



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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A COMPREHENSIVE STUDY OF ELECTORAL REFORMS: ISSUES AND CHALLENGES

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Abstract: - 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.

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. 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: - Electoral system, Voting process, Constitution, Irregularities, Misuse

1. **Introduction:** In India, the democratic setup has been recognized as a part of the basic structure of the constitution. 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.

India is the largest democracy in the world. Elections are the most integral and important part of politics in a democratic system of governance. True democracy can function only when elections to the offices of power are held in a free and fair manner. The issue of electoral reforms is a very important and often-heard topic in Indian Polity.

It is generally accepted that while the first three general elections were held in a free and fair manner, a plummeting of standards started during the fourth general elections in 1967. Many consider the electoral system in the country as the basis of political corruption. Having regard to the magnitude and diversity of India, it is an eloquent testimony of the parliamentary system of Indian democracy that its basic framework as bequeathed to us in 1950 has been preserved. Shortcomings in the system are amenable to realistic solution within the precincts of the present Constitution, if the major political parties bring their commitment to national unity and progress to bear on devising solutions. There is no need for a radical change in the Constitution to switch over from the parliamentary system to the presidential system of government. With such diversity and immensity of population it would be almost impossible to operate a Presidential system in India. Elections are the life-breath of India's democratic polity. The health and vitality of parliamentary democracy is sustained by ensuring free, fair and peaceful elections where the verdict of the people finds full expression. Elections to the legislature conducted over the past 46 years or so, have, except for minor aberrations, been successful and widely acclaimed in the country and abroad. India is listed as one of the 39 countries with a stable democracy in the World Atlas of Elections.¹

2. History of Electoral Reforms:- Without disregard to the high office of the Speaker, apprehensions regarding the partisan nature of the Speakers' decisions have been a cause for concern. Former Speaker Mr. Shivraj Patil himself in his decision of June 1, 1993 (referred above) duly noted:

“Since Speakers in India are, after all, party members, they should not be burdened with the job of pronouncing on the membership of their fellow members. Whatever they decide, motives would be imputed to them.”

¹ Fink-Hafner, Danica, and Mitja Hafner-Fink. "The determinants of the success of transitions to democracy." *Europe-Asia Studies* 61.9 (2009): 1603-1625.

While there have been several piecemeal changes in the electoral law, there has been no attempt at comprehensive reforms in the law or the system of elections. Some of the changes have in fact been retrograde steps rather than reforms. Some of these piecemeal changes were suggested by the Election Commission while others, especially those which were retrograde, arose out of political considerations of the ruling party.

The first exercise at what could be called comprehensive reforms was made in 1971 when a joint parliamentary committee of the two houses of Parliament was appointed under the chairmanship of Mr Jagannath Rao. The committee submitted two reports on January 18, 1972 and March 10, 1972. The first contained recommendations for the amendment of the Representation of the People Acts of 1950 and 1951 while the second dealt with certain basic questions such as the voting age, the electoral system, etc. Some of the amendments in the Representation of the People Acts suggested by the committee were incorporated in a Bill introduced in the Lok Sabha in 1973 (Lok Sabha Bill No. 100 of 1973).

The Bill did contain some important provisions such as (i) specifying four qualifying dates in a year instead of one for the qualification of voters; (ii) prohibiting capricious transfers of election staff on the eve of elections; (iii) disqualification of persons with contracts with the government or any public sector undertaking, for contesting elections; (iv) counting of election expenses from the date of the notification; calling for the election instead of the date of nomination; (v) enhanced punishments for certain offences, etc. This bill was not, however, passed before the dissolution of the Lok Sabha in 1975 and, therefore, lapsed.²

During 1974-76, however certain amendments were effected in Section 77 relating to election expenses which appear to be definitely retrograde and for the benefit of the ruling party.

- 3. Electoral System After Independence:** - The Indian electoral system was free from any major flaw till the fourth general elections, 1967. The distortions in its working appeared, for the first time, in the fifth general elections, 1971 and multiplied in the successive elections, especially those held in the eighties and thereafter. The malfunctioning of the electoral system in some areas of some of the states has been a cause of concern for the

² Electoral Processes and Governance in South Asia. India, SAGE Publications, 2007.

election authority, the political parties and the public in general. It is appropriate time for us to examine the working, on the basis of experience, ascertain the distortions and search for legal, administrative measures to eliminate them to restore electoral system to its pristine form. Such desire is also vindicated by specific reference of the government commitment to electoral reforms in the Presidential address to the nation in the years 1985 to 1987.

The government's endeavor in regard to electoral reforms has been marginal, as vital areas of, election law has not been addressed. The core election related problems are: criminalization of electoral politics; the use of money and muscle power at polls; violence, booth capturing; rigging; misuse of governmental machinery by party in power, entry of non-serious candidates in election; violation of the model code of conduct etc. Urgent corrective measures are needed for saving the system from further erosion.

The Chief Election Commissioner Sushil Chandra has written to Law Minister **Ravi Shankar Prasad** requesting for expedited action on the electoral reform proposals pending with the government, including the one which seeks an enhanced two-year jail term for those furnishing incorrect information in their poll affidavit. Enhancing the imprisonment period for those furnishing incorrect details in poll affidavits from existing six months to two years is a key electoral reform proposal of the Election Commission. A two-year jail term could bar the candidate from contesting elections for six years.³

In 1995, the government of India in the ministry of law, justice & company affairs, wrote a letter dated 2.11.1995 to the law commission to undertake a comprehensive study of the measures required to expedite the hearing of the election petitions. Recently, the hon'ble minister for law, justice and company affairs wrote a letter dated 3rd august, 1998 asking for a report on the above subject at an early date. A little while before the receipt of this letter, the present law commission (15th law commission, constituted towards the end of 1997) had indeed commenced an exhaustive study of the representation of the people act, 1951 with a view to finding out and identifying the measures necessary to reduce as far as possible the evils of money-power and entry of criminals as well as the measures required

³ 'CEC Sushil Chandra writes to Law Minister Prasad reminding him of pending electoral reforms', *The Hindu* June 8, Online web: <https://www.thehindu.com/news/national/cec-sushil-chandra-writes-to-law-minister-prasad-reminding-him-of-pending-electoral-reforms/article34760167.ece>,

to rectify, to the extent possible, the defects inherent in the 'first-past-the post' system. The commission has also gone into the reasons for the delay in disposal of election petitions and certain other aspects of the act.⁴

It may be made clear that in this study and in drafting the amendment bills appended hereto, the commission has by and large adopted the provisions of the 1990 bill except, of course, those provisions which have already been incorporated by amendment act 21 of 1996. We have also not adopted the provision in the bill relating to deletion of part IVA, containing only one section, namely, section 29A, which provides for the registration of the political parties. The commission feels that this is a useful provision and the election commission could possibly enforce this provision by virtue of clause 16A of the election symbols (reservation and allotment) order, 1968. (the reasons for this disagreement will be set out at the appropriate place.)

It is necessary to state that the ideas put forward in this study and the provisions of the bill appended there to are tentative in nature and our report will be finalised in the light of the feedback received from various interest, concerned and affected parties whose opinions, suggestions, comments and criticism are solicited herewith. The law commission is quite aware of the significance of several measures/provisions suggested herein and hopes to elicit a well-considered and constructive response from all the political parties, institutions, organisations and members of the public and, in particular, from the election commission of India, the premier body administering the Act. We humbly invite the particular attention of all concerned parties to the new measures contained in this study and accompanying amendment bills, i.e., Measures apart from those drawn from the 1990 amendment bill. While the provisions of the said bill represent the consensus among the political parties in parliament, the measures suggested by us are new and, therefore, call for more specific response.

The law commission is also aware that some other bodies and committees are seized of one or the other aspects of the Representation of the People Act, 1951 and that ours is not the only exercise in this behalf. Regard, however, being had to the critical relevance of the issues raised herein to our democracy and its functioning and keeping in view the present

⁴ https://lawmin.gov.in/sites/default/files/prs2_0.pdf,

unsatisfactory election scene in this country, this study is undertaken by the law commission as yet another effort to suggest ways and means of improving the existing state of affairs.

- 4. Judicial Verdicts:** - Electoral reforms can make the democratic process more inclusive by bringing more people under the electoral process, reduce corruption, which is pervasive, and make India a stronger democracy. It may be emphasized that this is in accord with the well-established principle which has also received judicial recognition by the Supreme Court in a number of cases including: -

N.P. Punnuswami v. Returning officer⁵. In this case, the Court held that elections should be concluded as early as possible according to time schedule and all controversial matters and disputes arising out of elections should be postponed till after the elections are over.

In **Dr. N.B. Khare v. Election Commission of India**,⁶ the Supreme Court of India consistent with this approach, held that "elections should not be held up and that the person aggrieved should not be permitted to ventilate his individual interest in derogation of the general interest of the people, which requires that elections should be gone through according to time schedule". The above-mentioned procedure has to be followed for the purpose of filling twenty-five percent of the seats according to list system in each of the State Legislative Assemblies also. It is, however, necessary to clarify that the concept of "territorial unit" is not relevant for this purpose; each State is a separate unit by itself and the list system shall be operated accordingly. In other words, the Votes held by each RPP in each State will have to be totaled and the seats allocated among them are to be filled according to the list system in proportion to the votes polled by such RPP.

It is obvious that for giving effect to the above proposal, it would be necessary to amend **Articles 81 and 170** which respectively provide for the composition of the House of the People and the State Legislative Assemblies.

A Bill providing for amendments to the said articles and also providing for deletion of **Article 331** is appended herewith. A provision has been made, inter alia, for reasons of practical difficulty that **Article 330** of the Constitution shall not apply to the election of

⁵ AIR 1952 SC 64 at 70

⁶ AIR 1957 SC 694,

members under the list system. It shall, however, be open to the RPP, if they are so advised, to observe the said rule while choosing the persons to be declared as elected (as members) on its behalf.

So far as reducing the expenditure on elections is concerned, the Law Commission wholeheartedly reiterates the proposal contained in the 1990 Bill to delete Explanation I to Section 77 of the Act but that by itself may not be enough. Unless the expenditure incurred by the political parties is also monitored, the evil of excessive expenditure on elections cannot be solved. The Commission seeks to invite attention in this connection to the judgment of the Supreme Court in **Gajanan Bapat v. Dattaji Meghe**⁷ where it observed that: " We wish, however, to point out that though the practice followed by political parties in not maintaining accounts of receipts of the sale of coupons and donation as well as the expenditure incurred in connection with the election to its candidate appears to be a reality but it certainly is not a good practice. It leaves lot of scope for soiling the purity of election by money influence. Even it the traders and businessmen do not desire their names to be published in view of the explanation of the witnesses, nothing prevents the political party and particularly a national party from .maintaining its own accounts to show total receipts and expenditure incurred, so that there could be some accountability. The practice being followed as per the evidence introduces the possibility of receipts of money from the candidate himself or his election agent for being spent for furtherance of his election without getting directly exposed, thereby defeating the real intention behind Explanation 1 to Section 77 of the Act. It is, therefore appropriate for the legislature of the Election Commission to intervene and prescribe by Rules the requirements of maintaining true and correct account of the receipt and expenditure by the political parties by disclosing the sources of receipts as well. Unless this is done, the possibility of purity of elections being soiled by money influence cannot really be ruled out. The Political parties must disclose as to how much amount was collected by it and from whom and the manner in which it was spent so that the court is in a position to determine 'whose money was actually spent' through the hands of the party. It is equally necessary for an election petitioner to produce better type of evidence to satisfy the court as to 'whose money it was' that was being spent through the party. Vague allegations and discrepant evidence may only create a doubt but then the charge of corrupt practice cannot be held to be proved on mere lurking suspicion

⁷ [1995 (5) SCC 437]

of doubts. However undesirable and objectionable the practice might be, the fact remains that the evidence led by the election petitioners in this case does not establish the charge levelled by them at all."

Reference may also be had to two earlier judgements viz., **C. Narayanswamy v.C.K. Jaffer Sharief**⁸ and **Gadakh Yashwantrao v. Balasheb Vikhe Patil**⁹. In the former decision it was observed:

"As the law stands in India today anybody including a smuggler, criminal or any other anti-social element may spend any amount over the election of any candidate in whom such person is interested, for which no account is to be maintained or to be furnished and any such expenditure shall not be deemed to have been expenditure in connection with the election, incurred or authorised by the candidate or by his election agent for the purpose of sub- section (1) of Section 77, so as to amount to a corrupt practice within the meaning of subsection(6) of section 123. It is true that with the rise in the costs of the mode of publicity for support of the candidate concerned, the individual candidates cannot fight the election without proper funds. At the same time it cannot be accepted that such funds should come from hidden sources which are not available for public scrutiny. According to us, subsection(6)of section 123 declaring 'incurring or authorising of expenditure in contravention of section 77' a corrupt practice has lost its significance and utility with the introduction of the Explanation 1 aforesaid which encourages corruption by underhand methods. If the call for 'purity of elections' is not to be reduced to a lip service or a slogan, then the persons investing funds, in furtherance of the prospect of the election of candidate must be identified and located. The candidate should not be allowed to plead ignorance about the persons who have made contributions and investments for the success of the candidate concerned at the election. But this has to be taken care of by Parliament."

Similarly, in the latter case, it was observed:

"The existing law does not measure up to the existing realities. The ceiling on expenditure is fixed only in respect of the expenditure incurred or authorised by the candidate himself but the expenditure incurred by the party or anyone else in his election campaign is safely outside the net of legal sanction. The spirit of the provision suffers violation through the

⁸ [1994 (Supp) 3 SCC 170]

⁹ [1994 (1) SCC 682].

escape route. The prescription of ceiling on expenditure by a candidate is a mere eye-wash and no practical check on election expenses for which it was enacted to attain a meaningful democracy. This lacuna in the law is, however, for the Parliament to fill lest the impression is reinforced that its retention is deliberate for the convenience of everyone. If this be not feasible, it may be advisable to omit the provision to prevent the resort to indirect methods for its circumvention and subversion of the law, accepting without any qualm the role of money power in the elections. This provision has ceased to be even a fig leaf to hide the reality."

The proposed delete on of Explanation I to section 77 would restore the position of law as explained in **Kanwar Lal Gupta v. Amarnath Chawla**¹⁰, "Now if a candidate were to be subject to the limitation of the ceiling, but the political party sponsoring him or his friends and supporters were to be free to spend as much as they like in connection with his election, the object of imposing the ceiling would be completely frustrated and the beneficent provision enacted in the interest of purity and genuineness or the democratic process would be wholly emasculated. The mischief sought to be remedied and the evil sought to be suppressed would enter the political arena with redoubled force and vitiate the political life of the country. The great democratic ideal of social, economic and political justice and equality of status and opportunity enshrined in the Preamble of our Constitution would remain merely a distant dream eluding our grasp. The legislators could never have intended that what the individual candidate cannot do, the political party sponsoring him or his friends and supporters should be free to do. That is why the legislators wisely interdicted not only the incurring but also the authorizing of excessive expenditure by a candidate. When the political party sponsoring a candidate incurs expenditure in connection with his election, as distinguished from expenditure on general party propaganda, and the candidate knowingly takes advantage of it or participates in the program or activity or fails to disavow the expenditure or consents to it or acquiesces in it, it would be reasonable to infer, save in special circumstances, that he impliedly authorize the political party to incur such expenditure and he cannot escape the rigour of the ceiling by saying that he has not incurred the expenditure, but his political party has done so. A party candidate does not stand apart from his political party and if the political party does not want the candidate to incur the disqualification, it must exercise control over the expenditure which may be incurred by it

¹⁰ [1975 (3) SCC 646]

directly to promote the poll prospects of the candidate. The same proposition must also hold good in case of expenditure incurred by friends and supporters directly in connection with the election of the candidate. This is the only reasonable interpretation of the provision which would carry out its object and intendment and suppress the mischief and advance the remedy by qualifying our election process and ridding it of the pernicious and baneful influence of big money. This is in fact what the law in England has achieved. There every person, on pain of criminal penalty, is require to obtain authority from the candidate before incurring any political expenditure on his behalf. The candidate is given complete discretion in authorizing expenditure up to his limit. If expenditure made with the knowledge and approval of the candidate exceeds the limit or if the candidate makes a false report of the expenditure after the election, he is subject not only to criminal penalties, but also to having his election voided."

It is for the above reason also that the Law Commission disagrees with the proposal in the 1990 Bill to delete Part IVA of the Act, which contains section 29 A. The .said section it is the only section in Part IVA- providing for registration of political parties contains certain very statutory provisions. In our considered option, not only the provision for registration of political parties should continue, all the recognized political parties (which must necessarily be registered political parties) should be obliged to maintain accounts showing in full detail the amounts received and spent by them. Such accounts should be audited every year (financial year) and such audited accounts submitted to the Election Commission within nine months of the expiry of the relevant financial year. These accounts should be duly published by the Election Commission in such manner at it may direct and should also be open to inspection by public on payment of prescribed fee. The appended Bill gives effect to these suggestions. The provisions of the 1990 Amendment bill with respect to free supply of certain election material and petrol/diesel etc. are also adopted herewith.

It is also suggested that where a re-count is prayed for in an election petition, the requirement of notice provided in the proviso to section 97 (1) shall not apply. This is suggested in view of the facts/decision in **Bhagmal v. Prabhuram**.¹¹, wherein it was held that in the absence of a notice required by the said proviso, the respondent (returned

¹¹ AIR 1985 SC 150

candidate) cannot ask for counting the wrongly rejected votes in his favor. In fact, in that case, the petitioner was declared elected though he had obtained less votes than the respondent because of latter's failure to give a notice in terms of the said proviso.

5. Issues in Electoral Politics in India: - There are multiple issues plaguing the electoral process in India. Some of the most prominent ones are mentioned below.

- a. **Money Power:** -In every constituency, candidates have to spend crores of rupees for campaigning, advertisement and publicity, etc. Most of the candidates far exceed the permissible limit of expenses as regularized and authorized by the Election Commission of India and States.
- b. **Muscle Power:** - In certain parts of the country, there are widespread reports of illegal and untoward incidents during polling such as the use of violence, intimidation, booth capturing, etc.
- c. **Criminalization of Politics and Politicization of Criminals:**-Criminals enter into politics and ensure that money and muscle power wins them elections, so that the cases against them are not proceeded with. Political parties are also happy as long as they have winnable candidates. Political parties field criminals in elections for funds and in return provide them with political patronage and protection.
- d. **Misuse of Government Machinery:** - There is a general opinion that the party in power uses government machinery such as using government vehicles for canvassing, advertisements at the cost of the exchequer, disbursements out of the discretionary funds at the disposal of the ministers, and other such means to improve the chances of their candidates winning.
- e. **Non-serious Independent candidates:** - Serious candidates float non-serious candidates in elections to cut a good portion of the votes that would otherwise have gone to rival candidates.
- f. **Casteism:** - There are cases of certain caste groups lending strong support to particular political parties. Thus, political parties make offers to win over different caste groups, and caste groups also try to pressurize parties to offer tickets for their members' elections. Voting on caste lines is prevalent in the country and this is a serious blotch on democracy and equality. This also creates rifts in the country.
- g. **Communalism:** - Communal polarization poses a serious threat to the Indian political ethos of pluralism, parliamentarianism, secularism and federalism.

h. Lack of Moral Values in Politics:- The political corruption in India has led to politics becoming a business. People enter the political arena for making money and retaining their money and power. There are very few leaders who enter politics to make a difference in the lives of their people. The Gandhian values of service and sacrifice are missing from the Indian political scene.

6. Electoral Reforms Undertaken by Appropriate Authorities: - Electoral reforms undertaken by authorities can be broadly divided into two categories: pre-2000 and post-2000. Both of these are discussed in the section below:

➤ **Pre 2000 Electoral Reforms:-**

- i. Lowering of Voting Age:** The Constitution reduced the minimum age for voting from 21 to 18 years.¹²
- ii. Deputation to Election Commission:** All personnel working in preparing, revising and correcting the electoral rolls for elections shall be considered to be on deputation to the EC for the period of such employment, and they shall be superintended by the EC.
- iii. Increase in the number of proposers and the security deposit:** The number of electors required to sign as proposers in the nomination papers for elections to the Rajya Sabha and the State Legislative Councils has been raised to 10% of the electors of the constituency or ten such electors, whichever is less chiefly to prevent frivolous candidates. The security deposit has also been hiked to prevent non-serious candidates.
- iv. Electronic Voting Machine (EVMs):** First introduced in 1998 during the state elections of Delhi, Madhya Pradesh and Rajasthan, EVMs are used widely now as they are fool-proof, efficient and a better option in terms of the environment.
- v. Disqualification on conviction for violating the National Honours Act, 1971:** This shall lead to disqualification of the person for 6 years from contesting to the Parliament and the state legislatures.
- vi. Restriction on contesting from more than 2 constituencies:** A candidate cannot contest from more than 2 constituencies.
- vii. Death of a contesting candidate:** Previously, the election was countermanded on the death of a contesting candidate. In the future, no election will be countermanded on the death of a contesting candidate. If the deceased candidate, however, was set up by a

¹² The 61st Amendment Act to The Constitution of India 1952.

recognized national or state party, then the party concerned will be given an option to nominate another candidate within 7 days of the issue of a notice to that effect to the party concerned by the Election Commission.

- viii. It is prohibited by law to go to or near a polling booth bearing arms. This is punishable by imprisonment for up to 2 years.
- ix. On poll days, employees of organisations get a paid holiday and violation of this is punishable by a fine.
- x. **Prohibition on sale of liquor:** No liquor or other intoxicants shall be sold or given or distributed at any shop, eating place, or any other place, whether private or public, within a polling area during the period of 48 hours ending with the hour fixed for the conclusion of poll.
- xi. **Time limit for bye-elections:** Bye-elections to any House of Parliament or a State Legislature will now be held within six months of the occurrence of the vacancy in that House.
- xii. The period of campaigning has been reduced.

➤ **Post 2000 Electoral Reforms:-** The electoral reforms target the election process in the country. The list of such electoral reforms is given below:

- i. **Ceiling on election expenditure:** At present, there is no limit on the amount a political party can spend in an election or on a candidate. But, the Commission has put a cap on individual candidates' spending. For the Lok Sabha elections, it is Rs. 50 – 70 lakh (depending on the state they are contesting the Lok Sabha seat from), and Rs. 20 – 28 lakh for an assembly election.
- ii. **Restriction on exit polls:** The EC issued a statement before the 2019 Lok Sabha elections saying that exit poll results could be broadcast only after the final phase of the elections were over. This was done to avoid prospective voters being misguided or prejudiced in any manner.
- iii. **Voting through postal ballot:** In 2013, the Election Commission decided to expand the ambit of postal ballot voting in the country. Previously, only Indian staff in missions abroad and defense personnel in a limited way, could vote via postal ballots. Now, there are 6 categories of voters who can use the postal ballot: service voters; special voters; wives of service voters and special voters; voters subjected to preventive detention; voters on election duty and Notified voters.

- iv. **Awareness Creation:** The government decided to observe January 25th as 'National Voters Day' to mark the Election Commission's founding day.
- v. Political parties need to report any contribution in excess of Rs 20000 to the Election Commission for claiming income tax benefit.
- vi. Declaring of criminal antecedents, assets, etc. by the candidates is required and declaring false information in the affidavit is now an electoral offence punishable with imprisonment up to 6 months or fine or both.¹³

7. Kinds of electoral systems:- The three types of electoral systems are Majoritarian, Proportional Representation and Mixed. Indian elections of the 1970s and 1980s were increasingly factional and violent. In 1990 the government realized that action had to be taken. It chose to revive the Model Code of Conduct, a voluntary electoral code that had been largely ignored since its adoption in 1962. The mood had changed, though, and the desire for reform intensified after the assassination of Rajiv Gandhi in 1991. The Election Commission of India spent the next decade persuading politicians to observe the code's guidelines and conduct peaceful and orderly election campaigns.

The first stage of the reform was for the then prime minister to invite the Committee on Electoral Reforms under the minister of law and justice, Dinesh Goswami, to report and make recommendations on how to proceed. "Among other recommendations, the report endorsed

- 1) the disqualification of candidates who campaigned on caste or religious lines, or instigated communal animosities during elections, and
- 2) the investigation, special trial or prosecution of candidates who intimidated or coerced voters. In addition, the report recommended that the election commission should void results and arrange fresh elections in cases where misconduct reported by electoral officers turned out to be true."¹⁴

The Committee was of the opinion that "statutory backing should be given to some of the more important provisions of the Model Code" such as the use of government funds for party political advertising. This aspect of the recommendations was ignored, and it was implemented as a voluntary code.

¹³ Reddy, C. Sheela. "Electoral Reforms in India." (2020).

¹⁴ Implementing Standard Without The Force Of Law: India's Electoral Conduct Code, 1990-2001 Rushda Majeed, 2011, Innovation for Successful Societies, Princeton University.

In December 1990, President Venkataraman appointed T.N. Seshan as chief of the Election Commission of India (ECI). Subsequently, M.S. Gill took over as in 1996, after Seshan had completed his term of office. Both men recognised that in order to use the Model Code of Conduct as an effective policy tool, the ECI would need to build broad support for the code and its goals, and to induce politicians and parties to abide by the code's recommended campaign practices. They took the following steps for implementing the code of conduct during their periods of leadership:

Building support and relationships - Seshan was working on the image of the ECI and gathering public support, and Gill later on used several similar tactics to win the cooperation of political leaders. “‘In my view ... the recognized political parties and the Election Commission are linked by an umbilical cord,' Gill said. ‘Neither can exist without the other.’”¹⁵

Gill shifted the emphasis to a cooperative approach with politicians, designed to create and sustain a working relationship between the parties and the ECI.

The ECI's monitors (who were appointed by Seshan and Gill) collected evidence for them about electoral malpractice that prosecutors could use to prove such criminal charges in court.

8. **Key aspect to Electoral Reform: -**

a. **Political Commitment**:- The government took a number of initiatives to control the violence that had erupted in elections before 1990. It recruited specialized and energetic civil servants to lead the ECI, and set up the Goswami Committee to make recommendations about reform. Even though there were several changes of government and of chiefs of the ECI, there was gradual progress towards the acceptance and observance of the code.

b. **Public Confidence**: - “‘In 1989, when the newly elected government, seeking to consolidate alliances with caste-based political parties, tried to enforce the affirmative action recommendations, violence erupted as students and political groups protested.’”¹⁶

However, by 1995 a Times of India poll indicated that a majority of the respondents

¹⁵Model Code Of Conduct For Te Guidance Of Political Parties And Candidates, Election Commission of India.

¹⁶ Report of the Committee on Electoral Reforms, May 1990. The Committee on Electoral Reforms, Legislative Department, Ministry of Law and Justice, Government of India.

were in favor of Seshan's interpretation of the Model Code of Conduct, and backed his orders to disqualify candidates who engaged in disruptive practices.

9. Clarity of Objectives: - The objectives of Seshan, during the formative period following his appointment as chief of the ECI, were that “the code of conduct could be developed into an effective tool for dealing with fierce electoral competition in multicultural and multi-religious India”. These objectives were maintained by his successor, Gill, during his five-year tenure from 1996-2001. Their success would be measurable by a reduction in violence and malpractice during election campaigns, although the code was only one factor among many.

A. Strength of Evidence: -

The content of the Model Code of Conduct was based on the electoral code of conduct that was passed in Kerala in 1960 for the Guidance of Political Parties and Candidates, to set rules for candidates during a close electoral race.

“In 1960, an official in the state of Kerala drafted a Model Code of Conduct for the Guidance of Political Parties and Candidates, to set rules for candidates during a close electoral race. Among other aims, the code, in its final form, restricted the use of inflammatory language that could divide India's diverse electorate on the basis of caste, religion or region ... the ECI in 1962 adopted the Kerala document for national use, made a few changes, and circulated it during every election from that year onward.”

The code was largely ignored from 1962 to 1990, principally because it lacked legal force. It was only when the level of violence became untenable that the government sought to enforce it.¹⁷

B. Management: - The chiefs of the ECI, in their different ways, gave the organization a strong sense of direction and helped give force to the Model Code of Conduct:

- a. The ECI recruited significant numbers of personnel from the state and central governments during elections.
- b. Seshan appointed special election observers to check for incendiary campaign speeches, voter intimidation, vote-stealing and other tactics often associated

¹⁷ ‘India's electoral reform: the Model Code of Conduct,’ Online web: <https://www.centreforpublicimpact.org/case-study/indias-electoral-reform-model-code-conduct>,

with electoral violence. Early in his tenure at the ECI, Seshan started recruiting larger numbers of election workers from central and state governments under the Representation of the People acts to monitor candidates and perform other election duties.

- c. “Seshan had not anticipated that a tragic political event would further his reform efforts during this time. While campaigning during the 1991 elections, Rajiv Gandhi, leader of the Congress party and a former prime minister, was assassinated.”¹⁸ Gandhi's death shocked Indians and intensified their worries about political violence. It did, however, enable Seshan to implement many of his requests for additional personnel to monitor the electoral process.

C. Measurement: - A large number of electoral officers were recruited under the supervision of Seshan to monitor electoral malpractice. They did so by inspecting publicity materials and candidates' speeches and reporting on other campaign- and election-related problems. They were therefore observing the main indicator of success: reductions in the levels of violence and corruption during electoral campaigns.

D. Alignment: - There was good alignment of interest between all the actors to create the impact, starting from the role of government in appointing the Goswami Committee to appointing Seshan and then Gill to head the ECI. They realised that reviving the Model Code of Conduct and making politicians observe it was a difficult task. They took care, therefore, to align their interests in with the Indian citizens and with the politicians themselves. They followed their individual roles in building relations by recruiting the necessary personnel and deploying observers to enforce the code.

10. Conclusion: - Elections in India is celebrated as festival. Voters travel a long way to reach the polling booths and stand in long queue to cast their votes. Despite people's eagerness for voting, elections in India are far from fair, and the results are frequently met with disappointment and scepticism.

For a country like India, where democracy is the bedrock of all governing systems, governance must be inclusive and heavily influenced by citizen participation. In a

¹⁸ Indian Parliamentary Democracy, U.N.Gupta 2003, Atlantic Publishers and Distributors, New Delhi.

democracy like ours, an accountable and transparent governing system necessitates the participation of citizens at all levels. People's participation, on the one hand, can assist the government in formulating better policies that can then be communicated to the public and implemented effectively. Citizens will be more likely to participate in the mainstream political process if government policies are inclusive and people-friendly. As a result, whether people participate directly, such as by running for office, or indirectly, such as by voting or being a part of the election process, the government is strengthened and more people-friendly policies are implemented. As a result, good governance must be viewed as a two-way process: on the one hand, the government must ensure that good governance values such as accountability and transparency are considered when formulating policies, and on the other hand, citizens must participate in the governance process in order to improve it.

