

Suitable Electoral Reforms for Democracy with Special Reference to India

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Introduction

“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

The aims of the Preamble of our constitution are to provide political justice to the people of India. Democracy is an idea which often assumes concrete dimensions for the vast majority of people through the electoral system. Election is one of the most important features of a democratic polity in India as a regular interval. Elections are the grant people a Government and the Government has constitutional right to govern those who elect to it. Elections provide an opportunity to the people of India to express their faith in the Government from time to time and changed when the need arises of it. For many, an election marks the only occasion of any form of political participation as it is the only tangible evidence of what it means to be a citizen in a democratic society.

Democracy can indeed function only upon the faith that elections are the 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 in India 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, but a discernible decline in standards began with the fourth general election in 1967. No such events were reported till the fourth general election. Over the years, Indian electoral system suffers from some serious infirmities. Electoral system, therefore, is the most fundamental aspect of every representative democracy.¹ The election process in India 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. 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.

Universal Declaration and International Covenant

Article 21 (1) Universal Declaration of Human Rights, 1948 declares that *"everyone has the right to take part in the government of his country, directly or through freely chosen representative."* But this Human Rights Declaration has no statutory or covenantal force. The Universal Declaration is merely in the form of Directive Principles to the Member States of the United Nations.

¹ Joseph, T.M., "Democracy and Governance: Does Electoral System Matter" Vol. LIII, No. 1 *IJPA* 125 January-March (2007).

The International Covenant on Civil and Political Rights provides about the civil right of taking part in elections freely without any reservations as follows:

Article 25-mandates that:-

“Every citizen shall have the right and opportunity, without any of the directions mentioned in Article 2 and without unreasonable restrictions:

- To take part in the conduct of public affairs, directly or through freely chosen representatives.
- To vote and to be elected at genuine elections which shall be held by secret ballot, guaranteeing the free expression of the will of the election?”

India

Indian Democracy stands out as a model for many emerging democratic countries around the world. Free and fair elections are the hallmarks of well-functioning democracy. While we are justifiably proud of our democracy, there are a number of areas that need to be strengthened for us to realise the true potential of a well-functioning democracy. Our election system, starting from the selection of candidates, to the manner in which funds are raised and spent in election campaigns, does call for significant changes.²

India being the world’s largest democracy is being observe as a role of model by the new and emerging democracies in the world. The founding father of the Indian constitution opted for a parliamentary democracy as an appropriate model for a large and diverse country like India. There has been a growing concern over the year in India about several aspects of our electoral system.

The constitution declared India to be a republic and the republic of India emerged on the coming into force of the

² Quraishi, S. Y., “Controlling Electoral Corruption in India” Vol. LVII, No. 3, *IJPA* 222 July-September (2011).

constitution on 26th January, 1950. The Parliament had to enact the Representation of People Act, 1950 which came into force on 12th May 1950. This Act provided for the allocation of seats in, and the determination of the constituencies for the purpose of elections to the house of people and the legislatures of states, the qualification of voters at the election for Parliament and state legislatures, the preparation of electoral rolls and other “constitutional matters.” But this Act was not sufficient to meet the needs and practice of elections. Hence in 1951 the Parliament had to pass another Act, namely, the Representation of People Act, 1951. This Act provided for the conduct of elections to the House of Parliament that is, the Lok Sabha (House of People) and the Rajya Sabha (Council of States) constituting the Parliament and the two houses of state legislatures in the States which had bilateral houses, i.e., Vidhan Sabha (Legislative Assembly) and Vidhan Parishad (Legislative Council) whereas some states had only one house, that is the Vidhan Sabha and no Vidhan Parishad.³

India is a country inhabited by people of different religions, castes, creeds, cultures and languages, attributing to its diversity. In this situation, sense of unity and integrity is the most important factor that binds the whole country together. The constitution of India, which provides a constitutional democratic system to guide the fate of Indian people, declares the country as a sovereign socialist secular democratic republic, and binds India into a strong bond.⁴

In *N.P. Ponnuswami v. Returning Officer, Namakkal*,⁵ the concept of democracy as visualized by the constitution presupposes the Representation of the People in Parliament and state legislatures by the method of election.

³ Tewari O.P., *Law of Elections in India* 3 (Allahabad Law Agency, 1st edn. 2001).

⁴ Prakash Abhinav, *Law Relating to Elections* 1 (Universal Law Publishing Co. Pvt. Ltd New Delhi 2006).

⁵ AIR 1952 SC 64.

“Democracy is Government by the people. It is continual participative operation, not a cataclysmic, periodic exercise. Although the full flower of participative government rarely blossoms, the minimum credential of popular government is apple to the people after every term for a renewal of confidence. So we have adult franchise and general elections as constitutional compulsions”.⁶

Our founding father had resolved to constitute the newly independent India into a ‘sovereign’ ‘democratic’ ‘republic’ which was later, added with ‘socialist’ and ‘secular’ goals to be attained to. A democracy, as India is, happens to be a form of Government in which the Supreme Power is vested in the People is exercised by them or by their elected agents under a free electoral system. Again a Republic, so India is, as a state in which the supreme Power rests, in the body of citizens entitled to vote and is exercised by representatives chosen by them, directly or indirectly. For this purpose, the system of regular elections provides opportunity to voters to make governance in the country the veneer of being a democracy but whether a society is really a democracy or not is decided by how good and how effective the electoral system.⁷

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 belief 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. Thus, free and fair elections are indispensable for the success of democracy and if democracy has anything to do with freedom and freedom with responsibility-then the electoral system might well be the very

⁶ *Mohinder Singh Gill v. Chief Election Commissioner*, AIR 1978 SC 851.

⁷ Tripathi sudhanshu, “Democracy and Electoral Reforms in India” (South Asia Politics, March 2008).

heart of democracy.⁸ If politics is the art and practice of dealing with political power, election is the process of legitimisation of such power. Hence purity of elections is, therefore, the essence of democracy.⁹

To ensure free and fair elections to Parliament and State Legislatures, the Constituent assembly discussed the problem of malpractices which might have the effect of interfering with the free exercise of electoral rights of millions of voters¹⁰ in India. The Constituent Assembly was alive to the need of conducting free and fair elections for which purpose it was deemed necessary to ensure that the election machinery was not tainted with or vitiated by any malpractices. There was considerable debate in the Constituent Assembly on devising means to insulate the election machinery from governmental interference. The task of conducting free and fair elections was ultimately entrusted to a “Central Election Commission”. In part XV under the heading ‘Election’ containing Article 324 to 329 got place in the Constitution of India.¹¹

Suitable Electoral Reform

“Whoever wishes to foresee the future must consult the past; for human events ever resemble those of preceding times? This arises from the fact that they are produced by men who ever have been, and ever shall be, animated by the same passions, and thus they necessarily have the same results”. -Machiavelli

In a country like India, people of different religions, castes, languages traditions etc. are living together. So Govt. has to look to interests of all such sections. But at the time of elections

⁸ Vivek Raj S., “*Understanding of Contemporary Issues in India*”, (Civil Service Times Publication, Rptd. 2nd edn. 2010-2011)

⁹ Palekar S.A., “The Role of Election Commission: An Analysis” Vol. LVIII No. 1 *IJPA* 82 (Jan-Mar. 2012).

¹⁰ More than 714 Million Indians would be eligible to vote in the 15th general Election to Lok Sabha.

¹¹ Dr. Anshuman Mishra, “Election Commission and Electoral Reform” Vol. 42 *JCPS* 221(2008).

it is often observed that the different constituencies are reorganized in order to suit the interests of the party in power. There has been a long drawn public debate on various aspects of electoral reforms. The election commission and the leaders of political parties have made certain valuable suggestions in this regard.

It would be wrong to assume that most of India's 1.2 billion people are corrupt; it is only a dominant minority of about one million people who may be corrupt. The chief reason for this is the lack of leadership and morality among the political masters. This again has happened over the last few decades with the most talented, the educated and the honest in India not taking to a political career. Consequently, there has been usurpation of politics by a set of unscrupulous opportunists of dubious character and education, with a no-holds barred ambition for power and self-aggrandisement at the cost of the nation.¹²

The journey of corruption in election process did not befall all of a sudden but gradually in a time span of several decades. Initially the requirement of money was felt for campaigning and since the majority voters were illiterate masses so, electioneering was required to be on a large scale. The candidates fetched support, aid and finances from criminals and muscle men. Generation and accumulation of money requires a robust support from the bureaucracy and these tend to encompass the bureaucracy too in the political web. After a while the criminals involved in non-bailable and cognizable offences themselves started participating in politics since they could easily win the elections by threats and coercion. The battle of ballot became battle of bullets. And when these kinds of people aspire to become the part of our honorary legislature, what better reforms can we expect from our government?

¹² See "The Hindu" dated Sunday, May 22, 2011

The recent phenomenon of *Anna hazare* capturing the imagination of the people, especially of the young, is symptomatic of the simmering anger of the common man against corruption. Civil society in India has always needed a rallying point to fight authority. This phenomenon has been observed since the pre-independence days. Now that civil society has gained some symbolic, yet significant, space in the crusade against corruption, the momentum should not be lost.¹³ The scandals and controversies that marked the 14th Lok Sabha and the recent events after the general elections in India were announced, where smaller and regional parties have held bigger parties to ransom over various issues like that of seat-sharing, have once again highlighted the urgent need of electoral reforms in India. It is high time that they are implemented in the earnest.¹⁴ The Election Commission suggests from time to time to political parties, Parliament and to the public at large suitable reforms in the electoral process in the light of its experience. Several of its various proposals have been implemented also.

Some of the proposals for suitable electoral reform are as follows:

1. Abolish the first-past-the-post system:

In short, the Indian Electoral System is '*first-past-the-post*' which take place on a categorical ballot in single member constituencies.¹⁵ This has been amongst the most widely discussed electoral reforms in India. Multi-cornered contests have become a norm in India rather than an exception due to the increase in the number of smaller and regional parties. There have been cases in the state assembly elections where a

¹³ *Ibid.*

¹⁴ See "The Hindu" Dated, January 2, 2012.

¹⁵ Joseph, T.M., "Democracy and Governance: Does Electoral System Matter" Vol. LIII, No. 1 *IJPA* 128 (2007).

candidate has been declared winner with the victory margin of less than 100 votes. Apart from this anomaly, in most cases, a candidate wins the election by securing just 30-35 per cent of the total number of votes polled. In this, a second round of election will be held if none of the candidates in the fray is able to get 50 per cent of the total number of votes polled in the first round. The two candidates who have obtained the maximum number of votes in the first round will fight in the second round. Whoever between the two gets more than 51 per cent of the total votes polled in the second round is declared the winner.

2. Preventing of Criminalization of Politics:-

“If we are going to spend a lot of money to deal with the problem of 200 million guns in the country owned by 650 million gun owners, we ought to have a system which will work and catch criminals.” John Dingell

It is well known that conviction can take a lifetime in many Indian courts, sufficient to enable a criminal to enjoy a full political career or even try to influence the process in his or her favour by acquiring power through the ballot. In this scenario, greater activism from the country's highest constitutional bodies against criminalization of politics would be extremely pertinent.¹⁶

Criminalization of politics has always been a matter of concern for all. It is a grave problem in India. The Commission in August 1997 issued an order under Article 324 of the Constitution, whereby all candidates for election to Parliament and state legislature were required to file affidavit about their conviction in case covered by Section 8¹⁷ of the Representation of People Act 1951, which disqualifies a person convicted of criminal offences for a certain period of time according to the

¹⁶ Dr. Anshuman Mishra, “Election Commission and Electoral Reform” V Vol. 42 (3-4) *JCPS* 240 (2008).

¹⁷ Provides that a person shall be disqualified for contesting an election to Parliament or a State legislature only if he stands convicted.

nature of the offence mentioned therein. The Supreme Court of India upheld¹⁸ the direction issued by the Commission and later Parliament also introduced these requirements in the provision of the Act.¹⁹

Everyone knows Raja Bhaiyya, the dreaded don from the Uttar Pradesh who earned his first criminal case as a teenager and who has a relationship with the prisons either as an inmate or the minister tasked with running them. But ever heard of Raja Bhaiyya a two-term former MLA from the kama sutra town of khajuraho in Madhya Pradesh 66-year old Ashok Veer Vikram Singh aka urf Raja Bhaiyya has been an unchallenged don for decades. Arrested for murder in the 1990, Bhaiyya Raja decided to fight his election from prison. He won on a not-so-subtle slogan of *Mohar lagegi haathi pe, Varna goli chaathi pe* (stamp on the elephant or take a bullet on your chest) the elephant being his election symbol. On winning, he rode an elephant to the assembly. On 31st May, he was sentenced to the life imprisonment for the 2009 murder of a grandniece who he sexually exploited and forced to undergo an abortion. Is his political career over?²⁰

The Commission had also clarified that “conviction by the trial court itself is sufficient to attract disqualification.” The Commission had also suggested that any person who is accused of any offence punishable with imprisonment for five years or more should be disqualified even when his trial is pending provided that the competent court of law has taken cognizance of the offence and has framed the charges against him.

In 1996 the Supreme Court in *Ankul Chandra Pradhan v. Union of India* observed that “Criminalization of politics is the bane of society and negation of democracy. It is subversive of free and fair elections.”

¹⁸ See *Union of India v. association for Democratic Reforms*, (2002) 5 SCC 294

¹⁹ *Ibid*

²⁰ Dr. Loura Jitender, “Election Reform in India vis-à-vis Criminalisation of Politics and Right to Reject-A review” Vol. 3 *IJMSSR* 35 (2014).

In 1997 the case of *Dinesh Trivedi, M.P v. Union of India*, Supreme Court dealt with N.N.Vohra Committee report, and its implementation, which addressed the problem of the growing nexus among politicians, bureaucrats and criminals and its effect on the civil society. The court further held that an independent body should be formulated to look into the matter and it should also be given necessary powers to investigate into these matters and if feasible establish special courts to take cognizance of such matters with the consent of Union government. In *People's Union for Civil Liberties v. Union of India*, Supreme Court held that "the criminal antecedents of the candidates including their assets and liabilities should be available to the voters so that they can make a wise decision which serves their best interest."

But recently in July 2013 the honorable Supreme Court ruled that Parliamentarians and State Legislators who were convicted of serious crimes, meaning carrying a jail term of two years or more would be barred from contesting elections. The court struck down section 8 of the representation of the People Act which allowed convicted members of Parliament and Legislative Assemblies to continue in office while their appeals journeyed through courts often for indefinite periods. The Government, backed by support from almost all political parties, had introduced a bill in Parliament to override this Supreme Court judgment and then passed the ill-fated Ordinance which now stands withdrawn.

3. More Powers to Election Commission:

It has been proposed that the Election Commission should be authorized to make certain recommendations for referring any matter of investigation to any agency specified by it for prosecution of any person who has committed any electoral offence and for trial of any offence under the Act.

The Commission also proposed to ban the transfer of election officers compulsory for police arrangements during

election and the Commission should have a disciplinary jurisdiction over the officials employed in connection with elections.

It is submitted that the independence of Election Commission which the constitution makers much emphasized would be further strengthened if the Secretariat of the Commission consisting of officers and staff at various levels are also insulated from the interference of the executive in the matter of their appointment, promotion etc. and all such functions are exclusively vested in the Commission on the lines of the Secretariats of the *Lok Sabha*, *Rajya Sabha*, Registries of Supreme Court and High Court.

4. Inner-Party Democracy:

The party system is an essential feature of Parliamentary Democracy. However, there is no direct reference of political parties in the Constitution of India. The statutory law relating to registration of political parties enacted in 1989 which was quite liberal. As a result, a large number of non-serious parties mushroomed and got registered with the Commission. For our Democracy to succeed, it is necessary to our party system must be democratized. But barring a very few parties like the Bhartiya Janta Party, left parties etc. Almost all major political contenders belong to families and are private shops.

The National Commission to Review the working of the Constitution recommended that there should be a comprehensive legislation regulating the registration and functioning of political parties or alliances of parties. The proposed legislation should provide for compulsory registration of every political party or pre-poll alliance. The measures taken by the Election Commission to streamline the registration of political parties have shown effective results. These have lessened the headache of the administrative machinery as well as confusion of the electorate.

5. Increase the amount of security deposit:

Under sec. 34 of the Representation of People Act, 1951 each candidate for election to the House of People is required to deposit of amount of Rs. 10,000 as a security and for the election of Council of States and Legislative Councils, the security deposit is Rs. 5,000. This move is necessary to put a check on the number of non-serious candidates contesting union and state assembly elections. Such a move has been taken in the past and has shown desired results. However in recent times, the number of candidates fighting elections has shown an increasing trend and hence there is a need to review the amount of security deposit.

6. Need for Election Finance Reform:

It is now well established that money plays a big role in politics, whether in the conduct, or campaigning, for elections. The Election Commission of India (hereinafter “ECI”), in its guidelines issued on 29th August 2014, recognised that “concerns have been expressed in various quarters that money power is disturbing the level playing field and vitiating the purity of elections.” Election requires money not only to distribute it illegitimately to influence voter choices but also fulfill the legitimate expenditures required to fight an election in large and big constituencies of India.²¹

This is best articulated by the Supreme Court in *Kanwar Lal Gupta v. Amar Nath Chawla*,²² (hereinafter “Kanwar Lal Gupta”), when it explained the influence of money as follows:

Money is bound to play an important part in the successful prosecution of an election campaign. The availability of large funds does ordinarily tend to increase the number of votes a candidate will receive.

²¹ Dr. K Reddy Eswara, “Electoral Reform in India- Issues and Recent Reforms” Vol. 3 *IJHSSI* 26 (2014).

²² (1975) 3 SCC 646.

The Supreme Court of India gave a landmark judgment in *Ashok Shankarrao Chavan v. Madhavrao Kinhalakar*,²³ with respect to the powers of Election Commission of India (“ECI”) to conduct an enquiry into the accounts of daily expenditure submitted by the candidates who are contesting in general elections and the powers of ECI to disqualify a candidate in case the Account of expenditure is false or incorrect.

As per Representation of People’s Act, 1951 (“RP Act”), section 77 & 78, every candidate contesting in general elections has to keep a correct account of his daily expenditures incurred during his Election Campaigning. Such account of the expenditures has to be submitted to the District Election Officer (“DEO”) of ECI, who then ascertains whether the same have been filed in the prescribed time and manner, as per the rules and with all required details or not. In case the Account has not been filed as per law, the ECI sends a notice to the candidate to justify as to why Account was not filed in the prescribed time and manner.

In case the candidate fails to justify the reasons for non-filing or filing the Account without confirming to the time and manner as per law then under section 10A of RP Act the ECI can disqualify the candidate from all parliament or State Assembly elections for three years from date of order.

7. Not allowing candidates to contest from more than one constituency in an election:

As per the law as it Stands at present²⁴ a person can contest a general election or a group of bye-election or biennial elections from a maximum of two constituencies. This is necessary to curtail the unnecessary expenditure that election commission has to make when a candidate contests election from more than one constituency and wins from all the constituencies he has

²³ (2014) 7 SCC 99.

²⁴ Sub-sec.7 of section 33 of the Representation of People Act, 1951.

contested from. The bye-election that is necessitated by the candidate choosing one seat and vacating others seats he has contested from will no longer be needed. It here recommended that the law should be amended to provide that a person cannot contest from more than one constituency at a time.

8. NOTA (None of the above):

This option was introduced in the electronic voting machines in India after the landmark judgment delivered by the Supreme Court (the apex court in the Indian Judicial system) in *Peoples Union for Civil Liberties v. Union of India*.²⁵ The right to vote in India is a statutory right. The converse of this, i.e. the right not to vote, while maintaining secrecy was claimed vide a petition to the Supreme Court by PUCL. Since the petition filed by PUCL (Peoples Union for Civil Liberties) was a Writ Petition under Article 32, the Court had to judge its maintainability, as it was contended that Right to Vote is considered a statutory right. The Court held that although Right to vote is a statutory right, the decision taken by the voter is a facet of Freedom of Expression under Art. 19(1) (a). Fundamental Right of freedom of speech and expression under 19(1) (a) and statutory right under S. 79 of Representation of People Act is violated if right not to vote is denied. Thus the Court held that the Writ Petition is maintainable. The Court also relied on international principles governing the right to secrecy as an integral part of voting and free elections under Article 21(3) of the Universal Declaration of Human Rights and Article 25(b) of the ICCPR.

The main advantage of the incorporation of NOTA is upholding and recognition of the right of the citizens to not cast a vote while maintaining secrecy during such abstinence. The true spirit of democracy lies in the right of the citizens to be able to choose their representatives periodically. Obviously the ends of democracy can be met only when majority of the citizens exercise this right. However, at the same time it must be

²⁵ (2013) 10 SCC 1.

ensured that the citizens are not compelled to choose the best from the worst (which, unfortunately is the case more often than not). This is exactly what NOTA seeks to achieve. The driving force behind the decision of the Supreme Court in PUCL vs. UOI was the fact that introduction of NOTA in EVMs would compel the political parties to project candidates with a so to speak „clean background“ in the various constituencies. NOTA is a powerful device in the hands of the voters who, if dissatisfied with the quality of the candidates may choose to use it. This consequently has the effect of a constant pressure on the political parties to ensure that only qualified and suitable candidates represent their political party in the elections. The consequence of this entire procedure: a much cleaner political future for India. At least this was the entire idea behind the Supreme Court passing a Judgment in favor of introduction of NOTA. The advantages of NOTA are obviously numerous as have been stated in the preceding section. But to scale down the benefits tone line NOTA is a step forward in achieving the ends of democracy.

9. Ban on publication of exit/opinion polls results till voting is over for all phases:

The exit poll and the opinion polls tend to alter the electoral results in some cases by diverting the attention of the voters. At time these opinion and exit polls have been the matter of severe manipulations and they lack the desired amount of credibility. Thus it is hereby reiterated its view that there should be some restriction on publishing the results of opinion polls and exit polls. Such a restriction would only be in the wider interests of free and fair elections. Regarding the argument about the right to freedom of information sought to be linked to the dissemination results of opinion polls and exit polls, it has to be noted that the past experience shows that in many cases, the result of elections have been vastly different from the results predicted on the basis of the exit polls. Thus, the information

claimed to be disseminated turned out to be disinformation in many cases. The Commission recommends that there should be a restriction on publishing the results of such poll surveys for a specified period during the election process. In many of the western democracies, there exist such restrictions for various periods.

Conclusion

It can be concluded that an efficient electoral reform system is one of the cornerstone of good for Democracy in India. Reform is not a single time effort but a continuous process. The accomplishment of the modification would depend upon the operational compliance of the coordination of electoral machinery, the political parties, the candidates and electorate at all levels. Over the years, the Election Commission has handled a number of issues and accomplished commendable electoral reforms to fortify democracy and augment the even-handedness of elections. These alterations are ample and venerable. Undeniably, the election machinery, under the sponsorship of the EC, justifies its credibility for organising elections in a free and fair method. Nevertheless, our system is still overwhelmed with many moral weakness and these can be combated by the tripartite support of the candidates, electorates and the Election Commission of India.

In our democracy most of the political leader are corrupt, criminals and not well educated in the State Government as well as in the Central Government. We need to educate people to actively participate in elections and take active interest in matters of state policy and form intelligent opinion and not fall victim to caste, regional and other narrow considerations that form vote banks. The present system of adult franchise should be retained. With more informed and conscious voters, most of the inadequacies of the system will be eradicated. Only recognized political parties should be allowed to contest the election.