

Indian judicial services system must be introduced for selection of the judges.

7. There should be a code of conduct of judges.

## THE SYSTEM OF ELECTION AND ELECTORAL REFORMS IN INDIA

By

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Democracy is a Government by the people, of the people, for the people.” The concept of democracy as visualised by the Constitution presupposes the representation of the people in Parliament and State Legislatures by the method of election<sup>1</sup>.

India had a long history in conducting free and fair elections and it did not need any lesson on election system, from other nations<sup>2</sup>. Elections in India are not a new phenomenon or a new concept born in modern time.

Tracing the history of elections and evolution of representative Governments in India, the Election Commission of India observed in its report after the first General Elections in Independent India in 1951-52, that it is known that in some of these republics every adult male member had the right to vote and to be present in the general assembly which decided all public affairs.

With the increase of population and the growing complexities of the social structure it become increasingly difficult for all citizens to assemble at one place for the purpose of deliberation on State affairs and gradually this resulted in the evolution of some kind of representative Government.

The Constitution of India itself provides a Government for the Centre and a Government for the State by conducting elections. The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult – suffrage, that is to say, every person who is a citizen of India and who is not less than 18 years of age on such date as may be fixed in that behalf by or under any law made by appropriate legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt practice to be registered as a voter at any such election. Every adult person has responsibility to elect for the formation of good Government to rule the nation<sup>3</sup>.

A separate election system existed during the British regime, but the new Constitution abolished the communal electoral system which was introduced in the Indian politics by the Government of India Acts of 1909, 1919, and 1935, and introduced element for the natives participating in legislative bodies in British India found its introduction the first time under the Indian Councils Act 1909<sup>4</sup>.

1. *N.P. Ponnuswamy v. Returning Officer, Namkaval*, AIR 1952 SC 64.

2. The “Hindu” news paper. P.1 3rd August 2002.

3. Subsequent for twenty one, by the Constitution (61st amendment) Act 1989.

4. *V.S. Rama Devi and S.K. Mendiratta*. How India votes, election Laws, practice and procedure, first Edn. 2000. P 4.

While the system of Election in India has a hoary past, the problem of Electoral Reform has been a subject of recent past having its beginnings in the reforms introduced by the Britishers. The Reforms introduced since-then cover various segments of the system of election including the qualifying age of the voters, the qualification of the candidates contesting election and the system of adjudicating the disputes. The reforms introduced in the post-independence era in regard to major aspects of elections in India, may be highlighted thus :

### A – THE SYSTEM OF ELECTIONS

Article 324 provides for the setting up of an independent Election Commission of India for the conduct of elections to the office of President and Vice-President of India, and of elections to Parliament, and State Legislatures.

Thus, under the Constitution, the electoral mechanism in India is superintended and controlled by two constitutional authorities, namely, the Central Election Commission of India and for elections to (i) the office of the President of India; (ii) the Vice-President of India; (iii) the Parliament and; (iv) State Legislatures; and the State Election Commissions appointed in each State for elections to the Panchayati Raj institutions as institutions of Local Self-Government.

Matters relating to election of the President of India, the Vice-President of India, the Parliament and, the State Legislatures have been dealt with by Central Law, and details relating to elections to the Panchayati Raj institutions are governed by Separate State Laws of the State concerned<sup>5</sup>.

Under the British regime in India, the principle of communal representation was followed in regard to election to the

Legislature. There were two constituencies, the general and the Muslim. Article 325 of our Constitution proclaims the abolition of this system of separate representation for Muslims or any other community and provides for there being a single electoral roll irrespective of any distinction of religion, race, caste or sex.

**Central Election Commission :—**The Election Commission consists of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix<sup>6</sup>. When any other Election Commissioner is so appointed the Chief Election Commissioner acts as the Chairman of the Election Commission<sup>7</sup>.

Election Commission is thus a permanent constitutional body, created by Article 324<sup>8</sup>. It came into existence on the 25th January, 1950.

**Regional Commission :—**The Constitution also made provision that before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the legislative Council of a State having such Council, the President may appoint after consultation with the Election Commissioner, such Regional Commissioners as he may consider necessary to assist the Election Commissioner in the performance of its functions<sup>9</sup>. The Regional Commissioners are not members of the Election Commissioner but are temporarily appointed merely to assist the Election Commission<sup>10</sup>.

6. Article 324(2).

7. Article 324(3).

8. Article 324 came into force on 26th November 1949;

9. Article 324(24).

10. *V.S. Rama Devi and S.K. Mendiratta*. How India votes, Election Laws, practice and procedure, first Edn. 2000. P 185.

5. Ibid. P.23.

## B – ELECTORAL REFORMS

The necessary of reforming the electoral system is as old as the first 1951-52, general election, but it did not take a tangible shape, nor was any voice raised from the non-ruling parties against this basic exercise of democracy and the problem has aggravated over the years.

The entire electoral machinery of the Union as well as of the States is placed in the hands of a centralised body called the Election Commission which alone are entitled to issue directives to Returning Officers, Polling Officers and others engaged in the preparation and revision of electoral rolls so that no injustice is done to any citizen by any local Government<sup>11</sup>.

The Constituent Assembly decided that the Election Commission of India will be assisted by Regional Commission but they will be working not under the control of the State Government but under the Control of the Election Commission and they will not be liable to be removed except on the recommendations of the Chief Election Commissioner.

The Goswami Committee on Electoral Reforms set up by the Government recommended that the appointment of Chief Election Commission should be made by the President in consultation with the Chief Justice of India and the Leader of the opposition in the House of the People and that the Chief Election Commissioner should also be consulted in the matter of appointment of other Election Commissioners<sup>12</sup>.

**Qualification as to Age** :—The Constitution has laid down that a person shall not be qualified to be chosen to fill a

seat in the Council of States or in the legislative Council of a State having such Council (that is to say in the upper House of Parliament and State Legislatures unless he is 30 years of age<sup>13</sup>).

To be qualified to be chosen to fill a seat in the House of the people or in a State Legislative Assembly (that is to say in the lower House of Parliament and State Legislatures), the candidate must not be less than 25 years of age<sup>14</sup>.

The above minimum qualifying ages for elections to upper and lower Houses of Parliament and State Legislatures were fixed by the Constitution makers, when they had prescribed the minimum qualifying age for voting at elections to the lower House as 21 years. The minimum qualifying age for voting has now been lowered from 21 to 18 years by a Constitutional Amendment<sup>15</sup>.

**Rule regarding Educational Qualification** :—No educational qualification has been prescribed even for candidates from graduate or teacher constituency which have been specifically created under the constitution to give special representation to graduates and teachers in the upper house there was thus no question of prescribing any educational qualifications for election to the lower House.

**Disqualification on conviction for certain Offences** :—Conviction for certain offences has been considered by Parliament a sufficient ground for disqualification of the convicted person for membership of Parliament and of State Legislatures. “The underlying object of this provision is that a law breaker should not be a law-maker<sup>16</sup>.”

11. Constituent Assembly Debates Vol. VII. P 906.

12. V.S. Rama Devi and S.K. Mendiratta. How India votes, election Laws, practice and procedure, first Edn. 2000. P.177.

13. Articles 84(b) and 173(b).

14. Articles 84(b) and 173(b).

15. (Sixty first Amendment) Act 1988.

16. V.S. Rama Devi and S.K. Mendiratta. How India votes, election Laws, practice and procedure, first Edn. 2000. P 370.

The Law Commission also made a similar recommendation in its 170th Report submitted in May 1999. It recommended that a person against whom a charge has been framed under Sections 153A, 171E, 171G, 171(H), 171I, 376(1), 376(2), 505(2) or 505(3) of the Indian Penal Code or Sections 10 to 12 of the Unlawful Activities (Prevention) Act 1967, or the Penal Provisions of the Narcotic Drugs and Psychotropic Substances Act 1985, (except Section 27 thereof) or Sections 125, 135, 135-A, or 136(2) of the 1951 Act or of any other offence punishable with imprisonment for life or death under any law should be disqualified for period of five years from the date of framing the charge, provided he is not acquitted of the said charges before the date of scrutiny of nominations.

***Bar of the Jurisdiction of Civil Courts* :—**It is expressly provided in the law that Civil Courts shall have no jurisdiction to interfere in electoral matters. By civil Court are understood the Courts subordinate to the High Courts set up under the Code of Civil Procedure and not the High Courts, which are creation of the Constitution. Section 170 of the 1951 Act provides that no Civil Court shall have jurisdiction to examine the legality of any action taken or of any decision given by the Returning Officers or by any other person appointed under the Act, in connection with an election.

***New Institution that was set up by the Constitution Thirty-Ninth Amendment, 1975* :—**In 1975 the Constitution was amended by the Constitution (39th amendment) Act to make a special provision in respect of election petitions relating to members of Parliament who are

appointed as Prime-Minister or Speaker of the House of the people. It was provided by insertion of a new Article 329-A in the Constitution, that any such election petition shall be not to the High Court but before such authority as may be prescribed and it shall be tried by such authority as may be specially constituted for the purpose.

When the National Front Government, headed by Shri. *V.P. Singh*, the Janatha Dal – Parliament party leaders, assumed office in 1990, it appreciated the urgency of the problem and appointed a Committee chaired by the then Law-Minister, *Dinesh Goswami* to study in detail the problems of electoral reforms and make necessary recommendations. In pursuance of the Goswami Committee recommendations three separate Bills were introduced in the Council of States. The Bills could not make any headway and are still pending. The Government had first decided to move for consideration one of the three pending Bills in the Council of States and informal consultations were held with the Opposition Leaders.

The Ordinance provided that Parliamentary and State Assembly elections would not be countermanded if an Independent candidate died before the poll<sup>17</sup>.

The second Ordinance to amend the Representation of the Peoples Act curtailed the time for election campaigning from 20 days to 14 days. It is submitted that it is impractical to cover the vast Parliamentary and State Assembly constituencies in a short span of 14 days. It may not be possible for a candidate to contact personally the electorate in constituency.

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17. *A.C. Kapur*, Select Constitutions 15th revised Edn.2001 P. 384.