

MINOR RESEARCH PROJECT

**SUPREME COURT GUIDELINES ON RIGHT TO REJECT AND
IT'S IMPLICATION: A STUDY**

EXECUTIVE SUMMARY REPORT BY

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**SUPREME COURT GUIDELINES ON RIGHT TO REJECT AND IT'S
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Model Law Amendments in Law- Suggested

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- Right to reject
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- Measures for Improving the Electoral System

CASES REFERRED

1. Association for Democratic Reforms v. Union of India AIR 2003 SC 2363
2. B.R. Kapur v. State of Tamil Nadu. and Another 2001 7 SCC 231
3. Dinesh Trivedi, M.P. and Others v. Union of India and Others 1997 4 SCC 306
4. Election Commission of India v. Ashok Kumar AIR 2000 SC 2979
5. Election Commission of India v. Dr. Manmohan Singh (2000) 1 SCC 591 7.
6. Election Commission of India v. Jan Chowkidar 2004 (2) BLJR 988
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8. Indira Nehru Gandhi v. Raj Narain AIR 1976 SC 0069
9. K. Prabhakaran v. P. Jayarajan (2005) 1 S.C.C. 754, 780
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15. Mohinder Singh Gill v. Chief Election commissioner 1978 AIR 851, 1978 SCR (3) 272
16. N.P. Ponnuswami v. Returning Officer. Namakkal Constituency AIR 1928 Mad 253, 108 IndCas 212
17. P.R. Belagali v. B.D. Jatti AIR 1971 SC 1348
18. Romesh Thappar v. State of Madras 1950 SCR 594
19. S. Raghbir Singh Gill v. S. Gurcharan Singh Tohra and Others 1980 (Supp) SCC 53
20. Shri Manni Lal v. Shri Parmal Lal and Others 1970 2 SCC 462
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SUPREME COURT GUIDELINES ON RIGHT TO REJECT AND IT'S IMPLICATION: A STUDY

Introduction

“The experience of Democracy is like the experience of life itself, always changing, infinite in its variety, sometimes confused and all the more valuable for having been tested by adversity.”¹

“Politics encircle us like a coil of snake from which one cannot get out, no matter how much one tries”.²

Today the most important achievement of humanity is the democracy, which provides us participation and selecting the form and content of governance with a choice of change. Democracy is a process in itself for perfection. Therefore the democracy is a process of changes for perfection and it continues until it is achieved. This is equally true to humanity. The Constitution has adopted the Parliamentary form of government patterned on the British model³, where executive head is the President.

In the era of globalisation, liberalisation, and digitalization electoral reform is a process of evolving an electoral system strengthening the democratic process of a given society that includes global, national, provincial, regional, municipal, and local self-government? Electoral reforms are a change in electoral system to improve as to how public desires are expressed in election results. India is a liberal democracy around the world. Free and fair election is the prime and most powerful political activity in the country. But Electoral laws in India have many loopholes since they have not updated much by any of the government which have come to power in India. Election system in India right from the selection of candidates, to funding in the election, criminal background of the candidates, corruption, non- performance, and under performance of elected MP's and ML'A are in need of major changes. There is a growing concern about many factors of our electoral system. The Election Commission of India has

¹ Jimmy carter, 39th President of the United States (D-GA) speech to Parliament of India New Delhi, Jan 21, 1978.

² Mahatma Gandhi, available at, <http://www.mkgandhi.org/momgandhi/chap18.htm>, last visited 15 Sept.2015.

³ J.N. Pandey, The Constitutional Law of India, p. 30 (45th ed. 2008).

suggested the changes in number of areas in election system. There are many committee which is been constituted so as to examine the major issues with respect to our electoral system and suggested many recommendation. But there are still certain grey areas where legislative action is needed to bring required changes.

Today it is essential for democracy to survive that the best available men should be chosen for proper governance of the country. This can be best achieved through men of high moral and ethical values who win the elections on a positive vote. Thus the 'None of the above' option would indeed compel political parties to nominate sound candidates. Democracy is all about choices and voters will be empowered by this right of negative voting to express their disapproval with the kind of candidates that is being put up by the political parties.

"Right to cast negative vote will foster the purity of the electoral process and also fulfill one of its objective, namely, wide participation of people. There has been a growing concern over the years in India about several aspects of our electoral system. The Election Commission has made changes in several areas to respond to some of the concerns. There have also been a number of committees which have examined the major issues pertaining to our electoral system and made a number of recommendations. But there remain some critical issues that might need legislative action to bring about the required changes.

The purpose of this research is to evaluate the efficiency of existing legislations of Election laws in India and also to discuss major issues and challenges in present Election and voting system. The researcher has studied the process of development/reforms in the field of election laws by parallel forces legislations/ amendments judicial contribution etc. The researcher has suggested the remedies to ban the entry of criminals into Parliament and State legislature.

All recent committees on politics collectively addressed the growing concern on criminalisation of politics. The criminalisation of politics since it concedes to the people right to information about the kind of information about the kind of people whom they would like to choose as their representative. There are many forms of criminalisation of politics but most important is elected representatives having criminal character. There are many issues with respect to conduct of election which need to be addressed.

The researcher will also take into consideration the major issues like role of political party, internal party democracy, and de- recognition of political parties, accounting and auditing of political parties, disclosure of assets of political parties. The researcher is also going to analyze the issues in the present election system and will suggest some suitable reforms for proper governance.

P.R. Belagali v. B D. Jatti,⁴ Indira Nehru Gandhi v. Raj Narain,⁵ and the Supreme Court in these cases held that there is steady decline in the values, practices of political parties who fight elections. So as to win the election money power, muscle power, corrupt and unfair practices is used to win the election. The Parliament has taken several actions to amend the laws relating to election. Many round table conference and interactive session were held among some of the most eminent intellectuals, jurists, scholars, thinkers and concerned citizens have reached the conclusion that root of our problem is in the criminalization of politics, dependence of black money, caste and community based vote banks etc.

Interdisciplinary Relevance

Present topic not only touched the constitutional aspect but it also deeply and strongly concerned with sociological aspect of society. Free and fair elections are the very foundation of democratic institutions. The study of the electorate and the representative is of great important in dealing with democracy; in fact, their study is the study of democracy itself. In democracy, it is supposed that power is vested in the people, and the people should be allowed to choose their leaders or representatives. Government by people's representative means a government in which popular sovereignty can be expressed. Representative is elected by those who have franchise. People will not return to power, a corrupt and inefficient government, in which they have lost faith. The electorate is the basis of a democratic form of government. The electorate elects representative, who run the government.

Significance of Study

Today, there is a need of Negative Voting as indispensable "right" in order to resolve the dilemma of political nihilism and effective political participation in the present state of

⁴AIR 1971 SC 1348

⁵AIR 1975 SC 2299

democratic system. Thus the study of the electorate and the representative is of great important in dealing with democracy; in fact, their study is the study of democracy itself. India is the largest democracy in the world but we feel that due to the entry of person having criminal background, communalization of politics, legislators defection, misuse of public office, use of money power, muscle power, mafia power in election have apparent that there is deep rooted problems in parliamentary system of India.

How and where did we fail? Does the fault lie with the constitution itself or its implementation?

As our democracy is believed to be suffering from the maladies of four Cs- Corruption, Criminalization, Communalism and Casteism and three M.P.s., money power, muscle power, and mafia power, there is a need to bring required reforms in election process.

In the present research the researcher tries to deal with the total happenings in the present day's electoral exercise and various election reforms and also suggested some remedies for the betterment of electoral system.

Objective of the Study

Broad Objective

To evaluate the efficiency of existing legislations of Election laws in India and discuss the issues and challenges in present Election and voting system.

Specific Objective

- To critically analyse the present regime of laws with reference to the postulate of free and fair election as a fundamental point of democracy.
- To study the process of development/reforms in the field of election laws by parallel forces a legislations/ amendments judicial contribution.
- To suggest the amendment in law to ban the entry of criminals into parliament and State legislature.
- To study the influence of money, caste and power in election.
- To study the election system in India and voter participation in election.
- To analyse the challenges before ECI.

- To make a comparative study of the electoral laws in different countries.
- To analyse the issues in the present election system and to suggest some suitable reforms for proper governance.
- To suggest Measures for Improving the Electoral System in India

Hypothesis

Whether right to cast negative vote, will foster the purity of the electoral process.

Research Methodology

The present study aims at the nature scope and origin of India's electoral democracy in India as well as in other countries for this purpose researcher opted for doctrinal research.

The data will be obtained from two sources

1. Primary sources

Primary sources provide direct and first hand evidence about an event object, person work of art. Primary source includes historical legal documents, statistical data etc. Primary data is collected by the researcher themselves.

2. Secondary Sources

The secondary data will be obtain from published work books and reports available with various institution and libraries.

The researcher will use the doctrinal methods. This topic, researcher will study from various theoretical data which is collected from various Sources such as books, law commission reports, constitutional assembly debate judicial decision journals, article newspaper, juristic views of others countries judicial decisions internet etc.

Data Collection

For the data collection researcher will take the assistance of books, article, law commission report, constitutional assembly debate news paper, journals, and Indian law reporters. Researcher will laid emphasis on the websites which are relevant for the study of the present topic. The study is mainly concerned with the statutory and judicial position, so researcher will try to analysis the material in consonance with the relevance of the topic.

The statement of Problem

- The election at present day is not being held in ideal conditions because of the enormous amount of money power and muscle power needed for winning the elections. In addition

there are many other factors on the basis of which election is fought like casteism, communalism, criminalization of politics, poll violence, booth capturing, non-serious independent candidates, unemployment.

- Negative voting will lead to a systemic change in polls and political parties will be forced to project clean candidates.

Scope of Research

Elections are considered to be a process to achieve democracy and as an indispensable element in the establishment and continuation of any democracy. Constitution of India gives a scheme of democratic bodies as well as an independent constitutional authority bestowed with the function of conduct of free and fair elections, namely the Election Commission. So it can be safely assumed that elections are firmly rooted in the constitutional premise and are an attribute of the promise of democracy.

The scope of the study mainly covers the present regime of laws with reference to election. The present study tries to critically analyze the present issues in Indian election system. The researcher has done a survey of the existing laws available on the issues worldwide and collected the data.

Case laws in this area are major force of development and balance. Amendments by Legislative bodies and the orders and notifications of Election Commission to occupy the same field. Law Commission and National Commission on the Review of Constitution are the other major players. The role of the civil society bodies in the matter of electoral reforms is a major segment of study. A composite approach of analyzing the cases, amendments, notifications, recommendations and civil society groups will be a fair indicator to the development of law in this field.

Sources of Data Collection

1. Textbooks, Reference books, Law Commission reports, Constituent assembly debate
2. International and national journals, legal leaflets, magazines etc.
3. Encyclopedias, Websites, other relevant material available

CONCLUSION AND SUGGESTION

CONCLUSION

Thus in a vibrant democracy, the voter must be given an opportunity to choose none of the above (NOTA) button, which will indeed compel the political parties to nominate a sound candidate. This situation probably tells us the dire of negative voting. Without this, democracy will fail to thrive. Therefore, even if the right to vote is statutory, the significance attached to the right is massive. This choice can be better expressed by giving the voters an opportunity to verbalize themselves absolutely and by imposing least restrictions on their ability to make such a choice. By providing NOTA button in the EVMs, will accelerate the effective political participation in the present state of democratic system and the voters in fact will be empowered. The researcher is of the view that in bringing out this right to cast negative vote at a time when electioneering is in full swing, information technology will foster the purity of the electoral process and also fulfill one of its objective, namely, wide participation of people. Free and fair election is the basic structure of the Constitution and it includes right of the elector to cast his vote without fear of reprisal, duress or coercion. Protection of elector's identity and affording secrecy is therefore essential to free and fair elections and an arbitrary distinction between the voter who casts his vote and the voter who does not cast his vote in violation of Art 14. Thus mechanism of negative voting serves a very fundamental and essential part of a vibrant democracy.

Thus free and fair elections and good governance can only be possible in the event of eradication of criminal element in the politics. Today there is a strong need of electoral reforms in India. Election Commission of India needs to be kept free from any sort of interference, as it proved to be effective machinery. Hence for sweeping out the dirt in the electoral arena, the Government and Judiciary and ECI and even the Public should work to strengthen the backbone of the democracy.

NOTA was introduced in India following the 2013 Supreme Court directive in the People's Union for Civil Liberties v. Union of India⁶ judgment. Thus, India became the 14th country to introduce negative voting. However, NOTA in India does not provide for a 'right to

⁶ AIR 2003 SC 2363.

reject'. The candidate with the maximum votes wins the election irrespective of the number of NOTA votes polled.

Giving right to a voter not to vote for any candidate while protecting his right of secrecy is extremely important in a democracy. Such an option gives a voter to express his disapproval with the kind of candidates that are being put up by the political parties. When the political parties will realize that a large number of people are expressing their disapproval with the candidate being put up by them, gradually there will be a systematic change and political parties will be forced to accept the will of the people and field candidate who are known for their integrity.

The direction also can be supported by the fact that the existing system is dissatisfied. Voter ordinarily does not turn up for voting which in turn provides a chance to unscrupulous elements to impersonate the voter and cast a vote, be it negative one. Furthermore, a provision of negative voting would be in the interest of promoting democracy as it would send clear signals to political parties and their candidates as to what the electorate thinks about them.

SUGGESTIONS:

- The Political parties should only consider the merit of the candidates based on their qualifications, experience in public service and the intention to enter the politics, but should not consider his/her capacity to spend money in election, his/her caste to which he/ she belongs and also the god-fathers at the higher level.
- Introducing a NOTA button can increase the public participation in an electoral process.
- Votes cast for the 'none-of-the-above' option should also be counted.
- In case the 'none-of-the-above' option gets more votes than any of the candidates, none of the candidates should be declared elected and a fresh election should be held in which none of the candidates in the next election are allowed to contest.
- In elections, with fresh candidates and with a 'none-of-the-above' option, only that candidate should be declared elected who gets at least 50 percent + one of the votes cast. If even in this round, the 'none-of-the-above' option gets the highest number of votes

cast or none of the candidate gets at least 50 percent + one of the votes cast, then the process should be repeated. This may appear to be a cumbersome and tedious process but it will push the entire system in the direction of better representative-none of the above among the elected representatives by reducing the sectarian effects of vote banks, and encouraging political parties to put up better candidates.

- When the political parties will realize that a large number of people are expressing their disapproval with the candidates being put up by them, gradually there will be a systemic change and the political parties will be forced to accept the will of the people and field candidates who are known for their integrity.
- (NOTA) button, which will indeed compel the political parties to nominate a sound candidate.
- A provision of negative voting would be in the interest of promoting democracy as it would send clear signals to political parties and their candidates as to what the electorate thinks about them.
- "Negative voting will lead to a systemic change in polls and political parties will be forced to project clean candidates. But very low number of voters uses NOTA votes due to lack of awareness about this feature and reluctance to use it.
- So it has become a symbolic protest as even if the number of NOTA votes is higher than all the number of votes for all candidates, the candidate who got the second highest number of votes is declared winner.
- Door to Door canvas by groups should be banned before election. This only leads to number of mal-practices and corruptions.
- More awareness about NOTA is needed all over the country.
- Voting should be compulsory.
- There should be a direct election for President, PM and CM.
- There should be a post entry training programme for winning candidates.
- No person should be allowed to contest election if having criminal charges.
- Online voting should be allowed to those voters who are not able to go to booth station.

- **Right to recall**

There should be public accountability of the elected candidates towards the voters. If the elected political party fails to redeem the electoral promises and fulfill its election manifesto the voters should have the right to recall the elected representatives.

- **Stringent audit of electoral expenses**

Although it is not possible, in principle, to limit electoral expenses, it is important that if the country imposes such limits, that these are strictly monitored. If corrupt politicians can't gain an electoral advantage through use of huge amounts of black money then barriers against good candidates will further reduce.

- **Ban on entry of MP and MLA having criminal charges**

The criminalization of politics continues to be a very big concern, with an increase in the number of MPs with criminal records in 2004 from 128 to 150 in 2009. Even the number of MPs with serious criminal cases has gone up. The biggest reason for this seems to be the undemocratic and autocratic selection and nomination of candidates by political parties. If the party doesn't allow candidates with criminal records to contest in the election then a person with any sort of criminal record should not be allowed to file his/her nomination for the elections at any level. Any person contesting an election has to undergo a strict audit 3 times - first at the time of filing nomination, next at an unspecified time during campaign and third right after polling day.

- **Fast track courts to deal with corruption or criminal charges against MPs**

Special courts to be established to decide cases against candidates within 6 months. Potential candidates with pending charges may take matter to the special courts, which can be decided if a prima facie case justifying framing of charges is made out.

- **Preventive measures to curb Booth capturing and rigging in the elections**

The parliament elections witnessed large scale violence, booth capturing and rigging. The violence during the state elections in particular in Bihar and U.P. which recorded a maximum death toll is a clear indication of failure of the

government machinery to ensure free and fair polling. There is also a need to prescribe stringent punishment for the offences of rigging, booth capturing and disturbing the election process by violence.

- **Public Education**

In India the voter votes for a symbol and does not know for what the symbol stands for. As such there is a need to educate the voters about the importance of the vote, elections and the manifestos of the political parties. This public education of the voters is bound to make the voters to exercise their franchise in a rights way with one being influenced by irrelevant consideration. Creation of awareness among voters for proper utilization of franchise should be given much importance. It can be done with implementation of literacy camps in right manner. A sense of security has to be developed to exercise the right to vote.

These reforms will considerably transform the electoral process in India towards the betterment good governance.

