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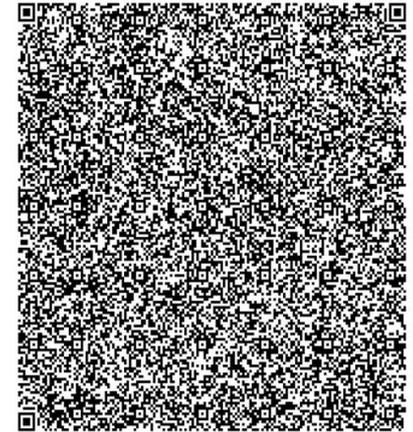
## Electoral Reforms in India: Recent Developments and their Impact on Electoral Politics

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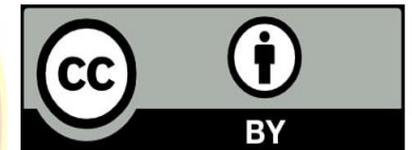
### Abstract

India, as a democracy, made a decent beginning with elections and a parliamentary system of government in the 1950s although the country at that time was underdeveloped and full of illiteracy. Allegations of electoral malpractices were far less at that period. But gradually, the electoral deficit in the form of non-correspondence between rulers and common people and in the form of non-fulfillment of aspirations of the people have increased. Moreover, criminalization of politics and use of money power in elections have resulted in booth-capturing, vote purchase etc. and the application of the Anti-Defection law 52<sup>nd</sup> Constitutional Amendment Act 1985, included 10<sup>th</sup> Schedule of the Indian Constitution in the present context of India which elite domination, money power and corruption, changing the political parties after win the elections have challenged the whole parliamentary voting system of post-election as such. As a result, the after-election government become unstable the MPs and MLAs often change the floor, political party use huge amount of money for cross voting, elections are losing legitimacy and people also express no confidence against the system because often people think that the elections are unreliable. All these negate the purpose of elections. People are often denied the right to choose and the outcome of elections is distorted. In this context electoral reforms can play a positive role in protecting the sanctity of elections. For this purpose, periodic electoral reforms are necessary.

**Keywords:** Election, Electoral Reforms, Politics, Defection, Parliamentary etc.



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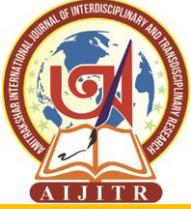
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### Introduction:

Electoral reform is not an uncharted cognitive territory in contemporary India. Since the beginning of electoral politics in the fifties and particularly in the last two decades this them has been subjected one of the vital issues. Though, the electoral reforms have been started in the decades of seventy. After the fourth general election the numbers of the electoral malpractices started to increase. In fact, the purity of the elections has been losing and the democracy of India initiate the loose of its faith. In the decade of seventy the numbers of questions raise for the electoral reforms and to ensure free and fair election. In this decade electoral reforms become a crucial issue of the electoral politics in India. It is the Joyprakash Narayan, who initiates electoral reforms August 1974, appointment a committee known as Tarkunde Committee. The Committee made the major recommendations like three-member committee of Election

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Commission reduces the voting age from 21 to 18 years etc. After that there are number of committees appointed and they have been given numbers of recommendations and suggestion, the Election Commission have been made the numbers of electoral reforms like Anti Defection Law, reducing voting age, Registration of political parties, maintain the financial account, give the affidavit during the time of nomination etc, for ensure the free and fair elections.

Though the 20th century is very crucial for electoral reforms in India and numbers of electoral reforms have been made for free and fair elections. In spite of those reforms, the elections of India not free from the malpractices and 21st century beginning the electoral malpractices tremendously growth like money power, muscle power, booth capturing, threatening, communalism etc. So, election at present not being hold in ideal conditions because of the enormous amount of money required to be spent and large muscle power needed for winning the elections. In fact, the 21st century is very crucial for ensure free and fair election and election is the one of the most challengeable jobs on the behalf of the Election Commission. In this 21st century the Election Commission takes the numbers of the steps and gives numbers of the recommendations and reforms. 95 The Election Commission from time to time has been engaging the attention of the government on a number of numbers of issues of electoral reforms but the government unfortunately has not received much response from them. As late as July 2004 the Election Commission brought to the attention the following issues of electoral reforms:

*Measures to check criminalization.*

*Restriction on the number of seats which one may contest.*

*Prohibit surrogate advertisement in the media.*

*Appointment of appeal ate authority in districts.*

*Legislation providing for compulsory maintenance of accounts and audit by political parties.*

*Ban on transfer of election officers on the eve of elections.*

*Changes in anti-defection law Common electoral rolls for Election Commission.*

*Simplification of disqualification procedures for a person found guilty of corruption.*

*Making false declarations in connection with elections to be declared an offence Speedy disposal of petitions challenging election results.*

From the beginning twenty first century the Election Commission has faced number of problems and gain huge amount of experience. In the year 2002 election, the Election Management faced the problem of violence which varied from State to State. Traditionally Himachal Pradesh, Rajasthan, Gujarat (except for riots in 2002) Maharashtra and Kerala were relatively peaceful during elections. However, in some of the other State such as Bihar, Haryana, Jammu and Kashmir, Tamil Namil Nadu and West Bengal have had their own peculiar problems. Uttar Pradesh was the most problematic political parties followed by Bihar. This has been largely attributed to prevalence cast-and region based with strong feudal background. Apart from the problem of large electorate, problems like poverty, illiteracy, and caste and communal conflicts make election management very difficult. In this situation 96 election commission had to face tremendous challenges to the peaceful election conducting. Violence and threats to voters, candidates and polling



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officials; appeals to caste and community sentiments; booth capturing of various shades are some of the well-known electoral malpractices associate with the state. In this situation Election Commission initiated some steps:

**Appointment of the Special Observer:** Since 2004 Parliamentary elections, the Election Commission had to take special steps to check bogus voting. One of the special steps taken in 2005 assembly election was to verify the voting records, including the signature of the voters. With the approval of the Supreme Court, the Election Commission had to initiate alternative methods of identification of voters in the absence of identity card. In addition, a number of first-time measures had been taken in the 2005 assembly elections – intensified monitoring, appointment of additional and special observers, better and stricter deployment of paramilitary forces and polling officials, better training for officials and tougher handling of criminal elements before and during the elections, stricter and post-poll management.

**Multi-phased Election:** The Election Commission faces the major challenges in conducting elections Haryana, Tamil Nadu, West Bengal during the year 2004-05. The Election Commission received a large number of complaints from violation of Model Code of Conduct in Hariyana in 2005 assembly election on matters of fresh appointments and new projects, to receiving large scale complaints regarding missing names in 2004 Tamil Nadu -electoral roll and further grievance voiced by voters in West Bengal that they are unable to go to the polling station freely. The Election Commission had addressed these issues and gave a new direction to the entire process of election management for making them free and fair. It is with a view to have a very peaceful poll in some of these trouble-prone states, the Election Commission started to conduct elections in a staggered manner. The 2007 elections for UP assembly were conducted in seven phases and the 2008 J & K elections also in a multi-phased manner. This ultimately resulted in very peaceful poll and increased voter- turnout and thereby creating in citizenry a special respect for the institution of the Election Commission.

**Criminalization of Politics:** The elections at present are not being held in ideal conditions. The major defects which come in the path of electoral system in India are: muscle power, criminalization of politics, poll violence, booth capturing etc. Though, the Election Commission In 1997 began a campaign against the criminalization of the politics arguing that no candidate should allow contesting an election if they had been convicted of an offence, even if the conviction was under appeal. Then Commissioner, G. V. G. Krishnanurthy Pithily noted that ‘no law breaker should ever be a law-maker’ (Ali 2001). As with the attempt to impose the model code of conduct, it was seen as exceeding the power of the commission. 110 In a further attempt to counter ‘criminalization’; the Election Commission issued an order in June 2002, which laid-down that each candidate for the Rajya Sabha, Lok Sabha, or State Assembly should submit an affidavit along with nomination papers. This affidavit would detail any involvement with a criminal prosecution, details of assets and property ownership, and property ownership, and educational qualifications (Venkates 2002).110 This followed a directive from the Supreme Court, which suggested that, in the absence of legislative guidance, it was within the Commission constitutional remit to seek such information. Parliamentary attempts to codify the limits of disclosure of candidate’s background were declared unsatisfactory by the Supreme Court, giving the Election Commission freedom to impose its own rules of disclosure (Venkatesan 2003).



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**Auditing of Finance of Political Parties:** In 2004 report of the Election Commission declared that political parties should be required to publish their accounts (or at least an abridged version) annually for information and scrutiny of the general public and all concerned, for which purpose the maintenance of such accounts and their auditing to ensure their accuracy is a pre-requisite. The auditing may be done by any firm of auditors approved by the Comptroller and Auditor General. The audited accounts should then be made public.

**Review of Anti-defection Law:** In the report —Ethics in Governancel of the Second Administrative Reforms Commission, it is noted that —Defection has long been a malaise of Indian political life. It represents manipulation of the political system for furthering private interests, and has 98 been a potent source of political corruption. The report further notes that —there is no doubt that permitting defection in any form or context is a travesty of ethics in politics. The Anti-Defection provisions of the Tenth Schedule of the Constitution, enacted in 1985, fixed a certain number above which group defections were permitted. The National Committee to Review the Working of the Constitution noted that although individual defections became rare after this, group defection were —permitted, promoted and amply rewarded. The 91st Amendment to the Constitution, 2003, changed this by making it mandatory for defectors to resign their positions regardless of whether they defected as an individual or as part of a group. Currently the issue of disqualification of members of Parliament or a State Legislature is decided by the Speaker or Chairman of the House. Aside from those concerning the Tenth Schedule all other matters of post-election disqualification are decided by the President/Governor, on the advice of the Election Commission. The Election Commission, in its 2004 report, noted that —all political parties are aware of some of the decisions of the Honble Speakers, leading to controversies and further litigation in courts of law. The National Committee to Review the Working of the Constitution noted that —some of the Speakers have tended to act in a partisan manner and without a proper appreciation – deliberate or otherwise – of the provisions of the Tenth Schedule. The National Commission to Review the Working of the Constitution recommend that —the power to decide on questions as to disqualification on ground of defection should vest in the Election Commission instead of in the Chairman or Speaker of the House concerned. The Election Commission and —Ethics in Governancel report of the Second Administrative Reforms Commission also both recommended that the issue of disqualification on grounds of defection should be decided by the President/Governor concerned under the advice of the Election Commission, instead of relying on the objectivity of the decision from the Speaker.

**Candidate and Disclosure:** On March, 2003 in the judgement of People's Union for Civil Liberties and ores. V. Union of India and Anr32, Apex Court of our country gave its verdict on candidate disclosures and declared Section 33B of the —Representation of the People Act, 2002 (Amendment Act) illegal, null and void, and go over its earlier judgment on May 2, 200233. Supreme Court held that citizens have the fundamental right to know the backgrounds of candidates who are competing for elective office, as part of freedom of expression guaranteed under Article 19(1) of the Constitution of India34. Now, if candidate does not disclose their general information about their background, then their nomination can be disqualified.



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**NOTA (None of the Above):** The criminalization of politics, widespread corruption in the system, and use of violence, voter intimidation, etc. may result in there being no desirable candidates within those contesting elections in a particular constituency. Currently there is no way for voters to express their dislike for all candidates. The lack of such a provision may further contribute to the decay in the system in such cases by encouraging only those voters who support such compromised candidates to vote, returning those same leaders to power again and again. Both the Election Commission and Law Commission of India recommend that a negative or neutral voting option be created. The Negative/neutral voting means right to any voters to reject all of the candidates on the ballot by selection of a —none of the above option instead of the name of a candidate on the ballot. In such a system there could be a provision whereas if a certain percentage of the vote is negative/neutral, then the election results could be nullified and a new election conducted. **NOTA (None of the above):** This option was introduced in the electronic voting machines in India after the landmark judgment delivered by the Supreme Court (the apex court in the Indian Judicial system) in *PUCL vs. UOI*.<sup>9</sup> The right to vote in India is a statutory right. The converse of this, i.e. the right not to vote, while maintaining secrecy was claimed vide a petition to the Supreme Court by PUCL. Since the petition filed by PUCL 100 (Peoples Union for Civil Liberties) was a Writ Petition under Article 32, the Court had to judge its maintainability, as it was contended that Right to Vote is considered a statutory right. The Court held that although right to vote is a statutory right, the decision taken by the voter is a facet of Freedom of Expression under Art. 19(1)(a). Fundamental Right of freedom of speech and expression under 19(1) (a) and statutory right under S. 79 of Representation of People Act is violated if right not to vote is denied. Thus, the Court held that the Writ Petition is maintainable. The main advantage of the incorporation of NOTA is upholding and recognition of the right of the citizens to not cast a vote while maintaining secrecy during such abstinence. The true spirit of democracy lies in the right of the citizens to be able to choose their representatives periodically. Obviously, the ends of democracy can be met only when majority of the citizens exercise this right. However, at the same time it must be ensured that the citizens are not compelled to choose the best from the worst (which unfortunately is the case more often than not). This is exactly what NOTA seek to achieve. The driving force behind the decision of the Supreme Court in *PUCL vs. UOI* was the fact that introduction of NOTA in EVMs ‘would compel the political parties to project candidates with a so to speak —clean background in the various constituencies. NOTA, is a powerful device in the hands of the voters who, if dissatisfied with the quality of the candidates may choose to use it. This consequently has the effect of a constant pressure on the political parties to ensure that only qualified and suitable candidates represent their political party in the elections. The consequence of this entire procedure: a much cleaner political future for India. At least this was the entire idea behind the Supreme Court passing a judgment in favor of introduction of NOTA. The advantages of NOTA ‘are obviously numerous as have been stated in the preceding section. But to scale down the benefits tone line NOTA is a step forward in achieving the ends of democracy.

**Second Administrative Reforms Commission (Maintaining proper account):** The Second Administrative Reforms Commission reiterated this in 2007, saying, Political parties have a responsibility to maintain proper accounts of their income and expenditure and get them audited annually. The steps taken in the Election and Other Related



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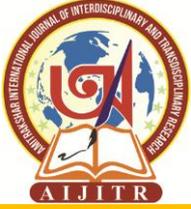
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Laws (Amendment) Act, 2003, following various reports mentioned in Para 2.1.3.1.4 will be strengthened if this is made mandatory under law. The Election Commission has reiterated this proposal. This needs to be acted upon early. Deployment of Central Forces 101 In 2014, parliamentary election in West Bengal (first phase) taking advantage of the passive role of the Central forces, the ruling party's workers dominated the election process in a number of Lok Sabha constituencies. There were allegations of violence, attacks on opposition workers and polling agents. The Election Commission was accused of doing nothing to protect the voters. Aware of such allegation the Election Commission took special care over one and a half months to assure the voters of Bengal that it would be holding elections in a free and fair manner before the Assembly Elections in 2016 in West Bengal. Chief election Commissioner Naseem Zaidi visited the state twice and held meetings with the state administration, leaders of political parties, media persons and civil society members, and announced a number of confidences building measures so that voters could come forward to cast their votes without any fear. Accordingly, the Central paramilitary forces started conducting flag marches in the districts, mostly in sensitive and vulnerable areas. Zaidi assured the voters of West Bengal that polling booths would be manned by the Central forces alone, and that the state police would be responsible for managing the queues in front of the booths. Moreover, that the Central forces would take control of the adjacent areas and go deep into the villages to establish area domination so that voters could approach polling booths without fear. There will be 100% availability of Central paramilitary forces in all the polling stations. They will be available well in advance and be used for area domination and confidence building measures, Zaidi had said in a press meet in Kolkata in December, 2015. He reiterated this position again and again. In fact, the Central forces started arriving from March 1, 2016 onwards, and began their flag march in sensitive areas. However, opposition party leaders are less than satisfied. While the State Congress President, he was frustrated seeing the role of the Election Commission, BJP State President also said that his party had expected a more pro-active role and would take the issue up with the commission. Recent Reforms: In July, 2013 the Honorable Supreme Court ruled that Parliamentarians and State Legislators who were convicted of serious crimes, meaning carrying a jail term of two years or more would be barred from contesting elections. The Court struck down Section 8 of the Representation of the People Act which allowed convicted members of Parliament and Legislative Assemblies to continue in office while their appeals journeyed through courts often for indefinite periods. The Government, backed by support from almost all political parties, had introduced a bill in Parliament to override this Supreme Court judgment and then passed the ill-fated Ordinance which now stands withdrawn.

### Impact on Democratic System:

Electoral Reforms in India, New One must admit the fact at the very outset that the systems of parliamentary democracy and elections have been implanted on the Indian people by the leaders of freedom movement of India. Except for a few small instances of ancient India selection of rulers through election is an alien concept borrowed from British system of parliamentary democracy. At the same time, India is unique in the sense that it is the only country outside European civilization that has sustained electoral democracy for last seventy years since independence. It is a no small achievement. It can be safely argued that the continuation of electoral democracy in



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India has been possible because elections have acquired some kind of legitimacy in India. This has been possible largely due to the reason that Indian electoral system has been flexible and adaptive whenever there was questioned about the validity of a procedure or legitimacy of elections results, the election commission has tried to address the question through the instrument of electoral reforms. Thus' it is the institution of electoral reforms which has maintained the credulity of India's electoral system and hence legitimized Indian democracy. In a nut shell this is the significance of electoral reforms in India. Even an exploratory account of electoral reforms in India must pay attention to three interrelated areas of: 1. The consequences of electoral reforms on legitimacy of election in particular and on Indian democracy in general. In this way only can attempt to examine the efficacy and success of electoral reforms. 2. The sensitiveness of Election Commission and other authorities to social demands for redressal of any limitation of the electoral system. 105 3. Attention must be paid to unfulfilled dreams and unresolved agenda which the reform authorities tried to address but could not resolve satisfactorily due to existing political and administrative factors. First, let us address the issue of consequences of electoral reform on legitimacy. It must be noted here that popularity of elections and people's participations in elections in India has increased with the passing of time. In the Second General Elections in 1957, 38.8% of women voters and 55.7% of male voters exercised their voting rights. By the end of the century in 1990 elections, 61% of women and 68.66% of male voters exercised their rights. Since then, in parliamentary elections the rate of participation has remained steady for male voters while the figure has increased in case of women voters. The rate of participation is higher than parliamentary elections in case of state Assembly Election and even higher in case of Panchayat Election in which sometimes voter turn-out process the 90% mark. More importantly, Indian people, especially rural people invest powerful meaning in the act of voting which is regarded as a special right. This clearly indicates that various steps for electoral reform have been successful in protecting the right to Vote. Reforms also inspire people to exercise their rights. More over the electoral system has been able to neutralize to a substantial extent, the system of domination and has been successful in the inclusion of the poorer section of society. More and more people belonging to lower castes Dalit and marginalized are getting elected to State Assemblies and parliament. It can be described as a silent social revolution which has become as a result of the agenda of electoral reform. The second issue which demands attention is the interaction between institutions in charge of electoral reform in the one hand and emerging social forces on the other such interaction may be exemplified with the instance of the background story of introduction of NOTA. The Association for the Protection of Democratic Rights (APDR) filed a petition to the Chief Election Commissioner of India in 1999 after the introduction of Electronic Voting Machines, by arguing that there should be a no choice option for the voter in the EVMs. According to APDR earlier as a protest but the EVMs does not provide the freedom of making such no choice. After APDR other such voluntary organizations and intellectuals supported the demand which the commission ultimately accepted. It is indicative of adoptability and flexibility of the institutions in-charge of electoral reform. These undoubtedly increase the credibility of reforms. 106 Finally, it is also necessary to report the unresolved aspects of electoral reform in India. These include sensitive items like criminalization of elections and use of money power for winning elections. The effectiveness of reforms in the coming years will largely depend on the way



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electoral reforms measures address these questions. In case of criminal activities suggests that a convicted person should be banned for life from participating in elections as a candidate. The present law debars a convict only for six years. The success of the reform decriminalizing elections will be tested in this case. To check use of money power and financial corruption, these has been suggestion for state funding of electoral expenses but in this case also there has not been much break-through. Actually, election funding and election expenditure are the two related unresolved areas. In conclusion it can be safely said that India can be legitimately take pride in its electoral system which has become more and more effective over the years through a continuous process of reform. Despite limitations, free and fair elections are not a nature electoral deficit of Indian system. The problem possibly comes from political representation and a growing difference between popular politics and parliamentary structure.

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