



“Issues related to Electoral Reforms in India”

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INTRODUCTION

“Democracy” and “free and fair election “are inseparable twins. There is almost an inseverable umbilical cord joining them. The little man’s ballot and not the bullet of those who want to capture power is the heartbeat of democracy. Path of the little man to the polling booth should be free and unhindered, and his freedom to elect a candidate of his choice is the foundation of a free and fair election.”- Justice, Arijit Pasayat, Supreme Court of India¹.

The Preamble of the Constitution of India declares that the people of India have resolved to constitute India into a sovereign democratic republic with the four-fold objective, namely, to secure to all its citizens, justice, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity and to promote among them all fraternity, assuring the dignity of the individual.

The Preamble to the Constitution declares India to be a Democratic Republic. India as a constitutional democracy with a parliamentary form of government, at the heart of the system it lays a commitment to hold regular, free and fair elections. Jain (2008, p.803) says that democracy is sustained by free and fair elections. It is the cherished privilege of a citizen to participate in the electoral processes which place persons in the seats of power. These elections determine the composition of the government, the membership of the two Houses of Parliament, the State and Union Territory Legislative Assemblies, and the Presidency and Vice-Presidency.

Elections are conducted according to the constitutional provisions, supplemented by laws made by the Parliament. The Election Commission of India is a permanent independent authority created by the Constitution under Article 324(1) which provides that the superintendence, direction and control of the preparation of the electoral rolls for and conduct all elections to Parliament and to the legislature of every State and of elections of the offices of the President and Vice President shall be vested to the Election Commission.

The major laws are Representation of the People Act, 1950, which mainly deals with the preparation and

remain of electoral rolls, and the Representation of the People Act, 1951,

¹Arijit Pasayat, Judge of the supreme court of India.

which deals, in detail, with all aspects of conduct of elections and post-election disputes. All these laws seeks to provide for a free and fair election but problems have been arising in this regard on account of division in our polity on the basis of religion, caste, language, region and race.

In the landmark Supreme Court decisions of *P.R. Belagali v. B.D. Jatti*²; *Indira Nehru Gandhi v. Raj Narain*³ & *Mohinder Singh Gill v. The Chief Election Commissioner*⁴, the Indian Supreme Court lucidly explained that free and fair elections are the very foundation of democratic institutions. But, however, it has been seen that there has been a steady deterioration in the standards, practices and pronouncements of the political class, which fights the elections.

Objective of the Research Paper

The objective of the present research paper is to bring certain reforms in the field of our electoral system which was prevailing at the present time in our country and to establish a healthy democracy.

Methodology applied

The present research problem is a doctrinal one. Both secondary and primary sources of data collection have been employed. The primary source of data collection has been the case laws. The secondary source of data collection has been the books, e-journal article, print journal article.

Research questions

- What is the history of election in India?
- What are the laws which govern electoral conduct in India?
- Are there any reforms in elections in India?
- What is criminalization of politics and what all can come under it?
- What is the procedure for conduct and management of elections in India?
- How to regulate political parties especially during elections?

² AIR 1971 SC 1348

³ AIR 1975 SC 2299

⁴ AIR 1978 SC 851

HISTORY OF ELECTORAL PROCESS IN INDIA

The elections have their own unique history in India. Their origin and growth can be traced back to the history of the Indian freedom movement, where the Indian leaders constantly demanding for the introduction of representative institutions and the association of the Indian people with administration. One could observe that the election machinery is one which from its embryonic stage has gone up the ladder step

by step ultimately maturing into fully fledged election machinery with its vast repertoire after the attainment of freedom.

There was no regular election machinery under the Acts of 1861,1892,1909,1919 and 1935. Only certain stop-gap arrangements were made for the conduct of elections. In fact, no regular election machinery was required till the passage of the Government of India Act of 1909. The election procedure, which we are practicing right now in India, having its evolution in the early part of the twentieth century, with the British made Indian Councils Act, 1909 where the elective element for the natives in the legislative bodies in British India found its introduction. The legislative bodies which are created under the Indian Councils Act, 1909 continued upto 1915, when the Government of India Act, 1915 superseded the earlier Act. Prakash (2010,p.3) says that this Act of 1915 was further amended by the Government of India Act,1919 in order to bring in the reforms, known as Montague- Chelmsford Reforms. Chopra (1984) argues that a clear necessity for a separate election machinery started arising with direct elections provided under the Montague-Chelmsford Reforms of 1919. But unfortunately, this Act also failed to fulfill the demands and expectations of the Indian people. As a result, the British Parliament passed the Government of India Act, 1935. Detailed provisions for the conduct of elections were made only under the Government of India Act of 1935. This but the federal scheme as envisaged under the Government of India Act, 1935 was never put in practice and remained a provision only on paper⁵.

After the end of Second World War in 1945, Labour Party under the leadership of Clement Atlee came to power in Britain. In August 1946, the elections had been conducted to the Constituent Assembly of India and Congress emerged as the majority party. After a prolonged and wearisome struggle India became free from the rule of British. People all over the country were jubilant, and they eagerly looked forward for new horizons and the heights they could scale. Their sentiments lay in the fact that they would now be able to establish a

⁵Government of India Act 1935

government of their own and conduct a free and fair election for the selection of their representatives to the Parliament and the State Legislative bodies. Their sentiments were finally translated into reality when the provision of Article 324 was inserted in the Constitution regarding the launching of the Election Commission of India on the 26th November 1949 to prepare for the elections which were held for the first time on a massive scale during 1951-52 after the passing of the Representation of the People Act, 1950 and 1951 respectively. Thus, the Constitution and the Representation of the People Acts operate as the fundamental documents for the election system.

ELECTORAL LAWS IN INDIA

Constitution of India-Part XV of the Constitution of India deals with elections. It contains six articles (Articles 324 to 329)⁶.

Under articles 243K and 243ZA of the Constitution of India the elections of the local bodies⁶ i.e. Gram Panchayats and Municipalities are held and they are under the responsibility of State Election Commissions.

Besides this there are a number of legislations dealing with the election process in India as⁷:

1. Representation of the People Act,1950
2. Representation of the People Act,1951
3. Indian Penal Code,1860
4. The Delimitation Act,2002
5. The Election Commission (Conditions of service of Election Commissioners and Transaction of Business) Act 1991
6. The Parliament (Prevention of Disqualification) Act, 1959
7. The Presidential and Vice- Presidential Elections Act, 1952

ELECTORAL REFORMS IN INDIA

During the last half-a-century, there have been fifteen general elections to Lok Sabha and a much larger number to various State Legislative Assemblies. The experience in this election has brought to fore many distortions which generate a deep concern in many quarters. There are constant references to the unhealthy role of money power, muscle power and mafia power and to criminalization, corruption, communalism and casteism. Concerns for electoral reforms have been expressed from almost all quarters in India. With a couple of civil and governmental committees which were setup for suggesting reforms in the electoral process during the recent past, it is generally believed that the concern towards electoral reforms are somewhat new in India. The topic of electoral reforms that has been taken up by numerous government committees in the recent past, including but not limited to:

- Dinesh Goswami Committee on Electoral Reforms (1990)
- Vohra Committee Report (1993)
- Indrajit Gupta Committee on State Funding of Elections (1998)
- Law Commission Report on Reform of the Electoral Laws (1999)
- National Commission to Review the Working of the Constitution (2001)
- Election Commission of India – Proposed Electoral Reforms (2004)
- The Second Administrative Reforms Commission (2008)

Among these the Dinesh Goswami Committee which was setup in 1990 and the Indrajit Gupta Committee set up in 1998 with the central issue of election funding. Kumar(2002,p.3489) shows that in addition, the Election Commission of India has also taken initiative towards suggesting reforms in the election system since the 1980 and in its publication Elections in India-Major Events and New Initiatives 1996-2000 suggested far reaching reforms in the electoral process. In 1996 Parliament enacted the Representation of the People (Amendment) Act, 1996. The Ministry of Law and Justice, Government of India, has constituted a Committee on Electoral Reforms. The Committee takes into account the opinions of political leaders, Government servants, legal experts, NGOs, scholars, academics, journalists, and other stakeholders. Unfortunately the fact remains that the recommendations of these learned and painstakingly prepared reports are yet to be implemented.

But one should take note that the concern for electoral reforms has not become fashionable only during the recent past. Kumar (2002,p.3489) argues that it was as early as 1974 that Jayaprakash Narayan set up the Committee on Electoral Reforms under the Chairmanship of V.M. Tarkunde on behalf of the *Citizens of Democracy*, an independent organization & the report was submitted in the year 1975. It is also popularly known as the Tarkunde Committee. In spite of so many committees and reports of the government, the concern on electoral reforms still continues mainly because, except for bringing some procedural changes in the electoral system, most of the suggestions of these committees and reports have not been implemented by the Government.

The question of electoral reforms acquires importance in India at the present day due to the growing deterioration in electoral politics. Today most of the Indian citizens do not have faith in the way that our elected representatives are chosen and it seems to be a danger to the very idea of democracy itself. Widely held views among the public with regard to criminalization of politics, the use of money power in securing votes, the paid- news disease are some of the issues that are enlarging the trust deficit with regard to our electoral process.

CRIMINALIZATION OF INDIAN POLITICS

The criminalization of our political system has been observed almost unanimously by all recent committees on politics and electoral reform. Criminalization of politics has many forms, but perhaps the most alarming among them is the significant number of elected representatives with criminal charges pending against them. It has been seen that most of the major political parties field a high number of candidates with a criminal record i.e. those undergoing trial in some court or the other⁸. According to the data assessed by the Association of Democratic Reforms and National Election Watch (ADR-NEW) in 2009, an umbrella body of about 1,000 NGOs across the country, there are 162 (about 29 per cent) newly elected MPs in the 15th Lok Sabha charges with criminal cases which were pending against them.

Out of these, there are 76 (about 14 per cent) MPs with serious charges against them. As compared to 2004 general election, the number of MPs with pending criminal cases has gone up. State legislatures are also not lagging behind. It has been seen that in Bihar, a total of 109

MLAs in the 243-strong Assembly had criminal cases pending against them. Out of these, reportedly 64 MLAs had serious criminal charges against them. The ADR-NEW in its report in 2009 also noticed that as many as 50 per cent of elected MLAs in Maharashtra faced criminal charges as per their own self-sworn affidavits. Haryana had 17 such MLAs.

Financing of elections

It is widely believed that in many cases successfully contesting an election costs a significant amount of money that is often much greater than the prescribed limits. A Consultation Paper to the National Commission to Review the Working of the Constitution, 2001, noted that “the campaign expenditure by candidates is in the range of about twenty to thirty times the legal limits”.

But the problem with extravagant spending of money is that the person who wins the election spends all his or her time recovering the money that he or she spent during the election and in returning favours to those who funded him or her, rather than focusing on real issues of governance. In addition to this the citizens are directly affected because apart from compromised governance, the huge money spent on elections pushes up the cost of everything in the country and in return the general citizen has to face the real hurdles. Moreover it has been seen that Electoral compulsions for funds become the foundation of the whole structure of corruption.

CONDUCT & MANAGEMENT OF INDIAN ELECTIONS

The massive size of the Indian electorate makes general elections an enormous and daunting exercise. According to the Election Commission of India, the size of the electorate for the 2009 elections to the 15th Lok Sabha was more than 714 million. The National Commission to Review the Working of the Constitution, 2001, stated in its report that holding of general elections in India is equal to holding of elections for Europe, the United States, Canada, and Australia if all put together. In order to administrate the electoral process successfully it requires more than 50 lakh personnel and almost 1 million (10 lakh) polling booths. Millions of security personnel are required to promote a peaceful and incident-free voting experience rigging of elections have become common facets of electoral system in India.

NEED FOR REGULATION OF POLITICAL PARTIES IN INDIA

Proliferation of political parties is also one of the root causes for the deterioration of Indian politics. Section 29A of the Representation of the People Act, 1951, allows for small groups of people to form political parties by making only a simple declaration. According to the Election Commission, a large number of non-

serious parties create excessive load on the electoral system. More than 1100 parties are registered with the Election Commission in 2009, but out of them only about 360 parties actually contested the general election that year. The Commission also states that the main problem is that there is no specific provision to de-register a party⁹.

Besides this, there are some other problems which are related to the operational aspects of election. They are-

1. Booth capturing and fraudulent voting by rigging and impersonation.
2. Use of muscle power in the form of intimidation of voters either to vote against their will or not to vote at all, thus taking away the right of free voting from large sections of society and distorting the result thereby.
3. Involvement of officials and local administration in subverting the electoral process.
4. Engineered mistakes in counting of votes.
5. Divisive and disruptive tendencies including the misuse of religion and caste in the process of political mobilization of group identities on non-ideological lines.
6. Loss of systemic legitimacy due to decay in the standards of political morality and decline in the spirit of service and sacrifice in public life.

Electoral reform is a broad term that covers among other things, improving the responsiveness of electoral processes to public desire and expectations. The following are the electoral reforms that have been introduced in our electoral system in the last few years-

- **Electronic voting machine-** The Electronic Voting Machine has been included in our electoral process. The Representation of the People Act, 1951 was amended to facilitate the use of electronic voting machines in elections.
- **Booth capturing-**Section 123(8) of the Representation of the People Act, 1951 provides that booth capturing by a candidate or his agent or other person is a corrupt practice.

- **Lowering of voting age**-The Constitution (61st Constitutional Amendment) Act, 1988 amends Article 326 by substituting the words “18 years for 21 years” and it came into force on 28th March, 1989.
- The amount of security deposit made by a candidate at an election has been enhanced as a measure to control the multiplicity of non-serious candidates.
- Restriction has been made on contesting election from more than two constituencies.
- Going armed with any kind of arms as defined in Arms Act,1959 to or near a polling station is now considered as a cognizable offence punishable with imprisonment upto two years or with fine or with both.etc.

Although huge scale of reforms have been made by the constitution, statutes and through the judicial pronouncements except few of them most of the reforms are not put into practice and they remain in pen and paper only.

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SUGGESTIONS

In order to put an end to all these ugly developments in the electoral process, the concept of electoral reform assumes special importance. This is essential to cleanse the political system. Electoral reforms seem to have come to occupy a prominent position in the national discourse in recent times¹⁰. Chhokar (2001,p.3977) argues that the president of India

R.K. Narayanan, while inaugurating the Golden Jubilee Celebrations of the Election Commission of India, which was held in Vigyan Bhawan, New Delhi, on January 17,2001 referred in his speech that “serious malpractices (that) have crept into the election process.” The President in his speech quoted the prophetic writings of Mahatma Gandhi in 1920s,

“What if unworthy people get elected because we do not come forward? If such people enter the legislatures, the government will not be able to run the government of an awakened people and it will be laughed at”.

In the light of the recommendations given by the various Committees and Commissions, the following suggestions may be put forwarded in respect of electoral reform in India-

¹⁰Chhokar, J.S. (2001). Electoral Reforms: Need for Citizen’s Involvement. [Electronic version]*Economic and Political Weekly*, 36, 3977-3980.

1. **Criminalization of politics-** The influence of muscle power in Indian politics has long been a fact of political life since the First General Elections of 1952. National Commission on review the working of the Constitution mentioned that according to the Central Bureau of Investigation (CBI) report to the Vohra Committee: "all over India, crime syndicates have become a law unto themselves. Even in the smaller towns and rural areas, muscle men have become the order of the day. Some political leaders become the leader of these gangs/armed Senas and over the years get themselves elected to local bodies, State assemblies and national parliament."

In the case of *People's Union for Civil Liberties(PUCL)& Another Vs Union of India & Another*¹¹ which was decided by the Supreme Court on 13th March,2003,has a far reaching positive and resultant impact in the path of electoral reform. With this judgment, it has become mandatory for candidates to declare their criminal antecedents, wealth, educational qualifications etc. A three Judge bench said "A voter has a fundamental right to know the antecedents of a candidate and this right was independent of the statutory right under the election law". The judges declared that a voter is first a citizen of this country and apart from statutory rights; he is having fundamental right conferred by Constitution. Although the Supreme Court has made mandatory for all the candidates to declare their criminal antecedents, wealth, educational qualifications etc. but in real field it has not been followed by any political parties.

Some radical reform in the existing structure of law needs to be taken urgently so that the political parties could have taken certain initiative in removing this trend, and it can be done by refusing tickets to politicians with a criminal background. 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.

2. **Funding of elections and electoral reform**¹²- In the present day arena when the electoral reforms appear to be corroding the vitality of political parties and vitality of democracy it has been found that campaign expenditures play a significant role in election outcomes. Krishna (2012, p.129) says that the spending by candidates has a larger effect on the vote. If the laws relating to funding of elections intended to be effective with regard to their transparency, they should be general in nature and

¹¹ AIR 2001 SC 565

¹² Krishna. G (2012). Politics of funding of elections and electoral reform.[Electronic version]*Think India Quaterly*,15,129. enforced with respect to everyone, and not just political parties or candidates, but also to the donors as well. Therefore, state funding to political parties should be introduced which will eliminate to some extent the influence of money power, black money support and raising of funds in the name of elections by the political parties. Krishna (2012,p.129) argues that two committees set up by Jayaprakash Narayan in 1975 and 1978 recommended State funding of political parties. In 1998, the 15th Law Commission also supported it in a paper on electoral reforms.

3. According to the 170th Law Commission Report provision should be made for making it obligatory upon the political parties to maintain regular accounts clearly and fully recording therein all amounts received by

them and all expenditure incurred. The said accounts should be duly audited at the end of each year and the audited accounts should be submitted to the Election Commission every year. Election Commission was required to publish the said accounts for public information. This provision will help to bring the transparency and openness in the financial matters of the political parties. In the case of *Gajanan Bapat v. Dattaji Meghe*¹³ the Supreme Court held that it is necessary for the political parties to maintain true and correct account of their receipts an expenditure including the disclosure of the sources of receipt.

4. **Electoral Rolls and Voter ID**¹⁴-The electoral process begins with the preparation of electoral rolls. If any attempt has been taken to reform the electoral process in our country one must at first tackle the question of faulty electoral rolls. The electoral rolls should be updated constantly and periodically it should be posted on the web site of the Election Commission. Prior to elections, these rolls should be printed and publicly displayed at the post offices in each constituency, as well as at the panchayats or relevant constituency Head Quarters.

In the present day global world the technology has been growing so fast that an automated and well-designed online system broken-down to district level and it can be created without much hassle. The database would be centrally computerized by the Election Commission and each voter/ adult citizen would have a unique bar-coded ID number. This ID number would be for life. In course of time, possession of such an ID card should be made mandatory for all elections. This would serve the objective of contributing to cleaning up the electoral process and it will also help in curbing the impersonation and rigging.

¹³ AIR 1995 SC 347

¹⁴Ibid.

5. **Caste and Communal Hatred**- The election campaigns which are crafted to create or exacerbate tensions between communities and/or to incite feelings of hatred on the basis of caste, community, religion, race or language attract disqualification at present but effective implementation of laws in this regard is lacking. This deserves the highest degree of attention. If any election is campaigned on the basis of caste or religion and if any attempt is made to spread caste and communal hatred in the society during elections should be punishable with mandatory imprisonment.

6. **Corrupt practices and election petitions**- Section 8A of the Representation of the People Act, 1951 (RPA) provides for disqualification on the ground of corrupt practices during election. The current practice is that once the High Court pronounces judgment on an election petition holding the candidate guilty of corrupt practices, the case goes to the Secretary of the concerned State Legislature or the Secretary General of the Lok Sabha or Rajya Sabha, as the case may be. It is then forwarded to the President who in turn forwards it to the Election Commission. Only then the Election Commission get jurisdiction to tender its opinion to the President based on which the disqualification order is issued. The High Court is expected to give judgment on all election petitions within 6 months, but in actual practice, it takes much longer time and often the petitions remain pending for years and in the meantime even the full term of the House expires. Therefore provision should be made that in the matters of election the candidate who are disqualified on the grounds of corrupt practices, the President should determine the period of disqualification under Section 8A on the direct opinion of the Election Commission but not through the long

procedure which was currently experienced. This can be done by resorting to the position prevailing before the 1975 amendment to RPA, 1951. In the opinion of many activists and eminent persons, all election-related petitions should be heard by a separate judicial body and these petitions should be decided within a time period of 6 to 12 weeks by the dedicated benches of special court. Special election benches may be constituted in the High Courts and they should work only for the disposal of election petitions and election disputes.

7. **Reducing the Cost of Elections**-There should be a systematic attempt under law to reduce election expenditure. Various modes of electioneering which creates public nuisance, namely, wall writings, campaign through loudspeakers, holding rallies on the roads and parks, creating traffic jams, etc. can be conveniently curbed by making necessary provisions under law or the rules framed under the parent legislation.

Already there exists some legal provisions with regard to cost of elections but what is needed is better enforcement of the provisions so made.

8. **Right to recall and right to reject**: There is urgent need to include „right to recall“ and „Right to reject“ elected representatives by the Election Commission. Recall is a process which enables voters dissatisfied with an elected official to replace him before the expiry of his term of office, which will make them more accountable to the people. On the other hand right to reject means when the voter is not willing to vote in someone's favour. Right to reject gives people power to express discontent.

9. In the last few decades we have seen that a great deal of political instability was prevailing in our country. During a period of ten years, we can see that there were seven governments at the Union level. The reason is nothing but the adoption of the Westminster model of *“first-past-the-post”* system of elections which works mainly in communion with a two party system or a limited number of parties. But in India there exist a large number of political parties which appears to be the principle reason for the failure of this system in India. According to the 170th report of the Law Commission the „first-past-the-post' system which was prevailing in our country had given rise to several inequities and distortions in our electoral process due to the existence of large number of political parties. Therefore the system of FPTP should be curtailed, as this system was now in vogue as it is not yielding a correct picture of the voter preferences.

CONCLUSION

Elections which imply a chain of processes from filing of nominations to the declaration of results are the necessary concomitant of democracy. But free and fair elections provide the marrow to nurse a healthy democratic life and constitute the yardstick to measure its strength and vitality. The electoral administration saddled with the responsibility of conducting the election and must, therefore, be immune from any undue pressure either by the executive or the legislature. Only the independent election machinery would ensure that corrupt electoral practices should be kept to the minimum if not totally eliminated.

It is quite common to put almost the entire blame for the current state of affairs on the so-called political class in the country. But what is overlooked is the fact that the political class does not exist in isolation; it

emerges and evolves out of the society at large. Therefore the society in general, of which all of us are a part, cannot escape the responsibility for the existing state of affairs. Any serious thought over electoral reforms must be based on clear thinking, rational analysis and sensible goals. Opportunities will always knock the doors, and once the goals are clear, it becomes easier to design campaigns and activities to suit the requirements. A vibrant and informed civil society, media exposure and political will to enforce these reforms measures are the vital inputs.

The lights of the passing ships might prove enticing but it's the constant twinkle of the distant star that must navigate the course of political and electoral reforms. It is true that changing the electoral system is not going to be an easy task but it must be done if democracy has to be preserved and strengthened.

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