democracy. Politics is a way through which a change in society can be brought. In democracy, justice flows through the channels of politics, hence it is to be understood that the Electoral Politics is a soul of a Democracy without which it cannot exist in its true spirit. Legal framework pertaining to the Electoral System demands timely change. This Research paper not only examine the present Electoral system that exists in India but also the need for ‘electoral reforms’ under the shadow of threats like ‘criminalization of Politics’ that Indian democracy is facing. To defend the ideals of democracy, a strong Electoral System is necessary which would facilitate transparent and fearless representation of dreams, aspirations, desires, requirements, needs and voice of people-The Voters. Strong Electoral system is a mechanism which is necessary to strengthen the democratic structure of India and to strengthen the Electoral system timely reforms are necessary which not only would give justice to the people but also to the ideals enshrined in the Constitution of India.*

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### **Part-I**

#### **Political Enlightenment**

*We have fought for social justice. We have fought for economic justice. We have fought for environmental justice. We have fought for criminal justice. Now we must add a new fight- the fight for electoral justice.*

*~Barbara Boxer, Junior United States Senator from California*

The history of India is a history of social contradictions, revolutions and counter-revolutions. History of Indian people is a saga of glory, struggle, survival and success. The concept of “state” around which the concepts of political power, justice, and social welfare roams evolved out of mind-blowing historical drama that the history of India witnessed. Man is a social animal. Since time immemorial he has been living in small groups. The group mechanism is at the very foundation of the growth of human society. The small groups of men gradually evolved into larger groups which

after the invention of farming preferred to settle in fix geographical region. The invention of farming brought revolutionary changes in Indian society; it was a time when the concept of state, citizen, patriotism, power and political community formed. The nomadic groups gradually evolved into political communities. The growth of man as a part of society and political community is significant which laid down the foundation of modern concepts of state and political system. The political history of mankind witnessed different political systems that evolved from time to time in many parts of the world. In case of India which then was known as the land of spirituality and wisdom witnessed empires and emperors. In ancient India, the form of governance was entirely different than what we have today, the status of the kings was hereditary, and even Republic the smritis and sabhas were aristocratic bodies.<sup>1</sup> The ancient India also witnessed Shakya gana-rajya (Shakya's Independent Republican state governed by the ideals of democracy) a unique system of parliamentary as well as participatory democracy. The present political system in India is a parliamentary system of governance which can be defined as a system of democratic governance of a state in which the executive branch procure its democratic validity from and is held answerable to, the legislature (parliament); the executive and legislative branches are thus interconnected.<sup>2</sup> The journey from Monarchical system of Governance to the Democratic system of Governance has been very enlightening and equally challenging. The Britishers played an important role in helping the Indian society to get political maturity by allowing Indians to participate in politics and administration of British India. The mid-night of 15<sup>th</sup> August, 1947 officially ended the British era which lasted for more than 150 years. The independent India gifted herself a great Constitution that not only became a foundation of new Independent India but also the overall governance, administrative and political system. The process of Democratic consolidation which can be defined as a process by which new democracy matures; has been helping Indian Democracy to flourish, grow, mature and enlighten in adverse times while dealing with internal and external eco-socio-political contradictions and hazards. It is pertinent to understand that there are three important ingredients to democratic consolidation and positive, progressive transformation in India: all inclusive public policy, social-political justice and Electoral-Participatory politics. In order to protect the democratic structure from withering out it is necessary to introduce changes which would protect the fundamental machinery of political system which form an essential part of the foundation of democracy. Politics is a way through which a change in society can be brought. In democracy, justice flows through the channels of politics, hence it is essential to understand that the Electoral Politics is a soul of a Democracy without which it cannot exists in its true spirit. Legal framework pertaining to the Electoral System demands timely change and structural amendments to cater the needs of changing political environment. This Research paper not only examine the present Electoral system that exists in India but also the need for 'electoral reforms' under the shadow of threats like 'criminalization of Politics' that Indian democracy is facing. To defend the ideals of democracy, a strong Electoral System is necessary which would facilitate transparent and fearless representation of dreams, aspirations, desires, requirements and needs of people-The Voters. Strong Electoral system is a mechanism which is necessary to strengthen the democratic structure of India and to strengthen the Electoral system timely reforms are necessary which not only would give justice to the people but also to the ideals enshrined in the Constitution of India.

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<sup>1</sup> Altekar, A.S., State and Government in Ancient India, Varanasi, Motilal Banarsidas, 1972, pp80-84.

<sup>2</sup> [http://en.wikipedia.org/wiki/Parliamentary\\_system](http://en.wikipedia.org/wiki/Parliamentary_system), accessed on 29<sup>th</sup> Nov.2014

## **Part-II**

### **The People's Democracy**

***Democracy is when the indigent, and not the men of property, are the rulers.***

*~ Aristotle.*

Democracy is one of the inalienable fundamental features of the Constitution of India and forms part of its basic structure (*Kesavanand Bharati v State of Kerala and Others AIR 1973 SC 1461*). The concept of democracy, as visualized by the Constitution, pre-supposes the representation of the people in Parliament and State Legislatures by the method of election (*N P Punnuswami v Returning Officer Namakkal AIR 1952 SC 64*). For democracy to survive rule of law must prevail and it is necessary that the best available men should be chosen as people's representatives for proper governance of the country (*Gadakh Yashwantrao Kankararao v Balasaheb Vikhepatil AIR 1994 SC 678*). Democracy as rightly defined by Abraham Lincoln is 'Government of the people, for the people and by the people.' Thus the people have a major stake in the functioning of the government, which is a major reason for this system of government thriving in the world. Such a form of government is bound to succeed, as it owes its strength to the popular support of the people. Hearnshaw, while giving the meaning of a democratic state, has said, "A democratic state, in short, is simply one in which the community as a whole possesses sovereign authority, maintains ultimate control over affairs and determines what sort of governmental machinery shall be set up because democracy as a form of state is no merely a mode of government; but is merely a model of appointing, controlling and dismissing the government".<sup>3</sup> India is in fact one of the largest democratic country in the world, a fact in which we pride ourselves. India is the seventh largest and the second most populous country in the world. The world's largest democracy by electorate was created after independence in 1947 under the leadership of the Indian National Congress.<sup>4</sup> In a democratic state people have a right to shape and form the government which comprises their duly elected representatives by way of general elections in which people give vote to the candidate they wish. In a democratic system of governance government can either unitary or federal. In India we have the quasi-federal form having both a government at the center responsible to the parliament and governments in the states elected and equally responsible to their legislative assemblies.

There are basically two types of democracies direct democracy and indirect or representative democracy. In direct democracy common people express their will directly on public or state affairs and it was originated in ancient Greek City States which is also reflected in the political life of Switzerland. In India this type of democracy was evidently prevalent during the Buddhist era. The second type of democracy which is known as indirect or representative democracy is a type of democracy which is prevalent in most of the countries that adopted "Democracy" as a system of governance. In direct democracy, the will of state is formulated and expressed not directly by the people themselves but by their representatives to whom they delegate the power of deliberation, decision making and a power to shape the present and future of a nation.<sup>5</sup> The Election is necessary to set this philosophy into motion. Hence the connection of representation with Electoral system has

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<sup>3</sup>Hearnshaw: Democracy of the Crossways, from R.C. Agarwal, Principles of Political Science (1982) pp. 17, 22

<sup>4</sup> Maya Tudor, The Promise of Power: The Origins of Democracy in India and Autocracy in Pakistan. (Cambridge University Press, 2013): Chapter 5.

<sup>5</sup> R.C. Agarwal, Principles of Political Science, (1982) 296.

been pertinent. The democratic validity can only be judged effectively by way of “universal adult franchise” which is an integral part of Electoral system which is prevalent at present in India. Not only to discover and give justice to the people’s will and aspirations election must be held at regular intervals but also to give people an opportunity to express their approval or disapproval of helmsmanship of key political office. When we study the philosophy of Election in this context it clearly appears to be a method of finding able people who possesses this representative quality.<sup>6</sup>

Sir Winston Churchill once said "Democracy is the worst form of government, except for all those other forms that have been tried from time to time." The Democratic form of government is indeed far better than autocratic, communist, and monarchic form of government. Before independence there was restricted franchise and denial of political rights to the illiterate or weaker section or gender of society in the country. Individual freedom given in democratic fabric of the nation offers opportunities to commonest of the men to develop and grow. This is the indication of democratic values granted under the Indian constitution.<sup>7</sup> It is also necessary to quote Mr. M.K.Gandhi, in his autobiography, “My experiments with truth”, that, “To safeguard democracy, the people must have a keen sense of independence, self-respect and oneness and should insist on choosing as their representatives only such persons as are good and true”.

The grand philosophy of Democracy would be a total failure if people are not given opportunity to express their will in the form of ballot. The Electoral system in India can be described in a single sentence which is- “One man, One vote, One value.” It is to be clearly understood that only free and fair elections to the various legislative bodies in the country can give the guarantee of the growth of a democratic polity.<sup>8</sup>

The participatory democracy that gives equal right and power of voting to every citizen of India in the form of Adult Franchise proved to be a revolutionary right that changed erstwhile undemocratic, monarchic systems of Government that India witnessed from time to time.

### **Part-III**

#### **Electoral System in India**

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

*~ Gerald F. Lieberman*

India is a constitutional democracy with a parliamentary system of government, and at the heart of the system is a commitment to hold regular, free and fair elections. General Elections serve an important purpose of regulation of public policies, mobilization of public opinion and institutionalization of political participation.<sup>9</sup> These elections determine the composition of the government, the membership of the two houses of parliament, the state and union territory legislative assemblies, and the Presidency and vice-presidency. Elections are also held for local bodies such as municipalities, municipal corporations and village panchayats. It is held by political

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<sup>6</sup> Carl. J. Friedrich “Constitutional Government and Democracy” IV Ed. (1974) 279.

<sup>7</sup> R.K. Bhardwaj, Concept of Democracy, (1980) 1.

<sup>8</sup> M.P.Jain, Indian Constitutional Law, Butterworths and Wadhawa, Reprint 2012, p.872

<sup>9</sup> For a theoretical discussion, see: Rajni Kothari, Politics in India (Boston, Little Brown & Co., 1970) pp 1-20.

scientists that the periodic general election has a significant impact on the process of modernization.<sup>10</sup> In Indian context a great majority of election battles undertaken are based on sociological and other local issues including the national priorities and issues altogether.<sup>11</sup> The elections are held on the basis of universal adult franchise which means all Indians of 18 years of age and above have the right to vote irrespective of their caste, creed, colour, religion, sex, gender or place of birth. Electoral system is complex independent machinery either efficiency or failure of which is capable enough to create a direct impact on the Democracy of India at large. Election is a very complicated exercise which governs by the constitutional norms and rules.

**3.1 Voting system in India:** It is a concept that elaborates the idea that all citizens have a right to participate in the decision-making processes that further lead to adoption of policies that are applicable nationwide.<sup>12</sup> The voting preference of the electorate concerning political parties and the individual choices of electorate in making the selection of their representatives- either of political parties or independent candidates is a process of conversion of wish of a common man into specific political decisions.<sup>13</sup> The Voting system prevailing in India is “The First Past the Post system” which is the simplest form of plurality/majority system that uses single member districts and candidate-focused voting mechanism. The voter is given the list of names of the nominated candidates and votes by choosing one, and only one, of them. The winning candidate is simply the person who wins the most votes; in theory he or she could be elected with two votes, if every other candidate only secured a single vote. The choice to use FPTP system of voting was not made in haste by India’s constituent assembly. Various systems of proportional representation were considered given India’s extremely diverse and multi-ethnic society, but FPTP was chosen, mainly to avoid fragmented legislatures and to help the formation of stable governments—stability being a major consideration in a country emerging from immediate post-colonial communal bloodshed and with widespread poverty and illiteracy. In Indian context it is seen that for a period of 20 years, from 1977 to 1997, the FPTP electoral system seemed to have guided well in an era of instability, principally because of the formation of coalitions without common principles and the pursuit of narrow self-interest by political parties. The FPTP electoral system is often said to work best in countries where there are two major political parties. In India, by contrast, the Congress Party ruled continuously at the centre from 1952 to 1977 without any strong opposition. This monopoly ended in 1977. From single-party dominance, the pattern on the political field changed, first to one of a competition between a single party and a coalition of parties, and from there to a competition between two coalitions of political parties till present day where BJP has won the majority single handed. In India, there are several instances of political alliances made by parties including the then ruling congress and even instances of break-down of such alliances in a short span of life for e.g. the present case of break-off of 25 years old BJP-Shivsena alliance in Maharashtra is worth to take note of. However, it is to be noted that FPTP system is not flawless or foolproof. The biggest problem

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<sup>10</sup> Rudolph and Rudolph, *Modernity of Tradition*, (Delhi: Orient Longman’s Ltd ; 1969).

<sup>11</sup> Degmar, Bernstorff, “Eclipse of Reddy Raj, the attempted Restructuring of the congress party leadership in A.P.” in *Asian Survey*, Vol. XIII, No. 13:10, October, 1973, pp. 959-79

<sup>12</sup> Article 25 of the International Covenant on Civil and Political Rights; Article 3 of Protocol I to the European Convention on Human Rights; and Article 23 of the International American Convention on Human Rights

<sup>13</sup> Russell J. Dalton, *Citizen Politics in Western Democracies* (New Jersey, Catham Publishers INC. 1998). P 127.

seems to be policies designed and implemented only to benefit few sections of society or government functioning only for certain sections and not all, hence the problem of non-all-inclusiveness still remains a big question.

**3.2 Election and Electoral Laws:** The huge and complex election mechanism which is responsible for future of democracy is govern by the laws validity of which sourced out from the constitution of India. The Constitution has created an independent Election Commission of India in which vests the superintendence, direction and control of preparation of electoral rolls for, and conduct of elections to, the offices of President and Vice-President of India and Parliament and State Legislatures (Article 324). A similar independent constitutional authority has been created for conduct of elections to municipalities, panchayats and other local bodies (Articles 243 K and 243 ZA).

The authority to enact laws for elections to the offices of President and Vice-President and to Parliament and State Legislatures has been granted by the Constitution in Indian Parliament (Articles 71 and 327). Laws relating to conduct of elections to municipalities, panchayats and other local bodies are made by the State Legislatures (Articles 243 K and 243 ZA). All doubts and legal disputes relating to the elections to the office of President and Vice-President are dealt with by the Supreme Court (Article 71). The initial jurisdiction to deal with all doubts and legal disputes relating to the elections to Parliament and State Legislatures vests in the High Court of the State concerned, with a right of appeal to the Supreme Court (Article 329). The disputed matters relating to elections to municipalities, etc. are decided by the lower courts in accordance with the laws made by the respective State Governments.

The law relating to the elections to the offices of President and Vice-President of India has been enacted by Parliament in the form of Presidential and Vice-Presidential Elections Act 1952. This Act has been supplemented by the Presidential and Vice-Presidential Elections Rules 1974 and further supplemented by the Election Commission's directions and instructions on all aspects. Conduct of elections to Parliament and State Legislatures are governed by the provisions of two Acts, namely, Representation of the People Act 1950 and Representation of the People Act 1951. Representation of the People Act 1950 primarily deals with the matters relating to the preparation and revision of electoral rolls. The provisions of this Act have been supplemented by detailed rules, Registration of Electors Rules 1960, made by the Central Government, in consultation with the Election Commission, under Section 28 of that Act and these rules deal with all the aspects of preparation of electoral rolls, their periodic revision and updating, inclusion of eligible names, exclusion of ineligible names, correction of particulars, etc. These rules also provide for the issue of electoral identity cards to registered electors bearing their photographs at the State cost.

**Indian Penal Code, 1860 have following provisions that directly deals with the offences related to Election:** 171G. False statement in connection with an election.-Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with fine.

171H. Illegal payments, in connection with an election.-Whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees:

Provided that if any person having incurred any such expenses not exceeding the amount of ten

rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

171-I. Failure to keep election accounts.-Whoever being required by any law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at or in connection with an election fails to keep such accounts shall be punished with fine which may extend to five hundred rupees.

505. Statements conducing to public mischief.-

- (1) Whoever makes, publishes or circulates any statement, rumor or report,-
  - (a) with intent to cause, or which is likely to cause, any officer, soldier, sailor or airman in the Army, Navy or Air Force of India to mutiny or otherwise disregard or fail in his duty as such or
  - (b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or
  - (c) With intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both.
- (2) Statements creating or promoting enmity, hatred or ill-will between classes.-Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.
- (3) Offence under sub-section (2) committed in place of worship, etc.-Whoever commits an offence specified in sub-section (2) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

Exception.-It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, rumour or report, has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it in good faith and without any such intent as aforesaid.

**Comments:** The ideal equilibrium of rights and duties, the balance of structure and safety is nicely achieved by enacting penal provisions corresponding the constitutional and legal provisions pertaining to the Elections. However, in spite of stringent penal provisions successful attempts have always been made by the contesting candidates to disgrace the Indian Democracy by resorting to the illegal, corrupt practices. Election is an only way to reach the power sector where decisions of national/state importance are taken, it is a way to be a part of a machinery that make the policies to run a nation/state, winning an election is a way to become a member of Parliament or Legislative Assembly that in itself grants a kind of VIP status to the winning candidate. In short, winning an election has become nothing but a quickest way to attain maximum power. The nature of a human being is highly volatile and unpredictable as the history of mankind has witnessed from time to time that man can go to any extent to achieve the ruling power.

## Part-IV

### Criminalization of Politics- A Curse to Democracy

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

~ *John Dingell*

Apart from the dark shadow of terrorism, prevailing social inequalities, communal tensions, severe economic disparities and demon of poverty the most serious problem being faced by the Indian democracy is criminalization of politics. At times, the concern has been expressed from time to time against this obnoxious cancerous growth proving fatal to electoral politics in India.<sup>14</sup> Purity and sanctity of electoral process appears to have lost in view of the entry of a large number of MP's and MLA's with serious criminal records in the supreme legislative bodies at central and state level. Sri G.V.C Krishnamurthy, former election commissioner has clearly pointed out that almost forty members facing criminal charges were the members of the Eleventh Lok Sabha and seven hundred members of similar background were in the state legislatures.<sup>15</sup> It has been well stated by the Presidential message to the nation on 14 Aug. 1989 which emphasizes: The use of money or muscle power and the totally unacceptable practices of voters' intimidation and booth capturing offend the very foundations of our socio-economic order.<sup>16</sup> It is now often seen that the number of election offences has gone up in recent years and politics and elections have been severely criminalized because of the entry of people with criminal background.<sup>17</sup> In past, criminals usually worked behind the scene but now they; apart from extending indirect help contest the elections and also become ministers.<sup>18</sup> In a general election, Seshan, the Chief Election Commissioner (as he then was) demanded re-election in five parliamentary and fifteen assembly constituencies of UP and Bihar because of booth capturing and violence.<sup>19</sup> It is also true that Bihar, Uttar Pradesh and Andhra Pradesh have been famously notorious for electoral malpractices and crimes like rigging, threatening, booth capturing, and booth vandalizing etc.<sup>20</sup> while stating the wreckage of democratic polity Mr. GRS Rao quoted:

Hundreds of criminal groups with an average strength of 500 each, few of them on bail, millions of licensed and unlicensed and indigenous weapons apart from vast quantities of ammunition and bombs constitute an integral part of the election-scenario in states like UP and Bihar in particular and others in general. Gruesome murders of party workers and candidates have become common place making it look like our internal threats and challenge to democracy are far more deadly than

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<sup>14</sup> Vohra Committee Report

<sup>15</sup> Rabi Roy, “Electoral Reforms: Need of the Hours,” 13 *Politics India*, 7 at 8 (1998)

<sup>16</sup> Taken from R.Y.S. Peri Shastry, *Elections: A Code of Conduct for Contestants*, XXXVII *JPI*, 153 at 157

<sup>17</sup> Editorial, *Criminalization of Elections*, *C & MLJ*, 5 (1996).

<sup>18</sup> S.N. Sharma, *Booth Capturing: Judicial Response*, 41 *JILI* (1999), 44 at 45-46

<sup>19</sup> Meenu Roy, *Chief Election Commissioner's Controversial Role in Election – 1991*, 25 *JCPS*, 67 at 72

<sup>20</sup> *Ibid* at 74



the external.<sup>21</sup> He further stated that of the 14,000 candidates in one general election as many as 1500 candidates had a record of violent crimes, such as, murder, dacoity, rape, robbery or extortion. The two states, UP and Bihar accounted for 870 candidates with such a criminal record<sup>22</sup>.

National Commission on the review and working of the Constitution notes:

A stage now has reached when the politicians like one of the Bihar's Ministers that openly boast of his criminal connections in his statement in the assembly openly said that he patronized and would continue to patronize gangsters to fight and win elections is a pointer to the growing phenomena where criminal background has become an invisible requisite to win elections.<sup>23</sup>

The Hon'ble Supreme Court in *K. Prabhakaran V P. Jayarajan*<sup>24</sup> has opined that the purpose of enacting disqualification under section 8(3) of the Representation of People Act is to prevent criminalization of politics. Chief Justice R.C. Lohati speaking for the majority observed:

Those who break the law should not make the law. Generally speaking the purpose sought to be achieved by enacting disqualification on conviction for certain offences is to prevent persons with criminal background from entering into politics and the house – a powerful wing of governance. Persons with criminal background do pollute the process of election as they do not have many a holds barred and have no reservation from indulging into criminality to win success at an election.<sup>25</sup> It also noted that disqualifying persons with criminal record or those with dubious distinction is a very complex issue and efforts should be made to prevent persons with criminal background from contesting the elections.<sup>26</sup>

To have a clearer understanding about the immoral, criminal practices prevailing in India during the period of Election It is pertinent to study how Sec. 123 of the Representation of the People's Act, 1951 classified various criminal offences pertaining to the Elections.

#### **4.1 Corrupt practices in Election:**

Section 123 of the Representation of the Peoples Act, 1951 enumerates the corrupt practices for the purposes of Act, 1951. These are:

1. Bribery;
2. Undue influence;
3. Appeal by a candidate or his agent or by any other person with the consent of the candidate or his election agent to vote or refrain from voting on the ground of his religion, race, caste, community or language etc;
4. Promotion of or attempt to promote feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community or language;
5. Propagation, commission or glorification of the practice of sati;

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<sup>21</sup> GRS Rao, *Electoral Reforms: Touchstone of the Basic Process of Power*, 3 *Politics India*, 18 at 20 (1998).

<sup>22</sup> *Ibid* at 20-21, Nearly 700 out of 4072 were involved in crimes and trials pending against them in 25 states and union territories

<sup>23</sup> B.P.C. Bose & MVS Koteswara Rao, *Criminalisation of Politics: Need for Fundamental Reform LXVI IJPS*, 733 at 734

<sup>24</sup> AIR 2005 SC 688.

<sup>25</sup> *Ibid* at 705.

<sup>26</sup> Larrdis, *The First Report of the Ethics Committee of Rajya Sabha, XLV, JCPS*, 21-27, 23-24

6. Publication by a candidate or his agent, etc., of any statement of fact which is false or defamatory;
7. Hiring or procuring of vehicles or vessel for the free conveyance of voters;
8. Incurring or authorizing of expenditure in contravention of Section 77 i.e., in excess of the amounts prescribed;
9. Obtaining or procuring any assistance from any person in the service of the Government;
10. Booth capturing by a candidate or his agent or other person.

**Bribery as a corrupt practice is defined as under:**

- (A) Any gift, offer or promise by a candidate or his agent, or by any other person with the consent of a candidate or his election agent, of any qualification, to any person whomsoever, with the object, directly or indirectly, or inducing
- a) a person to stand or not to stand as, or to withdraw or not to withdraw from being, a candidate at an election, or
  - b) an elector to vote or refrain from voting at an election, or as a reward to
- i) a person for having so stood or not stood, or having withdrawn or no withdrawn his candidature, or
- ii) an elector for having votes or refrained from voting.
- (B) The receipt of, or agreement to receive, any qualification, whether as a motive or a reward
- a) By any person for standing or not standing as, or for withdrawing or not withdrawing from being, a candidate; or
  - b) By any person for whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting or any candidate to withdraw or not to withdraw his candidature.<sup>27</sup>

**Comments:** The entry of criminals in election politics must be stopped at any cost. If it is not checked it, will destroy the system totally. Considering the facts and scenarios discussed so far in this paper, it is necessary to understand that the need to reform the entire Electoral system has become a need of a moment. From time to time it has been seen that the loopholes available in the present system of Electoral Laws help the criminals to get away with the clean hands. According to CBI report to the Vohra Committee, “all over India crime syndicates have become a law unto themselves, even in the smaller towns and ruler areas muscle man becomes the order of the day.” And the reflection of this can be found not only in election to House of people or State Legislature but even in at the ground level of corporation elections as well.<sup>28</sup> The nexus between the criminal gangs, police, bureaucracy and politicians has come out clearly in various parts of the country<sup>29</sup> which not only challenged the legitimacy of present electoral system but also the Democracy at large. Healthy political system is a sign of healthy process of “Democratic consolidation”. Under no circumstances a country like India could afford to stall this process. Democratic Consolidation is a base of mature political community upon which the social growth of India as a nation depends.

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<sup>27</sup> Jain, Kiran and Jan P.C. 1998, op. cit.

<sup>28</sup> Sakal Times – Tuesday , Feb.21,2012, Ed.Pune

<sup>29</sup> National Commission To Review The Working of the Constitution, Review of Election Law, Processes and Reform Options, 2001

## Part-V

### Electoral Reforms- Essential for Democratic Consolidation

*“Whoever wishes to foresee the future must consult the past; for human events ever resemble those of preceding times. This arises from the fact that they are produced by men who ever have been, and ever shall be, animated by the same passions, and thus they necessarily have the same results”.*

~ *Machiavelli*

Every now and then during the period of elections the news of malpractices and illegal activities flash in the media. Election commission has been conducting elections since years; however it has miserably failed to conduct in free and fair manner in an healthy environment. Be it a Parliamentary Election, Legislative Election, Corporation Election or Panchayat or Zilla Parishad; not a single election has ever been freed from criminal elements. Money power, Muscle power, Media power, notion of caste supremacy, religious feelings rules the elections. Trillions of Rupees are being spent unofficially all over India in an election which is far more than the amount permitted by Election Commission to be spent in Elections by the candidates. Media houses are being strategically hired to propagate the candidature of a candidate. Social Media is being extensively used (as seen in present Election) to promote the political parties, their candidates and agendas. It seems heavy backing of Money, Muscle and Media are the prerequisites for contesting any level of election in India. A common man is a focal point of Democracy, however, in this entire grand exercise of Elections what is missing is the active presence of common man simply because instances of Booth capturing, Tampering with voting machines, Kidnapping, Threatening, Distributing money, liquor and gifts, False political promises, Lack of honest political representation and many more extrajudicial, illegal activities pertaining to the elections evidently destroyed his trust in Electoral system.

In order to restore the lost faith of people in Electoral system numerous electoral reforms have been recommended from time to time by various Election Commissions and a number of formal-informal group discussions at various public forums and by individuals that have specifically pointed out the problem areas in the electoral system. The Joint Parliamentary Committee on Amendments to Election Law (1971-72), the Tarkunde Committee Report of 1975, the Goswami Committee Report of 1990, The Constitution Bill 1994 and the Representation of the People (Second Amendment) Bill, 1994 (passed by Parliamentary), the Election Commission's Recommendations in 1998 and Indrajit Gupta Committee Report of 1998 etc. produced comprehensive set of recommendations regarding electoral reforms. Many of the recommendations of the committees are being accepted and implemented. It was under the leadership and chairmanship of the then Chief Election Commissioner Mr. T.N.Seshan many electoral reforms were fearlessly initiated.

**It is pertinent to take a look at the reforms that tried to change the course of wind to safeguard the ship of Democracy. List of reforms is as follows:**

1. Voting age lowered from 21 to 18 which have considerably helped to increase the number of votes and confidence among them.
2. Increase in Deposit amount evidently stopped non-serious candidates from contesting the Election.
3. The photo identity cards issued to annihilate the bogus voting attempts.

4. Introduction of Electronic Voting Machine proved as a deterrent to any attempt of booth capturing, rigging and bogus voting. In the long run, the EVM will prove to be very cost effective.
5. If any discrepancy is found between the number of votes polled and number of total votes counted the Returning officer is duty bound to report the matter to the Election Commissioner.
6. The EC has taken several new initiatives in the recent past as a use of state owned Electronic Media for broadcast or telecast by political parties, checking : criminalisation of politics, providing with electoral identify cars, streamlining the procedure for registration of political parties and requiring them to hold regular organizational elections, a variety of measures of strict compliance of Model Code of Conduct for providing a level playing field to contestants during the elections, and so on.<sup>30</sup>
7. Model code of conduct for political parties and political leaders.

**5.1 Proactive role of Judiciary:** The Judiciary is well aware of the menace of criminalization of politics hence brought a major electoral reform by way of revolutionary pronouncements. In *Deepak Ganpat Rao Salunke V state of Maharashtra*.<sup>31</sup> The Deputy Chief Minister of Government of Maharashtra in a public meeting made the statement that if Republican Party of India supported the Shivesena BJP alliance in the Parliamentary Election he would see that a member of RPI was made Deputy Chief Minister of the State. It was held by the hon'ble court that the above statement did not amount bribery as defined under section 171 B as the offer was made not to an individual but to RPI with the condition that it should support BJP-Shivsena alliance in the election. Thus seeking support of a political party in lieu of some share in the political power does not amount gratification under S. 171-B of the Penal Code.

In *Raj Deb V Gangadhar Mohapatra*<sup>32</sup> a candidate propagated that he was Chalant Vishnu and representative of Lord Jagannath himself and if any one who did not vote for him would be sinner against the Lord and the Hindu religion. It was held that this kind of propaganda would amount to an offence under S. 171 F read with S 171C.

In *T.R. Balu V S. Purushthoman*<sup>33</sup> it was alleged in the election petition that the returned candidate had a bigamous marriage and it was admitted by him through an affidavit submitted at the time of filing the nominations. Hence, his election should be declared void. Madras High Court upheld the election on the ground that the returned candidate was never prosecuted nor found guilty or punished for it.

In the case of *Association for Democratic Reforms*<sup>34</sup>, the judiciary brought about a major electoral reform by holding that a proper disclosure of the antecedents by candidates in election in a democratic society might influence intelligently the decisions made by the voters while casting their votes. Observing that casting of a vote by a misinformed and non-informed voter, or a voter having a one sided information only, is bound to affect the democracy seriously, the Hon'ble

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<sup>30</sup>Prakash. Chandra (1999). *Changing Dimensions of the Communal Politics in India*, Delhi, Dominant Publishers

<sup>31</sup> (1999) Cr LJ 1224 (S.C.).

<sup>32</sup> AIR 1964 Ori. 1.

<sup>33</sup> AIR 2006 Mad. 17.

<sup>34</sup> *Union of India v. Association for Democratic Reforms and Anr.* (2002) 5 SCC 294.

court gave various directions making it obligatory on the part of candidates at the election to furnish information about their personal profile, background, qualifications and antecedents. Hence the principle of transparency was established.

In *K. Prabhakaran V P. Jayarajah*<sup>35</sup> the Court considered numerous issues. It took note of the question whether for attracting disqualification under S. 8(3) the sentence of imprisonment for not less than two years must be in respect of a single offence or the aggregate period of two years of imprisonment for different offences. The respondent was found guilty of offences and sentenced to undergo imprisonment. For any offence, he was not awarded imprisonment for a period exceeding two years but the sentences were directed to run consecutively and in this way the total period of imprisonment came to two years and five months. On appeal, the session court directed the execution of the sentence of imprisonment to be suspended and the respondent be released on bail during the hearing of the bail. During this period, he filed his nomination paper for contesting election from a legislative assembly seat. During the scrutiny, the appellant objected on the ground that the respondent was convicted and sentenced to imprisonment for a period exceeding two years. The objection was overruled and nomination was accepted by returning officer on the ground that although respondent was convicted of many offences but he was not sentenced to for any offence for a period not less than two years. The High Court also took the similar view but the Supreme Court by majority took the different view.<sup>36</sup> Chief justice Lohati speaking for the majority held that the use of the adjective “any” with “offence” did not mean that the sentence of imprisonment for not less than two years must be in respect of a single offence. The court emphasized that the purpose of enacting S. 8(3) was to prevent criminalization of politics.<sup>37</sup> By adopting purposive interpretation of S. 8(3), the Court ruled that its applicability would be decided on the basis of the total term of imprisonment for which the person has been sentenced.

It is interesting to note that Supreme Court in *Vidyacharan Shukla V Purushottam Lal*<sup>38</sup> had taken an enigmatic view; V.C. Shukla was convicted and sentenced to imprisonment exceeding two years by the Sessions Court on the date of filing nomination but the returning officer unlawfully accepted his nomination paper. He also won the election although conviction and sentence both were effective. The defeated candidate filed an election petition and by the time when it came before the High Court, the M P High Court allowed the criminal appeal of Shukla setting aside the conviction and sentence. While deciding the election petition in favour of the returned candidate, the court referred to *Mannilal V Parmailal*<sup>39</sup> and held that the acquittal had the effect of retrospectively wiping out the disqualification as completely and effectively as if it had never existed. However *Vidyacharan Shukla* which had the effect of validating the unlawful action of the returning officer and encouraging criminalization of politics was overruled by *Prabhakaran*. The Supreme Court observed: Whether a candidate is qualified or not qualified or disqualified for being chosen to fill the seat has to be determined by reference to the date for the scrutiny of nomination... The returning

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<sup>35</sup> AIR 2005 SC 688.

<sup>36</sup> The bench consisted of Chief Justice Lohati and Justices S.V. Patil, B.N. Srikrishna, G.P. Mathur, K.C. Balkrishnan. Majority judgment was delivered by Justice R.C. Lohati whereas Justice K.C. Balkrishnan wrote dissenting opinion.

<sup>37</sup> *Supra* note 16 at 705.

<sup>38</sup> (1981) 2 SCC 84.

<sup>39</sup> (1970) 2 SCC 462

officer cannot postpone his decision nor make it conditional upon what may happen subsequent to that date.<sup>40</sup>

In *People's Union for Civil Liberties & Anr. V Union of India & Anr.*<sup>41</sup> It is wisely observed by the Hon'ble court that: "Democracy being the basic feature of our constitutional set up, there can be no two opinions that free and fair elections would alone guarantee the growth of a healthy democracy in the country. The 'Fair' denotes equal opportunity to all people. Universal adult suffrage conferred on the citizens of India by the Constitution has made it possible for these millions of individual voters to go to the polls and thus participate in the governance of our country. For democracy to survive, it is essential that the best available men should be chosen as people's representatives for proper governance of the country. This can be best achieved through men of high moral and ethical values, who win the elections on a positive vote. Thus in a vibrant democracy, the voter must be given an opportunity to choose none of the above (NOTA) button, which will indeed compel the political parties to nominate a sound candidate. This situation palpably tells us the dire need of negative voting".

## **Part-VI**

### **Concluding Observations, Findings and Remarks**

Free and fair Election process is a foundation of healthy democracy. The Democratic future of India depends upon healthy political environment, and to protect it free and fair election process is inevitable. The entry of criminals in election must be restricted at any cost. Shortage of talented, white collared, innocent people in politics will affect the fabric of Democracy of India. A number of commissions and committees have examined the issue of criminalization of politics however the problem is increasing day by day. The parliament has taken efforts by amending the laws but the exercise has proved futile. The Supreme Court of India has also made efforts to keep a check on the evil of criminalization of politics but the problem remains unbeatable, though it had not made any radical suggestion however, whatever suggestions being made are not acceptable to the politicians. There exists a wide gulf between preaching and practice in today's modern political era. Actually the roots of the problem lie in the political system of the country. There is lack of political will to combat the problem. As being said earlier, Election is a soul of Democracy, that not only nourishes the faith of common man in the ideals of democracy but also protect the nation from the threat of authoritarian politics. Weak electoral system is a biggest threat not only to the national integration but also to the Democratic Consolidation of India. The political system of India is gradually maturing. After the adoption of the great Constitution, it was for the very first time that the India entered into a true democratic era of politics. The criminalization of politics is not a failure of Constitution, but it is the people of this great nation that fail the great constitution and therefore the need for radical Electoral Reforms is felt today than ever before in the history of independent India. Electoral Reforms of radical nature can only save this glorious nation from political deterioration. Sanctity and purity of Elections must be protected at any cost as the future of India depends on it. Considering the widespread venom of criminality in Indian politics it is necessary that India should take steps on war-footing to initiate the radical electoral reforms in the interest of Democratic Consolidation.

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<sup>40</sup> Supra note 34 at 699; The Court also overruled *Mannilal V Parmal Lal*, (1970) 2 SCC 462.

<sup>41</sup> WRIT PETITION (CIVIL) NO. 161 OF 2004

## **Recommendations**

1. At present Election Commission does not have its own staff. Whenever election takes place the office of Election Commissioner has to depend on staff of central and state governments. It is recommended that Election Commission should have permanent Electoral administration
2. It is recommended that Chief Election Commission should have independent department to enhance efficiency and impartiality. Political interference and any undue link ups with the office of Election Commission shall not be tolerated.
3. It is recommended that the practice of making polling camps near the polling booths should be immediately stopped.
4. It is recommended that the necessary steps should be taken on war footing to issue Voter's Identity Card to curb the practices of impersonation and bogus voting.
5. It is recommended that the necessary steps should be taken to increase the number of polling booths.
6. It is recommended that the appointment of high level observer should be made on immediate basis.
7. It is recommended that the electoral roll which is sine qua non for pure, free and fair elections be updated with reference to the date of election or by-election.
8. It is recommended that Independent candidate be debarred from contesting election as Independent candidates are often dummy candidates.
9. It is recommended that by way of making necessary amendments in the constitution of India, a presidential rule should be compulsorily brought in a time of election.
10. It is recommended that the voting awareness campaign be initiated to educate the common citizen of India about the importance of voting, democracy and political ethics.
11. It is recommended that the training workshops be organized for Election Candidates to educate them about Electoral laws and Electoral ethics.
12. It is recommended that mass media should be totally kept away from the Electoral process until the day of Election results. It is highly recommended that Pre-Poll Predictions commonly known as Exit Polls or Opinion Polls of Election Results and their broadcasting should be immediately stopped.
13. It is recommended that the restrictions be put on the number of seats from which one may contest.
14. It is recommended that the political advertisements on Television, Radio or Print Media be permanently banned.
15. It is recommended that the prompt action be taken by Judiciary in case of any violation is detected. It is also recommended that one or more "election benches" be introduced in each high court in India to deal with election petitions.
16. It is recommended that the separate courts be established to expedite the matters pertaining to the violation of electoral laws.