

**AN ANALYSIS OF CORRUPT PRACTICES IN INDIAN
ELECTIONS AND THE ROLE OF JUDICIARY**



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Free and fair elections strengthen the roots of democracy. They are sine qua non of a vibrant, living and real democracy. However, conducting free and fair elections has always been like a challenge, which requires a separate, independent and powerful body to hold, supervise, direct and conduct the elections. Present study is an effort to find out the flaws in Indian election laws in order to make a reform in electoral system so that free and fair election can be realized and a healthy democracy may be established.

Present study is divided into **eight chapters**. **Chapter – I** introduces the topic of research. Corrupt practices in terms of electoral offences, bribery, undue Influence, promotion of feelings of enmity or hatred on ground of caste, religion etc., publication of false and defamatory statements, illegal hiring of vehicles for free conveyance of voters, assistance of government servants during election, booth capturing has been discussed under this chapter. Meaning of election, objectives and scope of the study, hypothesis of research, and research methodology have also been discussed in the present chapter.

Chapter – II entitled, “The Electoral Process : Past And Present Scenario” traces the historical, conceptual exposition and present scenario of electoral system. It discusses elections in pre-independent India, elections post-independence, history of electoral process in India – the Indian Councils Act 1909, the Government of India Act 1919, electoral reforms in India, recommendations of electoral reform committees.

Chapter – III entitled, “Election in India: Constitutional Approach” examines critically the constitution of the Election Commission and status of the Chief Election commissioner, jurisdiction of the Election Commission, functions of the election commission viz., preparation of electoral rolls, conduct the elections, preparation and implementation of model code of conduct, order for fresh poll or countermanding, registration of political parties and allotting symbols, election commission as censor, power with regard to officers and employees on elections. Dealing with the jurisdiction and power of election Commission leading judicial verdicts have also been discussed critically under this chapter.

The requirements of a free and fair election, role of Election Commission of India, management of electoral rolls, election expenditure monitoring, universalization of adult franchise, creating awareness for exercise of voting right, capacity building of election administrators, use of electronic voting machine as a necessity for free and fair elections, state level election machinery has been discussed under **Chapter – IV** entitled, “Mechanism for Free And Fair Election”. The role played by judiciary relating to obstacles in free and fair election relating to decriminalization of politics, eradication of communalism, casteism and mushrooming of political parties, muscle power in election, non-serious candidates in political parties has also been discussed. Recent challenges of electoral process relating to campaign controversies, campaign finance, lack of education in politicians, criminals as a bread butter of politicians, negative politics practices, changing characteristics of new voters has been discussed in detail.

Chapter – V, entitled, “Role of Power in Election” analyzes the statistical data relating to abuse of powers in elections. Different committees report on prevention of criminalization of politics have been discussed in detail. The reasons of use of power in politics and criminalization of politics such as vote bank, corruption, loop holes in the

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functioning of Elections Commission, denial of justice and rule of law have been analyzed along with leading judicial verdicts. Legislative control of criminalization in politics, disqualification on conviction for certain offences, and practices of booth capturing have been discussed at length in the chapter.

Chapter – VI under the title, “Role of Money in Election” discusses use of money power in elections. This chapter examines the provisions of statutory laws relating to political finance regulations, controlling money in politics *viz.*, contribution limits, contribution bans, spending limits, campaign time limits, public disclosure of expenditure, public financing, forms of public financing, money to parties, money to candidates, tax incentives, free or discounted broadcast media, and the subsidies. The problems of money in politics as wealthy interests can gain undue influence over the political system, campaign contributions from businesses may lead to corruption in public finances, abuse of state resources, abuse of state resources, influence of foreign funding can threaten the sovereignty of national politics, high levels of campaign spending can make it difficult for new political forces to emerge and vote buying have also been discussed critically with the help of judicial pronouncements.

Sentimental exploitation of voters has been discussed under **Chapter – VII**. Various ways to exploit the voters namely, appeal for vote on charisma basis, caste based exploitation of voters, religious exploitation of voters, spiritual exploitation of voters, linguistic exploitation of voters, symbolic exploitation of voters, exploitation of voters by creating nationalism feelings, performance of the party in power, exploitation of illiterate voters, factionalism in political parties affecting voters, public esteem of the candidate affecting voters, voter’s trust gaining election campaigns have been discussed with the help of relevant statutory provisions and judicial pronouncements.

Exploitation of Voters examines promotion of the feelings of enmity or hatred among different classes of Indian citizens, how the courts have reacted to the publication of false statements made on the eve of an election to jeopardize the prospects of rivals, hiring or procuring of vehicles for voters which also comes under the rubric of corrupt practices, reaction of the court on most controversial aspects of election law *i.e.* expenses in elections. The act of obtaining assistance from government servants was made a corrupt practice to ensure fairness has also been discussed in this Chapter. The rationale behind the provision is to keep government servants aloof from politics and to prevent the machinery of the government being used in furtherance of a candidate's return and also to protect government servants from being pressed upon by those with influence or in a position of authority.

Finally, **Chapter-VII** entitled "Observations and Submissions" sums up the study and offers certain submissions in order to make the working of constitutional and legal safeguards as success.

- **SUBMISSIONS**

This research explores some problem in enforceability and effectiveness of the election laws and provides some submissions on it as under –

1. **Decriminalization of politics : Need of the hour**

There must not be criminalization in politics and the candidate who are having criminal records, they should not be permitted to contest the election but no political party are exception to it. There should be some criteria that may prohibit the politicians to contest the election who are charged with offences moral turpitude and

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all those offences for which the punishment is ten years or more if such person has been chance for that offence.

2. Communalization of politics must be curbed

Now a days, we must have seen that politicians advocate that there should be casteless society but if we see the posters in our city then we could witness the election contested by politicians under the umbrella of 'Brahmin sabha', 'Rajput sabha', 'Dalit sabha', 'Saini sabha', 'Baniya sabha', 'Kashyap sabha', 'Nishad sabha' 'Muslim sabha', 'Hindu samaj sabha' and the like. So all the political parties talk about caste free society but they involved themselves into caste and religion based election and hence society has been divided into caste and religion by political parties just for their own political considerations. So, humble submission is that religion and caste should not be used for electoral gain. These kind of practices during elections must be prohibited. Law should be made in this regard so that during election any religion or caste based assembly may not be organized.

3. Promises affects national financial conditions must be prohibited

It is commonly seen that during election the political parties promises to waive the bank loans and to provide free electricity, water, bus services, construct houses, metro services, laptops and mobiles to their voters. A candidate declaring free for public debts or public dues must be declared disqualified from contesting the election because if he is not in position to make it clear that under what mechanism he would redress public dues, without affecting the government exchequer, then should not be given right to contest the election. If they are promising to provide free electricity etc. to the voters they should not be allowed to pay for that from the money of tax payers but they should be allowed to pay for the same from their own political party funds.

4. Use of black money in election must be checked

On the one hand we advocate the eradication of black money but on the other hand we promote the black money. We could have seen when there was demonetization, the political parties have deposited about hundred crores. Now the question arises that why and what for the political have kept such a huge amount of money with them. If they have received the donations, that must be deposited into the bank and if there is any expenditure they can draw it from bank. So, to curb the use of huge amount of black money in the election must be checked by enacting an effective law. Political parties should not be allowed to receive cash amount from anyone. The fund of political parties must be strictly audited.

5. Government sponsored advertisements before elections must be prohibited

The government uses the public money or the money of that government in the advertisement in the name of sponsoring schemes. There should be ban on the government sponsored advertisements before one year prior to elections. It is a matter of discussion that what is made or done by the government before elections should or shouldn't be advertised, it may need the period from which the code of conduct is applicable. Such an advertisement before elections are wastage of money of public exchequer.

6. No advertisement in print media be allowed prior to forty eight hours of election

Section 126 of the Representation of People Act, 1951 provides that there shall be no election campaign prior to forty eighty hours of the election in that constituency. It is not being followed strictly. There are instances that the advertisement is being issued one-week ago with the instruction to the print media that it shall be published when

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the election is due. What is needed that if anonymous or hazardous or some materials has been published in the newspapers regarding the candidate, the other candidates have no option because the next print media will be effective on the next day only. So, such a practice must be restricted.

7. Paid news channels should be restricted for healthy democracy

Television channels are now commonly seen that they in their programme are usually favouring a particular political party as they have been paid by these parties. It may not affect a prudent man but it affects illiterate voters and consequently causes impediment in a free and fair election which is the demand of healthy democracy. So it is need of the hour, that there should be restrictions on the paid news channels.

8. The assets of winning candidates must be monitored regularly

Affidavit is being given at the time of nomination paper, at that time they declare about their properties but after winning of elections their property increases approximately up to five to ten times within five years. So, the humble submission is that the winning candidate's assets increasing so rapidly must be checked strictly.

9. There should be some restriction to form a new political party

Till 27th May, 1964 there was no political instability in the country. But after that, various Prime Minister have taken oath for very short span of time e.g., Sri Moraraji Desai, Sri Charan Singh, Sri V. P. Singh, Sri Chandrashekhar, Sri H. D. Devegauda and the like. Now the political parties are having so aspirations that they are not willing to work together for a long period. Under these circumstances, it is very much difficult to adopt one nation one election policy in India. Here, most humbly I would like to submit here that there must be some restriction to form a new political party.

10. Right to recall

If the elected political parties fail to fulfill the electoral promises or does not fulfill its election manifesto, then voters should have rights to recall their elected representatives so that they may not reappear before the electorate at the time of next general election.

11. Value based politics should be promoted

Political parties need to catch control through any methods without regard to minimal basic democratic moral or ethical values. The outcome is that money and muscle power is assuming a vital role in the elections. Ideological groups need to pursue carefully the code of conduct and offer inclination to value based politics.

12. Election expenditure should be minimized

Elections in India have turned out to be costly. The Election Commission needs to find a way to control the cash control in the elections. In this regard Section 77 of the Representation of People Act, 1951 should be amended to include all the direct or indirect election expenses that are incurred during election process by the candidate. The candidates having capacity to spent huge money are entering into the election and hence influencing the whole electoral process. The Election Commission has also to take few tough steps to curb the money power in the elections.

13. Consolidation of the reports of poll observers and their publication

At the season of elections, the Election Commission is appointing eyewitnesses to regulate whether the candidates contesting in elections or following the code of conduct and different standards set somewhere around the Election Commission. The reports presented by the observers are to be combined and the production of the

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equivalent is necessary to know the opinion of the onlookers. The suggestions made by the onlookers for the conduct of free and fair survey are to be given effect.

14. Issuing of voter identity cards must be ensured

It is the duty of Election Commission to ensure itself that the voter identity card has been issued to each and every voter prior to the election. However, many at times it has been seen that the Union and the State Governments have expressed their inability to implement the Election Commission's recommendations due to lack of money. In order to curb personation, it is necessary to issue the identity cards.

15. Special Courts dealing with election offences should be established

The Election offenses, for example, booth capturing, rigging, violence etc. so on, are tried by ordinary courts which are already overburdened. Consequently, timely disposal of election offences become difficult one which a grave threat to Indian democracy. So it is submitted that in order to curb violence in elections there is a need to establish special courts so that offenders trialed speedily. In this regard, special laws are the need of the hour.

16. For free and fair election, public education is the need of the hour

In India voters are of mixed nature. Most of the voters are either illiterate or less literate and thus, they are not capable enough to understand the true nature and character of election and the candidates. The illiterate voter votes in favor of an image and does not know for what the image rely on. As a result, there is a need to instruct the voters about the significance of the vote, elections and the declarations of the ideological groups. A sense of security must be developed to practice the privilege to cast a ballot. It can be done by organizing literacy camps in rural and urban areas.

If maturity of Indian democracy is to be measured keeping in view the corrupt practices prevalent, we all have to admit this truth that Indian democracy is immature. Although, we must hope that a day will come when with the help of legislative, judicial and Election Commission's collective efforts, our country will be able to curb the corrupt practices in election process.

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