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ELECTORAL REFORMS - NEED IS IMPERATIVE

By

—C. JAYASHREE SARATHY, Advocate,
Standing Counsel for E.C.I.
Hyderabad, A.P.

Government of the people, by the people and for the people shall not perish from the earth. Those are the perceptions of *Abraham Lincoln*, the most prestigious and ever remembered President, United States of America. True, when the wise people are the rulers and law makers, destiny makers of the nation, the Democracy will remain stable and powerful.

After our country attained independence, we have elected our rulers by exercising adult franchise. We have framed our Constitution, which is the fountain head of our rights. We have got the Constitution amended numerous times suiting to the needs and aspirations that have arisen during those periods. We have framed Representation of People Act in the years 1950 and 1951 which are supplementary to each other. The right to elect assumed much prominence in those Acts and the voter is given number of privileges, rights and duties. A right to elect fundamental though it is to Democracy is not a fundamental right nor a common law right as per the earliest decision of the Apex

Court in AIR 1952 SC, which throws plenty of light on the entire election process. The right to elect and to be elected and the right to dispute the elections are statutory rights subject to limitations.

The Election Commission is a creation of the Constitution governing the entire process of the elections as provided by the Representation of People Act. The Constitution in Part XV deals with elections. Article 324 is the repository of all the powers vested in the Commission. Thus Article 324 exercises the powers of superintendence, direction, and control for the preparation of electoral rolls and for the conduct of elections to the Parliament and Legislature in the entire country. The Adult Franchise has been emphasized in Article 326. Article 327 empowers the Parliament to make laws in respect of all matters concerning elections to both Houses of Parliament and the Legislatures of the States. Article 328 enables the Legislature of the State to make laws with respect to all matters relating to elections if Parliament has not made such legislations.

Article 329 bars the interference by Courts in electoral matters and clause B in particular provides the procedure for questioning the elections to either House of Parliament or to the Houses of Legislature of the State. Thus the entire election process commencing from the issuance of the notification calling upon the constituency to elect members, right up to the final election of the candidate is under the control and superintendence of the Election Commission.

The entire process is regulated by the R.P. Act of 1950 and 1951, the preparation and finalization of the electoral rolls, the incidental matters issuance of notifications regarding the elections and the schedule of the elections, filing of nominations, finalization of nominations, making arrangements to conduct elections, countermanding the elections, ordering re-polls *etc.*, are governed by the provisions of the R.P. Act and Article 324. The Election Commission issues directions under the superintending powers as and when the occasion demands. The integrity and dignity of the Election Commission has been maintained and preserved continuously. The cases filed by the aggrieved parties or individuals regarding certain matters dealing with elections are being decided by the Courts by giving relief permissible under law in appropriate cases and keeping in view the powers of the Election Commission under Article 324 Starting from the preparation of electoral rolls, registration of political parties and allotment of symbols for the parties, fixing the schedules for elections, conducting the elections in fair and smooth manner are being discharged by Election Commission drawing personnel from various departments with the powers vested in them.

In *Ramakant Pandey v. Union of India* AIR 1993 SC 1376 the Supreme Court stressed the importance of political parties which are necessary for a strong vibrant democracy. In the above judgment their Lordships decided the constitutional validity

of an amendment of 1992 by way of Ordinance 1 of 1992 another amendment Ordinance 2 of 1992. The first amendment deals with the power of the Election Commission to countermand the election only in the event of the death of a candidate set up by a recognized political party, By the second amendment the period of 20 days was reduced to 14 days in Section 30. Section 30 earlier had a period of 20 days from the date of withdrawal of the nominations to the date of poll. When there are two parties both majority and minority. Different points of view on the controversial issues are brought out and debated on the floor of the House. In order to encourage the above point the Election Commission brought out The Elections Symbols (Reservation and allotment) order. The political parties have to register with Election Commission under Section 29(a) the R.P. Act 1951 by filing an application. The procedure prescribed under the above section has to be followed by the political party. There is no express provision in the Act or Symbols Order to cancel the registration of a political party. No proceedings for de-registration can be taken by the Election Commission against a political party for having violated the terms of Section 29(A) of the Act. The power of the Commission to derecognize a political party as a National Party for non-fulfillment of certain conditions laid down by the Commission is upheld by the Supreme Court. Although there is no specific provision in the Symbols order vesting powers in the Commission to declare that the political party has ceased to be a National Party. The Apex Court declared in the year 1995 by judgment dated 23.11.1995 in the case of *Janata Dal (Samajwadi) v. Election Commission of India* upheld the power of the Commission to declare that a political party has ceased to be a National Party. In the judgment the Supreme Court held that the power to derecognize a party can be exercised under paragraph 6(2) of the Symbols Order and also under Section 21 of the General

Clauses Act. In an earlier decision reported in A.I.R. 1986 SC the Supreme Court held that "Even if for any reason, it is held that any of the provisions contained in the Symbols Order are not traceable to the Act or the Rules, the power of the Commission under Article 324(1) of the Constitution which is plenary in character can encompass all such provisions." In the context of the above narration of the legal position it is pertinent to observe the situations where the Election Commission is helpless and not able to take up the issues relating to some important aspects. It is undisputed that the elections will play a vital role in moulding the future of the Nation and if the electorate are educated intelligent and right-thinking they will elect a person who serves the country with zeal commitment and with high moral values. The people expect a good governance in the hands of honest efficient and committed leaders.

There are no provisions in R.P. Act or in the Constitution to de-register a political party. The Parliament has chosen not to give E.C. such powers for de-registration of a Political party. It is a sad state of affairs to note that the Election Commission is helpless in this aspect. The Election Commission is only empowered to cancel the registration of a political party a) where a political party has obtained registration by practising fraud and forgery. B) where a registered political party amends its nomenclature of association, rules and regulations abrogating therein conforming to the provisions of Section 29A(5) of the Act or intimating the Commission that it has ceased to have faith and allegiance to the Constitution of India. c) Any like ground where no enquiry is called for on the part of the Commission. The above position is made clear in the decision reported in A.I.R. 2002 SC (2158) *Indian National Congress v. Institute of Social Welfare and others*.

Section 123 of the R.P. Act has been subjected to several amendments after *Mrs.*

Indira Gandhi's defeat in the election petition filed by *Raj Narain*. She was elected as Member of the Parliament from Rai Bareili Constituency in the year 1971. On an election petition filed *Sri Raj Narain* her election was held to be invalid by the Allahabad High Court. She was found guilty of corrupt practices under Section 123(7) of the Representation of People Act. During the pendency of the Election petition some amendments have been brought forth in the R.P Act and in the Constitution which we were challenged by *Sri Raj Narain* in the Supreme Court. By the amendment Act of 1974 the rigour of the disqualification on the aspect of incurring expenditure is diluted. In Section 77 of the R.P. Act 1951, it is stated that the candidate or his election agent shall keep correct and separate account in respect of the expenditure incurred by them. By the Amendment Act 58 of 1974 it is stated that any expenditure incurred by a political party or by any other association or body of persons or by any other individual other than the candidate or his election agent shall not be deemed to be an expenditure incurred in connection with an election In the reported judgment "*Indira Nebru Gandhi v. Raj Narain* in the judgment A.I.R 1975 2299, His Lordship Justice *Khanna* has stated that "To put a stamp of validity on the election of a candidate, by saying that the challenge to such an election would not be governed by any election law and the said election in any case would be valid and immune from any challenge runs counter to accepted norms of free and fair elections in all democratic countries. "The constitutional amendment made in such direction was held to be void by the Apex Court. In this context it is relevant to state that the 39th amendment of the Indian Constitution adding clause IV to Art 329 (A) tried to confer immunity from challenge in Court of law regarding the posts of the Prime Minister and the Speaker. The Parliament wanted to confer supremacy on itself but the Supreme Court held that the above amendment is void as it offends the

basic structure of the Constitution. Due to the above amendment no tangible results have been achieved in this regard and it is left to the High Courts in the election petition to decide the issue of expenditure incurred by a candidate during elections. In fact, non-submission of accounts relating to expenditure also results in disqualification of the candidate, by the Election Commission as per Section 10-A of the R.P. Act. The disqualification is for a period of three years. Section 11 of the Representation of People Act gives power to E.C to remove the above disqualification assigning reasons.

Another aspect which needs special attention is the vacation of the candidates after election. Vacation of the seats by the candidates will arise under three occasions. When the candidate gets elected for more than one seat he has to necessarily vacate one seat. This provision causes hardship to the Election Commission to conduct election for the vacated seat. As long as that provision is there in the Statue Book we have to accept that situation. This aspect also requires some attention by the legal luminaries. Another occasion is the resignation of the Members of the Parliament and Members of the Assembly due to so many reasons. Recently enmasse resignation of Members of the Parliament and Members of the Legislative Assembly has taken place in the State of A.P for which by-elections have to be held since a seat cannot be kept vacant for more than six months. Section 101 Proviso says that if the resignation of the Member is not voluntary or genuine the Chairman or the Speaker as the case may be shall not accept such resignation. The Courts are not in a position to exercise their power of judicial review over such matters so far and the resignation of the Members is going unabated. Even the Speaker is not in a position to exercise his power since it is difficult to judge whether the resignation is voluntary or not even if it is brought to the notice of the Speaker. So this situation is beyond the realms of the Speaker,

Chairman, Election Commission of India and the Courts. Another occasion is vacation of the seat by death of a member, which is a natural cause. The repeated elections in the same place for the same seats will cause much inconvenience to the public, to various departments who will be under deputation of the Election Commission of India. In addition to those it will cause much burden to the Exchequer to the Commission for no valid reason. The resignations can be justified under certain contingencies. For *eg.* in a case where the Railway Minister feels that he is accountable to the accident that has happened during his tenure resulting in massive deaths and disasters, or in any other situation. This has not happened recently although many Railway accidents have taken place. One can recollect the incident happened long ago when our beloved *Lal Bahadur Sastri*, the then Railway Minister owed moral responsibility for the disastrous Rail accident that has happened when he was the Minister. Now the Members of the Parliament and of the Assembly are resigning their seats in order to show to their political rivals their strength and capacity to get elected again. In this context a writ petition filed by one *Srinath Reddy* who is a young public spirited citizen is very relevant for the sentiments expressed therein. He questioned that the enmasse resignation of four M.P.s and 16 M.L.As are not contemplated under Sections 149 and 150 and the sections are meant to fill up the casual vacancies arising but the resignations made by the Members to exhibit their power, trend, exhibit their political wave in the forth -coming by elections. The grievance of the petitioner is well founded since he has espoused a public cause which will require serious consideration by the legal experts. The slogans made by the Members and leaders of the Opposition Parties that whenever untoward incident happens the concerned Ministers should resign are not unhealthy. The E.C is given powers to adjourn the poll due to emergencies due to natural calamities or any other sufficient

cause under Section 57 of the R.P. Act, 1951. Similarly the powers to order fresh polls in the case of destruction of ballot boxes, booth capturing, large scale rigging and counter manding of election will be ordered by declaring the poll at that Polling Station as void and fix a day for fresh poll. The Commission is given very wide powers to exercise its discretion during the elections.

The most serious situation which is causing much concern and anguish in the minds of the right thinking people who want to do something in the realm is the entry of criminals in the governance of the country. Persons with criminal backgrounds and history and with money power are entering the political field. Gone are those days where leaders with knowledge wisdom, educational and cultural background used to enter the field to serve the country. A leader who has to guide the nation should be bestowed with some virtues and noble qualities. The provisions dealing with disqualification of candidates to enter and contest the elections are very few and general and they are not serving the present day need. The Courts are helpless in giving the necessary relief to those who ring the bells of justice that criminals are ruling the country and there is total fall in the moral standards of the leaders. The law will permit those who suffered disqualification for membership to enter the political field after serving the period of sentence and disqualification imposed by the Courts. The member who is convicted by the Trial Court will file an appeal and till the appeal is disposed of he can continue the membership and the disposal of the appeal may take number of years. During his term of five years, the member will achieve what he wants and he cannot have any complaint even if he is disqualified at the later stage. While Part II of the R.P Act 1951 deals with the disqualifications of the Membership of the Parliament and the Legislative Assembly the Section 8 of the Act is the most concerned

one which deals with the disqualification of the persons on conviction of certain offences. In Section 8 from A to K the offences relate to different acts. In sub-section 2 Section 8 another category of offences like Prevention of Hoarding and Profiteering, Food Adulteration Act and Dowry Prohibition Act are stated. Section 8(4) is brought out by an amendment in the year 1989 which has enabled the persons to continue as members even after conviction by the first Court. It enables the person who is convicted for any of the offences enumerated under sub-sections (1) to (3) to continue in the seat till the appeal or application is disposed of by the Court. In this field some drastic steps have to be taken. Due to the enormous delays in the prosecutions and disposal and again at the appellate stage the person can definitely continue for the entire period of five years. No matter he is disqualified at a later stage. He will remain secluded for a period of six years. Section at one stretch says that the person will suffer disqualification from the date of conviction and says in sub-section (4) an appeal will permit him to stay in the post till the disposal. So it can be presumed that mere filing of the appeal will automatically amount to suspension of the operation of the judgment of the trial Court.

The disqualification for Membership of a Parliament of either House is provided under article 102 of the Constitution. A) Holding an office of profit under the Government of India or any State. This subsection again says that the Parliament by law can declare any office not amenable to disqualification. B) If the person is of unsound mind. This has no dispute. C) If he is an un-discharged insolvent D) if he is not a citizen of India *etc.*, and e) If he is so disqualified by or under any law made by the Parliament. Article 103 is the one which gives power to the Election commission to give the opinion to the President when he is asked to give a decision to the question

whether any member has been subjected to the disqualification under clause (a) of Article 102 that is dealing with office of profit held by the person. In the case of a Member of the Assembly the Governor of that State is the person to give decision if it is referred to him and he takes the opinion of the Election Commission. The disqualification of a member due to defection from the party is another venue which has been taken care of by the tenth Schedule of the Constitution in the year 1985 and it is significant to note that in the cases of disqualification of Member of the House on the ground of defection the decision of the Chairman as the case may be or the Speaker of such State is the final. As per the amended schedule, the political immorality has been branded as legal by adding the extra schedule. The schedule permits group defection and splitting from the political party. In case of merger of that political party into another party after the defection, the disqualification will not arise. Betraying the party and the electorate and joining thereafter those who purchased them is another word for defection, which the public will understand in this context. By this amendment the statute has thrown open all doors wide for defection.

People look at the leaders and their rulers with much hope for a better nation and for their better future. They elect a member owing allegiance to the party for its goals and ideals but the members play fraud on the electorate. We know the consequences of the defection under the label of splitting and merger. The defection gets a legalized status. In the case of an individual member, the question of disqualification has to be decided by the Chairman or the Speaker as the case may be.

The Model Code of Conduct is a field which has received the support from the members, leaders and the administrative heads and it is playing a significant role. True it is not having any statutory force because so

many situations have not been visualised by the makers of the Law and the Constitution at the time of framing. But considering the dire need of controlling so many situations during elections the necessary changes have to be made in the laws to suit to the present political scenario. We watch the electoral promises being made by the respective ministers in their ambition to retain their power for the next elections. The political scenario has changed beyond anybody's imagination and the laws have to be moulded suiting to the occasions because election is the basic need of democracy. The period prescribed for the application of the Model Code of Conduct is only from the date of issuance of the notification announcing the election schedule till the results are announced. The period has to be increased by the Election commission and the violation of the Code of Conduct should attract penal action. In this connection the Article will not be complete if the recommendations made by the Constitution committee in the field of Electoral Law are not mentioned. The Review Committee suggested drastic changes in the Election Laws while holding that far-reaching reforms in the electoral processes are necessary without making any constitutional amendments. The suggestions given by the Committee should be welcomed and should be implemented by the Parliament. My article deals with only the suggestions in conformity with the thoughts and expressions made herein within my limited knowledge. In fact some of the recommendations within the purview of the Election Commission are being implemented for example the introduction of websites to achieve accessibility to the public. Electronic voting machines suggested by the experts are already pressed into service. Now I am summing up the points by emphasizing the urgency to introduce the following reforms mentioned below which are not exhaustive 1) The Election Commission should be given wider powers to de-register a party on the grounds when it is of the opinion that the party is

flouting the mandates of the Constitution. The concerned party should be given adequate opportunity in this regard which will be definitely welcomed by one and all. 2) The proliferation of the independent candidates should be discouraged and some conditions should be imposed for their eligibility to contest besides the usual conditions for eligibility of candidates to contest. The Commission has observed with concern that almost all the candidates barring a few have lost their deposits. If any independent candidate failed to get at least a reasonable percentage of the total votes cast in his constituency. He or she should not be allowed to contest at least for a particular period. That percentage of votes should be decided by the Commission. 3) Even with regard to the other political parties that have been registered with the Election Commission some formula has to be evolved to discourage them from contesting the elections in order to prevent the entry of mushroom political parties into the political arena. 4) The Representation of the People Act should be amended and particularly Section 8 of the Act which provides for disqualification of the member on ground of conviction. This is the most urgent need of the hour and it should be done by the Government with zealous political will and commitment to ensure to the public a healthy, stable and disciplined Governance. 5) Any person convicted of any heinous offence like murder, rape, smuggling and dacoity should be permanently debarred from contesting for any political office. This is a recommendation of Constitution Review Committee. 6) Criminal cases filed against politicians should be disposed of speedily if necessary by appointing Special Courts with a time bound programme. This measure is suggested by

the Review Committee. 6) The candidates should not be allowed to contest simultaneously for the same office for more than one constituency. It is difficult to perceive how a candidate can file nominations for more than one seat when he should be voter for one constituency. The fundamental requisite for filing nomination is that candidate should be a voter in that particular constituency and he cannot cast his vote twice. This can be done by the Election Commission even without any amendment in this regard. 7) The Constitution Review Committee even went to the extent of suggesting the amendment of the tenth Schedule of the Constitution to make the offence of defection and splitting more stringent. Hitherto the defection is permitted and being misused. The power to decide disqualification on the ground of defection should vest in the Election Commission instead of the Chairman or Speaker as the case may be. In fact all persons whether individually or in groups from the party or the alliance of the parties must resign from their seats and must contest fresh elections. The committee suggested for the scrapping of protection under the split. 8) The Election Code of Conduct should be given the sanctity and the period of application should be extended as per the discretion of the Election Commission. The Code of Conduct should be given statutory force and the violation should attract penal measures.

Although it is difficult to foresee the political will of the Government to make such drastic changes the right thinking people who view their right to vote a precious one will wait forever for electoral reforms hoping constantly for a better future for our country.