

## ELECTORAL REFORMS

[text of **Introductory Remarks** by Justice R.C. Lahoti, Fr. CJI  
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Welcome to this seminar on Electoral Reforms. I am a helpless person sitting singly on dais, dictated by the command of my esteemed friends in IRI whom I cannot afford to disobey much less over-rule. Else, I know that this auditorium is filled with a galaxy of stalwarts each more knowledgeable than me and possessed of capacity to lead and guide. There is also a sizeable number of youth present here who have energy and enthusiasm, dedication and determination, but they wish to be told what to do. I am hopeful that a collective thinking, exchange of views and churning of thoughts would enable us to identify some workable solutions.

The command of my friends to me is to make a few introductory observations and then throw the subject open to the House, and that I propose to do in the given time of a few minutes.

Ours is a Constitutional Democracy – a Democracy governed by a written constitution. Woodrow Wilson believed in Democracy because it releases the energies of every human being. Abraham Lincoln's golden words have become a universal quote – "Democracy is the Government of the people, by the people, for the people." Inspired by such philosophy and having borrowed from the best constitutions of the world, the framers of Indian Constitution wrote in its Preamble – "We, the people of India, enact and give to ourselves this Constitution." Ideally the Constitution of India is supposed to guarantee and secure to all its citizens, amongst other things, justice – social, economic and political. Any democracy for its functioning adopts an electoral system, and ideally speaking, the electoral system in any country should support and strengthen the empowerment of the people of the country. More than 65 years of independence and 62 years of the functioning of the Constitution and thereunder the electoral system which we have adopted, the questions arise – have we succeeded in reaching the goal identified by ourselves, and, has the electoral system enabled us in reaching the goal?

Casting an eagle-eye over the country's scenario and making an assessment of the situation in which our electoral system has landed us, we are compelled to subscribe to rather cynical observation of George Bernard Shaw<sup>1</sup> that Democracy substitutes election by the incompetent many for appointment by the corrupt few. The way the political parties play their roles in the elections, we are reminded of H.L. Mencken<sup>2</sup> – 'Under Democracy, one party always devotes its chief efforts to try to prove that the other is unfit to rule – and both commonly succeed and are right.' How prophetic and correct the great poet Akbar was when he wrote –

*Jamhooriyat woh tarz-e-hukumat hai ke jisme,  
Bandon ko gina karte hain, tola nahin karte.*

( Democracy is that form of Government where people are counted, not weighed. )

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<sup>1</sup> G.B. Shaw, *Man and Superman*

<sup>2</sup> H.L. Mencken, *Minority Report: Mencken's Notebooks*

This day-long workshop proposes to focus on a question of the questions – whether time has come to replace the existing ‘first past the post’ electoral system in India?

‘First Past the Post’ (abbreviated as FPTP or FPP) is indicative of an election won by the candidate with the most votes though he may not have necessarily received a clear majority of all the votes cast. FPP may allow political parties to come to power with minority of votes. History has many instances where parties with less than 30% of votes have won a large percentage of seats and successfully claimed the right to form Government. The result is obvious. In this system, the majority of voters consisting of those who have voted, not to talk of those who have chosen not to vote, are left unrepresented in Government.

Slowly and slowly, we have moved to a situation where money and muscle power rule the roost. Beginning from criminalisation of politics, we have reached the stage of politicisation of criminals. Problems are galore and solutions invisible, by and large. Result: there is a wide spread and increasing disenchantment with politics and politicians in India. A strange scenario has emerged. Money, muscle and crime having come together and donned the robe of politics has resulted in increasing alienation of large sections of people from the political class and also the ruling class itself, a trend which is a serious danger to the sustainability of democracy itself.

Let us have a brief glimpse into the political scenario as projected by the facts.

### **Criminalization of Politics**

The report of National Election Watch which analyzes affidavits of 3268 candidates in the Assembly Elections to 5 States viz. **Uttar Pradesh, Punjab, Uttarakhand, Goa and Manipur** held in 2012 reveals the following:

- 28% candidates i.e. (906 out of 3268 analyzed) had self declared criminal charges as per their affidavits in the previous Assembly Elections. 383 candidates out of these 3268 analyzed had declared serious IPC charges like murder and attempt to murder charges against them.
- Uttar Pradesh had the maximum percentage of candidates, 35% (759 of 2195) with declared criminal cases, followed by Goa with 23% (30 of 129), Uttarakhand 19 % (53 of 278), Punjab 15% (61 of 408) and Manipur 1 % ( 3 of 258).
- In Uttar Pradesh out of the 759 candidates with criminal charges, as given above, 340 (15%) candidates had acknowledged serious criminal cases against themselves followed by Punjab with 22 (5%) candidates, Uttarakhand with 14(5%) and Goa 7(5%) with candidates. Manipur alone had candidates without serious criminal charges.
- A total of 1525 (47%) candidates out of 3268 analyzed in the 5 states were crorepatists. 71 % (92 out of 129) candidates analyzed in Goa were crorepatists followed by 65 % (266 out of 408) in Punjab, 48 % (1046 out of 2195) in Uttar Pradesh, 32% (88 out of 278) in Uttarakhand and 13% (33 out of 258) in Manipur.
- The highest average asset increase of re-contesting MLAs from the outgoing assembly was for Punjab with an average asset growth of Rs. 6.12 crores (133%), followed by Goa with Rs. 5.39 crores (200%), Uttar Pradesh with Rs. 2.35 crores

(194%), Manipur with Rs. 98.08 lakhs(414%) and Uttarakhand with Rs. 92.30 lakhs (106%).

- A total of 1162 (36%) candidates had not declared their Income Tax Returns. Manipur had 66% (170 out of 258) followed by Uttar Pradesh 36% (791 out of 2195), Punjab 23% (92 out of 408), Uttarakhand 36% (99 out of 278) and Goa 8% (10 out of 129)
- Out of 9210 total candidates in the 5 states, only 771 (8%) were women. Uttar Pradesh had 594 (9%) of 6850, Punjab had 93 (9%) of 1078, Uttarakhand had 63 (8%) of 788, Manipur had 12 (4%) of 279 and Goa had 9 (4%) of 215 candidates.

These findings confirm our worst fears. Added to this, the data compiled by the Election Commission reveals that between the 14<sup>th</sup> and 15<sup>th</sup> Loksabha, the number of MPs with criminal records / serious criminal records has increased by 17% to 31%. In the current Loksabha there are 150 MPs' with criminal records and 72 with serious criminal records making a total of 222. There is no reason why in the next general election, this number cannot cross the halfway mark to establish the numerical feasibility of a Government of Criminals.

### **Money Power**

The adage, though not coined in India, is unfortunately true in its applicability hereat that behind every fortune there is a crime. Fortunes are made as a part of politics visibly so during elections. During elections in 5 States (2012), the Election Commission seized Rs. 74 Crores of which Tamil Nadu accounted for 60 Crores.

There are 49 crorepati Ministers in the 15<sup>th</sup> Lok Sabha belonging to different political parties. Maximum assets of the Ministers are as high as Rs. 83.7 crore and average asset of the Ministers in the current Lok Sabha is Rs.7.30 crore, while that of the MPs is Rs. 5.32 crores according to the report presented by ADR (Association for Democratic Reforms) There are at least five crorepati Ministers who have not declared their PAN details along with their affidavits.

The aforesaid data clearly substantiates the view that the Parliament and State Legislatures are being dominated by the *rich* and those possessing not only a tainted and criminal *past* but also *present*. These trends establish an unanswerable case for fundamental reform.

In the last Gujarat and Himachal Pradesh Assembly Elections 74 per cent and 65 per cent respectively of the winning candidates are crorepatis; 31 per cent and 21 per cent respectively have criminal cases against them. In theory, a legislator does not hold an 'office of profit'—however, nearly each one multiplies his wealth while in office. A Congress spokesman, currently a Union minister, recently let the public know in a media discussion that one candidate for MLA spent Rs 20 crore in his election campaign. Assuming a 'modest' Rs 10 crore expenditure as the norm for each Assembly segment, the 'speculative investment' is of the order of Rs 40 crore, assuming a 1:4 success ratio. A person willing to invest that much would not be satisfied without a 500 per cent return in one term—this translates to a Rs 200-crore project for each MLA's post; perhaps double that for an MP. These are turnovers bigger than many universities, hospitals and indeed large industrial projects. The largest and least regulated "industry" in India is politics—the players make their own rules, break them at will, change their own goalposts, do not want

any umpire (Lokpal?—perish the thought!). Parliament and Assembly are ‘of the politician, by the politician and for the politician’<sup>3</sup>.

On 29.01.2010, a leading Newspaper<sup>4</sup> in its leading Editorial, marking 60 years of the Election Commission of India, wrote - “The dominant role of money in elections, which is taking more and more outrageous forms, is deeply worrying. Instances of politicians paying for news coverage and bribing voters were widespread in the 2009-2010 elections”.

Post-independence India has emerged as a sovereign state with a well developed strategic sector and a growth in basic infrastructure. However a small minority of the population has prospered hugely while the quality of lives of the majority has deteriorated. This is reflected in massive rural unemployment, lack of adequate health care and education, a sharp drop in the purchasing power of the people and a sharp growth in rural indebtedness.<sup>5</sup>

### **Steps taken in the direction of election reforms**

Not that nothing has been done. The issue has been burning for quite some time. Without touching the details, I would only mention the names of a few events and high powered bodies which have dealt with the subject of electoral reforms:

- Joint Parliamentary Committee on Amendments to Election Laws, 1972
- The Tarkunde Committee, 1978
- The Dinesh Goswami Committee, 1990
- Vohra Committee Report, 1993
- The Law Commission Report of 1999

To say the least, one thing is certain, that the reports of the above have not received the requisite attention, much less the action.

Other than these the Apex Court of the Country, Supreme Court of India has played a notable role by issuing from time to time directions for electoral reforms. I wish to cite only two instances.

Courts cannot make laws; they can only interpret the laws. The Supreme Court of India is empowered to issue directions and lay guidelines to operate in such areas as are not occupied by any legislation. The Judgment of the Supreme Court in ***Union of India v. ADR & Anr.***<sup>6</sup> (delivered on 02-05-2002) displays the judicial wisdom and activism playing at its best. There is no provision in the law which requires a candidate at an election to declare his assets and antecedents. The Court relied on Article 19(1)(a) of the Constitution which provides for freedom of speech and expression. Borrowing therefrom, the Court held that choosing a candidate and casting a vote in his favour is a part of citizen’s right to speak and express, which right cannot be exercised unless the assets and antecedents of the candidate are made known to him. The Supreme Court issued directions in the following words:

*The Election Commission is directed to call for an affidavit by issuing necessary order in exercise of its power under Article 324 from each candidate seeking election to parliament or a State Legislature as a*

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<sup>3</sup> Indian Express dt. 17-05-2013

<sup>4</sup> The Hindu

<sup>5</sup> All India Progressive Forum, Need for Electoral Reforms in India

<sup>6</sup> (2002)5 SCC 294

*necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his / her candidature:*

*(1) Whether the candidate is convicted / acquitted / discharged of any criminal offence in the past – if any, whether he is punished with imprisonment or fine.*

*(2) Prior to six months of filing of nomination, whether candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the court of law. If so, the details thereof.*

*(3) The assets (immovable, movable, bank balance etc.) of a candidate and of his / her spouse and that of dependants.*

*(4) Liabilities, if any, particularly whether there are any overdues of any public financial institution or government dues.*

*(5) The educational qualifications of the candidate.*

The Supreme Court also enlarged the scope of power and authority conferred on the Election Commission of India by Article 324 of the Constitution. The Supreme Court observed that Article 324 is a reservoir of power to act for the avowed purpose of having free and fair elections, which plenary power has unlimited potential and can be subjected to limitations only by a valid legislation.

Section 8 of the Representation of the People Act, 1951 provides that a person convicted of any offence and sentenced to imprisonment for not less than 2 years suffers disqualification from contesting the election. In **Vidyacharan Shukla's** case<sup>7</sup>, the Supreme Court had held that if a convicted person prefers an appeal and his sentence is stayed releasing him on bail, then disqualification is also suspended. In the case of **K. Prabhakaran**<sup>8</sup> a Constitution Bench overruled **Vidyacharan Shukla's** case and held that suspension of sentence during the pendency of appeal means only this much that the sentence will not be executed but the conviction does not come to end and so the disqualification continues to operate. Regrettably, in subsequent decisions the Supreme Court carved out an exception holding that the High Court and the Supreme Court have power to suspend not only the execution of the sentence, but the conviction itself, and if that is done, then the disqualification will not operate. The record of decided case shows that once a prick was made, by carving out room for an exceptional situation, soon the exception became the rule and there are several cases in which the politicians though convicted, participated in election armed with judicial order suspending the conviction itself and not just the execution of sentence.

The Courts and the Election Commission of India have wide powers, but they cannot provide effective solution in the absence of legislation. This is for two reasons: firstly, the law laid down by the Supreme Court can be altered by a subsequent Bench of larger strength. Secondly, such directions are expected to be complied with, but if not complied with there is no remedy under the law except to initiate proceedings for contempt of Court.

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<sup>7</sup> (1981) 2 SCC, 84

<sup>8</sup> (2005) 1 SCC, 754

How many persons would be so proceeded against? Similar impediments are to be found in the efficacy of directions issued by the Election Commission of India as they would always be open to judicial review, and hence would have some amount of uncertainty.

### **Why the Electoral Reforms have not taken place**

Why the situation has deteriorated day after day and why in spite of the Parliament, the Press, the Judiciary and the Election Commission of India, there has been practically no reforms and even the downfall has not been checked? This is the question which obviously poses itself before us.

The first and the prime step that can be taken in the direction of reforms is by Legislation. There we are in a 'catch 22' situation. Parliament and Legislatures are controlled by politicians. Power lies with politicians who are quite happy with the status quo and the people who want a change are powerless. This is ironically a strange democracy. With the prevailing money and muscle powered elections and mushrooming of family oriented undemocratic political parties, politics have become large business. The players make rules convenient to loot public wealth, for themselves becoming the worlds' richest Indians whereas leaving Aam Adhmi struggling not just for two square meals a day but even for getting drinking water, health care and education either free or at affordable cost. It is time the above authorities singly and severally do everything possible to bring in a code of conduct/discipline to restrict the mushrooming family oriented selfish political business houses by banning any individual spending in the elections, meaning state funded elections.<sup>9</sup>

### **Conclusion**

Electoral Reforms hold the key to the survival of a healthy democracy in India. Not all hopes are lost. The citizens must stand up and be counted, both in the present political process and in the movement to engender systemic change. The hopes of people of India are rivetted on the saner section of the society consisting of right minded intellectuals who can lead and guide and the youth which has the zeal and enthusiasm to act also mindful of the fact that it is the future of the present day youth of the country which is at stake.

IRI and NRF who are co-hosting the present seminar are on the path. Several concrete steps have been taken, such as by filing public interest petitions in the Supreme Court of India and motivating and bringing together the youth volunteers who would be acting as inspired volunteers mobilizing and mustering the public opinion.

### **A Parting thought!**

Before I part, I have an irresistible impulse of sharing a real life anecdote with you. It may be of some relevance. About three days before, I was reading memoirs of late Shri Hanuman Prasad Poddar, the founder of Gita Press, Gorakhpur. He too was a revolutionary and also associated with Mahatma Gandhi. He records that when independence movement was gathering momentum a weekly newspaper named *Yugantar* used to be published in Bangla from Calcutta. It was meant for circulation amongst the freedom fighters, specially

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<sup>9</sup> Indian Express, dt. 23-02-2013

the youth. It was edited by Bhupendranath Dutta who was the younger brother of Swami Vivekananda.

The contents were forceful and firing. Soon on publication the editor would go underground and the publisher would be arrested and sent to jail. To maintain regularity of publication of *Yugantar*, every week a young man was needed who could publish the paper and go to jail. An advertisement was inserted in *Yugantar* calling for youth aspirants prepared to go to jail in the service of the mother land. Thousands of applications were received. It became difficult to make a choice. Bhupendranath decided to repeat the advertisement saying that only such applications will be received as were written in blood. Yet, thousands of applications were received, all written in blood. That was the urge for freedom and preparedness for sacrifice. The purpose of telling this anecdote is only this much that the freedom and democracy which we have earned is too dear to us. Can we afford to compromise on the values of democracy, simply because of impoverishment of electoral process.

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