

4.2 Streamlined elections

Several speakers suggested Parliamentary, Assembly, and local elections should be conducted at the same time to minimize election related expenditure and fatigue of election officers. It was suggested that such a measure would allow governments to base decisions less on political considerations and more on sound policy analysis.

One speaker dissented, saying that this was not practically feasible in our system.

4.3 Right of recall

It was suggested that a mechanism should be set up by which voters may recall legislators who are not seen to be performing their work satisfactorily.

4.4 Electronic Voting Machines (EVMs)

It was suggested that polling stations should have a dummy EVM where voters can become more familiar with the device before entering the booth to place their voter. It was also suggested that electronic surveillance of EVMs through booth cameras should be in place to deter any misuse.

4.5 Measures for Election Commission

It was suggested that the budget of the Election Commission should be charged on the Consolidated Fund of India.

One speaker dissented, noting that this was unnecessary because budget of the Election Commission is usually cleared in the Home Standing Committee without any discussion.

4.6 Structural Changes

Several major structural changes in the electoral process were suggested by speakers. These include the following:

- 4.10.1 Voting should be made compulsory.
- 4.10.2 Candidates should have to secure more than 50% of votes to win any election.
- 4.10.3 Legislative Councils/Vidhan Parishads should be abolished.

5. Regulating Political Parties

5.1 It was suggested that there some form of inner-party democracy should be mandated by the Election Commission.

5.2 The Election Commission should be given the power to deregister parties.

6. Adjudication of Election Disputes

Disputes relating to elections of the State Legislature and Union Legislature are adjudicated upon exclusively by the High Courts before whom election petitions under Section 80 and 80-A of the Representation of Peoples Act, 1951, are filed.

Sections 86(6) and 86(7) of the Representation of the People Act, 1951, provide that the High Court shall make an endeavour to dispose of an election petition within six months from its presentation and also as far as practicably possible conduct proceedings of an election petition on a day to day basis.

In practice, however, cases involving election petitions are rarely resolved in a timely manner. According to the report "Ethics in Governance" of the Second Administrative Reforms Commission, "such petitions remain pending for years and in the meanwhile, even the full term of the house expires thus rendering the election petition infructuous.

6.1 It was suggested that a Commission should be set up to determine election petitions can be disposed of quickly.

6.2 Special tribunals should be set up to dispose of election petitions.

7. Anti-Defection Law

Currently the issue of disqualification of members of Parliament or a State Legislature is decided by the Speaker or Chairman of the concerned House. Aside from those concerning the Tenth Schedule all other matters of post-election disqualification are decided by the President/Governor, on the advice of the Election Commission.

It was suggested that since speakers of assemblies are partisan, they should not be involved with issues of disqualification for violation of the Anti-Defection law.

Summary of Recommendations

3rd Regional Consultation on Electoral Reforms

Mumbai, Maharashtra

(Covering Maharashtra, Gujarat, and Goa)

16th January 2011

1. Introduction

The 3rd Regional Consultation on Electoral Reforms was held on 16th January, 2011 in Mumbai, Maharashtra. Sessions were held at Mumbai University.

Discussion was based on the Background Paper on Electoral Reforms, and covered the following broad categories: Criminalisation of Politics, Financing of Elections, Conduct and Better Management of Elections, Regulating Political Parties, Adjudication of Election Disputes, and Review of Anti-Defection Law.

The following is a summary of recommendations made at the Consultation.

Recommendations made by the Dr. S. Y. Quraishi, Chief Election Commissioner of India, and M. Veerappa Moily, Minister of Law and Justice are not included below as they are present in the Background Paper.

2. Criminalisation of Politics

2.1 Disclosure of criminal antecedents by candidates

Currently, Rule 4A of the Conduct of Election Rules, 1961, prescribes that each candidate must file an affidavit (Form 26 appended to Conduct of Election Rules, 1961) regarding (i) cases, if any, in which the candidate has been accused of any offence punishable with imprisonment for two years or more in a pending case in which charges have been framed by the court, and (ii) cases of conviction for an offence other than any of the offences mentioned in Section 8 of Representation of the People Act, 1951, and sentenced to imprisonment for one year or more. In addition to this, pursuant to the order of the Supreme Court the Election Commission on March 27, 2003, has issued an order that candidates must file an additional affidavit stating information relating to all pending cases in which cognizance has been taken by a Court.

It was suggested that criminal antecedents of candidates should be made public and published in vernacular language newspapers prior to elections.

2.2 Ban on candidates with criminal cases pending against them

2.2.1 It was suggested by several speakers that any candidate charged with a crime shall not be eligible to stand for elections for the duration of trial.

2.2.2 Criminal cases against politicians should be expedited through a special tribunal or fast track court

2.2.3 One speaker suggested that all posters and advertisements by candidates should compulsorily include a listing of all criminal charges pending against the candidate.

2.3 Negative/neutral voting

Several speakers members of the public stated that there should be a provision allowing for negative voting, by which voters are able to reject all candidates if none are found satisfactory.

Some speakers dissented to this view, suggesting that neutral or negative voting is not currently desirable or easily implementable.

3. Financing of Elections / Auditing of Finances of Political Parties

Several speakers mentioned that current limits on election spending were not being observed and that measures to correct this were necessary. The prevalence of "black money" in election funding was noted.

3.1 There should be strict rules regulating disclosure of sources of funds received by political parties. Accounts of parties should be made available to the public.

3.2 The current ceiling on election expenses should either be raised significantly or be abolished. One speaker suggested that the ceiling should be based on a method of price indexing, raising with rising costs.

3.3 Corporate Funding of Elections

It was suggested that measures should be taken to either (1) ban corporate funding of parties strictly, or (2) encourage corporate funding while ensuring full disclosure through tax incentives or some other mechanism.

3.4 State Funding of Elections

It was suggested by several speakers that state funding of elections be implemented, or at least considered.

However, some speakers dissented to this view and described state funding of elections would not end the flow of unaccounted money.

3.5 Audit of Finances of Candidates

It was suggested that income tax returns of sitting legislators should be analyzed for asset inflation over the course of their term in office.

4. Conduct and Better Management of Elections

4.1 Ban on house to house campaigning in the last 48 hours before the start of polling.

4.2 Qualifications of candidates

It was suggested by members of the public that education credentials of candidates should be independently verified.

4.3 Structural Changes

Several major structural changes in the electoral process were suggested by speakers. These include the following:

4.3.1 Compulsory voting should be considered.

4.3.2 Candidates should have to secure more than 50% of votes to win any election.

4.3.3 Members of Legislative Councils should be elected directly by voters.

5. Regulating Political Parties

5.1 The Election Commission should be given the power to deregister parties.

5.2 It was suggested that parties representing only a small subsection of the population (religion, caste, regional) should not be allowed. One speaker took strong exception to this idea, stating that parties should not be held accountable for the actions of individuals in their ranks.

6. Adjudication of Election Disputes

Disputes relating to elections of the State Legislature and Union Legislature are adjudicated upon exclusively by the High Courts before whom election petitions under Section 80 and 80-A of the Representation of Peoples Act, 1951, are filed.

Sections 86(6) and 86(7) of the Representation of the People Act, 1951, provide that the High Court shall make an endeavour to dispose of an election petition within six months from its presentation and also as far as practicably possible conduct proceedings of an election petition on a day to day basis.

In practice, however, cases involving election petitions are rarely resolved in a timely manner. According to the report "Ethics in Governance" of the Second Administrative Reforms Commission, "such petitions remain pending for years and in the meanwhile, even the full term of the house expires thus rendering the election petition infructuous.

It was suggested that special tribunals should be set up to dispose of election petitions.

7. Anti-Defection Law

Currently the issue of disqualification of members of Parliament or a State Legislature is decided by the Speaker or Chairman of the concerned House. Aside from those concerning the Tenth Schedule all other matters of post-election disqualification are decided by the President/Governor, on the advice of the Election Commission.

It was suggested that since speakers of assemblies are partisan, they should not be involved with issues of disqualification for violation of the Anti-Defection law. One

speaker suggested that a special body with representatives from several organs of the state be constituted to decide matters of disqualification.

Summary of Recommendations

4th Regional Consultation on Electoral Reforms

Lucknow, Uttar Pradesh

(Covering Uttarakhand and Uttar Pradesh)

30th January 2011

1. Introduction

The 4th Regional Consultation on Electoral Reforms was held on 30th January, 2011 in Lucknow, Uttar Pradesh. Sessions were held at the Ram Manohar Lohiya National Law University.

Discussion was based on the Background Paper on Electoral Reforms, and covered the following broad categories: Criminalisation of Politics, Financing of Elections, Conduct and Better Management of Elections, Regulating Political Parties, Adjudication of Election Disputes, and Review of Anti-Defection Law.

The following is a summary of recommendations made at the Consultation.

Recommendations made by the Dr. S. Y. Quraishi, Chief Election Commissioner of India, and M. Veerappa Moily, Minister of Law and Justice are not included below as they are present in the Background Paper.

2. Criminalisation of Politics

2.1 Disclosure of criminal antecedents by candidates

Currently, Rule 4A of the Conduct of Election Rules, 1961, prescribes that each candidate must file an affidavit (Form 26 appended to Conduct of Election Rules, 1961) regarding (i) cases, if any, in which the candidate has been accused of any offence punishable with imprisonment for two years or more in a pending case in which charges have been framed by the court, and (ii) cases of conviction for an offence other than any of the offences mentioned in Section 8 of Representation of the People Act, 1951, and sentenced to imprisonment for one year or more. In addition to this, pursuant to the order of the Supreme Court the Election Commission on March 27, 2003, has issued an order that candidates must file an additional affidavit stating information relating to all pending cases in which cognizance has been taken by a Court.

It was suggested that criminal antecedents of candidates should be made public. One speaker suggested that polling stations should include lists on criminal charges pending against each candidate.

2.2 Ban on candidates with criminal cases pending against them

2.2.1 It was suggested by several speakers that any candidate charged with an independent court shall not be eligible to stand for elections for the duration of trial.

One speaker suggested that such persons should be disqualified only for a period of 2 years while undergoing trial.

2.2.2 Criminal cases against politicians should be expedited through a special tribunal or fast track court

2.3 Negative/neutral voting

Several speakers members of the public stated that there should be a provision allowing for negative voting, by which voters are able to reject all candidates if none are found satisfactory.

Some speakers dissented to this view, suggesting that neutral or negative voting is not currently desirable or easily implementable.

3. Financing of Elections / Auditing of Finances of Political Parties

4. Conduct and Better Management of Elections

5. Regulating Political Parties

5.1 One member of the general audience suggested that party constitutions should be made legal documents.

5.2 Several speakers and members of the public commented that measures to ensure inner-party democracy are necessary.

5.3 One speaker suggested that elections to party positions be conducted by the Election Commission.

6. Adjudication of Election Disputes

Disputes relating to elections of the State Legislature and Union Legislature are adjudicated upon exclusively by the High Courts before whom election petitions under Section 80 and 80-A of the Representation of Peoples Act, 1951, are filed.

Sections 86(6) and 86(7) of the Representation of the People Act, 1951, provide that the High Court shall make an endeavour to dispose of an election petition within six months from its presentation and also as far as practicably possible conduct proceedings of an election petition on a day to day basis.

In practice, however, cases involving election petitions are rarely resolved in a timely manner. According to the report "Ethics in Governance" of the Second Administrative Reforms Commission, "such petitions remain pending for years and in the meanwhile, even the full term of the house expires thus rendering the election petition infructuous.

7. Anti-Defection Law

Currently the issue of disqualification of members of Parliament or a State Legislature is decided by the Speaker or Chairman of the concerned House. Aside from those concerning the Tenth Schedule all other matters of post-election disqualification are decided by the President/Governor, on the advice of the Election Commission.

It was suggested that since speakers of assemblies are partisan, they should not be involved with issues of disqualification for violation of the Anti-Defection law. One speaker suggested that a special body with representatives from several organs of the state be constituted to decide matters of disqualification.

It was suggested by one speaker that defection should be treated as a criminal act and defectors should be banned from contesting for at least five years.

One speaker suggested that the provision in the Tenth Schedule of the Constitution allowing for mergers between parties should be removed.