



An Analysis of Electoral System in India

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Abstract: - In India, the democratic setup has been recognized as a part of the basic structure of the constitution.¹ Since, free and fair elections are the backbone of a democracy, logically they ought to be considered as a part of the basic structure of the Constitution. Election as a process can be an effective instrument of ascertaining popular will both in reality and form only if it is free and fair. Free and fair elections require that the candidates and their agents should not resort to unfair means or malpractices as impinge upon the process of free and fair elections.² There cannot be a free and fair election if the majority of the electors by reasons of irregularities in the mode of conducting the election, have been prevented from electing the candidates they preferred.³

Again, there cannot be a free and fair election if the party in power misuses official machinery. It is inherent in a democratic set up that the agency which is entrusted the task of holding elections to the Legislatures should be fully insulated so that it can function as an independent agency free from external pressures from the party in power or executive of the day.

Keywords: - Election, Democracy, Constitution, Irregularities, Malpractices

1. **Introduction:** - Democracy existed in ancient Greek and Roman Republics but with little success. In ancient India also only a very little scope of democracy existed. The golden stage of democracy was seen from twentieth century. The term democracy is derived from the Greek word '*democratic*' which means rule of the people. Democracy is defined as a form of government in which the supreme power is vested in the people and exercised by them directly or indirectly through a system of representation usually involving periodic free elections.

The preamble of our Constitution proclaims that we are a Democratic Republic. Democracy being the basic feature of our constitutional set up, there can be no two opinions that free and fair elections to our Legislative bodies alone would guarantee the growth of a healthy democracy in the country. In order to ensure the purity of the election process, it was thought by our Constitution makers that the responsibility to hold free and fair elections in the country should be entrusted to an independent body which would be insulated from political and/or executive interference. It is inherent in a democratic set up that the agency which is entrusted the task of holding elections to the Legislatures should be fully insulated so that it can function as an independent agency free from external pressures from the party in power or executive of the day. This objective is achieved by the setting up of an Election Commission, a permanent body, under **Article 324 (1) of the Constitution**. The superintendence, direction and control of the entire election process in the country has been vested under the said clause in a Commission called the Election Commission.

¹ *Keshavananda Bharathi v. State of Kerala* AIR 1973 SC1461

² *Indira Nehru Gandhi v. Raj Narayan* 1975 Supp SCC1, p.87

³ *Woodward v. Sarsons* (1875) LR 10 CP 733

Part-XV of the constitution Arts. 324- 329 deal with elections. This part incorporates the composition of and power to Election Commission to superintendence, direction and control of elections and, electoral process in credible free and fair elections with equal and proportional representation of states and voters by adult franchise.

The election commission of India is an autonomous, constitutionally established federal authority responsible for administering all the electoral process in the Republic of India. Under the supervision of the commission, free and fair elections have been held at regular intervals as per the principles enshrined in the Constitution. The Election Commission has the power of superintendence, direction and control of all elections to the Parliament of India and the state legislatures and of elections to the office of the President of India and the Vice-President of India.

2. **Democracy:** - Democracy depends on the following conditions:

- a. Co-existence of ideas and parties,
- b. The right to free discussion,
- c. Universal adult suffrage and
- d. Periodic election.

3. **Significance of Election Commission of India:-** Democracy is expression of will of people translating to power through ballot endowing on its populous equality and equal protection before law. Indian democracy has over time shown resilience that has been marveled at the world over. Election serve as means of communication between the public and their government. It is process through which leaders are selected by vote for a political office. The event of election provides the public with an opportunity to choose between political alternatives and, to a certain extent, in influencing the policies of political parties. Owing to their significance in a democratic political system, the elections are governed by a set of laws: The following are the significance of election commission of India:

- a. To conduct free and fair and credible elections in a democratic manner.
- b. Election commission lays down the manner code of conduct in elections.
- c. To control violence and criminalization in Indian polity.
- d. To check the expenditure by the contesting candidates in election campaign, which is flagrantly violated?
- e. To contain voter intimidation and fraud in elections.
- f. To issue voter ID card to exercise the adult franchise this is a right of Citizen of India, so as to prevent impersonation of the voter.
- g. To ensure and encourage proper and equal participation and representation of citizens in the process of voting without any fear, for a democratic governance.
- h. Election Commission acts as quasi-judicial authority by lending advice with respect to election/candidature of an elected member to the legislature.

Democracy involves an 'input' and an 'output' aspect, as that form of government of the people that is both 'by' the people and 'for' the people. Indeed, democratic theorists have typically linked democratic means, whereby rule is 'by' the people rather than a privileged ruling class, with democratic ends, or government that is 'for' the people rather than a sub-section of them, regarding the one as the guarantee of the other.

4. **Certain Values Inherent In Democracy:** - To make India as a liberal

democratic nation, not only requires conduct of free and fair elections but also to the fundamental tenets as a means to attain justice, apart from purely the rule of majority, which may be whimsical at times. 'A little anarchy is a dangerous thing, but a good protest is a joy forever'. If democracy were to be a truly legitimate form of government, it must contain certain inherent value;

- a. The success of entire democratic political system depends upon free and fair elections.
- b. Political stability which is very much threatened due to the era of collusion politics for which electoral reforms are required, (two party system.) defection of legislators for collusive politics and requirement to contain it.
- c. Election should be made free from influence of criminals and use of money n muscle power should be checked.⁴
- d. Easy availability of information to every citizen, is the only way to free and fair elections are cornerstones of democracy. In India, Electronic Voting Machines (EVMs) were introduced with the objective of reducing electoral fraud. We exploit the phased roll-out of the EVMs in state assembly elections to study its impact on electoral fraud, democracy, and development and check the abuse of powers in elections to maintain transparency.

⁴ Indrajit Gupta committee Report, 1998.

5. **Purpose of Introducing Electronic Voting Machines**

(EVMs) In India: Objects of introducing EVM System in India are the following :-

- a. Introduction of EVMs led to a significant decline in electoral frauds, particularly in politically sensitive states which were subjected to frequent re-polls due to electoral rigging.
- b. It strengthened the weaker and the vulnerable sections of the society (women and the scheduled castes and tribe) who were now more likely to cast their vote.
- c. It made the electoral process more competitive whereby the winning margin and the vote share of the winning party declined.
- d. Using the luminosity data, we find that EVMs led to an increase in the provision of electricity.
- e. Lastly, we find evidence that EVMs resulted in significant decline in crimes, such as murder and rape (violence against women).

6. **Electoral system in India:** - An electoral system is a set of rules designed to ensure that elections go smoothly. It also determines how their outcomes are calculated. The Indian government organizes political electoral systems as a sovereign, socialist, secular, democratic republic. The electoral process' rules govern all aspects of the voting process, including elections, who can vote, candidates, ballots, campaigning, and other factors. Political electoral systems are often run by election commissioners, which are defined by constitutions and electoral laws. Various forms of elections have different numbers of victors. Electoral systems elect a single winner for a unique office such as Prime Minister, the President, or Governor; however, electoral systems elect many winners for members of parliament.

Indian general elections are always a veritable *Mahabharata* – how to elect our representative and ultimately form the government is the work of electoral system. An electoral system effectively determines which candidates are elected and which party achieves power by transforming votes cast by the people into seats. The electoral system, according to International Institute for Democracy and Electoral Assistance "has a profound effect on the future political life of the country concerned," and "electoral systems, once chosen, often remain fairly constant as political interests solidify around and respond to the incentives presented by them."⁵

7. **Evolution of electoral system in India:** - Elections in the contemporary form, in which electors registered on the electoral rolls of well-demarcated territorial constituencies express their preference for persons they want to represent them in decision-making institutions such as the Parliament, began in India in the early twentieth century. Even in the nineteenth century, the British Parliament had provided for the formation of bodies to legislate on local laws under the Indian Councils Acts of 1861 and 1892, when it took over from the East India Company, under the Government of India Act 1858, the governance of Indian territories under its occupation after the first war of independence, which broke out in India for freedom from the British in 1857.

However, the legislative bodies established as a result of the Acts were limited, consisting solely of nominated members, with no local representation under the former Act and only a minor amount of local representation under the later. The Indian Councils Act 1901 was the first legislation in British India to provide an elected element for natives in legislative bodies. The Morley–Minto Reforms were drawn up by Lord Minto, the then Governor-General of India, and Lord Morley, the then Secretary of State for India in the British Cabinet, in 1906, and were approved by the British Parliament. The Act called for the establishment of legislative councils at the federal level, which would be overseen by the governors. The Act established the first Central Legislative Council, which consisted of 68 members, 27 of whom were elected.⁶

They were chosen by particular constituencies, such as towns, district and local boards, universities, chambers of commerce and trade associations, and groupings of people like as landowners and tea-planters, rather than by the general public in India. Furthermore, rather of benefiting the Indian people, this Act was responsible for planting the seeds of communal discord and enmity between Hindus and Muslims, which eventually led to India's partition into two distinct countries, India and Pakistan, in 1947. The aforementioned Act stipulated that certain seats in legislative councils would be allocated exclusively for Muslims, with members elected by distinct electorates comprised solely of Muslim voters.

8. **Electoral Development after Independence:** - India is world's biggest democracy. It is huge task to organize election for 1.2 billion people. Representative parliamentary democracy was envisioned by our Republic's forefathers as the polity best suited to India's culture, history, and needs. They envisioned all adult individuals participating in the political process equally and without discrimination. It was an act of faith for them to choose representatives for the people through universal adult franchise and free and fair elections. The universal adult franchise was a bold and ambitious political experiment, and a sign of the founders' unwavering faith in the country's huge masses and their inherent wisdom.

On January 25, 1950, the Election Commission was formally established, one day before India became a Sovereign Democratic Republic. Shri Sukumar Sen, the first Chief Election Commissioner, was appointed on March 21, 1950. From 1950 to October 16, 1989, the Commission was a single-member body, but from October 16th, 1989 to January 1st, 1990, it was transformed to a three-

⁵ International Institute for Democracy and Electoral Assistance (International IDEA) (2005) Electoral System Design: The New International IDEA Handbook. Available at: http://www.idea.int/publications/esd/loa_der.cfm?csmodule/4security/getfile&pageid/410445 (visited on 1 September 2021).

⁶ Subhash C Kashyap, History of the Parliament of India (New Delhi: Shipra Publications, 2000), 55

member body. The system of a single member body was reinstated on January 1st, 1990. However, the Commission has been operating as a three-member body since October 1, 1993.

Parliament passed the first Act (Representation of the People Act, 1950) on May 12th, 1950, providing primarily for the preparation of electoral rolls, and the second Act (Representation of the People Act, 1951) on July 17th, 1951, laying down the procedure for the conduct of elections to both Houses of Parliament and Vidhan Sabhas for each State. By November 15th, 1951, all states had released constituency electoral rolls. According to the 1951 census, the total number of voters (excluding J&K) was 17,32,13,635 compared to the total population of India (excluding J&K) of 35,66,91,760. Between October 1951 and March 1952, the first general elections for the Lok Sabha and Vidhan Sabhas were held. On April 2nd, 1952, the first Lok Sabha, with 497 members, was formed. On April 3rd, 1952, the first Rajya Sabha was formed, with 216 members.

The first Presidential election was held in May 1952, following the establishment of the two Houses of Parliament and the State Legislative Assemblies, and the first lawfully elected President took office on May 13th, 1952. The Commission had recognised 14 political parties as multi-state parties and 39 parties as state parties at the time of the first General Election in 1951-52. There are currently seven registered National Parties and forty recognized State Parties.

The Election Commission used the 'Balloting System' of voting for the first and second General Elections in 1951-52 and 1957, respectively. Every candidate was given a separate ballot box in a screened compartment at each polling station under this method, and the voter was simply required to drop his ballot paper, the centrally pre-printed ballot papers, into the ballot box of the candidate of his choosing.

The Commission began using a 'marking system' of voting with the 3rd General Elections in 1962. A common ballot paper including the names and election emblems of all contesting candidates is printed under this system, and the voter must mark the sign of the candidate of his choice with an arrow cross mark rubber stamp on or near it. A common ballot box is used to hold all of the marked ballot papers.

9. **Use of Electronic Voting Machines (EVMs):** - Electronic Voting

Machines (EVMs) are electronic voting machines that help or take care of the responsibilities of casting and counting votes. The control unit and the balloting unit are the two parts of an EVM. A cable connects these units together. The presiding officer or the polling officer is in charge of the EVM's control unit. The balloting unit is kept in the voting compartment so that voters can cast their ballots. This is done so the polling officer can confirm your identity. Instead of issuing a ballot paper, the polling officer will press the Ballot Button on the EVM, allowing the voter to vote. On the machine, there will be a list of candidate names and/or symbols with a blue button next to it. The voter can select a candidate by pressing the button next to their name.⁷

In 1982, the Electronic Voting Machines (EVMs) were used for the first time on an experimental basis in a portion of the Assembly Constituency in Kerala. In the election, where the late Congress leader A.C. Jose and the late Communist Party of India leader N. Sivan Pillai were embroiled at a tight race, EVMs were introduced in 50 voting sites. Pillai defeated the Congress candidate by a razor-thin margin of 123 votes. Jose filed a petition in the Kerala High Court challenging his opponent's election, claiming that the Representation of the People Act, 1951, and the Conduct of Elections Rules, 1961 did not allow the Election Commission to utilise electronic voting machines. His appeal was denied by the High Court. However, following Jose's appeal, the Supreme Court ordered a re-poll in the 50 polling sites using traditional ballot papers in 1984. Jose was elected to the repoll.

According to the Supreme Court, the Election Commission should have conducted the election using ballot papers, as required by the Representation of the People Act, 1951, and the Conduct of Election Rules, 1961, which were in effect at the time. The court ruled that the Commission couldn't "invent a new procedure."

In 1992 Section 61 was amended by the Parliament and Section 61A was inserted to validate the use of EVM. This act paved the way for use of it in elections. In 1998, the widespread adoption of EVMs began. For the first time in the 14th General Elections to the Lok Sabha in 2004, EVMs were utilized in all voting places across the country. Since then, EVMs have been used in all Lok Sabha and Legislative Assembly elections.⁸

According to Supreme Court counsel Kaleeswaram Raj, the Supreme Court has consistently rejected the petition to abolish EVMs. In 2013, the Court issued guidelines for the use of VVPAT to ensure accuracy and fairness in the EVM process. "The difficulty is that just a small percentage of votes are presently exposed to VVPAT inspection across the country," he adds, adding that "the Election Commission must raise the sample test reasonably and substantially to achieve the fundamental aim of VVPAT."⁹

10. **Electoral roll:-** The electoral roll of a constituency is a list of all those who are registered to vote in that constituency's elections. As 'electors,' only individuals whose names appear on the electoral rolls are permitted to vote. Every year, the electoral roll is updated to add the names of people who are 18 or older as of the first day of January of that year, or who have moved into the constituency, and to delete the names of those who have died or moved out of the constituency. The updating of electoral rolls is a continual operation that is only interrupted during election season, from after the deadline for filing nominations until the elections are completed. The ECI is at the top of the administrative hierarchy engaged in the preparation, maintenance, and modification of electoral rolls.

⁷ Online web: <https://eci.gov.in/evm/>, last visited on September 18, 2021.

⁸K.C. Gopakumar, 'EVMs were used first time in Kerala in 50 booths in 1982', Online web:

<https://www.thehindu.com/news/cities/Kochi/evms-were-used-first-time-in-kerala-in-50-booths-in-1982/article34005923.ece>, last visited on September 22, 2021.

⁹ *Ibid.*

The electoral roll for each seat in a State/UT is to be prepared and revised by an Electoral Registration Officer. (ERO). Booth Level Officers (BLOs) and supervisors are appointed at the bottom of the hierarchy. Each BLO has jurisdiction over one or two polling sites. Enumeration, roll and form verification, and the collection of forms and images from electors for the Electoral Photo Identity Card (EPIC) and photo roll maximisation may be assigned to BLOs during the revision of the electoral rolls. The forms are then handed over to the designated officials and EROs for further action. BLOs may be employed for the identification of dead and transferred voters on certain dates prescribed by the ECI during the time when continuous revision and updating is taking place (one week in each half of a year).¹⁰

In an election year, a BLO's job starts with the publishing of the draft rolls and ends with the completion of the second Supplement, all in accordance with an ECI-approved programme. Supervisory officers keep an eye on the quality of the BLOs' work and keep a careful eye on it. Each Supervisory Officer is in charge of ten to twenty BLOs. Apart from the machinery involved in the preparation and modification of electoral rolls, community engagement has been recognised as one of the ways in which political parties might appoint their members as Booth Level Agents (BLAs) to supplement the work of BLOs. In most cases, one BLA is assigned to each portion of the electoral roll. The BLA must be a registered elector in the relevant section of the electoral roll for which he or she is appointed, as it is expected that the BLA will scrutinise the entries in the draft roll of the area where he or she resides in order to identify dead and shifted persons.

11. **Conclusion:** - Electoral system of India is more than one century old. Over the passing of years its roots became stronger. To hold elections for a mammoth population like India is a herculean task. This task has been successfully completed by Election Commission of India. Separate electorate was introduced by British Parliament in 1909 and 1919 for Muslim, Sikh and Christians but our founding fathers of the constitution rejected this idea though has accepted reservation for SC, ST's. Nomination was made for Anglo Indian community citizens but it has now been given away. From raising hand to ballot to Electronic voting machine has been introduced. Now free and fair elections are being conducted in a free and fair manner by Election Commission of India and State Election Commissions.



¹⁰ Section 13B of the Representation of the People Act, 1950.