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Role of Judiciary and Election Commission in Protecting the Electoral Democracy

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ABSTRACT

It is said that democracy is the people, for the people, and by the people. The quote was said by Abraham Lincoln the former president of the United States of America. The feature of Democracy is Liberty, freedom, equality, rule of law, and all kind of fundamental rights. Freedom of free speech and expression is also a very vocal feature of democracy. the citizen chooses their government by casting votes in other words voters choose their government on their own. In India, all kinds of governmental elections have been done by an independent authority Election Commission of India. In India Supreme Court is their custodian of fundamental rights. there are several cases and judgments available and every time whenever it is needed apex court tried to regulate and control it. Many cases are examples of When the Supreme Court made the way for a healthy democracy. The Election Commission of India set a good track record of transparent honest and unbiased independent organizations. Recently, we have seen the elections of five states where all parties have accepted the results of elections. Examples of a lot of cases where the supreme court saved the freedom of free speech and expression cases like Shreya Singhal v. Union of India, also in case of Keshav Nanda Bharati v. the State of Kerala, in S.R. Bommaie v. Union of India, the case of Rameshwar Chourasia v. State of Bihar the Supreme Court sets the benchmark for saving democracy. Election commission's efforts for stopping criminal elements from contesting elections.

Keywords: Democracy, Election, Voter Rights, Judiciary, Muscle Power, Governance, Transparency, Corruption, Movement, Fair Election.

I. INTRODUCTION

The election commission and supreme court consistently put effort to counter muscle power and money power in elections. So, both the independent pillars of democracy are working for the betterment of democracy according to their rules and procedures. Democracy is the best model of governance in the current political system, in which people are supreme. The two Greek words “Demos” and “Kratos” coined the term democracy. The meaning of demos is people and the meaning of “Kratos” rules. So, “democracy is the power of the people”. in

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another word, we can say that democracy means the rule of people in which liberty, equality, and fraternity are guaranteed. People elect their government and make the rules and regulations through its elected representative. People can make their government on their own through them they can deliberate and discuss, and decide their legislation. In this method of ruling people choose their government by choosing their representative directly through the casting of a vote. This kind of democratic system is known as the parliamentary democracy or parliamentary form of the governance system.

Once, the president of the United States of America Abraham Lincoln very rightly told in their Gettysburg address in the year 1863 about democracy that “Government is the people, by the people, and for the people” actually it is a participatory system where all citizens can participate and make their way for future social, economic, political development goal. For achieving these goals, they elect their government they make their own rule, regulation and that government is responsible for making the path for successfully achieving these goals. It is not like a monoracial or authoritarian autocratic system of governance where citizens can’t participate in decision-making for their development only a ruler or the king takes decisions for everything.

In past, we have seen an autocratic system, a monarchical system where people can’t make their own decision of all-round development, they were paying heavy taxes to their ruler without any benefits, and there was so many social and economic barrier among citizen so there was a lot of resentment among common citizen because there was no any system to resolve it properly. So, after the French, Bolshevik, and industrial revolution world saw a new change, not in the name of social development but also in the level of economic and political development. The situation of anarchy, unrest, and lack of accountability brings a new scientific change in the world’s political thought, that was based on scientific temperament and the fundamental principle of equality. Equality is not a matter of social only but in the matter of politics and economics also.

The old system of governance was not fulfilling these scientific ideas and was unable to address the new demands of welfare so the idea of self-governance came into the picture democracy was the demand of the hour because democracy was based on the scientific notion that inherits the principle of equality, justice, and good conscience. The change in governance was the change in economic order also it was a shifting of the police state to the welfare state. We can say that democracy is a welfare state arrangement in which grass to mass all participate not in the sense of individualistic development but also the matter of community development.

Democracy runs on some set of principles like freedom, no discrimination, rule of law, liberty,

equity, and good conscience. In a democratic system election, forming of a government, working for the welfare of the people, and coordination with other democratic entities are core values of this system. Free choice or election can be said core and basic value of democracy. If people will have no free choice in the matter of selection of their representative, then the method will not say transparent and honest method. The way how the people participate in democracy is very important like election people come forward to elect their candidate without any undue influence, misleading and any force, their faith in democracy grows more and more. Voting is important on one hand another hand participation in contesting in the election is also important if all social, economic, and political fractions of a state participate in the election it means that there is healthy democracy that allows everyone to share his/her problems and needs for all-round development and where everyone believes in democracy. The free spaces for the press, expression of free speech, and expression through various sources and modes are signs of a strong and healthy democracy.

It is believed by Indian scholars that the first democracy in this world was set up in India in the state of the Lichhavi republic. But some western scholars think that it was Greece where the first notion of democracy applied in the matter of governance. India after independence adopted the parliamentary democracy in which the people mean the voter is supreme and it delegates their power to make the law to the parliament. India is abided by the universal principle of democracy and accepted a constitutional form of democracy where no one is above the law the values that lie in the constitution are indelible marks for any government except parties. That's why the current prime minister Mr. Narendra Modi said in an election campaign that I know a book while governing India that is the constitution. On the very first day when Mr. prime minister came to the parliament, he bows down at the door of parliament it symbolizing the importance of people's power in a democracy.

II. EFFORTS OF COURTS & ELECTION COMMISSION

In India, all the representative of the people is termed as the servant of the people because it is the common people who are the supreme boss of democracy in India by electing their government. So, the election is very important in our country because the election and selection of representatives set and plan the future roadmap of our county. That's why the Honourable Supreme Court held in the *T.N. Sheshan v. Union of India*³ case that free, impartial, fair elections are an essential need for any healthy democracy. And the election is the part of basic

³ T.N. Sheshan v. Union of India, AIR 1995 SC 852.

structure doctrine.⁴ And in the *Keshava Nanda Bharti v State of Kerala*⁵ case, it was held that the principles which fall in the area of basic structure doctrine can't be amended. In *Indira Gandhi v. Raj Narayan*,⁶ the supreme court held that elections must be conducted at regular intervals. Election at regular intervals is the most important factor of democratic policy. Election on regular intervals allows wide participation, change, the inclusion of new agenda and ideas, and freshness in views to the voters as well the political parties and leaders who participate in it. It also limits and take control over authoritarian thought and curbs autocratic view and brings more transparency, so that the possibilities of corruption decrease.

We can see that transparency and a corruption-free system are demands of every election. We can understand these views and sentiments in the movement of 1974 against the Indira Gandhi govt., Anna movement or the movement for Jan Lokpal Bill 2011, the movement for justice for Damini, movements for the right to information, movements for the right to services legislation, etc, judicial and civil society's activism against the leaders & candidates with criminal and corruption charges. Article 324⁷ deals with the arrangement and Mechanism of the election, in sub-articles of art. 324 t is mentioned that the process of election will be done by the election commission of India, and the head of the election commission of India will be the chief election commissioner of India, the appointment, tenure, and other functions are also mentioned in this article. It is also held in *S.S. Dhanoba v. Union of India*⁸ that the election commission of India armed with uncontrolled powers to make it more responsive, responsible and democratic will be a multimember organization. For this fact, the *constitutional amendment act 1993* was brought up and passed by Parliament.

Article 326⁹ the election of the house of people and Legislature of every state shall be based on adult suffrage, which means who is going to contest elections should not be less than 21 years. In the case of the *Election commission of India v. Ashok Kumar*¹⁰, The Honourable Supreme Court held that the word superintendence, direction & control of elections are enough to define the characteristics of the election commission of India that the words already included in the functions of the election commission of India. For a healthy democracy, a free and fair election is very important. For a free and fair election, there should be coordination between all the concerned departments of govt. and also there should be control over muscle power,

⁴Ibid.

⁵ *Keshava Nanda Bharti v State of Kerala*, AIR 1973 SC 1461.

⁶ *Indira Gandhi v. Raj Narayan*, AIR 1975 SC 2299.

⁷ Article 324, Constitution of India.

⁸ *S.S. Dhanoba v. Union of India*, AIR 1991 SC 851.

⁹ Article 326, Constitution of India.

¹⁰ *Election commission of India v. Ashok Kumar*, AIR 2000 SC 2299.

money power, and abuse of power to curb these kinds of issues election commission of India and the Apex court of India time frame rules. To demotivate the idea of abuse of muscle power and money power election commission of India time to time frame rules. In like, the year of 1971 first advisory nature of the modal code of conduct came into force, these rules suggest candidates not indulge in malpractice, abuse of money power or muscle power, not spread ill will between community, no hate speech, etc. under this provision the election commission of India help responsible to Mr. Narendra Modi and Sonia Gandhi in Gujrat election in 2007. In *I.D. Systems (India) Pvt. Ltd. v. C.E. Commissioner*¹¹ the Kerala High court held that the motive of the modal code of conduct was not to stop all governmental activity but to stop that illegal activity that influences the voter directly. Modal code of conduct can say as like election morality and ethics which every participant as a voter supporter or candidate should keep in mind.

From time to time the election commission of India publishes a policy, and awareness program to aware the voter about the modal code of conduct so that can less malpractice should not be used in elections. The election is a signpost of democratic values¹² because through the election the values, attitudes, and emotions reflected towards the political belief and system of any country. But the model code of conduct is advisory it is not binding on candidates if they take this loophole as a tool of benefit. For a free and fair election, any democracy must eradicate all the hurdles it is necessary to control over the money power too. To stop the muscle power and money power in the election a rule in the year 2003 has been passed. In *common cause: A registered society v. Union of India*¹³ court help that nowadays it is common and very bad that election is fought based on money. The purity of election is very necessary for the purity of democracy. So, a candidate shall have declared all the expenditure in a time frame manner, and how many political parties have expanded the election that the use of illegal money in the election should be controlled. To demotivate the factor of criminalization in elections the election commission of India works on this issue because the criminalization of politics affects the belief in democracy, people do not use their right to caste cost freely because of fear of such kind of corrupt and criminal candidates.

In *Union of India v. Association for Democratic Reforms*¹⁴ the Supreme court of India upheld the Delhi high court order that candidates who are going to fight the election have to submit an

¹¹ *I.D. Systems (India) Pvt. Ltd. v. C.E. Commissioner*, AIR 2006 Ker 229.

¹² Nagnath Chandrakant Borphalkar (no date) *Indian Democracy & Role Of Election Commission, Role of election commission*. Available at: <https://www.legalservicesindia.com/article/108/Role-Of-Election-Commission.html> (Accessed: 06 March 2025).

¹³ *common cause: A registered society v. Union of India*, (1996) 2 SCC 752.

¹⁴ *Union of India v. Association for Democratic Reforms*, (2002) 5 SCC 294.

Effie davit regarding their income, and assets, information regarding criminal cases against him/her, properties information(movable, immovable), the liability of government if any, and his/her educational qualification, this is mandatory for every candidate to disclose this information while applying to contest the election. Actually, in this case, the judiciary has taken bold steps to control and counter the challenges of the criminalization of politics and expand the scope of the right to know under article 21.¹⁵ Even In *Mohinder Singh v. Chief Election Commissioner*¹⁶, the Supreme Court interpreted the power and functions of the election commission of India for a free and fair election, that the election commission has a power like any tribunal and can pass any order which makes the election reliable, doubtless, transparent, beyond doubt and smooth. Even the election commission can pass the order to regulate the voice of loudspeakers, and cancel the rally and public gathering, and venue. There are a lot of changes and steps taken by the election commission of India to improve the process of election and to maintain the purity of election. In the case of *Jan chaukidari, v. Union of India*¹⁷ person in custody is to be debarred from the election.

It was held in the *Lily Thomas v. Union of India*¹⁸ by the Supreme Court that a person who is convicted of any offense in which punishment is more than two years can be debarred from contesting an election. Now on election and democracy, there is the next-generation debate is going now technology has got a significant place in a transparent election the use of EVM for election was a revolutionary step of commission that brought more transparency in the election. The debate over the right to recall and one nation one election has also started election commission looking these issues seriously courts also case to case clearing their views over these doubts and issues.

Now voters have the right to vote none (NOTA) it is a unique right given to the voters if no candidate is found suitable to a voter. So, this right also allows those voters or citizens whose voice was unheard. The case was *People's Union for Civil Liberties v. Union of India*¹⁹ in which the right to none of the above (NOTA) expressed by the court and election conduct rules 41(2) and (3) and 49(o) found ultra-virus to *article 19(1)(a)*²⁰ of Indian constitution and *section 128* of the *Representation of The People's Act*. Not only through policies but through technologies also the election commission of India and the Supreme court ensure more and

¹⁵ Article 21, Constitution of India.

¹⁶ *Mohinder Singh v. Chief Election Commissioner*, AIR 1978 SC 851.

¹⁷ *Jan Chaukidari v. Union of India*, 2004 (2) BLJR 988.

¹⁸ *Lily Thomas v. Union of India*, (2013) 7 SCC 653.

¹⁹ *People's Union for Civil Liberties v. Union of India*, (2013) 10 SCC 1.

²⁰ Article 19(1)(a), Constitution of India.

more transparency and fairness in the election.

In the case of *Subramaniam swami v. Union of India*²¹, the Supreme court held that using *VVPAT (vote verifiable paper audit trail)* is mandatory with EVM so, that every voter knows to whom he/she cast their vote and it is similar to whom he pressed the button. Even caste-based rallies for election were stayed by the Allahabad high court. In the case of *Subramanyam Balaji v. State of Tamil Nādu & others*,²² the Supreme Court took the bold step to purify the election and held the election commission can regulate the manifesto of political parties. This case was against the freebie provided by the political parties in their manifesto irrespective that the government's income is decreasing and the economic situation of the whole country is very tuff.

III. SUGGESTION & CONCLUSION

So, we can see from the above decisions and facts that the judiciary and election commission of India doing a lot to democratize elections. nowadays we hear many debates on grass root level democracy and free fair and more reliable elections. we can hear the debate on right to reject and right to recall, one nation one election these debates are very relevant some these debates are under the jurisdiction of court no doubt improvement has always a scope but till yet we have very reliable two organization of democracy on which everybody has a belief which is our judiciary and election commission.

Civil society should also be vigilant about purity in elections which we know that very essential thing for a strong democracy. Many org. specially P.U.C.L. and P.U.D.R. have done a remarkable job in this area. The election commission and judiciary need a support base to strengthen democracy and corruption-free elections. so, everyone not only the judiciary or election commission has a role in the protection of our electoral democracy in India. The election commission and judiciary have done no doubt a remarkable effort to make our elections more transparent, time-saving, and unbiased time to time the Supreme Court issued guidelines for media also on coverage of news related to the election because it came into the light of the election commission that some media groups publish paid news, and manipulated exit poll of election it has found by election commission that to allure and to distract the voters in the favour of certain political parties media houses publishing manipulated exit poll. Then commission ordered that no exit poll can be published before the campaign election, it can be published 48 hours after the election.

²¹ *Subramaniam swami v. Union of India*, (2015) 13 SCC 353.

²² *Subramanyam Balaji v. State of Tamil Nādu & others*, [2013] Insc 658.

We are now living in the age of information technology in some sections of the social debate over going on the topic of online voting. Still many debates many issues have with election their redressal will take time. But we can say the work for strengthening and protecting the democracy of our country by these two pillars of democracy is remarkable and very appreciable.
