CHAPTER 1
Introduction
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INTRODUCTION

1.1 GENERAL:

India is the largest democratic country in the world. Democracy is a government of the people. It must reflect the genus the people, their hopes, aspirations, conflicts and way of life. Fair elections, freedom of thought, expression, freedom of press and independency of judiciary are the main pillars on which the edifice of democracy stands. Elections are the corner stone of democracy. They lie at the heart of the democratic process. It is based on the popular will. In fact, democracy is based on the active and intelligent interest of the people in their national affairs. The voters come in the picture during an election because it is through elections that sovereignty of the people is institutionalized and realized. The process of election is shouldered by the responsible executive authorities. It is quite obvious that these independent authorities are no exceptions for the political influences and power politics.
According to the New Standard Encyclopedia *Election*, the act of choosing officials and representatives by voting. Elections provide the chief means by which people express their will and make it effective. Democracy cannot exist without free and frequent elections.

The founding fathers had envisioned a socio-economic revolution that aimed to achieve unity and integrity of the nation, socialism, secularism and the development of the democratic values, adult franchise, regular elections and accountability of political leadership by the Constitution of India which they drafted. They had great faith in democratic values. They evolved and developed democratic institutions and practices, but soon an erosion of these institutions and the decline of the political process began as a consequence of the excess of populist and confrontational politics that began in the last quarter of the sixties. Today the normal political process has been grossly distorted. The political legitimacy and morality of political leadership is always suspected by the people. There is gross decline of democratic commitment and erosion of ethical values. Growing corruption, criminalization, conviction, repression and intimidation have gravely perverted the growth and development of democratic process¹. Increasing violence at the polls is promoting the loss of public faith in participatory democracy; the forcible seizure of booths, the stuffing of ballot boxes, the burning of vehicles, the manhandling of election staff, the free use of guns by armed goondas and murders are becoming common features of the electoral system. At this junction there is a great need for wide-range of electoral reforms and an electoral code to be followed by all the political parties and candidates at the time of

¹ Dayal Keshav, 'Election Laws and Criminalization of Politics' Electoral Reforms paper submitted to the NCRWC, New Delhi, 2000. p 243
elections to have or real representative government.India is facing political, economic and social problems of an unparalleled magnitude. The people of the country have by now experimented and experienced repetitive changes of political parties, including multiparty Governments and each such experience has not been found satisfying the aspirations of the people. According to Shri N. A. Palkhivala "we should think of making some changes in our Constitutional law..... There are a number of changes in our Constitutional law which need to be effected to root out corruption and to prevent further degradation of our political life..... To my mind, the greatest danger facing India is that of disintegration". Corrective measures in the form of Constitutional and Electoral Reforms have become imperative to face the situation. In such matters, generally, Governments are reactive and not pro-active.

Political parties and the party system in India have been greatly influenced by cultural diversity, social, ethnic, caste, community and religious pluralism, traditions of the nationalist movement, contrasting style of party leadership, and clashing ideological perspectives. Political parties do not as such find any direct mention in the Constitution of India. However, there is one provision in the Constitution which is directly relevant to the functioning of political parties. The Tenth Schedule of the Constitution was added by the Constitution (Fifty-second Amendment) Act,

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4 Under the Tenth Schedule of the Constitution of India.
1985 which deals with the disqualification of a person for being a member of either House of Parliament or the Legislative Assembly or Legislative Council of a State, on ground of defection.

In the absence of a sufficiently detailed constitutional provisions, the major onus of framing and administering the rules and regulations governing political parties in India has fallen on the Election Commission, a constitutional body responsible for conduct of elections. The Election Commission of India has the ultimate power to accord recognition and status of political parties to "the association or body of citizens of India". The Election Commission has the power to decide whether or not to register an association or body of individuals as a political party.

Judiciary is an effective organ protecting the democratic institutions by its intervention as and when they drift away from the basic principles. Judiciary has demonstrated that it has got the power, authority and strength to protect the parliamentary democracy in India. Through Judicial activism all corrupt practices are brought to book. The bad elements of the system are well known. Without being exhaustive, one can identify the major defects as follows.

- Use of religion, caste, language and region in electoral politics.
- Influence of power of money and muscle in criminalizing politics
- Misuse of governmental powers and machinery
- Delay in processing of complaints and disposing of petitions.

The constitutional provisions are adequate to deal with the inadequacies of the institutional arrangements. The idea of secularism reinforced by the recent

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5 Under Art. 102(2) the Constitution of India
6 Under Art. 191(2) the Constitution of India
Supreme Court's decisions in S.R. Bommai's case is an eloquent example of the constitutional principle of keeping religion out of electoral politics. However, caste-based reservation in the elected legislatures and the well-intentioned protection of minority rights have been cleverly manipulated by certain political elements both in the majority and in the minority communities to organize political campaigns and divide the people for narrow political advantages. An attempt was made through amendment to Representation of the People Act, 1951 to compel such religion and case-based political parties to declare their total commitment to the constitutional values and principles.

In this scenario it is to suggest an amendment to the Representation of the People Act, 1951 under which only a candidate who has recurred 50% or more of the total votes polled in a constituency alone is to be declared elected. If no candidate secures 50% of the votes polled, there should be a re-poll involving only the top two candidates who have secured the largest and the second largest number of votes. This not only makes the system more representative but will eliminate a candidate or party depending on one community.

The issue of criminalization of politics was raised by the Commission from 1998 onwards. Disqualification for criminal offences is provided for in Section 8 of the Representation of the People Act, 1951. According to this section, a person is disqualified from contesting election only on conviction by the Court of Law. There have been several instances of persons charged with serious and heinous crimes like murder, rape, dacoity, etc. contesting election, pending their trial, and even getting elected in a large number of cases. This leads to a very undesirable and embarrassing

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7 S. R. Bommai v. Union of India AIR 1994 SC 1918
situation of law breakers becoming law makers and moving around under police protection. The Commission had proposed that the law should be amended to provide that any person who is accused of an offence punishable by imprisonment for five years or more should be disqualified from contesting election even when trial is pending, provided charges have been framed against him by the competent Court.

The Commission reiterates that such a step would go a long way in cleansing the political establishment from the influence of criminal elements and protecting the sanctity of the Legislative Houses. The counter view to this proposal is based on the doctrine that a person is presumed to be innocent until he is proved guilty. The Commission is of the view that keeping a person, who is accused of serious criminal charges and where the Court is prima facie satisfied about his involvement in the crime and consequently framed charges, out of electoral arena would be a reasonable restriction in greater public interests. There cannot be any grievance on this. However, as a precaution against motivated cases by the ruling party, it may be provided that only those cases which were filed prior to six months before an election alone would lead to disqualification as proposed. It is also suggested that persons found guilty by a Commission of Enquiry should also stand disqualified from contesting elections. The Patna High Court had passed an order that persons behind bars cannot contest elections. On the basis of an application moved by the Election Commission, this order was stayed by the Supreme Court with the observation that the High Court could not have passed the order during the course of the election process. The Commission endorses that the law should be amended as proposed above
On the issue of criminalization of politics through money and muscle power, several recommendations have been made from time to time by governments, political parties and committees of experts. It is indeed a sad commentary of party politics that despite having a consensus on many issues, no government has come forward to legislate decisively on this subject. The revised rate of election expenses is still too low and is unlikely to make an impact on corrupt practices. The adoption of identity cards and electronic voting machines should minimize the scope of physical use of force in the electoral process. Booth capturing whether silent or violent, has to be put down and the Election Commission's hands are to be strengthened.

In India, various e-government construction policies are being implemented by the central and local governments (provincial). The information policy in the central government has been promoted based on the proposal of the IT Action Plan designed in 1998. Towards the implementation of this proposal, the government of India has allocated a large portion of the budget to the development of systems such as the National Supervising System and Electronic Voting System for prevention of injustice and corruption in government corporations. In 2006, the government announced a new strategy, the National e-Governance Plan (NeGP), to advance the transition to e-government and settled on a policy to achieve e-government throughout all of India investing 230 billion rupees (about 577 billion yen) over the next five years.

Electronic voting in India was partially carried out after the election in 1998, and has been carried out nationwide starting with the election in 2004. The merits of introducing the electronic voting system include the reduction of preparation cost of ballots, transportation cost of ballot boxes
and cost for vote counting, reduction of the risk of ballot theft, shortening of vote counting time, and elimination of dud ballots that numbered many in the past. The electronic voting system is also effective for prevention of election obstruction as only the number of ballots voted for each candidate is output. In addition, since the illiteracy rate in India is about 35%, candidates are displayed by name and symbol, and electors vote by choosing the button located on the side. Voting was previously difficult for those who are illiterate and the introduction of electronic voting has brought the opportunity for them to participate in elections.

Misuse of governmental machinery and powers is a perennial problem which perhaps cannot be eliminated altogether. A vigilant and powerful Commission can at least create a fear in the ruling party and inhibit open misuse of government machinery to some extent. But there is no way to check the variety of subtle favours and corrupt practices at different levels in government unless a vigilant public and an independent media continuously agitate against all known deviations. Expedition in disposal of electoral dispute both at the election commission level and in the judicial process is another matter which deserves attention in reform of the election system. This naturally raises questions on the competence, efficiency and fairness of the election commission itself in its judicial functions. Further the inordinate delay inherent in the judicial process militates against efficiency and fairness in the electoral process as well. As such, a system needs to be evolved for settlement of election disputes within three months after institution otherwise reforms towards curbing influences of money power, muscle power, ministerial power and caste/religion power will not yield results in the near future.

Democracy contemplates that there should be free and fair periodic
elections. Unless there are free and fair elections the effective instrument of ascertaining popular will in an election will be a mere ritual calculated to generate an illusion of deference to mass opinion. Free and fair elections mean the candidates or their agents should not resort to unfair means, manipulations or malpractices or corrupt practices as they smack the free and fair elections. Even in absence of corrupt practices or unfair means or malpractices, sometimes the result of an election is materially affected, due to improper rejection of ballot papers etc. Thus disputes may arise challenging the validity of an election on various scores. In order to adjudicate those disputes, different democratic countries of the world have made provisions prescribing the law and the forum for resolving these disputes. The validity of the 39th Amendment Act was challenged in Indira Gandhi v. Raj Narain, popularly known as the ‘Election case’. According to the learned C.J, the concept of “free and fair elections” is an important aspect in the legislation relating to validity of election and that it is worked out by formulating the principles of franchise and free exercise of franchise. In cases of disputes as to elections, the concept of free and fair elections requires that disputes are fairly and justly decided.

Section 15 of the Representation of the People Act, 1951 lays down procedure for issuing a notification for general election in a State Legislative Assembly. The Election Commission can recommend to the Governor the date or dates when the elections may be held. When a recommendatory body makes any recommendation the functionary to whom the recommendation is made is not obliged to accept it. The Governor for reasons stated under Section 15 may disagree with the
recommendations. In case of such disagreement the matter shall be referred back to the Election Commission. By this process, an agreed date may be worked out. In case an agreed date is not reached, a situation of confrontation between the Governor and the Election Commission would arise. However, the decision of the Governor may prevail as the recommendation of the recommendatory body can be ignored.\textsuperscript{10} The State Legislature may attain the object by enacting law and the Commission may be required to act in conformity with those provisions. The Gujarat situation of confrontation could have been avoided had the Commission acted within the framework of its constitutional powers.

It is an essential postulate of democracy and a part of the basic structure of the Constitution, that the elections should be free and fair. In order to guarantee free and fair elections it would be appropriate for the Commission to hold the elections.\textsuperscript{11} The functioning of the Election Commission either in consultation with the Government of India or the State Government is a prerequisite. While programming the dates of poll the Commission considers the ground situation in the State and the assurance of the Government of India or the State Government in relation to the law and order situation of the area and on the question whether the atmosphere is conducive to the holding of free and fair election. Such assurance being offered to the Commission, there can be no question of postponement of the election by the Election Commission. The State Government and the Election Commission should also not ignore the need to ensure that the country is governed in its true secular, socialist, democratic perspective by elected representatives. In the present case the

\textsuperscript{10} Neelima Misra v. Harinder Kaur Paintal, (1990) 2 SCC 746
\textsuperscript{11} Union of India v. Assn. for Democratic Reforms, (2002) 5 SCC 294
Election Commission, by taking a decision on its own has swerved from its object in getting the election conducted to secure functioning of democratic government in the State. Thus, the Election Commission, as a functionary, concerned with the conduct, supervision and control of free, fair and peaceful elections in the State has failed to adopt a realistic approach.  

It may not be correct to say that the Election Commission has no discretion in the matter of extending the time for the completion of election. Section 153 of the Representation of the People Act fully empowers the Election Commission to make appropriate changes in the dates of poll. The Election Commission issues the notification under Section 30 of the Representation of the People Act appointing the various dates mentioned therein for the purpose specified in the process of holding of elections. This power carries with it the further power of alteration of the dates of poll. In cases where there is eruption of violence or communal riots during the process of election, such powers can be exercised by the Election Commission in individual cases based on the merits of that particular case. However, no such omnibus powers can be exercised by the Election Commission to postpone the holding of elections.

Article 324 is geared to the accomplishment of free and fair elections expeditiously. It can also not be forgotten that in all such cases opinion of the Government should also predominate. Thus, in spite of the power of postponement of elections having found to be existing in the Election Commission, it cannot be denied that the Election Commissioner is expected to use the discretion wisely and not rashly. Howsoever wide the

12 Bhim Singh v. Election Commr. of India, (1996) 4 SCC 188
powers of Article 324 may be, the powers of the Commission under Article 324 are meant to supplement rather than supplant the law in the matter of superintendence, direction and control as provided by Article 324 and therefore, that power does not prevail over the Acts passed by Parliament. In this context the provisions contained in Section 15 of the Representation of the People Act vest the power of notifying the date of commencement of election in the Governor. If the Governor is prepared to notify the date of election, the recommendatory body which the Election Commission is, cannot refuse to recommend the date of election under any pretext. The plenary powers of the Election Commission under Article 324 are of recommendatory value. The Governor can still issue the notification under Section 15 if the recommendation of the Election Commission is not in conformity with the political scenario of the State concerned. In such a contingency, if the Governor considers the elections to be imminent, it would be supplanting the provisions of Section 15 of the Representation of the People Act and the powers of the Election Commission under Article 324 cannot be stretched so far.13

The powers of superintendence, direction and control would include such powers which though not specifically provided are necessarily to be exercised for effectively accomplishing the task of holding the elections. When the term "election" is used, it would mean and include the entire process from the issue of notification under Section 15 of the Representation of the People Act up to declaration of result. But the role of the Election Commission starts after the date of election has been notified.

by the Governor.  

If the Election Commission fails to make recommendation, then such failure on the part of the Election Commission is subject to judicial review. However, the jurisdiction of the courts would not extend to issue of directions to the Election Commission for the conduct of polls from particular dates independently of the perception by the Commission, as their feasibility and practicability consistent with what may be needed to ensure the purity of the election process is again within the domain of the Commission. The assessment of the Election Commission as to the state of law and order and the nature and adequacy of the machinery to deal with the situation so as to ensure free and fair elections must prima facie prevail but there may be limitations of resources and situations of the kind which should be resolved by mutual discussion and should not be blown up into public confrontation. Even when the Election Commission finds the law and order situation difficult, it can only require sufficient number of security forces to be deployed, but postponement of elections is hardly a remedy for that. It would be better if a mechanism is devised to settle such disputes which may arise between the Election Commission and the State Government or the Central Government.

The decision of the Election Commission to postpone elections trenches upon the areas which are within the domain of other constitutional organs. Under Article 174(1) the Governor is required to summon the House of the Legislature of the State to meet at such time and place as he thinks fit, but 6 months should not intervene between its last sitting in one

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14 Election Commission of India v. Ashok Kumar, (2000) 8 SCC 216  
session and the date appointed for its first sitting in the next session. If the elections are postponed, compliance of the provisions of Article 174(1) of the Constitution of India would become impossible. The Election Commission is under a constitutional duty to conduct the election at the earliest on completion of the term of the Legislative Assembly on dissolution or otherwise. If there is any impediment in conducting free and fair elections it can draw upon all the requisite resources of the Union and the State within its command to ensure free and fair election. Any man-made attempt to obstruct free and fair election is antithesis to democratic norms. Elections and the reforms in the electoral system has been a major subject of study for a long time in the country. Almost since the first general elections in India held on the basis of adult franchise, doubts have been expressed about the soundness of the electoral system. During the last 62 years views have been expressed on the electoral system both in parliament and in the press as well as on public platforms. Number of official and non official committees has made studies identifying the various inadequacies of the present system and procedure. The Chief Election commissioner also has from time to time made a number of suggestions for the removal of certain defects and the improvement in the system. Obviously, this situation calls for urgent and practical electoral reforms along with fundamental governance reforms to enhance people's empowerment and participation. These electoral reforms should address the following concerns:

- Criminalization of politics.
- Abuse of unaccounted money power.
- Electoral irregularities of flawed electoral rolls, impersonation,
false-voting,
rigging and booth capturing.

- Electoral reforms in local governments
- The curse of defections for personal gain
- The corrupt practices in elections

Thus Indian election system is now in crisis. This crisis is neither the account of decline in values in society, nor is it because of the wrong kind of people in politics, bureaucracy and judiciary. Essentially, the crisis of governability in India is a result of major flaws in India's governance structure. Good behaviour is not consistently rewarded by the Indian state, and bad behaviour is not consistently checked or punished. In fact, the contrary is true, and there is a strong feeling throughout the country that in governance structure it is bad behaviour that ensures rewards and success. A very poor implementation of democracy despite noble ideals, intentions, honesty of the Constitutional makers is no longer compatible with survival in political office, and politics and honour do not seem to coexist.

The fundamental flaws in the governance structure, which make the crisis inevitable. In the face of the state's failure to optimize results, and its incapacity to check malignant use of power, the citizen is increasingly frustrated. Unlike the elites, who laud the modest accomplishments of state functionaries against heavy odds, the ordinary citizens are deeply discontented as they perceive the vast area of non-performance, and the pervasive insensitivity, corruption and unresponsiveness. As repeated rejection of status quo and voting out the party in power do not yield any positive results, there is increasing frustration, and easy recourse to
violence.

As early as 1964, the Santhanam Committee on prevention of corruption had sounded a warning. "Public belief in the prevalence of corruption at high political levels has been strengthened by the manner in which funds are collected by political parties, especially at the time of elections". Prof K. N. Raj, a noted economist concluded that "Indian politics has become increasingly capital-intensive" even as the Wanchoo Committee on taxation, while discussing the problem of generation and proliferation of black money, recommended "not just election grants but general grants-in-aid for political parties".

Meanwhile, corruption has grown steadily. A decade after Santhanam Committee's warning the then President, V. V. Giri, expressed his anguish over the rising menace. In his address to the nation on the eve of Independence Day in 1974, he observed: "It is most regrettable development in recent years that money power has come to play such a dominant role in elections to legislatures that people may lose faith in cherished democratic values if leaders of all political parties do not take prompt corrective measures". There is increasing lawlessness and anarchy in most parts of the country. As all governance structure fails, the citizen is no longer sure of the state meeting its obligations in any sphere. Any citizen, unadorned by power and privilege, who ever approaches any public office in the country to obtain something that is due as a matter of right, is fully aware of the magnitude of the state's failure. The pervasive corruption, harassment, delays, inability of the Courts to render justice in time, the complexity of Indian administrative system that makes it wholly unintelligible to hapless citizens, the frequent breakdown of public order
and increasing insecurity.

Over the last sixty two years of Independence, no political party has been able to observe the basic norms of inner party democracy. The authority in organizational matters has always been from the top to the bottom through successive layers of party structures. Leaders of political parties in Independent India have not always emerged through a process of democratic elections and promotion from the lower levels to the higher and the top. Thus leadership in most political parties in India may be democratic in appearance but highly oligarchic in reality. Fear of party disintegration has led many political leaders to worry about preventing it from being reduced to the status of a State or regional party. Strong leaders with support from their States have been by-passed in favour of loyalists.

Political parties cannot remain indifferent towards women who constitute nearly 50% of the electorate. Although almost all parties have attempted to build women organizations to secure their support and make their organization more broad-based, but in practice they have fielded much less proportion of women candidates in the elections giving them proportionately much less representation in the legislative bodies than their actual population strength. In recent times this has been a matter of crucial concern in view of the controversy over reservation of 30% or so of the seats in these bodies.

Many political parties and candidates have been found to be using dubious methods in raising funds, like kickbacks, funds from foreign countries and even from donations by mafia gangs and other non-
desirable elements. How to let the parties get honest funding from legitimate sources for their basic and continuing political activities has emerged as one of the most crucial contemporary concerns of the reform agenda in respect of the functioning of political parties in India.

Caste and religion have in recent years emerged as rallying points to gain electoral support. Unfortunately there is a tendency to play upon caste and religious sentiments and field candidates in elections with an eagle eye on the caste equations and communal configurations. Although the influence of muscle power in Indian politics has long been a fact of political life since the First General Elections of 1952, when some feeble allegations were made about the use of outlaws by the politicians to further their electoral prospects, the intensity and frequency of such allegations, have increased in more recent times, and the criminalisation of politics and the persons known to have criminal past becoming legislators and ministers has not only become very common but is being openly defended by the party leaders. A stage has now reached when the politicians openly boast of their criminal connections. A Bihar minister's statement in the Assembly that he patronized and would continue to patronize gangsters to fight and win elections is a pointer to the growing phenomena where criminal background has become an invisible requisite to win elections.

Despite the country-wide debate that was generated by the Vohra Committee Report on criminalisation of politics, the system has changed only to the worse. Earlier in the 1960s, the criminal was only content to playing second fiddle to the politician to enable him win the election and in turn to get protection from him. The roles have now reversed. It is the
politician now, who seeks protection from the criminals. The latter seek direct access to power and become legislators and ministers. The Election Commission's observations that nearly 40 members of the 11th Lok Sabha and 700 members of the state assemblies had a criminal past proves this. The Election Commission's requirement that prospective candidates file an affidavit listing the criminal charges they face had hardly made any dent on the growing criminalisation of politics. Some radical reform in the existing structure of law needs to be taken urgently. Until this is done, political parties could have taken certain initiative in curbing this trend, that is by refusing tickets to politicians with a criminal background. Far from it, the party leaders invariably seek out those candidates for party tickets, who can, not only win elections themselves, but can also help other party candidates to win, irrespective of their past criminal history or background. The Election Commission is powerless in preventing criminals from contesting the elections. The Representation of People Act allows it to debar candidates convicted of certain crimes, but it cannot stop those under trial, or whose appeals from their earlier convictions are pending for disposal before the higher judiciary for multiple murders or rape, or corruption or theft from the public exchequer, from sitting in the country's highest legislative forums. There have been a number of cases where persons under trial have contested elections, while being lodged in jail, and have won. Unfortunately no political party has taken any concrete steps to curb this menace.

Morally or pragmatically, there is no substitute to democracy. Any efforts to the contrary are not only doomed to failure, but will also drive the nation to disaster. Isolated efforts to correct individual ills have largely been frustrated or failed because of the evil engulfing all facets of
governance. No matter how well-meaning and necessary an isolated reform is, it will not yield adequate dividends, when it is unaccompanied by the other necessary changes. Time and again, the isolated, necessary but insufficient reforms have failed to energize the polity and improve the content of Indian democracy. The sporadic attempts to improve the conduct of elections, the repeated attempts of the various Administrative Reforms Commissions, the many Law Commission Reports, the introduction of the much talked about Panchayati Raj institutions in the Anti-defection Act through the 50s and 60s and the 73rd and 74th constitutional amendments in the 90s, and efforts like the amendment of the constitution are all examples of sporadic, isolated, insufficient and ultimately ineffective efforts to reform the Indian governance system over the years.

In Parliament, government led by Rajiv Gandhi asserted that electoral reforms were an on-going process and that it would bring in more reforms in due course. The V. P. Singh Government, which took office in December 1989, set up a committee on electoral reforms under the chairmanship of the Law Minister, Dinesh Goswamy, in January 1990. On the basis of the report, the government introduced three Bills in the Rajya Sabha. The Government led by V. P. Singh lost power and the three pieces of legislation remained pending before Parliament. Finally, in 1992, Mr T. N. Seshan, who was perhaps the most assertive of CECs, furnished his set of proposals for electoral reforms. By then the Congress had returned to power and the government was headed by Mr P. V. Narasimha Rao. A great debate followed, with the Government considering, and finally accepting, some proposals such as the Model Code of Conduct, cutting expenditure on posters and banners as also frivolous expenses, reducing
the campaign period, the publication of annual accounts by parties, and issuance of identity cards to voters.

1.2 SIGNIFICANCE OF THE PROBLEM

The growth of political parties and emergence of various political groups in India has brought into focus a very disturbing and serious phenomena in the body politic of India. There are some sections of the population and highly organized political groups and parties, who do not like to remain within the orbit of the Indian Constitution and work outside the existing political apparatus and party norms, and in the process have taken to political violence and terrorism in a big way, as the only method for political participation. This has not only spread panic amongst the general population in some areas of the country, but people seem to have lost confidence in the efficacy of government in ensuring security for the general populace. Criminals now call the shots. They dictate and the Governments obey. Whether it is the hijackers of a plane or kidnappers of a film star, their writ runs supreme.

A spate of minority and coalition governments at the Center due to the fragmentation of the party system has laid bare the vulnerability of the process of governance due to political uncertainty and instability of governments. Efforts were made by the coalition partners or allying parties to establish some sort of institutional mechanism to evolve a consensus on the minimum governmental programme for action and to affect coordination between the different constituents of the government both vertically as well as horizontally by instituting multi-layered coalitional structures and a variety of steering and coordinating committees both for
inter-party and party-government consultations to resolve major
differences through personal emissaries of the Prime Minister. At best,
however, these efforts remained merely ad hoc in nature and did not quite
result in the establishment of some effective permanent institutional
devices to bring about a rapprochement amongst the coalescing partners.
The efforts were not quite successful.

Election Commission should bring effective changes in the code of
conduct to exclude candidates from contesting elections who have criminal
proceedings pending against them. If the Election Commission cannot do
this, Parliament must do it. More effective laws be created that will prevent
criminals from entering the political process. The legal reforms can push
criminals out of the system. New legal initiatives such as amendments in
Section 8 of the Representation of the People Act 1951 could empower the
Election Commission to deal with crime-tainted politicians. If criminals are
not barred from contesting elections until they are convicted by the Courts,
then the next best course would be to get speedy verdicts in their cases.
Special Courts and benches to try cases against legislators and other high
profile people should be set up for speedy trials.

By analyzing all the shortcomings and pitfalls in the ruined election
system the researcher had taken up an analytical study in the present
political scenario. Hence the researcher selected this topic for research to
draw concrete conclusions and make suitable recommendations to revamp
the existing murky politics and to restore free and fair elections.
1.3 OBJECTIVES OF THE STUDY

• To identify the factors that are influencing the elections and electoral process in India and pitfalls and shortcomings obstructing free and fair elections.
• To analyze the implementation of the Representation of the People Act, 1951
• To make a comparative study of election systems in democratic countries.
• To study socio-economic influences on the elections.
• To analyze the women's political participation and the political processes.
• To make suggestions for free and fair elections.

1.4 METHODOLOGY

The topic is selected with great interest to explain the election system in India in the present day context. In the legal research the most suitable method is the hypothetico-deductive method. The nature of the problem being a socio-legal, it is not possible to study it by purely experimental method. The analysis of the legal texts is taken up within the framework of both national and international concepts pertaining to elections and electoral reforms. Although the study is primarily a legal exploration, the legal discourse is located within historical developments and contemporary situations. Hence doctrinaire method is used for the study because law is a social science, and the problem at hand deals with the socio-legal and economic dimensions of elections. This topic needs a legal research in an analytical manner based on statutory material and judicial decisions, policy oriented, sociological, economical and interdisciplinary materials.
The relevant material is collected from primary and secondary sources. Material and information are also collected from both vertical and horizontal sources. The material is collected from law books, journals, judgements of Supreme Court and High Courts, reports of Law Commission of India, Election Commission, various election agencies, Documents, Periodicals, Reports and relevant matters published in newspapers, books, related to the disciplines like political science, sociology, law and Human Rights. The literature is also collected through internet. The material so collected is analyzed and placed in appropriate chapters.

1.5 HYPOTHESIS

The researcher has taken up the concept to consolidate the important dimensions and to give comprehensive idea about the problem. After a constant study the researcher has formulated the following hypothesis:

- Communalism, casteism, religionism, male domination, criminalization and corruption are principal factors for ruining election system in India.
- Illiteracy, Misuse of power by ruling party, poor voting percentage, non-participation of elite in elections are leading to irregularities in non-representative election system.
- Unlawful interference of ruling parties and the bureaucracy are coming in the way of free and fair elections.
- Complexity of the election process is another hurdle for the political furtherance.
1.6 REVIEW OF THE LITERATURE

Literature in connection with the topic was collected from the earlier studies, published books, reports, periodicals, journals, newspapers and websites relating to the concept of elections in India and also in other countries. The review of literature is done mainly on the election system in general and to stress the need for reforms in particular in their expanded scope.

Alan Heston and Vijay Kumar in their article entitled *Institutional Flaws and Election Incentives in India* www.ideas.repec.org (2005) stressed on the institutions of administration and the election process.

Arvind Sivaramakrishnan, *Electoral reforms and the effective electoral process*, The Hindu dated June 13 2008; emphasized that the Single Transferable Vote system reduces tactical voting, and creates a more sophisticated link between a constituency and its representatives.


Bidyut Chakrabarty, in his article entitled *Indian Politics and Society* (2008) dealt the election system and public administration, shaping Indian politics and the importance of electoral system in India.

Gehlot, NS in his book *Elections and electoral administration in India* (2001) has pointed out that the electoral process is the most vital part of the Indian democracy in action, which brings out the very strength of this system.

Gupta RL in his work *Electoral politics in India* (1985) covered an overview of electoral politics in India, national parties, policies and politics and statistical analysis of the elections.


Karunakaran in his work *Democracy in India* (1978) dealt with the legacy of the Indian nationalist movement. It also dealt with the new directions of India's foreign policy.

Krishna Mani, PN in his book *Elections, candidates and voters* (2004) has stated that the law and procedure relating to elections are, for the most part highly technical, legalistic and complicated for an average voter to comprehend.

Lin Say in his book entitled *Quality of life in developing countries* (2001) has given the comparative analysis of the welfare indicators.

Palanithurai in his work *Grass root Democracy in Indian Society* (2000) has explained resilience of the Indian democracy and thoroughly discussed about the issues and options relating to elections.


Raghavan, GNS and Balachandra, G in his book *Forty years of world's largest democracy*, (1990) a survey on Indian elections, provided factual data on electors, voters.

Rick Lawson: in his article entitled Criminalization In Politics, Laws still wanting www.news.indlaw.com (2002): explained the vital role played by the judiciary in preventing and remedies for abuse and misuse of power and eliminating exploitation and injustice.

Srikanth, CS Criminalization of politics in www.merinews.com (2000) explained Criminalization of politics and persons known to have a criminal past becoming legislators and ministers has not only become common but is being openly defended by leaders of political parties.
Surendra Munshi and Biju Paul Abraham in their article entitled *Good Governance, Democratic Societies and Globalisation* published in *Journal of Political Science*, (2008), had thrown focus on election system and good governance based on democratic values, drawing mainly from two major democratic regions in the world, India and the European Union.


Taylor & Francis in *Understanding the political corruption in contemporary Indian societies* [www.informaworld.com](http://www.informaworld.com) (2002) draws the importance of understanding Indian elections and the political influences on economic development.

1.7 SCHEME OF THE STUDY

The researcher has designed the work to carry out the objectives of the study easily and effectively. The researcher extensively studied the literature available on the topic in an analytical, historical and descriptive method. The entire study is divided into six chapters.

First chapter deals with the introduction wherein significance of the problem, objectives of the study, methodology adopted, hypotheses, review of literature and scheme of study are covered.
The Second Chapter covers the definition of election, conceptual framework of election system its origin and historical development and election process in India and other countries.

The Third Chapter brings out the Indian Constitutional and the Representation of People Act-perspective.

The Fourth Chapter highlights the impact of communalism, criminalisation of politics and corruption in elections and the reforms in election system in India.

The Fifth Chapter emphasises the role of Election Commission, electoral reforms: The role of judiciary in India.

The Sixth and the last chapter bring out the conclusions and suggestions.