

ELECTORAL REFORM POLICY AND ROLE OF JUDICIARY IN INDIA

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Abstract

“An election is a moral horror, as bad as a battle except for the blood; a mud bath for every soul concerned in it.”

- George Bernard Shaw

Electoral reform means introducing fair electoral systems for conducting fair elections. It also includes recuperation of the existing systems to enhance and increase the efficiency of the same. One of the most important features of our democratic structure is elections which are held at regular intervals. Free and fair elections are indispensable for a healthy democracy. India has an indirect form of democracy which implies that the government draws its authority from the “will of the people”. It is the citizens who have the sovereign power to elect the government and this government is responsible to the people who have elected them. But there are some shortcomings connected with this form of democracy which we have been carrying since long. The citizens who elect the representatives have no right to “recall or reject the representative” on the ground that they are unsatisfactory for their post unlike Switzerland, pursuing a direct form of democracy.

This paper discusses, what is electoral reform, origin of electoral reform policy in India, electoral policy and Constitutional Laws, current situation, electoral laws in India, role of Judiciary and scope and also effects of electoral reform.

Keywords: Electoral Reform, Electoral Reform Policy, Constitutional Law, Indian Judiciary

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INTRODUCTION

“Elections belong to the people. It's their decision. If they decide to turn their back on the fire and burn their behinds, then they will just have to sit on their blisters.”

-Abraham Lincoln

India has the difference of being the biggest democratic system of the world. Elections are the most significant and essential part of politics in a democratic setup of governance. While politics is the art and practice of dealing with political power, election is a process of legitimization of such power. Democracy can indeed function only upon this faith that elections are free and fair and not rigged and manipulated, that they are effective instruments of ascertaining popular will both in reality and in form and are not mere rituals calculated to generate illusion of difference to mass opinion, it cannot survive without free and fair elections.

The election at present are not being hold in ideal conditions because of the enormous amount of money required to be spent and large muscle power needed for winning the elections. While the first three general elections (1952-62) in our country were by and large free and fair, a discernible decline in standards began with the fourth general election in 1967.¹

No such events were reported till the fourth general election. Over the years, Indian electoral system suffers from serious infirmities. The election process in our country is the progenitor of political corruption. The distortion in its working appeared for the first time in the fifth general elections, 1971 and multiplied in the successive elections especially those held in eighties and thereafter.² Some of the candidate and parties participate in the process of elections to win them at all costs, irrespective of moral values. The ideal conditions require that an honest, and upright person who is public spirited and wants to serve the people, should be able to contest and get elected as people's representatives. But in actual fact, such a person as aforesaid has no chance of either contesting or in any case winning the election.

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¹ Shukia, Subhash, *Issues In Indian Politics*, New Delhi: Anamika Publishers 219 (2008)

² Kaur, Amancleep, *Electoral Reforms In India: Problems and Needs* (1989-2009), Chandigarh: Unistar Publication 35 (2009)

elections. The major defects which come in the path of electoral system in India are: money power, muscle power, criminalisation of politics, poll violence, booth capturing, communalism, castism, non-serious and independent candidates etc.³

In democracy the public is most powerful entity. If the public do not vote in favour of criminals, dishonest and corrupt politicians who wish to purchase their votes by money or muscle powers, everything shall function nicely and the democracy will shine in the dark spectrum of hitherto corrupt and criminalised political system. So, though the EC is working hard in this direction, but it cannot succeed unless all political parties and voters realize their responsibility. There should proper mechanism, fully functional and fully equipped to fight with any triviality.

The Judiciary of India has taken upon them the task of cleansing the electoral system of India. The role of the judiciary has changed since colonial rule; it is no longer to be perceived as a primarily oppressive system. Rather, it has to a certain extent become a centre of activism to clean up the State apparatus. Judiciary has, thus, played a crucial role in electoral reform in India from time to time and ensuring good governance by those holding reins of power in particular.

ORIGIN & EVOLUTION OF ELECTION IN INDIA

The term “democracy” is a Greek term made up of the words demos and kratos, meaning people power.⁴

One of the most important features of a democratic polity is elections at regular intervals. Elections constitute the signpost of democracy. These are the medium through which the attitudes, values and beliefs of the people towards their political environment are reflected. Elections grant people a government and the government has constitutional right to govern those who elect it. Elections are the central democratic procedure for selecting and controlling leaders. Elections provide an opportunity to the people to express their faith in the government from time to time and change it when the need arises. Elections symbolize the

³ Dr. Bimal Prasad Singh, *Electoral Reforms in India – Issues and Challenges*, Vol. 2 Issue 3, International Journal of Humanities and Social Science Invention 01-05 (2013)

⁴ Josiah Ober, *The original meaning of democracy: Capacity to do things not majority rule*, Version 1.0, Stanford University, September (2007)

sovereignty of the people and provide legitimacy to the authority of the government. Thus, free and fair elections are indispensable for the success of democracy.⁵

In persistence of the British inheritance, India has opted for parliamentary democracy. Since 1952, the nation has witnessed elections to the lawmaking bodies at both the national as well as State levels, as per the Constitutional principles and Electoral Laws, elections are held at regular intervals.⁶ The permanent Constitutional body is the Election Commission of India, which was established on 25 January, 1950.

The elections are held in accordance with the laws made by the legislative body. Election Commissioner and Chief Election Commissioner are appointed by the President of India. They get pay and position alike to the Judge of Supreme Court of India. A separate secretariat is provided for the Commission that consists of 300 officials. The Commission is assisted by two senior most Deputy Election Commissioners. As per law, the political parties are also required to be registered with the Election Commission.⁷

India got its first Lok Sabha in April 1952, after the first General Elections were successfully concluded and the Indian National Congress (INC) came into power with 245 seats in its kitty.⁸

MEANING OF ELECTORAL REFORM

‘Electoral reform’ means “*reforming the myth of democracy*”. ‘Electoral reform’ is a broad term that covers, among other things, improving the responsiveness of electoral processes to public desires and expectations. However, not all electoral change is electoral reform. Electoral change can only be referred to as reform if its primary goal is to improve electoral processes, for example through fostering enhanced impartiality, inclusiveness, transparency, integrity, or accuracy.⁹

Electoral reform often only catches the public eye when it involves changes to representational arrangements, such as electoral systems.

CONSTITUTION OF INDIA AND ELECTION

India is a Socialist, Secular, Democratic Republic and the largest democracy in the World. The modern Indian nation state came into existence on 15th of August 1947. Since then free and fair elections have been held at regular intervals as per the principles enshrined in the

⁵ Sumandeep Kaur, *Electoral Reforms in India: Proactive Role of Election Commission*, Vol. XLVI, No. 49, Mainstream Weekly, Nov 22nd (2008)

⁶ Ibid.

⁷ Election Policy of India, Guide to India (2009), http://www.iaslic1955.org/election_policy_of_india.html.

⁸ History of Lok Sabha elections, India General Elections 2009, <http://www.smetimes.in/smetimes/general-elections-2009/miscellaneous/2009/Mar/23/history-of-lok-sabha-elections5584.html>

⁹ Electoral Assessment and Reform (2010), <http://www.idea.int/elections/reform.cfm>

Constitution, Electoral Laws and System. The Constitution of India has vested in the Election Commission of India the superintendence, direction and control of the entire process for conduct of elections to Parliament and Legislature of every State and to the offices of President and Vice-President of India.¹⁰

Election Commission of India is a permanent Constitutional Body. The Election Commission was established in accordance with the Constitution on 25th January 1950. In other words the Indian Constitution provides for its creation.

Part XV of the Constitution of India deals with elections. Article 324 (1) of India Constitution provides the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in the Election Commission.¹¹ Article 324 (2) states that the Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.¹² Article 324 (3) says that when any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission.¹³

Article 325 states that no person to be ineligible for inclusion in, or to claim to be included in a special, electoral roll on grounds of religion, race, caste or sex. Article 326 deals with elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage.¹⁴ Article 327 deals with power of Parliament to make provision with respect to elections to Legislatures. Article 328 states the power of Legislature of a State to make provision with respect to elections to such Legislature. Article 329 deals with bar to interference by courts in electoral matters. Article 243K deals with elections to the panchayats, Article 243 ZA elections to the municipalities.¹⁵ Article 58 deals with qualifications for election as President.¹⁶

Right to Vote

¹⁰ Election Commission of India (2001), http://eci.nic.in/eci_main1/the_setup.aspx

¹¹ Bakshi, P.M., *The Constitution of India*, Universal Law Publishing, (12th Ed. 2013).

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Constitution of India, <http://www.mahasec.com/PDF/243/243%20Act%20English.pdf>

¹⁶ Article 58: Qualifications for election as President, Constitution of India, Lawyers Update, May 2010: <http://lawyersupdate.co.in/LU/4/51.asp>

Any citizen over 18 years can vote. Voting right denied to certain class of people: criminal convicts of certain class, person convicted of electoral offence, and person of unsound mind. There is no compulsion to vote.

ELECTORAL REFORM POLICY & COMMITTEES

Several Indian Committees formed in India to give their suggestions and recommendations to government of India to form a better policy related to elections. There is need to discuss and form a best electoral policy for conducting free and fair election in this largest democratic country where crores of people vote to decide their own faith as well as the faith of their nation. Some of the important committee's recommendations to look upon for electoral reform are as follows:

a. Justice J.S. Verma Committee on electoral reform -

The Committee recommended the amendment of the Representation of People Act, 1951. Currently, the Act provides for disqualification of candidates for crimes related to terrorism, untouchability, secularism, fairness of elections, sati and dowry. The Committee was of the opinion that filing of charge sheet and cognizance by the Court was sufficient for disqualification of a candidate under the Act. It further recommended that candidates should be disqualified for committing sexual offences.

The three-member committee headed by Justice J S Verma has said that electoral reforms are important for gender justice. The electoral reforms in India are integral to the achievement of gender justice and the prevention of sexual offences against women," the panel said in its report and suggested that the Representation of the People Act, 1951, be amended.

b. V. M. Tarakunde Committee (1974-75)

The Tarakunde Committee on Electoral Reforms was appointed by Jayaprakash Narayan on behalf of the Citizens of Democracy, an independent organization. An important recommendation of this committee was that there should be a law requiring all recognized political parties to keep audited accounts and sources of all income and details of expenditure, with false accounts being a punishable offence.

c. Goswami Committee on Electoral Reforms (1990)

It stated that irregularities in electoral rolls are exacerbated by purposeful tampering done by election officials who are bought by vested interests or have partisan attitudes.¹⁷ The provision of independent Secretariat to the Election Commission has been accepted in principle by the Goswami Committee on Electoral Reforms. The Committee on Electoral Reforms did not favor Negative or Neutral voting and was of the view that it does not serve any purpose.¹⁸

d. Vohra Committee Report (1993) & Indrajit Gupta Committee (1998)

The major contribution of the report, in the context of electoral reforms, is the coining of, or at least popularizing, the phrase “criminalization of politics and politicization of crime.” It was the first time that the effect of crime, organized and unorganized, on the electoral process was officially recognized, though not made public. It goes without saying that money power and muscle power go together to vitiate the electoral process and it is their combined effect which is sully the purity of electoral contests and effecting free and fair elections.¹⁹

e. Law Commission Report on Reform of the Electoral Laws (1999)

The law commission reports on reform of electoral laws are as follows:

- a. Recommendations of introducing the List System;
- b. To address the defections, the Commission has proposed that a pre-election front/coalition of political parties should be treated as a ‘political party’;
- c. Any political party which receives less than 5% of the total valid votes cast in the general election to the Lok Sabha or to a State Legislative Assembly, as the case may be, shall not be entitled to any seat in the Lok Sabha/Legislative Assembly, even if it wins any seat(s);
- d. enactment of provisions requiring the political parties to maintain accounts, have them audited and file them before the election Commission;
- e. The Commission has also recommended that in case of electoral offences and certain other serious offences, framing of a charge by the Court should itself be a ground of disqualification in addition to conviction; and

¹⁷ Background Paper On Electoral Reforms (Prepared By The Core-Committee On Electoral Reforms) Legislative Department Ministry Of Law And Justice Government Of India Co-Sponsored By The Election Commission Of India December, 2010, Available at: <http://www.lawmin.nic.in/legislative/ereforms/bgp.doc>

¹⁸ Proposed Electoral Reforms Published By Publication Division, Election Commission Of India, (2004).

¹⁹ George T. Haokip, CRIMINALIZATION OF POLITICS AND ELECTORAL REFORM IN INDIA, The International Journal of Social Sciences Research IJSSR (Vol 1, No4), 2004.

- f. in case of electoral offences and certain other serious offences, framing of a charge by the Court should itself be a ground of disqualification in addition to conviction;

g. Election Commission of India – Proposed Electoral Reforms (2004)²⁰

The election commission of India proposed electoral reform policy which contains the following objectives:

- Candidates must file an affidavit on criminal antecedents, assets, etc. It will reduce instances of candidates wilfully concealing information;
- The security deposit is needed to increase;
- Court must restrict criminalisation of politics in greater public interests;
- The Commission reiterates its view that there should be some restriction on publishing the results of Opinion Polls and Exit Polls;
- The Commission recommends that the law should be amended to specifically provide for negative / neutral voting;
- The Government may consider amending the relevant provisions of the Cable Television Network (Regulation) Rules, 1994 to provide for suitable advertisement code and monitoring mechanism.

ROLE OF JUDICIARY ON CONFLICTING ISSUES

In a Constitutional system of government, the role of the judiciary is essential for maintaining the balance of power, protecting individual rights, upholding the rule of law, interpreting the Constitution and ensuring equal justice for all.

Judiciary in India enjoys a very significant position since it has been made the guardian and custodian of the Constitution. It not only is a watchdog against violation of fundamental rights guaranteed under the Constitution and thus insulates all persons, Indians and aliens alike, against discrimination, abuse of State power, arbitrariness, etc. but also nullify the abuse of election provision by political parties, use of unfair means, etc. by introducing electoral reform time to time.

In the recent judgment, the Indian Supreme Court, in **PUCL v. Union of India**²¹, upheld the constitutional right of citizens to cast a negative vote in elections. This judgment crystallizes an emerging theme in Indian constitutional jurisprudence: the connection between the

²⁰ ci.nic.in/eci_main/PROPOSED_ELECTORAL_REFORMS.pdf.

²¹ (People's Union For Civil Liberties) PUCL v. Union of India, WRIT PETITION (CIVIL) NO. 161 OF (2004).

constitutional right to freedom of speech and expression [Article 19(1) (a)] and parliamentary elections.

In the case of *Joyti Basu and Others v. Debi Ghosal and Others*²², Supreme Court upheld Shri Jyoti Basu contention and allowed his appeal, holding that under Section 82 of the Representation of the People Act, 1951 only the candidates at the impugned election could be joined as respondents to an election petition, and no one else.

In the case of *Km. Shradha Devi v. Krishna Chandra Pant and Others*²³, The Supreme Court laid down that any remark or writing on a ballot paper to invalidate it must be such as to unerringly point in the direction of identity of the voter and that in the absence of such suggested remark or writing the ballot paper could not be rejected merely because these were some remarks or writings by which the voter may possibly be identified.

In the case of *N.P. Ponnuswami v. The Returning Officer, Namakkal Constituency, Namakkal, Salem District and four Others*²⁴, The Supreme Court held that the word ‘election’ in Article 329 (b) connotes the entire electoral process commencing with the issue of the notification calling the election and culminating in the declaration of result, and that the electoral process once started could not be interfered with at any intermediary stage by Courts.

In the case of *The Election Commission, India v. Saka Venkata Rao*²⁵ Madras High Court held that Article 192 applied only to cases of supervening disqualification and the Election Commission had, therefore, no jurisdiction to opine on the Petitioner’s disqualification which arose long before the election took place.

EFFORTS OF INDIAN GOVERNMENT

Thus, well-recognizing the urgent need for electoral reforms starting with the year 2011, the Ministry of Law and Justice, Government of India, had constituted a core committee to look into a range of aspects on Electoral Reforms in India. The resolution was taken to hold seven regional consultations across various locations in India to elicit views from various stake holders in order to consensually overlay the path for electoral reforms. The Election Commission had co-sponsored this exercise. The consultations attempts to address a number

²² Civil Appeal No. 1553 of 1980

²³ Civil Appeal No. 277 of 1980

²⁴ Civil Appeal No. 351 of 1951

²⁵ Civil Appeal No. 205 of 1952

of well-established grey areas in the electoral processes like de-criminalization of politics, de-communalization of elections, financing of elections, auditing of finances of political parties, conduct, regulation, better management of elections, adjudications of election disputes and media and elections. These seven regional consultations culminated in the National consultation in New Delhi, and attended amongst others by the Prime Minister of India. As a follow-up action to the nation-wide consultation the Law Ministry seems to have already finalized its list of proposed changes to be made to the Representation of People Act, a finalized draft of the same seems to have been forwarded for the consideration of the Cabinet at the Prime Minister's Office²⁶.

CONCLUSION

Although several committees formed and several efforts of the government has been well appreciated but still in the Some of the areas calling for urgent redressal within the election system are de-criminalization of politics, political parties reforms, state-funding of elections, adoption of certain ingenious methods like 'no-vote' option and the 'right to recall' in order to make the political functionaries more accountable to the very general public that they claim to represent.

For the purpose of protecting democratic structure of the country, and to ensure free and fair elections, it is much needed that Supreme Court as a guardian of the Constitution should give directions from time to time to the government in order to remove the obstacles faced in achieving the above mentioned goal.

²⁶ Nripendra Misra , *Salient Recommendations of Various Committees on Electoral Reforms*, (June 5, 2012), Available at: <http://publicinterestfoundation.com/2012/06/05/salient-recommendations-of-various-committees-on-electoral-reforms/>