

ELECTORAL REFORMS IN INDIA, ISSUES AND CHALLENGES

BEFORE THE ELECTION COMMISSION

*Dr. Sourabh Ubale**

*Ms. Vedashree Shedge***

ABSTRACT

As rightly said that the democracy is based upon the conviction that there are extraordinary possibilities in ordinary people, Election is the key feature of the same. Right to Vote though is just a legal right at first instance but there are number of facets which form an integral part of the electoral system. India, the largest democracy is possessing good electoral system endorsed by the Constitution of India and reforms in the same which are happening almost at every required point are strengthening the system to maximum extend. This paper discusses the Electoral Reforms in India dividing the era into four parts. It discusses the elections in India and role of Indian Judiciary in free and fair elections. It also critically examines the legislative framework along with the Criminalization of Electoral System. Paper observes the statistical analysis and accordingly defines Issues and Challenges regarding Current situation in Election Commission. Researchers have focused on solution based aspects of issues and challenges. Only with the help from both sides Election Commission can bring all these credible electoral reforms and strengthen the idea of good governance, can bring electoral justice and will be successful to eradicate unfair practices because in the end, the purpose is to have an idea democracy which is the very soul and heart of Indian Constitution and Indian People.

Keywords: Democracy, Election, Electoral Reforms, election commission, governance

* Assistant Professor , Marathwada Mitra Mandal's Shankarrao Chavan Law College , Pune , India

** 1st Year LLB Student at Marathwada Mitra Mandal's Shankarrao Chavan Law College , Pune , India

INTRODUCTION

India is known as World's largest democracy which has its key feature "Elections", and are conducted from time to time in a systematic manner which is accepted by Indian Constitution. Election are the important part of Democratic nation because it reflects the faith of citizens of the country in its Constitutional Democracy. Indian citizens are in sovereign authority and have power vested in them to elect their representatives, they have power to form and change their government. For a country like India which has over 900 million voters' free and fair elections are essential to maintain healthy democracy and to have political stability. Election commission of India has made several changes over the period of time but there are still some concerns , issues and challenges like booth capturing, misusing the government machinery, use of muscle power and money etc that might need a legislative action because Electoral reforms are the need of today and tomorrow.

ELECTORAL REFORMS IN INDIA

Machiavelli has said that *"Whoever wishes to foresee the future must consult the past ; for human events ever resemble those preceding times? This arises the fact that they are produced by men who ever have been , and ever shall be, animated by the same passions, and thus they necessarily have results"*

The authors have divided Electoral reforms in India into following parts- The reason for choosing the Time window was because V.P. Singhs Government brought so many changes in Electoral system , and the comparative study was needed to get the better understanding of reforms later on afterpath of 1996 was importance because so many provisions were made till today.

1. Before 1996¹

- The Voting age reduced from 21 years to 18 for encouraging to express their voice via vote

¹ M Laxmikanth, Indian Polity, 71(5th ed. 2019)

- The staff and officers who were engaged in correction and preparation were deemed to be on deputation to the Election Commission
- To prevent the non-serious candidates from contesting, the number of proposers were increased
- Electronic Voting Machines were introduced
- To avoid booth capturing , special provision was made in 1989
- In 1993 , Election Commission started issuing Elector's Photo Identity Card (EPIC) for registered voters , Anyone above 18 years was eligible to get EPIC once they get registered.

2. In 1996

The change in government in 1990 also brought change (V.P. Singh's government) , A committee was formed to study electoral changes and give the suggestions needed to make the change ,

Following are the recommendations submitted and later on implemented in 1996-

- Candidates who want to contest elections were further divided three categories
 - a. Political party
 - b. Registered and Un-registered Party
 - c. Independent Candidates
- Indian citizens who were convicted for following offences were Disqualified for Insulting National Honor (Prevention of Insults to National Honour Act, 1971)
 - a. Insulting the National Flag
 - b. Insulting the Constitution of India
 - c. Preventing the singing of National Anthem
- By-Elections were to be held in six months since the vacancy
- Strict prohibition on Arms and Sale of liquor near polling area
- Earlier on the Death of the Candidate the Elections were rescinded , now Elections were not revoked
- Candidates were restricted to only Two Constituencies

3. After 1996

- Number of Proposers and Seconders for contesting Election to President and Vice president were changes accordingly –
 - a. President: From 10 to 50
 - b. Vice President : From 5 to 20
 - c. Provision for taking over the Election duty was made regarding local authorities, employees of national banks , government
- Provision was made for voting through Postal Ballot in 1999 under circumstances by the permission of Election Commission for any class persons.

In 2003

- A provision was made for voters from Armed forces to opt their vote through proxy.
- Election Commission directed candidates to give information regarding-
 - Their Criminal Antecedents
 - Their Assets (Immovable , Movable , Bank Balance etc.)
- Exemptions made in travelling expenses made by Candidates , Election Commission passed provision stating that supply of the copies of electoral rolls by government for free of cost
- Allocation was made by Election Commission for sharing of time on media / cable to each candidate
- Braille Signage featured in EVM'S , also Election Commission made provision that companies who contributed to Political Party were eligible to get exemption in tax and parties could accept such contribution from any company or person but not from government company.

4. Since 2010 till Today

In 2009,

- Prohibition were imposed on conducting Exit Polls and publishing the results of exit polls
- Three month time limit was specified for submitting a case for disqualification of Candidate
- Security Deposit was increased
 - a. For Lok Sabha it changed from Rs.10,000 to Rs.25,000 for General Candidate and for SC and ST Candidate it changed from Rs.5,000 to 12,500
 - b. For State Legislative Assembly it changed from Rs.5,000 to Rs.10,000 for General Candidate and for SC and ST Candidate it changed from Rs.2,500 to Rs.5,000
- Election Commission passed a order for appointment of Appellant authority within District

In 2010,

Election Commission made a provision that every Indian Citizen living outside India is entitled to get his name registered in the Parliamentary or Assembly near the place of residence mentioned in his/her passport and are entitled to receive their voting rights.

In 2013,

- Election Commission made the provision for filling the application form in the electoral roll Online
- Apex Court of India directed election commission to add “NOTA” (None of the above) option in EVM’s
- Election Commission introduced VVPAT (Voter Verifiable Paper Audit Trail) which verifies voters vote.
- Apex court upheld the judgment passed by Patna High Court that even the Persons in jail or the persons in police custody can contest elections
- Another good thing happened in 2013 was that Apex court held that Convicted MP’s and MLA’s will be immediately disqualified.

In 2014

- Government raised the maximum ceiling on election expenditure of Lok Sabha from Rs.40,00,000 to Rs.70,00,000
- In bigger states assembly seats was increased from Rs.16,00,000 to Rs.28,00,000

In 2015,

Election Commission passed the order that from now on EVM's will carry the picture / photo of candidate , his/her name and symbol of the party to avoid the confusion amongst the common people.

In 2017,

Before the financial bill was introduced in Lok Sabha company donations made to political party were required to disclose the amount of contributions and there was limit of 7.5% of the Company's average net profits in the last three years of company's financial years but after the amendment the cap of limit was removed and the requirement of disclosing the name of political party was also removed.

ELECTIONS IN INDIA

India is a country which is constitution and democracy driven country. Election is the fruit given by the preamble, the democracy lies between the very first line of preamble, "WE THE PEOPLE"². The preamble states that people gave themselves this democratic nation – India and the rights which are deeply rooted in the constitution. Article 324 to 329 (Part XV of Constitution) lays down the provisions made regarding electoral system in India.

Following are the types in which Elections are conducted in India:

² The Preamble of India



Election Commission is the independent and permanent constitutional body formed to regulate and ensure fair and free elections in India. Article 324 has given a power to control and direct the elections to a. parliament b. state legislature c. president d. voice president of India

Amendments made till date regarding the Elections in India:

Amendment No.	Date of Amendment	Objective of Amendment
8 th	5 January 1960	Extended the period of reservation of seats for the Scheduled Castes and Scheduled Tribes and Anglo-Indians in the Lok Sabha and the State Legislative Assemblies till 1970.
11 th	19 December 1961	Election of Vice President by Electoral College consisting of members of both Houses of Parliament, instead of election by a Joint Sitting of Parliament. Indemnify the President and Vice President Election procedure from challenge on grounds of existence of any vacancies in the electoral college
19 th	11 December 1966	Abolish Election Tribunals and enable trial of election

		petitions by regular High Courts.
23rd	23 January 1970	Discontinued reservation of seats for the Scheduled Tribes in Nagaland, both in the Lok Sabha and the State Legislative Assembly and stipulated that not more than one Anglo-Indian could be nominated by the Governor to any State Legislative Assembly. Extend reservation for SCs and STs and Anglo Indian members in the Lok Sabha and State Assemblies for another ten years, i.e. up to 1980
45th	25 January 1980	Extend reservation for SCs and STs and nomination of Anglo Indian members in Parliament and State Assemblies for another ten years i.e. up to 1990.
51st	16 June 1986	Provide reservation to Scheduled Tribes in Nagaland, Meghalaya, Mizoram and Arunachal Pradesh in Loksabha, similarly for Meghalaya and Arunachal in their Legislative Assemblies.
52nd	1 March 1985	Anti Defection Law – Provide disqualification of members from parliament and assembly in case of defection from one party to other. However, parts of the 10th Schedule to the Constitution of India was struck down by the Supreme Court in the case of Kihoto Hollohan v. Zachillhu 1992 SCR (1) 686, for being in contravention with Article 368 of the Constitution.
57th	21 September 1987	Provide reservation to Scheduled Tribes in Nagaland, Meghalaya, Mizoram and Arunachal Pradesh Legislative Assemblies.

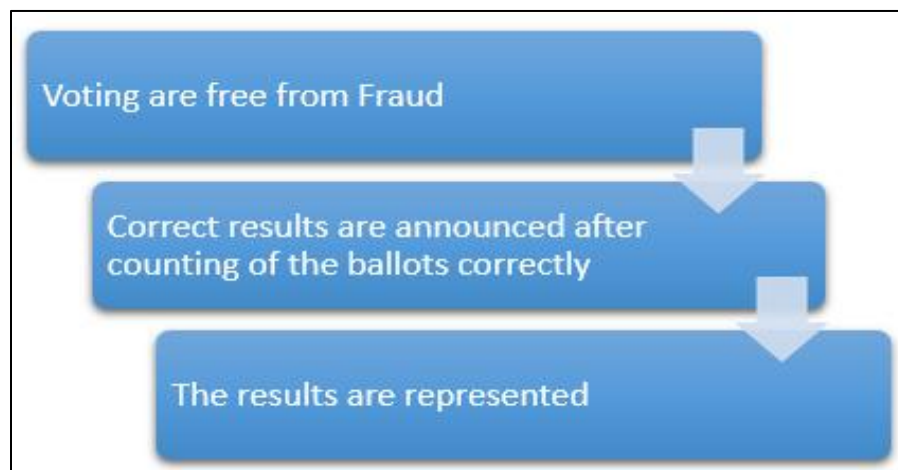
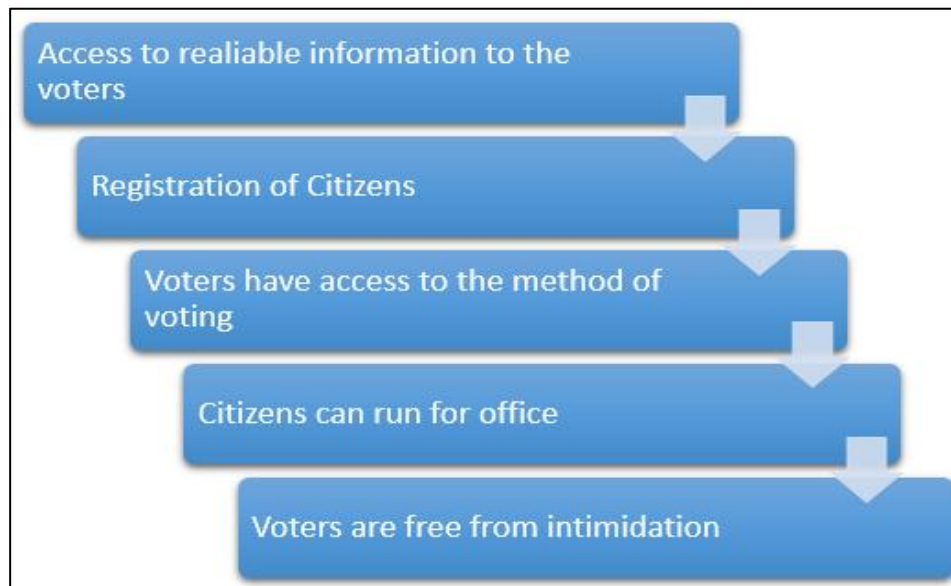
61st	28 March 1989	Reduce age for voting rights from 21 to 18.
62nd	20 December 1989	Extend reservation for SCs and STs and nomination of Anglo Indian members in Parliament and State Assemblies for another ten years i.e. up to 2000.
79th	25 January 2000	Extend reservation for SCs and STs and nomination of Anglo Indian members in Parliament and State Assemblies for another ten years i.e. up to 2010.
95th	25 January 2010	To extend the reservation of seats for SCs and STs and Anglo-Indian in the Lok Sabha and states assemblies from Sixty years to Seventy years.
104th	25 January 2020	To extend the reservation of seats for SCs and STs in the Lok Sabha and states assemblies from Seventy years to Eighty years. Removed the reserved seats for the Anglo-Indian community in the Lok Sabha and state assemblies.

FREE AND FAIR FLECTIONS

Elections are the very soul of Democracy , it gives the power to the people to choose their leader and to hold them accountable . But in order to fulfill the very purpose the elections must be free and fair , if the votes are not counted properly or if even a single person gets excluded from the process of voting having elections would not be enough to make difference.

A elections where all people can vote for the candidates of their liking / choosing is known as a free election and a election where even single vote is considered valuable and equivalent of others and is correctly tallied is known as fair election.

Following are the ideal parameters to be fulfilled by government in order to have fair and free elections in country :³



1. Indian Judiciary on Free and Fair Election :

In *Gujarat Assembly Election Matter*⁴, Apex Court held that free and fair elections will be considered as part of basic structure of Constitution, The Honorable Apex court held that parliament is in full authority to make laws for the conduct of elections and the whole and sole

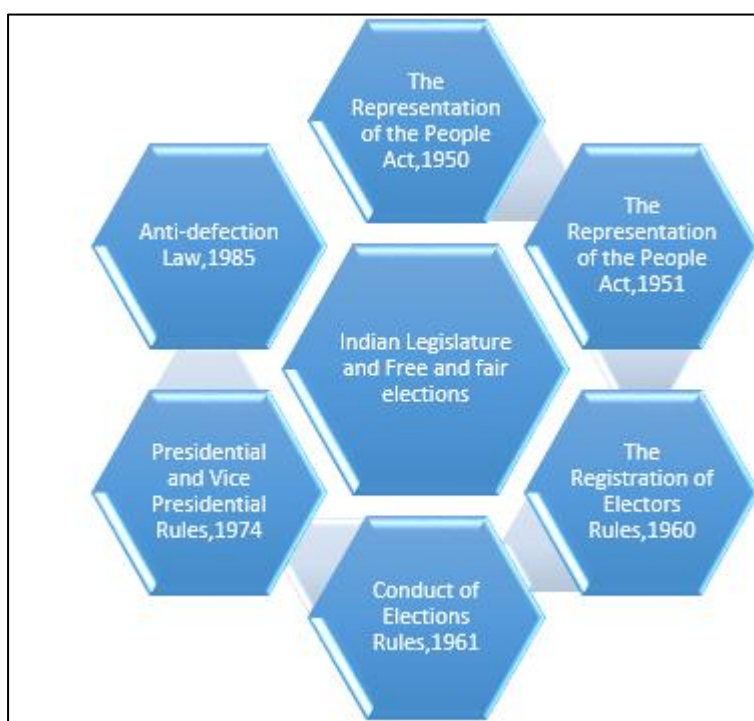
³ Parindu Bhagat and Dr. Purvi Pokharayl , “Essentiality of free and fair elections in democracy and Indian Consitutional commitment towards this” , 19 *Elementary Education Online* (2020)

⁴ (2002) 8 SCC 237: AIR 2003 SC 87

responsibility will be of Election Commission, though misuse of power will be considered as judicial subject.

In *Mohinder Singh Gill V. Chief Election Commissioner*⁵, the question of jurisdiction arose in front of Indian judiciary, it was held by Apex Court that due to the mob violence, Honourable court ordered the Election Commission to conduct the elections of entire constituency all over again.

2. Indian Legislature and Free and Fair Election:



CRIMINALIZATION OF ELECTORAL SYSTEM

Criminalization means act or activity done which is turned from being legal to illegal, Criminalization in Electoral system is a issue India facing today because this situation creates dilemma of moral where people accused of committing offence or well-known criminals contest

⁵ (1978) 1 SSC 405: AIR 1978 SC 851

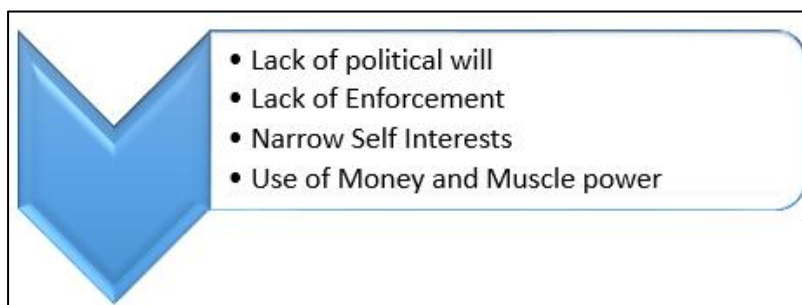
in Elections , win elections and are made “state legislators” , the same people who broke the law , are the individuals who are convicted by Judicial decision.

This impacts society and is harmful for the very purpose of democracy , where the rule of law , principals , fundamental rights , free and fair elections , accountability towards people are turned into a joke. Elections are a very crucial part of democratic country and they should be conducted in free and fair manner where the best candidate must take the victory home.

Disqualification of Criminal Candidates :

- Consitution of India does not specifically lays down what disqualifies a person from contesting elections
- **Section 8 of The Representation of People’s Act 1951 lays down :**
 - a. Disqualification on conviction for certain offences , according to which an individual punished with jail term more than two years cannot contest for six years after the jail time ends
 - b. But the law does not bar the individuals who have criminal cases pending against them.

Following are the some of the reasons for Criminalization :



1. Statistical analysis:

Year	MP's with Pending Cases (%)
------	-----------------------------

2004	24%
2009	30%
2014	34%
2019	43%

(Source of Information : Association for Democratic reforms)

- As per the data above mentioned , there is a consistent increase in the percentage of criminal cases pending , and while contesting elections this has to be seen and took steps upon. These increasing percentages every year are really disappointing for a big democratic country like India , it shows that people may vote out of fear , these Goonda's or Mafia's may force common people , or create a fear in their mind to fulfill the agenda of big political parties , this has always been a part of electoral system which needs a change.
- Criminals take matters into their hands when elections are announced and as much as muscle power , power money plays a very big part in criminalization in electoral system , money becomes a very easy way to buy voters and later on win elections
- **K.C. Suri believes that since ancient times, the use of money and muscle power by political elites to win elections has been completely wrong.** *“Large individual politicians, not just political elite, are having a nexus with criminals and this has further channelized social fissure as one of the formidable factors to get through elections.”*
- Corruption can directly rise the risk for contempt of law in elections because majority of candidates are in need of money , funds and big donations for their campaigns.
- Common people don't pay that much attention to the background of candidates whom they are about to cast the vote
- **Effects :**
 - a. It affects the very principle of free and fair elections
 - b. It affects the good governance where the state legislators become the “law breakers”

- c. It affects the society and integrity of the officers / public servants

2. Steps taken by Apex Court

- **In February 2020** , Apex court ordered the political parties to publish the entire criminal history of their candidates for assembly and lok sabha elections along the reasons under which they were filed as suspected criminals

3. New Step Forward

- **Dinesh Goswami , Inderjeet Committee** has been formed to regulate the corruption as well as the affairs of election commission and this will be a huge impact on reducing the criminalization in electoral system

ISSUES AND CHALLENGES REGARDING CURRENT SITUATION IN ELECTION COMMISSION:

India faces many issues and challenges in order to conduct more effective and efficient elections , following are the problems⁶-

- **Booth Capturing**

Even in new era and world of developments , voters are still being captured at the booth, the fear of assault or violence is still there . In order to create true Free and fair elections the important steps regarding booth capturing needs to be taken.

- **Misusing the Government Machinery**

The use of Government machinery is strictly prohibited during the election time , but in reality the ruling party uses the government machinery for advertisement and other purposes to get votes from people . It gives unfair advantage of resources to the ruling party and their candidates.

- **Muscle Power**

⁶ Hardeep Kaur, “Electoral Reforms in India- Challenges” , 3 *International Journal of Applied Social Science* 257(2016)

Harassing the voters , intimidation , using violence, capturing people from booth are all the parts of Muscle power and can be easily used to get votes , this the one of reasons of criminalization in electoral system

➤ **Code of Conduct violation**

Code of conducts are the rules ought to be followed by candidates but they can be violated easily , in reality candidates are seen promising freebies , free electricity , free commodities , free water , also they advertise their accomplishments in such a manner that is unfair to others , as well as amongst themselves threats are sent , illegal use of public places , loudspeakers are some of the issues needs to be solved.

➤ **Money Power**

Money power is used to buy the votes of people , to gather crowd at the rally's and various campaigns ran by candidates, in election there is a continuous flow of money and resources from big parties to their candidates to fulfill their dream of winning the election.

➤ **Non-Voters**

There are still some people who are not willing to vote, this problem is even seen in educated upper class.

➤ **Casteism / Hate Speech**

Political parties intentionally support certain caste or group for gaining their votes, Voters select their candidates not on the basis of what really matters but for from which caste he belongs, his skills and merits are ignored. Caste becomes the ultimate parameter for a candidate which later on increases the gap between the people from other castes.

➤ **Religion / Communalism**

There are some political parties who hurt the sentiments of other religion just to get the votes from the others , which creates a strain between the society because it is not the purpose of elections , the principles of secularism , constitutional rights and beliefs are totally ignored while making such speeches for votes.

➤ **Disbarring the limit of Funding**

Many candidates disbar the limit if funding's allowed for their rally's and campaigns by receiving big anonymous contributions, which is again unfair to the others

➤ **Lack of moral in politics**

Political parties and their candidates have corrupted mindsets where self-sacrifice , their honest duty towards nation , service to people , inspiring people , democratic norms are long forgotten and Voters are treated as puppets.

This leads to increase in criminalization in electoral system.

CONCLUSION

The Solution for tackling these issues which are in front of election commission is not only a work of election commission alone but it also lies in the attitude of people and their effort to fulfill the real purpose of “Elections” in the democracy.

Elections are Multi dimensional and social , political event which are complex in nature , which need some fundamental reforms regarding its policies , and a great cooperation from people who are true advocates of democracy to held the Electoral system more accessible , accountable , transparent . Only with the help from both sides Election Commission can bring all these credible electoral reforms and strengthen the idea of good governance, can bring electoral justice and will be successful to eradicate unfair practices because in the end , the purpose is to have a idea democracy which is the very soul and heart of of Indian Constitution and Indian People.

SUGGESTIONS

- Removal of Poll related malpractices is necessary, which can actually be a first step towards deep cleanse of the electoral system.
- NOTA – it is observed that even the educated class or there are voters who do not vote only because available candidates in their constituency are not the ones they want to vote for, but unwillingness to vote just because of this has to be changed, even your voice of “not liking the available candidates” is as important as the one’s vote for winning candidate. Recently is Uttar Pradesh elections , NOTA governed more votes than popular political party of the state. Its been more than right years since EC introduced NOTA option to the citizens , still the awareness has to increased amongst people.

- One Candidate limited to One Constituency – EC has allowed candidates to be open for two constituencies but limit should be imposed to cut down the expenses of EC to One constituency.
- One Nation , One Election – can actually help to solve the burden of checking the poll expenses , and reduce the burden on administration , can ensure that ruling party does not intervene in term decisions and can actually help to solve the problems of governance .
- One campaign – Candidates tend to arrange big rallies , spend huge amount of money on paid radio – internet advertisement for their campaigns , rallies also create nuisance because there are multiple candidates in one constituency , which can be brought down by the help of arranging one campaign where all candidates can come together and talk with their potential voters .
- Strict Regulation of Social media , TV, Newspaper , Radio – In the time of election , people are most likely to get on a wave of fake news , nowadays just like how information is available at fingertips , fake information is available at your fingertips too , for which people are most likely to fall for . This spreads fake facts or misleads the voters , spreads hatred in society. Strict Regulation is necessary and strict actions must be taken on those who violate
- Accessibility to the information – Voters should know their rights and should have access to their candidates background information (education and their achievements) , now this information is made available to public via EC but there are only few who know , more awareness amongst voters about their rights should be there , Voter registration should be more accessible , for easier registration registration should be made available to the workplace , community centers , in tribal offices , schools which has to be done by EC.
- Awareness Campaigns / Workshops – EC should organize awareness campaigns more effectively and efficiently in regional languages by distributing pamphlets in regional language so the language barrier should not be there , street plays can be acted on roads before the elections
- Performance scheme more local vise- the EC is a centralized body and there are state commissions to regulate elections but the whole process to bring even a minute change is very time consuming, more power to take actual decisions which can bring real change should be given to states and local authorities.

- More importance to candidate than for his caste – For avoiding casteism , communism EC can make changes regarding caste of candidates , political parties make propaganda of castes of their candidates to gain votes , to set a example of having free and fair elections and to set a example in front of world Candidate's caste or his religion should not be disclosed , but his aim and vision , skills should be given more importance.
- Localization Of Issues - Voters as “Supervisors” in their constituency – to supervise the electoral campaigns, a supervision committee which will collect the problems of voters and can be formed, they can be supervisors of their constituency.
- Taking Feedbacks from people pre and post elections and actually implementing changes to let the voters that their problems are being heard and necessary steps are taken is necessary for keeping people's faith and trust in the EC.

REFERENCES:

- Ravindra Kumar, “Electoral Reforms In India”,2(1) *Journal of Global Research & Analysis*
- Najeed Naved Siddiqui, “Elections in India- A Brief Analysis”,4 *International Journal of Law Management & Humanities* (2021)
- Stephanie Tawa Lama-Rewal, “Studying Elections in India: Scientific and Political Debate” *available at* <https://journals.openedition.org/samaj/2784>
- Srinibas Pathi, “Does India Really Need Electoral Reforms” *available at* <http://mzuhssjournal.in/images/resources/v6n1/pathi.pdf>
- Aakansha Natani , “Voting for new dimensions of Democracy” *Hindustan Times*, Dec. 15,2013