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Free And Fair Elections & Good Governance- A Bedrock Of Democracy

Name of the authors: Dr Seema Goyal ; Poonam Rani Hoon

Designation: Assistant Professor ; Research Scholar

Name of the institution: HLM Law College, Duhai, Ghaziabad ; IIMT University, Meerut, U.P. 150001

Address: New Shivpuri Hapur (U.P.)-245101; Balaji Enclave, Govindpuram, Ghaziabad

Abstract: - 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 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.

Election is the process by which we elect our representatives for forming government. India is the biggest democracy in the world. A free and fair election is the backbone of a healthy democracy. Malpractices in the elections distort the political, social, and economic outcomes in addition to distorting the quality of representation. Elections are an important part of democracy, and excellent elections increase the political legitimacy of the leadership. This is emphasized in the Inter-Parliamentary Council's (IPC) 'Declaration on Criteria for Free and Fair Elections,' which begins:

“The government’s authority can only come from the people’s will, expressed in authentic, free, and fair elections held at regular intervals on the basis of universal, equal, and secret suffrage.”

Key Words: - Democracy, Good-governance, Inter-Parliamentary, Malpractices

1. **Introduction:** - We base our notion on the Inter-Parliamentary Council's declaration, which provides a set of rights and obligations that constitute a "free and fair" election. All adult citizens must have the right to register and vote, as well as the freedom to form and join political parties and campaign freely within the country. Equal treatment of equals is referred to as 'fairness.' For example, every voter is "entitled to exercise his or her right equally with others," according to the declaration.

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.

2. **Conditions Required For Conducting Free & Fair Elections:** - There Are certain conditions required to conduct free and fair election. These Conditions for free and fair election includes: -
 1. Equal voting rights
 2. Freedom to assemble for campaign
 3. Parity of resources between political parties in order to persuade the voters
3. **Factors responsible for unfair election:** - There are various factors which are responsible for unfair elections, which includes: -
 - a. Electoral fraud;
 - b. voter repression or intimidation;
 - c. Uneven campaign financing restrictions; and
 - d. Unequal access to the media is all reasons of unfairness in elections.

Unfair elections are a violation of the right to vote, which is widely acknowledged as a necessary component of deliberative and representative democracy.

- a. **Electoral fraud:** - Between 1998 and 2001, electronic voting machines (EVMs) were used to replace paper ballots in elections across India to prevent electoral fraud. Since then, studies have found evidence of EVMs reducing fraud using a variety of measures. Major political parties have announced that electronic voting will be reformed, with 50% of EVMs being matched to the actual count of voting slips in the corresponding VVPATs (Voter verifiable paper audit trail). This is in contrast to the present verification method, which matches only one polling booth in an assembly/Lok Sabha seat.

With the use of paper ballots in India, booth-capturing, in which party loyalists take over a polling station by force and stuff the ballot box with fake ballots, was a major concern. EVMs were designed to prevent vote tampering by limiting the number of votes cast each minute to five. This feature increased the amount of time it required to cast a bogus ballot, giving security officials more opportunity to respond and intervene. There is also a "close" button that will turn off the equipment if a polling booth is taken by force. In comparison to paper balloting, where inspection was limited to court orders and the validity of any ballot was determined at the discretion of an election officer, the fact that electronic voting signatures and thumb impressions are kept in a register open to public inspection creates greater transparency.¹

¹ Available at: <https://www.brookings.edu/blog/up-front/2019/04/05/indias-electoral-democracy-how-evms-curb-electoral-fraud/>, (Visited on 10 February 2022).

b. Voter Repression or Intimidation: -

Position in USA: -The act of intimidating, threatening, or coercing another person to interfere with their right to vote for the candidate of their choice is known as voter intimidation. Voter intimidation became a federal offence in 2020, punishable by a fine, up to a year in prison, or both.

"Whoever intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce any other person for the purpose of interfering with such other person's right to vote or to vote as he chooses, or of causing such other person to vote for, or not vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, or Delegate from the District of Columbia," according to federal law.²

Civil claims based on voter intimidation are allowed under federal law. It is illegal to "intimidate, threaten, or compel" another person at the polls, according to Section 11 of the Voting Rights Act. It is also prohibited to pressure anyone into registering to vote or voting under the Voting Rights Act. In addition to federal legislation outlawing voter intimidation, each state has its own legislation prohibiting voter intimidation and providing penalties for it.³

Voter intimidation is illegal under federal law. Voter intimidation "usually needs evidence of threats, pressure, pecuniary coercion, or some other aggravating component that tends to wrongly compel activity on the side of the victim," according to a Department of Justice study from December 2017.

As of 2020, the following federal statutes against voter intimidation were listed by the Department of Justice:

"Knowingly and intentionally intimidating or coercing potential voters in registering to vote, or in voting, in any election for federal office," according to the National Voter Registration Act of 1993.

"It is illegal to use or threaten to use physical force to intimidate individuals from, among other things, voting or qualifying to vote," according to the Civil Rights Act of 1968. "It includes threats to use physical force against a victim because the victim has exercised his or her franchise, or to prevent the victim from doing so."

The Hatch Act was passed by **Congress in 1939. Section 594** outlaws "the blatant economic coercion employed during the 1930s to force federal employees and recipients of federal relief benefits to undertake political labour, vote for, and contribute to the candidates backed by their bosses," according to the Department of Justice.

The Hatch Act, Section 610 "It is illegal to intimidate or coerce a government employee into engaging in or refraining from engaging in 'any political activity.' Violators face a maximum sentence of three years in prison."

The Hatch Act's Section 241 "makes it a ten-year felony to 'conspire to hurt, oppress, threaten, or intimidate' any person in the free exercise of any right or privilege guaranteed by the Constitution or laws of the United States including the right to vote."

² 18 U.S. Code 594. Intimidation of voters, "Legal Information Institute," (Visited on January 26, 2022).

³ Georgetown Law, "Voter Intimidation Fact Sheet," (Visited on October 26, 2020).

Examples of voter intimidation: - The following are some examples of voter intimidation:

- ✓ Violent behaviors at the voting place or elsewhere
- ✓ Threats of violence made verbally
- ✓ Wearing military-style or official-looking uniforms in front of voters
- ✓ Armed individuals brandishing firearms or displaying firearms in an aggressive manner
- ✓ Blocking the entrance to the polling station or disrupting voting lines
- ✓ Following voters as they make their way to, from, or within the polling station
- ✓ Disseminating misleading information concerning voter fraud, voting requirements, or criminal penalties associated with them
- ✓ Approaching voters' vehicles aggressively or writing down their licence plate numbers
- ✓ Voters are being harassed and their qualifications to vote are being questioned forcefully.⁴

c. **Uneven campaign financing restrictions or Purchase of vote:** - How much does money taint the integrity of elections? According to certain authors, voting is so significant in and of itself that election legitimacy is unaffected.

According to Ahuja and Chhibber⁵, the poor regard voting as a right. It provides the impoverished with a "temporary parity with the rulers" by allowing them to "reject or elect their political masters" (2012, p. 395). Banerjee⁶ goes even further, claiming that voting is a unique form of 'communitas' that is nearly sacred. The act of voting itself [...] is a manifestation of super democratic values such as political equality (when one person is truly equal to another), popular sovereignty (when each person matters), and citizenship (when people have a chance to perform their rights and duties). They display their belief and involvement in the most democratic acts of democracy by showing up to vote, patiently queuing at voting centers, exercising their right to vote, and wearing their blackened fingers as a badge of honors.

The alleged amounts of money are large, and the actions to intercept them are significant. The extent to which huge sums of money actually have the desired effect of persuading voters is unclear to anyone — party leaders, voters, or analysts. What, therefore, is the point of vote-buying for those who are on the receiving end? Is it an outlier of a tainted system, or is it all part of the fun of voting, a cause to become engaged in an otherwise remote and foreign event? Is it a bribe from a patron or a simple act of bribery? Is it a straightforward business exchange of cash for a vote, or is it a waste of money that has no bearing on a vote? What criteria are used to assess it? What, if anything, can it tell us about today's 'vernacular' forms of democracy in India?⁷

The case of local and national elections held in rural coastal Andhra Pradesh in 2014 is used to focus on Dalits in rural Andhra Pradesh. Our concentration on Dalits is deliberate since so much of the debate about vote-buying revolves around the poor's vulnerability (and associated gullibility), and because the poor are frequently targeted globally. Despite the fact that all villagers are offered vote money, Dalits are more vulnerable to coercion and must plan ahead to avoid negative outcomes.

People in Pakistan see the election cycle as an opportunity to claim their share of electoral loot, and candidates dig wells, pave streets, distribute solar panels and fans, or pay large sums to welfare organizations, mosques, seminaries, shrines, or other religious places in the name of donations, and also send pilgrims to

⁴ 'Intimidation of Voters,' Available at: https://ballotpedia.org/Intimidation_of_voters, (Visited on January 27, 2022).

⁵ Ahuja, A., & Chhibber, P. (2012). Why the poor vote in India: 'If I Don't Vote, I Am Dead to the State'. Studies in Comparative International Development, 47(4), 389–410.

⁶ Banerjee, M. (2011). Elections as communitas. Social Research, 78(1), 75–98.

⁷ Michelutti, L. (2007). The vernacularisation of democracy: Politics, caste, and religion in India. New Delhi: Routledge.

Mecca.⁸ Gift cards, eyeglasses, building supplies, washing machines, and cheap tortillas are used to entice voters in Mexico.⁹

As seen in the preceding examples, the universality of vote buying poses a serious threat not only to electoral democracy but also to the establishment of trustworthy leadership. However, a number of studies have been published that cast doubt on the plausibility of vote buying in the traditional sense.

4. **Good Governance**: - Good Governance Characteristics:

- a. **Requirement of Participation**:- The first feature identifies equal involvement by all members of society as a critical component of good governance, with everyone having a say in the decision-making process. Direct participation or participation through legitimate intermediary entities or representatives are both viable options. Participants must be well-informed and well-organized. On the one hand, this entails freedom of association and expression, while on the other, it entails a well-organized civil society. Without fear of prejudice, all sections of society should be able to express their concerns in policymaking that affects them.
- b. **Respect for the law**: - Fair legal frameworks that are uniformly implemented are required for good governance. Human rights, particularly those of minorities, must also be fully protected. An independent judiciary and an unbiased and incorruptible police force are required for impartial law enforcement. It also entails providing free legal assistance to the destitute and indigent who cannot afford to employ a lawyer. It emphasizes the need of legal education and training, as well as judicial and legislative reforms.
- c. **Availability of information**: - Transparency refers to how choices are made and how they are implemented in accordance with rules and regulations. It also implies that information be publicly available and accessible to individuals who may be impacted by such decisions and their implementation. It also implies that sufficient information is presented in easily understandable formats and mediums.
- d. **Responsiveness**: - Good governance necessitates that organisations and processes make every effort to serve all stakeholders in a timely manner. Governmental institutions obtain 'legitimacy' in the public domain by being responsive, which ensures their wider acceptance and, as a result, their efficacy in governing.
- e. **Focused on consensus**: - In any given society, there are several actors and perspectives. Good governance necessitates the mediation of many societal interests in order to create wide consensus on what is in the best interests of the entire community and how this might be accomplished. It also necessitates a wide and long-term view of what is required for long-term human development and how to achieve those goals.
- f. **Equity and inclusion**: - The well-being of a society depends on ensuring that all of its members believe they have a stake in it and are not excluded from society's mainstream. This necessitates providing chances for all groups, particularly the most vulnerable, to improve or preserve their well-being.
- g. **Effectiveness and efficiency**: - Good governance means that procedures and institutions create results that suit society's needs while making the most efficient use of available resources. In the context of good governance, efficiency also refers to the efficient use of natural resources and environmental conservation.

⁸ Ali, S. (2018, July 16). Votes on sales in several constituencies. Dawn. Retrieved July 31, 2019, from <https://www.dawn.com/news/1420313>.

⁹ Linthicum, K. (2018, February 28). In Mexico, voters are wooed with gifts cards, washing machines and cheap tortillas. Los Angeles Times. Retrieved July 20, 2019, from <https://www.latimes.com/world/la-fg-mexico-tortilla-war-20180228-story.html>.

- h. **Accountability**: - Good government necessitates accountability. Governmental institutions, as well as the commercial sector and civil society organizations, must be accountable to the public and institutional stakeholders. Without transparency and the rule of law, accountability cannot be enforced.

5. **Rights of Voters: Preventing Fraud and Manipulation**: - Voters must have faith that their vote can be cast freely and anonymously, and that every vote will be kept secure and counted correctly. The voter must also have faith that elections will be conducted in a fair and impartial way, with an independent and impartial judiciary that will consider complaints promptly. As voters express their strong commitment to democracy, governments in many countries must step up and make an effort to meet those demands.

At the turn of the century, there was a surge of interest in presidential, parliamentary, and local elections around the world. They were viewed as a route to democracy based on the practice of certain human rights for which people had long fought and died. Elections were considered as celebratory affairs, with a visible and infectious passion for them. The rights of association and assembly, freedom of the press and expression, and, most importantly, the right to vote were all at stake. Elections have long been recognized as a critical phase in a country's development.

These rights imply that voters have the freedom to vote without being pressured; that they have the opportunity to make a real and informed choice of a candidate thanks to an independent media; and, most importantly, that all candidates are able to campaign on an equal footing against a backdrop of equal and universal suffrage. Voters must have faith that their vote can be cast freely and anonymously, and that every vote will be kept secure and counted correctly. The voter must also have faith that elections will be conducted in a fair and impartial way, with an independent and impartial judiciary that will consider complaints promptly.

These are the fundamental principles that should be followed in all elections around the world, including local, parliamentary, and presidential elections. Principles that ensure that there are no actual differences or traditions or regional specificities when it comes to the election's basic needs.

Procedures for organizing and executing elections, as well as the concepts that govern them, began to form and grow about that period in the 1990s. Observation missions for elections were launched, and parliamentary organizations were formed. After elections were observed, it became customary to issue recommendations to assist states in implementing and adhering to these principles. Many people were ecstatic to be able to vote for the first time.

6. **Various Techniques used for Conducting Election**: - Various techniques that are used include:
- (i) **Voter Registration** - A governing party can use votes to their benefit by eliminating legitimate voters, introducing fraudulent ones, and not deleting dead persons from the electoral register.
 - (ii) Making it difficult for opposition candidates to register, or rejecting their applications on the basis of bogus grounds, or harassing or imprisoning them. All of these tactics make it more difficult for an opponent to fight on an equal footing.
 - (iii) While vote buying is still practised, a more sophisticated technique in the form of pressure is now the norm. This is frequently directed towards students, instructors, university lecturers, military people, and industry workers, who are pressured to vote a certain way or face negative consequences.
 - (iv) Forcing the opposition to hold rallies on the outside of towns hinders the opposition's capacity to campaign by preventing supporters from attending.

- (v) Slanting information to voters, buying up media outlets, limiting opposition ownership of the press, seizing print runs, preventing reporters from collecting and reporting information, imprisoning journalists or forcing them to self-censor by making libel a criminal offence, and denying candidates paid advertising.
- (vi) All of these tactics are intended to limit the opposition's capacity to campaign and voters' ability to hear them.
- (vii) An inadequate legal system that does not promptly address complaints may hinder individuals from voting and leads to a general lack of trust in the system.
- (viii) Manipulation of the vote count at the polling station level is possible when votes are moved from one pile to another. When it comes to tabulation, there is even more room to play with the numbers. This further erodes trust in the system.
- (ix) If there is a lack of openness and accountability in party funding, a candidate may have an unfair advantage.
- (x) Abuse of incumbency is another example. A government is responsible for not abusing state resources to help the candidate of the ruling party, such as using government vehicles, office space, and opening roads and airports for campaign reasons. All of these are examples of abuse. Another option is for election commissions to lack training, resulting in blunders and processes that are not followed properly or are delayed.
- (xi) Election results and referenda can be influenced by fake news, social media, identity politics, and even cyber-attacks.

These are just a few examples of how incumbent parties and their international supporters try to sway election results. Voters' suspicions that elections have been tampered with frequently result in unpleasant violence. Any evidence of systematic and premeditated vote rigging, sadly, casts doubt on a country's election system as a whole. How can these issues be addressed such that fraud and manipulation be lessened, if not eradicated entirely?

What is important to remember is that, despite efforts around the world to undermine, marginalize, and even eliminate oppositions, voters in many cases are making a bigger effort than ever before to coordinate among themselves and come out to vote in order to seek more effective representation. The youth, like many other people in society, are fed up with being underrepresented in Parliament and are growing increasingly vocal about their concerns. Their increased election participation and engagement offers us hope that corruption will not triumph in the long run. They should receive international support. We must not let down those who are willing to fight for meaningful elections and democratic process integrity. We owe it to them to make certain that they are successful. As voters express their strong commitment to democracy, governments in many countries must step up and make an effort to meet those demands.

7. **Role of Judiciary in Providing Free and Fair Election:** - The term 'election' refers to the people who will be elected (known as electors), the post for which the election will be held, and the person who will be elected (called the candidate). According to Black, an election is the process of choosing someone to fill a post or office, usually a public one. As a result, election is defined as the selection of candidates for public office, as well as the expression of the people's or a large group of voters' will through voting. The act or process of selecting a person or persons for an office, position, or membership by ballot has also been defined. Election is defined as "an election to fill a seat or seats in either House of Parliament or in the House or either House of the Legislature of a State" in the Representation of the People Act, 1951. The term "election" is defined in the **Representation of the People Act, 1951** as "every stage from the time the election notification is issued until the result is declared." The term "election" refers to the process of

selecting a person through a vote or other means. In the broadest sense, a person is elected to an office if he is nominated by method of selection from among multiple people based on a set of criteria.

When considering the meaning of the word election as used in **Article 329(b)**, the Supreme Court noted that the term has acquired both a broad and a narrow meaning in relation to the process of selecting proper representatives:

- (i) Firstly, in a strict sense, it refers to a candidate's ultimate selection, which can include the results of a poll if one is conducted or a candidate being returned if none is conducted.
- (ii) Secondly, in its broadest sense, the term refers to the entire process that leads to a candidate being proclaimed elected.

In *Mohinder Singh Gill v. Chief Election Commissioner*¹⁰, Krishan Iyer J held that every step from beginning to end, or the entire process, constituted election, not just the completion. The rainbow of actions covered by the obnoxious term 'election' thus begins with the initial notice and ends with the announcement of a candidate's return. There can be no two ways about it: "free and fair elections" are a fundamental tenet of a free democratic society. According to the Supreme Court:

Democracy is a kind of government in which the people govern themselves. It is a continuous, participatory operation, not a one-time, cataclysmic event. When the little man casts his vote at the polls, he performs a social audit of his Parliament as well as a political choice of his proxy. Although the full bloom of participatory democracy is rare, the minimal credential of popular government is an appeal to the people for a renewal of trust after each term. As a result, adult franchise and general elections are required by the Constitution.

The Supreme Court concisely underlined the inseparability and inter-relationship between elections and democracy: "The notion of democracy as defined by the Constitution implies the representation of the people in Parliament and State legislatures via the process of election." As a result, a true, independent, and liberal democracy values free, fair, and impartial elections since true democracy is born via them.

8. **Constitutional prohibition Prohibiting Interference in Issues Concerning Elections in India:** - Elections to public posts must be available to the examination of an impartial tribunal in order for a democracy to function properly. The Constitution depicts the judicial process of resolving election disputes by discovering the circumstances surrounding the election and applying the law. Free, fair, fearless, and impartial elections are the guarantee of a democratic democracy, according to the Supreme Court in *V.S. Achuthanandan v. P.J. Francis*. The existence of an effective process is a prerequisite for such an election. A future law based on societal needs is admittedly of crucial importance for conducting, holding, and concluding the democratic process. This court's mandate is to apply a balanced judicial approach to the implementation of franchise laws.

Before delving into the issue of jurisdiction, it's important to remember **Article 329 of the Constitution**, which state that courts are prohibited from interfering in electoral matters.- Regardless of anything else in this Constitution, no election to either House of Parliament or to the House or Houses of the Legislature of a State shall be called into question unless an election petition is presented to such authority and in such a manner as may be provided for by or under any law made by the appropriate Legislature.

Also, The Hon'ble Supreme Court has stated that the non-obstante clause, which opens **Article 329 of the Constitution**, prohibits us, as well as any other court in the land, from hearing an action or proceeding

¹⁰ 1978 AIR 851.

challenging any election to Parliament or the State Legislature. The processes must be started by filing an election petition in the manner stipulated by the Act.

In *Jyoti Basu v. Devi Ghosal*¹¹, the Supreme Court stated the constitutional situation as follows: A fundamental right to vote, as important as it is to democracy, is oddly neither a fundamental nor a common law right. It's a statutory right, plain and simple. The right to vote is also in jeopardy. The right to contest an election is also protected. There is no right to elect, no right to be elected, and no right to contest an election outside of the statute. They are statutory creations, with statutory restrictions. Election-related rights, such as the right to contest or challenge a result, are not common law rights. They are the creations, conferrals, and limitations of the laws that establish, confer, and limit those rights. As a result, judges must reference the provisions of the law governing the particular election while deciding whether an election can be set aside on any stated cause. They must operate within the confines of that law and are not permitted to go beyond it.

Prior to 1966, election petitions were presented on an ad hoc basis to the Election Commission, which would then form one-member Election Tribunals of the level of District Judge to hear the petitions. The Supreme Court held in *Hari Vishnu Kamath v. Ahmed Isheque* that Art 329(b) prohibited only the 'initiation' of proceedings, questioning an election, in any manner other than by filing an election petition, and that once that proceeding was initiated by filing an election petition, the requirement of Art 329(b) was met, and the election tribunal's trial was subject to general law and the supervision of High Courts over tribunals.

As a result, in order to avoid having dual jurisdiction over election concerns, the Election Commission suggested that election petitions be heard by High Courts rather than election tribunals. As a result, Parliament adopted **Section 80-A of the Representation of the People Act, 1951**, which established the "High Court" as the authority for filing election petitions under **Article 329(b) of the Constitution**. In 1966, an adjustment was made to accommodate this (Act 47 of 1966).

9. **The Representation of People's Act of 1951 the scope of power:** - Parliament enacted the **Representation of People's Act, 1951 (hence referred to as RPA, 1951)** in exercise of its powers under **Art 327. The RPA of 1951** has specific laws governing all aspects and stages of elections to various legislatures. The **RPA, 1951** has been considered to be a complete and self-contained law within which every claim to a right in connection with an election or election dispute must be located. **Part VI of the RPA, 1951**, deals with election disputes and specifies the manner in which election petitions are presented, as well as their trial and procedure. No election shall be brought into question until an election petition is presented in line with the rules of this section, according to Section 80 of the **RPA, 1951**. In support of this clause, the High Court is designated as the court with authority over election petitions. Such jurisdiction shall be exercised by a single High Court judge, and the Chief Justice shall assign one or more judges for that purpose from time to time.¹²

The terms "common law" and "equity" are unfamiliar in the field of electoral law. Election rights that are free, fair, and independent are extremely important and crucial to any democracy. As a result, RPA, 1951 regulates the entire election process, from the issuance of a notification calling on a constituency to elect a member or members to the ultimate determination of any election dispute, if any. Different stages of the process are dealt with by different provisions of the Act.

¹¹ 1982 AIR 983.

¹² *Dr. Chhotalal Jivabhai Patel v. Vadilal Lallubhai Mehta And Ors. on 29 September, 1967.*

10. The grounds for challenging an election through an election petition are outlined in

Section 100 of the RPA, 1951: - Section 100 reads as follows: 100. Reasons for declaring an election void: –

(1) Subject to subsection (2), if the High Court finds:

(a) that a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat on the date of his election under the Constitution, this Act, or the Government of Union Territories Act, 1963(20 of 1963); or

(b) that any corrupt practise was committed by a returned candidate, his election agent, or any other person with the consent of a returned candidate on the date of his election under the Constitution, this Act, or the

(c) that any nomination paper has been improperly rejected: or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected-

(i) by the improper acceptance of nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by any agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) (iv) by any non-compliance with provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void.

(2) If, in the opinion of the High Court, a returned candidate was guilty of any corrupt practise by an agent other than his election agent, but the High Court is satisfied that:

(a) no such corrupt practise was committed at the election by the candidate or his election agent, and all such corrupt practises were committed contrary to the candidate or his election agent's orders and without their consent; and

(b) the candidate and his election agent took all reasonable steps to protect the candidate and his election agent.

Thus, section 100 provides the petitioner with two types of grounds: the grounds in clauses (a) to (c) are grounds of election petition in and of themselves, whilst the grounds in clause (d) are available to a candidate only if the candidate's result has been 'materially influenced.' The RPA, 1951, does not define what it means to be materially affected.

According to the **Supreme Court**, whether the election result was materially influenced must be determined by the facts, circumstances, and reasonable probabilities of the case, particularly the difference between the number of votes obtained by the successful candidate and the candidate who received the next highest number of votes, as compared to the number of votes obtained by the candidate whose nomination was improperly accepted, and the proportion by which Thus, if the difference between the votes secured by the successful candidate and the candidate securing the next highest number of votes is disproportionately large, and if the votes secured by the candidate whose nomination was improperly accepted bears a fairly high proportion to the votes secured by the successful candidate, the reasonable probability is that the result will be the same.

11. Article 329(b) in comparison to Article 226: -"Notwithstanding anything in this Constitution..." begins Article 329(b) of the Constitution. This is referred to as a non obstante clause. The High Court, on the other hand, is given extraordinarily broad powers under Article 226. The question therefore becomes whether the scope of Article 329(b) is so broad that it cannot be circumvented by Article 226. The courts have typically answered this question in the affirmative. To put it another way, the provisions of Art 329(b) supersede the stipulations of Art 226.

The Hon'ble Supreme Court discussed this issue in the Poonuswami case. In this case, the appellant was one of the candidates who filed nomination papers for the Namakkal constituency in the Madras Legislative Assembly. The appellant's nomination paper was rejected by the Returning Officer for a variety of reasons. The appellant then petitioned the High Court, requesting a writ of certiorari to quash the Returning Officer's order to include his name in the list of valid nominations to be published under Art 226 of the Constitution. The appellant's application was dismissed by the High Court on the grounds that it lacked power to intervene with the Returning Officer's order according to the provisions of Art 329. (b).

The question before the Supreme Court in the appeal was whether the High Court's conclusion that its jurisdiction is limited by Art 329(b) of the Constitution is correct. The Supreme Court agreed with the High Court's views, stating that Art 329(b) was created to specify the manner and stage at which this and other grounds may be made under the legislation to call the election in doubt. There will be no use in introducing a provision like Art 329(b) and establishing a special tribunal if the reasons for calling an election into question can be raised earlier and any errors, if any, can be corrected.

The Court went on to say that any alternative interpretation of the terms employed in the Art would result in inconsistencies that the Constitution could not have anticipated. One of them is that the High Court may voice opposing opinions during the pre-polling stage and the election tribunal when the subject is presented before it. As a result, state High Courts lack jurisdiction to hear petitions under Article 226 of the Constitution.

In a landmark decision, the Punjab and Haryana High Court found that an election appeal is a significantly more effective remedy in the event of incorrect nomination document rejection. The court stated that while it is unfortunate that some nomination papers were incorrectly rejected, the law provides relief to the candidate by allowing him to file an election petition with the election tribunal, which can declare the election void entirely based on the incorrect rejection of nomination papers. When discussing the scope of Art 226 in election affairs, the Division Bench stated that the powers under Art 226 are available when exercising said power supports the electoral process. Under Art 226 of the Constitution, the High Court has the authority to act in order to facilitate the election.

In the case of **Mohinder Singh Gill**, the Supreme Court was asked to explore this subject once more. The question was posed, among other things, whether a writ suit contesting cancellation combined with re-poll is barred under Art 329(b)? In response to the affirmative, it was decided that the catch-all jurisdiction under Article 226 cannot assess the validity, legality, or otherwise of the cancellation direction combined with the re-poll. For the most part, the objective of a re-poll is to restore and complete a detailed polling procedure by a salvatory endeavour.

A writ petition challenging the cancellation in combination with a re-poll amounts to questioning a stage in the 'election,' and is thus banned by Art. 329. (b). The petitioners in **Inderjit Barua v. Election Commission** argued that they are challenging the impugned elections as a whole, not any individual election, and that the bar of Art 329(b) consequently does not bar them from filing writ petitions challenging the impugned elections.

K. Venkatachalam v. A. Swamickan¹³ is a major Supreme Court decision concerning the scope of the High Courts' writ authority under Art 226 in relation to election matters. In this case, the Supreme Court's appellant was elected to the Tamil Nadu Legislative Assembly from the Lalgudi assembly constituency during the general election. There was no challenge to his election in the form of a petition. One of his opponents filed a writ suit in the Madras High Court a year after his election, arguing that the appellant was not registered as an elector in the constituency. The High Court granted the petition and declared that the appellant had been elected illegally. The Supreme Court upheld the High Court's verdict on appeal. However, the Venkatachalam case is unique in that it is the only known instance of a sitting member being disqualified through a writ petition. In general, the High Courts' powers under Art 226 in relation to election matters have been judged to be quite limited and constrained.

The Supreme Court added a word of caution in **Jeet Mohinder Singh v. Harmindar Singh Jassi**¹⁴, stating that a candidate's success should not be lightly messed with once he or she has won an election. Anyone requesting such interference must strictly follow the law's requirements. Though election purity must be protected and the court must exercise caution, the annulment of elections has serious consequences not only for the returned candidate and the constituency, but also for the general public, because re-election places a significant burden on public funds and administration.

The scope and domain of writ jurisdiction under Art 226 are consequently relatively limited. With a few notable exceptions when the courts went above and beyond to evaluate the facts of the case, courts have generally declined to hear election cases under Art 226 because of the bar set by Art 329. (b).

The following are the key principles governing the jurisdiction of High Courts in election matters and their authority to hear election petitions:

1. The Representation of People Act and the constitutional provisions make it plain that there is a remedy for any election-related wrongdoing. Art 329 does not take away the right to sue over the voting process (b). The only thing it accomplishes is to postpone the treatment until after the election.
2. A major reason for the postponing of the remedy in respect of wrongdoing in connection with the elections is that it has been postponed to the post-election stage. Given the crucial duties that legislatures play in democratic societies, it has always been acknowledged as a top priority that elections be held as soon as feasible and on time. All contentious issues and election-related conflicts should be postponed until after the elections are completed, so that the election process is not excessively slowed or prolonged.
3. The constitutional position and mandate have thus been clear: the election process, once started, cannot be interrupted or tampered with by judges at any point along the way until it is completed and the results are declared.
4. If judicial intervention is sought solely to correct or smooth the progress of the election proceedings, to remove an obstacle therein, or to preserve a vital piece of evidence if it would be lost, destroyed, or rendered irretrievable by the time the results are declared and the stage is set for invoking the jurisdiction of the court, judicial intervention is available without interrupting, obstructing, or delaying the progress of the election proceedings.
5. In considering and entertaining election-related disputes, courts cannot rely on principles of equity and common law to broaden their authority. The right to contest an election is a statutory right, meaning it

¹³ Appeal (civil) 1719 of 1986, Judgment on April 26, 1996.

¹⁴ Appeal (civil) 154 of 1999, Judgment on October 26, 1999.

was created by a statute, and it is thus subject to the Act's limitations. The statute's limitations on the types of forums that can be addressed cannot be exceeded.

Under the RPA, 1951, the High Courts have been given specific jurisdiction over election petitions. These election petitions are filed in the event of a dispute after the elections have taken place, not during the election process itself. As a result, election petitions are heard exclusively by the High Courts. Any party who is offended by the High Court's ruling may appeal to the Supreme Court, which will be the final authority in the case. There is no disagreement on the statute's jurisdiction. The broad powers granted to the High Courts under Article 226 of the Constitution, however, have a grey area when it comes to election problems. The court will normally decide whether or not the case falls under the writ jurisdiction based on the facts and circumstances of the case. The basic criteria is whether the court's orders, as requested by the petitioner, will serve the aim of completing elections on time.

Thus, if the courts' writ authority has been exercised while elections are pending, this test will serve as a guideline for the court to decide whether the subject falls within the scope of its broad powers under Art 226. However, the test's conclusiveness and guiding force have yet to be demonstrated. The Supreme Court's and state's High Courts' various decisions reveal that the courts are merely testing the waters. The policy of determining its jurisdiction on a case-by-case basis under Article 226 appears to be fragile, vulnerable, and uncertain. As a result, the Election Commission must develop appropriate guidelines and then enact them in the RPA, 1951, in order to determine with certainty the extent to which the high Courts' writ jurisdiction can be invoked and whether it can be invoked at all.¹⁵

12. **Conclusion:** - 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 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.

¹⁵ Available at: <https://www.legalserviceindia.com/article/I268-Powers-of-High-Court-to-entertain-election-petitions.html>, (Visited on March 2, 2022).