



CRITICAL ANALYSIS OF FREE AND FAIR ELECTIONS IN INDIA

SWATHI KRISHNA V.S

G. SOWNDARYA LAKSHMI

BALLB 2020-2025

ABSTRACT:

The success of a democratic system depends on the fairness of its election mechanism. Free and fair elections are essential components of any democratic country. For conducting free and fair elections it not only requires the legal framework and transparent electoral process, but also it requires the institutional structure which regulates the campaign finance that adequately ensures the governance priorities to the welfare of general public, over the interest of special interest which is required for fair elections. It signifies the sovereignty of the people, and it also provides legitimacy to the authority of the government. For the success of democracy, free and fair elections are important and it's necessary to conduct free and fair elections in our democratic country. But today's elections are not conducted in proper manner prescribed because of huge amount of money which required to be spent and the one who is contesting for election he should have large influential power to win the elections. The major defects which come in the electoral system in India are: money power, muscle power, Criminalization of politics, poll violence, booth capturing, communalism, castism, non-serious and independent candidates etc.

Key Words - Elections, Democracy, Electoral system, Criminalization.

LITERATURE REVIEW:

1. “Ensuring Free and Fair Elections: Best Practices from Around the World” by International Foundation for Electoral elections:

This article highlights best practices and lessons learned from various countries around the world in promoting and ensuring free and fair elections.

2. John Githongo, “How to Ensure Free and Fair Elections: Lessons from Kenya”, Transparency International (2015, March)

This article discusses the challenges faced by Kenya in conducting free and fair elections and the measures that were taken to overcome those challenges.

3. Carter Center, “Ensuring Free and Fair Elections: The Role of Election Observers”,

This article discusses the importance of election observation, and the role that international and domestic observers play in promoting transparency and accountability in elections.

RESEARCH PROBLEM:

Candidates and parties with lots of money adopt unfair means of buying the voters by gifting them. The single biggest threat to free and fair elections is the misuse of funds for electoral purposes. UPSC members after retirement they cannot take any employment in the government, but the election commission members after retiring can take appointment in the government.

RESEARCH QUESTION:

Whether the object of election commission that is free and fair elections is working in our democratic country?

HYPOTHESIS:

Assuming that in the current democratic state there is comparatively less transparency of free and fair elections and further scope in future all the elections must be held free and fair in India.

METHODOLOGY:

The methodology adopted for the purpose of conducting research in this paper is purely doctrinal. The data has been collected from various secondary sources which consist of books, journals, article, website, etc, we have referred as many sources as possible such as journals, different articles and book written thinkers.

CHAPTER - 1

INTRODUCTION:

Independent body because it is vest out with the power of conducting elections to MLA, MP, election of president, vice president. These elections are coming under election commission. So, it is mandatory that election commission should be independent one. It is common for both Centre and state. The Election commission is a permanent and independent body set up to ensure free and fair elections in the country. Article -324 talks about setting up of the election commission and to ensure free and fair elections for the parliament, state assemblies and for the election of president and vice President. Election commission is a common body like it is for whole India. This election commission is concerned with the election of the parliament as well as for the state election also. For the state assembly election this election commission was also there. There is a separate body called the state election commission. That state election commission is concerned with panchayat and municipality. Earlier it was a single member body, only one chairman was there. Now, after the voting age, the voting age before it was 21 years but now it has been reduced to 18 years. Now it is 18 years of age, which means many members will come and vote and so if we add all the members in the electoral roles means the work becomes a very big. So, it becomes a multi member body. As of now, the structure of election commission is there will be one chief election commissioner and other two election commissioners. For them everything is common like salaries, allowances. When there is difference of the opinion between these three commissioners. Then it is always by vote a majority only. It is nothing like chief election commissioner is deciding one thing and all of them to go with it. Not like that, it is done by majority or vote. Chief election commissioner and election commissioner are appointed by the president. When appointing the others election commissioners our president will consult with the chief election commissioner. While other election commissioners are appointed chief election commissioner acts as a chairman. The salary and allowances are the same as that of the supreme court judge. The condition of the service that are determined by the president. These service conditions cannot be modified or altered after the appointment of the election commissioners. That's why it is called independent body. Although they were appointed by the president they cannot removed easily by the president. Removal is same as that of the supreme court judge. It is done by resolution passed by both the houses of the parliament by a special majority.

CHAPTER -2

FREE AND FAIR ELECTIONS:

Elections are a central feature of democracy. For elections to express the will of the electorate, they must be 'free and fair'. 'Free' means that all those entitled to vote have the right to be registered and to vote and must be free to make their choice. In India and South Africa every citizen over the age of 18 is entitled to vote. An election is considered 'free' when you can decide whether to vote and vote freely for the candidate or party of your choice without fear or intimidation. A 'free' election is also one where you are confident that who you vote for remains your secret. 'Fair' means that all registered political parties have an equal right to contest the elections, campaign for voter support and hold meetings and rallies. This gives them a fair chance to convince voters to vote for them. A fair election is also one in which all voters have an equal opportunity to register, where all votes are counted, and where the announced results reflect the actual vote totals.

To ensure that an election is free and fair it must be run by an independent body that is not influenced by the current government. It is usually called as electoral commission. The Electoral commission operates independently from government it registers votes and release election results in line with the electoral Act of 1996. It is important that the election commission act in an open and transparent manner. It must publish the names of all registered voters and announce the results to the public. (2019)

There are rules that governments must follow before the election, during, and after an election to guarantee that the election was conducted in a free and fair manner. As follows, the eight models are:

- i). Voters have access to trustworthy data.
- ii) Voting registration is available to citizens.
- iii) Citizens are allowed to run for office.
- iv) The voting method is available to all voters; namely, access to the polling place.
- v) Individuals casting a ballot are liberated from terrorizing.
- vi) Voting is fraud-free.
- Vii) Right outcomes are reported subsequent to counting of the ballots precisely.
- viii) Respect is shown for the election results. (Pradhan, 2020)

Voters' participation in election-related events has increased over time. During the 2004 elections, more than one third of the electorate participated in events related to the election campaign. Over half of people stated that they

were affiliated with one political party or another. One voter out of every seven is a member of a political party. Even if elections aren't free or equal, the result still favors the dominant party. In such a scenario, the dominant parties should not lose elections. When an election is rigged, the party that lost usually does not accept the result. The result of India's elections speaks for themselves. The ruling parties in India frequently lose elections at the state and national levels. In fact, in the past fifteen years, the ruling party has lost every two of three elections. In the United States, an elected incumbent or "sitting" representative rarely loses an election. In India, about half of the current MPs and MLAs lose their seats. (2020)

CHAPTER - 3

DEMOCRACY:

Democracy was emerged and spread as most popular form of government. For true democracy elections at regular interval and in free and fair manner is very much essential. Democracy is the form of government in which people elect their rulers it's the government of the people, for the people and by the people. Democracy means rule of people it means people are free to choose their governing legislators. Democracy is form of government in which state power is held by the citizen. The term democracy is derived from the Greek words demos means the people and kratos means power. Democracy is thus a political system in which all the measures of the society have equal share of political power. People elect their representatives to work on behalf of them. In ancient times democracy was practiced in Greek and Roman countries. The ideals of democracy form the basis of a democratic government. In a democratic country the citizen of the country holds the supreme power. They choose their representatives through public elections.

It has two forms one is direct democracy and indirect democracy. The most popular form is indirect democracy. The indirect democracy is of 2 types further the presidential form of indirect democracy and the parliamentary form of indirect democracy. In presidential form of democracy one person is head of the state and head of the government. Example United states. In the United States of America the president of America is the head of the state and head of the government. Therefore United States is presidential form of indirect democracy. In the parliamentary form of indirect democracy there are two heads one is head of the state and the other is head of the government of state example- India. (2020) In Indian democracy have two heads, one is head of the state and other one is head of the government. President is head of the state and Prime minister of India head of the government of the state. India follows the system of parliamentary form of government. It is also called representatives democracy because in this form of democracy, people elect their representatives and representatives form the government frame the policies and run the administration. (M.G.Devashayam, 2022)

Election is a constitutional mechanism by which people elect their representatives, people elect their government at regular intervals, and they may change them. If they required to do so. Elections must be free and fair. Every citizen should get equal opportunity to contest election and equal opportunity to cast their voters. The constitution of India has therefore engaged the electoral commission of India an autonomous and statutory body that is responsible for conducting impartial elections. Political parties play an important role in the Indian democracy. Indian political history has witnessed the formation of several national and regional parties which had given voice to national and regional aspirations members of these parties contest elections and get elected to become a part of the government. (2022)

CHAPTER - 4

ELECTORAL VIOLENCE AND SECURITY CHALLENGES

India is the world's biggest democracy, home to more than one billion people. For this reason, keeping the peace and security for such a big population can be extremely difficult for the government. Since independence, there have been a constant stream of internal problems, including insurgencies, caste conflicts, terrorist attacks, violence during elections, sectarian conflicts, and regional disputes. While addressing challenges like promoting stability often focuses on enforcing laws and mending divides, fostering understanding between groups through open discussion can also help ensure a democratic system continues empowering citizens in a fair process. It is paramount to safeguarding a nation's democratic foundation that elections allow people's voices to be heard freely without threat to themselves or the values of rule by the public's will.

Electoral violence can be referred as Acts of coercion, intimidation, or physical or psychological violence that take place during electoral processes—such as elections, campaigns, or post-election periods—are referred to as electoral violence. It frequently aims to sway election results, discourage people from voting, or undermine the democratic process. Voter suppression strategies, assaults on candidates or voters physically, and actions meant to tamper with or disturb the electoral process are all examples of electoral violence .

Preservation of Democracy is important because the integrity of democratic systems depends critically on election security. Democracy depends on free and fair elections, and its fundamental elements are in jeopardy in the absence of secure procedures. There should be Credibility and Trust: Safe elections increase public confidence in the electoral system.

Citizens are more likely to participate in elections and accept the results when they have faith that the process is fair and that their votes will be counted accurately. This increases the legitimacy of elected officials. Election disputes and accusations of fraud can cause political unrest and even bloodshed in many nations. Strong election

security protocols can help avert these kinds of confrontations by guaranteeing an open, credible, and accountable electoral process.

Maintaining citizens' human rights, such as their freedom of speech and participation in politics, depends on holding fair and secure elections. These rights are protected and made sure not to be infringed upon by election security. By offering a peaceful transfer of power, safe elections support political stability. In turn, this stability promotes efficient government operations and sound governance. Aside from these complicated security issues, the Indian government also faces the difficulty of enforcing strict security laws in light of violent political rivalries, internal rebel movements, and global crises. A nation's dedication to election security affects its standing abroad.

As part of its efforts to guarantee and assist in securing free and fair elections, the Indian Election Commission (EC) has designated areas susceptible to electoral violence — so-called sensitive or key polling stations. During the seven-phase election process, over 500,000 security officers chosen from seven central police and paramilitary groups would be stationed around the nation. Although there will be 10% more polling places in 2019 than in 2014, there will be around 10% fewer security troops present because of the significant army deployment along the border due to increased tensions between India and Pakistan

.The international community views countries that hold secure elections favourably and views them as more trustworthy partners. There should be Economic and Social Development where environment that are favourable to economic and social development are more likely to be established by stable, democratically elected governments. Foreign and local investment are more likely to go towards nations with stable political systems. Preventing Corruption is important because they play a major happening of electoral fraud and vote-buying are two examples of corrupt activities that election security measures can aid in stopping. Corrupt people or organisations have fewer possibilities to rig elections when there is a safe voting system in place. There should be Inclusivity where all eligible citizens are guaranteed the right to take part in the voting process thanks to efficient election security procedures.

Adapting to technological development is necessary in current world, elections are heavily influenced by technology. Maintaining the integrity of the process requires making sure electronic voting systems are secure and protected from cyberattacks. Election security is a worldwide issue in addition to one of national importance. It is the cornerstone of stability, peace, and democratic government. Countries may preserve their democratic institutions, win back the confidence of their populace, and contribute to a more secure and affluent global community by emphasising and maintaining election security.

CHAPTER - 5

CHALLENGES TO FREE AND FAIRE ELECTIONS:

- ❖ Candidates and political parties with a lot of money may not be sure of their victory in elections but they do enjoy big and unfair advantage over small political parties and independent candidates. They are political parties in our country which have very huge funds, they spend a lot of money on election campaign, on other political activities etc., This is all to influence the others who are going to cast votes. (2019)
- ❖ There are political leaders with criminal backgrounds. These criminal background candidates and political leaders, they use their influence to get tickets for contesting elections from bigger parties, with the help of their criminal background. These candidates and political leaders keep honest and able candidates & Political leaders out of electoral race. Because it damages democracy, ultimately it weakens the government of the country. It damages the reputation of the country.
- ❖ With their criminal background, these candidates and political leaders succeed in influencing voters also and when voters are influenced by these things, then they are not going to cast their vote in a free and fair manner.
- ❖ In our country, if you notice or observe carefully you will find that some political parties are dominated by some families.
- ❖ Example: The political parties from Jammu & Kashmir to Kerala and from Gujarat, Rajasthan, Arunachal Pradesh and Assam, you will find that there are many political parties in our country which are dominated by some political families. The members of these political families do not allow others to come up or do not allow them to rise in politics.
- ❖ Dominance of some political families on some political parties also causes a threat to free and fair elections to our democracy.
- ❖ Most of the political parties in a country do have similar or common policies and programs. This offers very little to the voters. Voters get confused who should be preferred, because all political parties talk of nationalism, talk of employment, eradication of poverty, national security health, education, transport, communication and so many things' voters find difficult to decide preference, to decide whom should they vote. Therefore, political parties having a common program is also a challenge of free and fair elections.
- ❖ In the country, there are political parties which are very big or very powerful in finance and funds. On the other hand, there are political parties which are financially not that powerful. These smaller political parties face practically these kinds of disadvantages during the election campaigns. This challenge doesn't exist in our country

alone, this exists in all democratic countries. To overcome this challenge, we must encourage citizens to have confidence in democratic values. (2020)

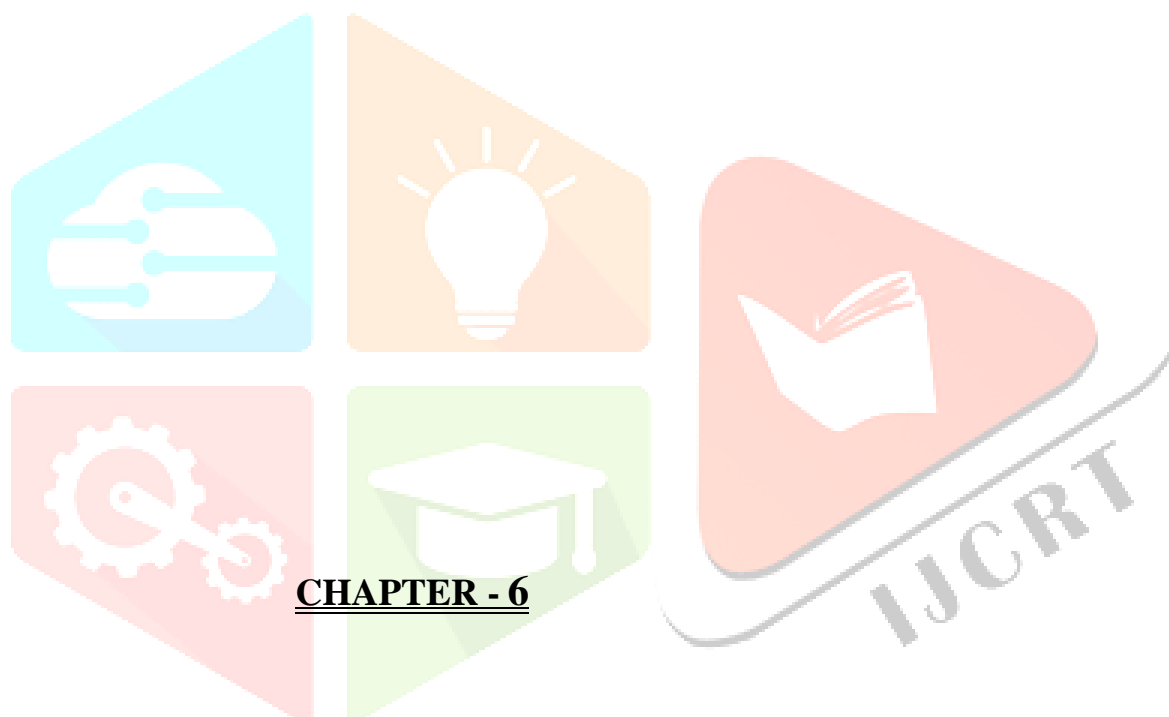
CASE LAW :

1. Indira Nehru Gandhi v. Raj Narain (1975, SC)¹ :

The court held that free and fair election in the basic feature in our democracy and hence stands as the basic structure of the constitution.

2. People's union of civil liberties v. Union of India (2003)²:

This case addressed the union of electoral malpractice, and held that the use of money power, muscle power and media power to influence elections was unconstitutional.



CONCLUSION:

The general principle of free and fair election is an essential feature of democracy, which is a part of basic structure of the constitution of India. The electoral democracy system is the most practical of all systems and the one that gives the most people the most opportunities and happiness with the fewest risks. It is the only form of government under which citizens can exercise the freedoms and rights which they hold. However, the system has some drawbacks, its weaknesses or imperfections do not decrease the excellence of the ideal of this system. The weaknesses of the system are generally found due to social, economic, or historical factors, which can be removed or limited. Despite some flaws, this system outperforms all other forms of government by a wide margin. These

¹ Indira Nehru Gandhi v. Raj Narain , 7 Nov, 887 of 1975

² People's Union of civil Liberties V. Union of India AIR 13 March, 2003

flaws could be fixed not by less democracy but by more of it. It is regarded as the best system of government in the modern world for this reason.

Because of the use of electoral corrupt practices and electoral offenses, it has been observed that elections are currently not held in perfect conditions. As a result, our electoral process is being affected and the very foundations of our democracy the roles that money power, muscle power, booth capture, and other factors played is a negative image of the electoral process and makes it difficult to hold free and fair elections. The objective of the election law is to guarantee free and fair elections since the goal of the law of elections in every nation is to create and maintain the conditions necessary for free and fair elections. Even though they may appear to be technical, our electoral law also contains numerous detailed provisions to ensure the purity of the election process.

SUGGESTIONS:

- ❖ As time passes and new issues emerge that limit the purity, freedom, and fairness of elections, so the Constitution must be revised immediately.
- ❖ The only constitutional agency with a lot of power is the Election Commission of India. However, more power is still needed to ensure that the election process is completely free and fair.
- ❖ The political parties bear the greatest burden. Certainly, the representatives' Winn ability is important, but they shouldn't forget that the whole election process is for the democracy's survival and strengthening, which we have achieved after overcoming many obstacles.
- ❖ Lastly, the general public needs to be aware that democracy has been proven to be the best form of government. The future of our country's democracy and development has to be aware of the issues that can destroy the pioussness and fairness of the democracy and take us away from it.

REFERENCE:

- ❖ (2019, April 22). Retrieved from <https://www.drishtias.com/daily-updates/daily-news-editorials/free-and-fair-election>
- ❖ (2019, April 22). Retrieved from <https://www.drishtias.com/daily-updates/daily-news-editorials/free-and-fair-election>
- ❖ (2020, Oct 27). Retrieved from <https://www.facinghistory.org/resources-library/free-fair-elections>
- ❖ (2020, July 25). Retrieved from <https://knowlaw.in/index.php/2020/07/25/elections-and-democracy-in-india/>
- ❖ (2020, Sep 18). Retrieved from <https://brainly.in/questions/23150141>
- ❖ (2022, April 7). Retrieved from <https://www.chathamhouse.org/2022/04/democracy-india>
- ❖ M.G.Devashayam. (2022, August 15). Retrieved from <https://theleaflet.in/is-india-an-electoral-democracy/>
- ❖ Pradhan, R. (2020, April 23). Retrieved from <https://lexfori.com/legal-news/efficacy-of-free-and-elections-in-india-a-comprehensive-study>