

Election Reforms in India: Issues and Challenges

First author : Saurabh Pandey (BA.LLB)Hons Final year

Second author : DR . khaleeq Ahmad (Asst. Professor in law) law college Dehradun

ABSTRACT: India is the largest democracy in the world with an electorate of nearly 670 million adults and election is the basic element of democracy, they play very important role in the democratic setup. At the heart of the system is a commitment to hold regular, free and fair election. It is through elections that the political system received legitimacy. Therefore, holding of free and fair elections is sine qua non of democracy. Article 324 to 329 part xv of the Indian constitution deals with matters relating to election. Election provides an opportunity to the people to express their faith in the government from time to time and change it to when the need arises election symbolizes the sovereignty of the people and provide legitimacy to the authority of the government

KEY WORDS: Elections , Democracy , Sovereignty , Authority , Government , Commitment , Electorate.

Introduction: The dictionary meaning of the word election is the act of electing or choosing. It is the expression of free will of a person usually by the votes of a constituent body'. Election has been given much importance particularly where the government is of democratic nature. Democracy means government in which people rule over themselves. Hearn Shaw, while giving the meaning of a democratic state, has said, "A democratic state, in short, is simply one in which the community as a whole possesses sovereign authority, maintains ultimate control over affairs and determines what sort of governmental machinery shall be set up because democracy as a form of State is no merely a mode of government; but is merely a model of appointing, controlling and dismissing the government".¹

In a democratic state people have the right to give a shape to the government either to appoint or dismiss it. The people appoint a new government after some years through elections and thereby express their will on important matters through the press or other means.

Election is a device which a modern state creates amongst its citizens a sense of involvement and participation in public affairs. Democracy is of two types: 1) Direct, 2) Indirect or representative. In the first type, people express their will directly of themselves on public affairs and it was originated from the ancient Greek City States. It is followed in Switzerland. In India, also this type of democracy was seen during the Buddhist periods.²

¹ Chambers "Twentieth Century Dictionary", Rev. Thomas Davidson, (1948) 298

² Hearnshaw: Democracy of the Crossways, from R.C. Agarwal, Principles of Political Science (1982) pp 17, 22.

Coming to another form i.e., indirect democracy, the will of the state is formulated and expressed not directly by the people themselves, but by their representatives to whom they delegate the power of deliberation and decision making. It is put in practice by following the means known as elections Hence the modern

tendency has been to identify representation with election.³ The reason is that the popular approval as expressed in the vote for a person or a measure is believed to be the only ground of democratic legitimacy. It is understood as a ruler's right to rule. To discover the "will of the people" election must be held or take place at regular intervals to give people a chance to express their approval or disapproval of the stewardship of key office. Representation is a matter of executive fact. Elections when seen in this context appears to be a method of finding persons who possess this representative quality. If we observe the history we can find that apart from electoral method of selection, representatives may be chosen in different methods. Choosing representatives on the basis of technical achievements is followed by the United Nations, Guinan Federal Council etc., Another method of considerable historical significance is inheritance of the office. House of Lords in England and some of the French upper chambers rested upon this basis. But it has become anachronistic for representative purposes in recent times. Election has suspended it almost completely. In recent times election - popular election - has become the most widely accepted basis for legitimate representation.⁴To understand the term election, a brief study of the historical background of the term representation is necessary.

1.1 Representation:

It is one of the basic aspects of modern government. It is always existed in the past. Because of lack of awareness the Greek Philosophers also did not see it. Plato and Aristotle hardly touched on the subject. And even there was no word for it. It is mainly due to Greek's failure to build representative institutions. Romans also followed the footsteps of Greeks. The change came in the Middle Ages The idea of representation rooted in the theological notion that the head of the Church represents God, the ruler of the Universe on earth. The idea of making someone present, who is real ruler, because he is not able to take care of the task himself, is in the modern mind, linked to the notion of election or deliberate choice. It may therefore be called voluntary or willed. In the modern world, direct general elections have been generally accepted as the most rational method for choosing representatives.'

³ R. C. Agarwal Principle of Political Science, (1982) 296

⁴ Ibid

Thus, there is a need to elect a representative. The representative may be elected by the people through the exercise of the right known as right to vote. Without this it is impossible to elect representatives in a democratic state. This was well defined by John Stuart Mill, the most powerful advocate of women suffrage as, "Democracy postulated the equalities of men, a political equality can be assured only when all citizens are granted the right to vote. Laws and policies of the government concern all people and what touches all, should be decided by all"⁵

1.2. Political Representation:

It is the process by and through which the political power and influence which the entire citizenry or a part of them might have upon gave a mental action is within their express or implied approval exercised on their behalf by a small number among them, with binding effect upon the whole community thus represented. The most essential part of this descriptive definition is contained in the phrase with their express approval. In this phrase, the recognition is for constitutional setting of all such representation. It may also refer to the specific approval of voter in election a particular person or set of persons to represent them. By that act, these persons acquire representative quality.

Thus, to rule among themselves there is a need for representative. These representatives may be elected by the people through the exercise of the right known as right to vote. Without this it is impossible to elect representatives in a democratic state. This may be well defined by John Stuart Mill as Democracy postulates the equalities of men, a political equality can be assumed only when all citizens are granted the right to vote. Laws and policies of the government concern all people and what touch at all, should be decided by all".

Whom should be given the right to vote is a controversial question. In this regard people have different views. According to Montesquieu, "all inhabitants ought to haright at the election of representatives except such as are in so mean a situation as to be deemed to have no will of their own."⁶ According to Rousseau, "every adult should have the right to exercise franchise". Duguit is of the opinion that Rousseau's doctrine led not only to universal suffrage but to equality of suffrage.⁷

⁵ Ibid

⁶ Ibid

⁷ Montesquieu, *Esprit Deslois*, bk. XV, Ch. 6, *Principle of Political Science* (1982)

In America, the above theory received support from the leaders of the revolution like Otis and Paine. For Franchise, many qualifications are prescribed from time to time. Some opined that proprietary persons only can understand the importance of law and social order and hence they are able to possess the franchise. But today it is not supported by the people. And another qualification prescribed is education. Because illiterate do not know the value of right to vote. This theory is also not true. The reason is that even in uneducated persons, there are many intelligents and the laws affect them also. However, at present it is not considered as important to possess the right to vote. Even women were denied of the suffrage for a long time, as they are physically weak and may not be able to understand the laws. But J.S. Mill, the most powerful advocate of woman suffrage said, "I consider it entirely difference, women require it more than men, since being physically weak, they are more dependent on law and society for protection."

All the above lead to the introduction of adult suffrage. In democracy, it's a great problem that whom should be given the right to vote. Most people of the view that adult should be given right to franchise. Because the source of sovereignty is people, it gives representation to minorities. It differentiates citizens from alien. It even brings awakening in society, imparts political education and brings about national unity. As such, the government enjoys the confidence of the people.

In democracy, political parties play a vital role because during the elections they create consciousness among the voters. Normally after the declaration of election results, the majority party forms the government and if no party gains absolute majority two or more parties form a coalition government. The other parties who do not win and join the government acts as the opposition. The opposition parties also serve the country through its criticism of ruling party if it exceeds its power and prevents from becoming autocratic. Lowell has aptly said that conception of government by the whole people in any large nation is of course, a chimera, for wherever the suffrage is wide, parties are certain to exist and the control must really be in the hands of the party that comprises a majority or rough appropriation to a majority of the people. There are different types of party systems like single, biparty and multiparty system. Multiparty system exists where there are more than two political parties. It is observed in India, France, Italy and Germany. Biparty system itself shows that there will be two major political parties in the country, and it is observed in Britain, United States etc. Single party system is mostly followed in Communist countries.⁸

Anyway, in practice, bi-party and multiple party systems are necessary for the protection of democracy. The concept of democracy is not new in India, at the substance of self-government lies embedded in our past history. This common form of democracy is generally represented by every person enjoying the right to vote. The democratic way of working is the right means to achieve the ends by peaceful means. It

⁸"Adult Franchise", Principles of Political Science (1982) 392

transforms the pressures which other forms of government may use over individuals. It is a self-discipline for all particularly for the minority because it is better to accept it rather than to have a conflict. As an alternative they can try to change power by peaceful methods.⁹ During the post-Independence in running a parliamentary democracy though it differ to some extent with U.K., Germany where democratic system has stability.

Prior to Indian Independence and the implementation of constitutional provisions as prepared by the Constituent Assembly, the country was under the way of the feudal Lords, the Rajas and Nawabs. There is a restricted franchise and denial of political rights to the un proprieted or the illiterate or the weaker sex or sections or racial and other minorities in the country. Individual freedom enjoyed by the people in democracy gives opportunity for the development of each individual. This is the indication of democratic values granted under the Indian Constitution. Here it is necessary to quote Gandhi, in his autobiography, "My Experiments with Truth" that "To safeguard democracy, the people must have a keen sense of independence, self-respect and Election is the foundation of a democracy and it is unfortunate that there are so many malpractices associated with it in our country. It is a contest carried on at the lowest common denominator of public morality by the candidates and their parties. Political parties have weakened the link between voter and representative by making the representative as the nominee concerned with wider issues, national policies and promises of pies in the sky. The voter becomes a spectator and not a participant in national affairs. This process of alienation is further increased. The smallest single member constituency has an electorate of around a million. The voter seldom comes in contact with the man he wants to vote. It is difficult for democracy to rise out of the surging flames to which it gets consigned during election periods. Methods therefore need to be devised to restore the individual citizen to his rightful place in the democratic process.

In the matter of electoral reforms, a parliamentarian has to go beyond electoral reforms and deal with the malaise in the country. Otherwise the situation will become worse. And there will be breakdown of law and order resulting in the breakdown of economic system. Time has come to develop a new political culture. Any foreign electoral or political system cannot be grafted wholly or completely to be Indian situation. Some modifications will certainly be needed.

1.3 Position in India:

Election is a device which a modern State creates amongst its citizens a sense of involvement and participation in public affairs. It is through popular elections that the authority of government is clothed

⁹ R. K. Bhardwaj, Concept of Democracy (1980)

with legitimacy with elections; peaceful transfer of authority is possible to the new leaders. So, a good electoral system is therefore, the basic principle of genuine representative government.

However, it depends on how the electoral system operates i.e., whether elections are conducted efficiently and impartially by competent administrators free from political bias. If there exists no confidence over the verdict of the ballot box, it may destroy the faith of the public in the democratic process and may tend to bring it into discredit. Realizing the importance of electoral administration to a democratic system, Pollock observed, "unless public elections are conducted with accuracy and efficiency, not only the public services are discredited but the whole democratic system is endangered. Similar views are expressed by H.M. Kunzru on the floor of the constituent assembly. Thus, it is generally accepted that the purity and freedom of election can be ensured only if the electoral administration which is the foundation of representative democracy, is placed beyond the reach of "Party Government".

1.4 Election Commission of India: Origin

The architects of the Indian Constitution attached considerable significance to independent electoral machinery for the conduct of elections. This is clear from the reports of various committees of the Constituent Assembly

At one stage, the "Fundamental Rights Sub-Committee" also unanimously agreed that the independence of elections and the avoidance of interference by the executive in legislative functions might be regarded as a Fundamental Right and be included while dealing with the subject. The Sub-Committee also resolved:

That universal adult franchise must be granted by the Constitution;

That elections should be free, secret and periodic; and

That elections should be managed by an independent commission

Set up under the Union Law.

Consequently, it recommended the inclusion of the following clause in the list of fundamental Rights:

"The superintendence, direction and control of all elections to the Legislature, whether of the Union or the Unit, including the appointment of Election Tribunal, shall be vested in the

Election Commission for the Union or Unit as the case may be, appointed in all cases in accordance with the law of the Union ".

In principle, the advisory committee of the constituent Assembly agreed with the contents of this clause but it felt that "instead" of being included in the list of Fundamental Rights, it should find a place in some other part of the Constitution. This Union Constitution Committee accepted this suggestion of the Advisory Committee and subsequently incorporated it in its Constitution plan.

The Drafting Committee, through Article 289 of the Draft Constitution, made separate provisions for the conduct of Federal as well as Provincial elections. In the resumed discussion on this Article, in the Constituent Assembly on June 15, 1949, the Chairman of the Drafting Committee, B.R. Ambedkar, moved an amendment substituting Article 289.

1.5 Contemporary Issues of Election in India

1.5.1 Corrupt Politician

Every politician is corrupted in some or other ways. We cannot bring everyone before justice, and they knew how to walk out of this mess. Corruption in India is a problem that has serious implications for protecting the rule of law and ensuring access to Justice as of December 2009, 120 of India's 524 Parliament members were accused of various crimes under India's First Information Report procedure wherein anyone can allege another to have committed a crime. Many of the biggest scandals since 2010 have involved high level government officials, cabinet ministers such as 2010 common wealth games scams (17000 crores).

1.5.2 Criminal Records of Indian Politicians

Crime and politics in India are so intervened that a clean politician sounds like an oxymoron, a bread that no longer exist. This fact hits home even harder as the world's largest democracy, and with 1.3 billion people the second most populous nation after China, gears up for high, octane election in 2014 to determine the fate of ruling Narendra Modi government. Democracy in India, with 554 million voters queuing up to over 900000 stations to cast their ballots in 2014 to determine the fortune of 8250 candidates representing 464 political parties.

According to the report released this April by Association for Democratic Reforms(ADR) a total of 1580 members of parliament and MLAs criminal case is pending against them and most of them are from BJP and Congress parties.

1.6 Caste and Religion Based Politics

The connection between the caste, ethnicity, religion politics and national and state elections is nothing new in India. This S.C of India cautioned that seeking votes in the name of religion could affect the secular concept of elections in our democracy. Hence such a thing could not be allowed.

Conclusion: Despite landmark judgements delivered by the supreme court and efforts by the election commission of India the system continues to be prone to mischief. To step out these tendencies there is a need to strengthen the election commission to punish current politicians and different political parties. Maintaining the sanctity of electoral process requires a multi-pronged approach including removing criminal elements and money bags in politics, disposing poll petitions. Introducing internal democracy and financial transparency in the functioning of the political parties free and fair election process is the foundation of healthy democracy democratic future of India depends upon the political environment. The supreme Court of India has also made efforts to keep a check on the evil of criminalization of politics but the problem remains unbeatable through it has not made any radical suggestion however whatever suggestion being made cannot acceptable to the politicians. There is a lack of political will to come but the problem as being said earlier election is a soul of democracy weak electoral system is a biggest threat not only to the nation integration but also to the democratic consolidation of India. Electoral reforms of radical nature can only save this glorious Nation from political deterioration sanctity and purity must be protected at any cost as the future of India depends on it.

