

ELECTORAL REFORMS IN INDIA: A QUEST BEYOND LEGAL REMEDIES

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ABSTRACT

Electoral reforms in India are central to administrative reforms to make the Nation a healthy democratic republic. India has already adopted parliamentary democracy, however, India's independence from the British rule was followed by blood soaked partition and it caused the genesis of the growth and development of anti-democratic values and factors. Many socio-cultural factors such as caste, religion, regionalism, language and dialect, corruption, criminalization, etc. have affected the functioning of the units of democratic governance. However, with the constitutional amendments in 1992, democratic decentralized governance at the grass root level has widened the scope of people's participation in decision-making process and administration of development programmes. This calls for electoral reforms in order to strengthen the units of governance to make the electoral process more fair, transparent and equitable. Against this backdrop, present paper purports to review the electoral reforms in India in the context of policy and legal framework.

When India attained independence, against the background of the holocaust of partition, not many of its even sincere friends in the west had much faith in or hope about its future. Winston Churchill warned the Labour Government; "You are handing over power to men of straw.....Within 50 years these barbarians will reduce the country to anarchy (Seshan, 1994). But what appeared to Churchill as straw were really strong bamboo seeds, which could weather even the most violent storms. After getting over the initial dock of partition, India not only stood together but the Government put together the pieces of a jigsaw puzzle of nine British Provinces and more than five hundred princely states [some of them larger than many countries in Europe] and for the first time in its history created a single sovereign country covering the whole sub-continent from the Himalayas to Kanyakumari and from Dwarka to Manipur (Gadkari, 1998).

But more astounding than all this was creation of a fully democratic state based on full-fledged universal adult franchise and secularism. Even in the United States about 10% of the population, [the Blacks] had been denied franchise on one pretext or another till 1964 and in England women were

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enfranchised only after World War-I. The polyglot society that in India, characterized by continental size, ethnic society, cultural diversity, linguistic multiplicity, caste hierarchy, religious pluralism, rural-urban hiatus, economic disparities, feudalistic attitudes, prejudices based on age and sex, and unabating problems of illiteracy, represents a vibrant democracy. The first general election in India (December 1951–February 1952) has been characterized as '*a massive act of faith*', unparalleled in the history of humankind (Guha, 2002).

The Indian Electoral system, which is another name for the conversion of votes in elections into seats in legislature, was free from any substantial drawback till the fourth general elections, 1967 (Bhalla, 1988)). The distortions in its working appeared in the fifth general elections and multiplied in subsequent elections, especially those held in the eighties. Some of the candidates and parties participate in the process of elections to win them at all costs, irrespective of moral values. It is time for us to examine the working of the electoral system, find out the distortions that have crept in it and search ways and means to eliminate them from the process to restore its pristine form. The core electoral problems are: the use of money and muscle power at elections; criminalization of electoral politics that encourages practices of booth capturing, violence and rigging; misuse of government machinery by the party in power at the center or in the state; participation of non-serious candidates in election; violation of the Model Code of Conduct, etc. Urgent corrective measures are essential for saving the system from further erosion. Therefore, Electoral Reform seems to have come to occupy a prominent position in the national discourse in recent times. No less a person than the President of India referred to "serious malpractices (that) have crept into the election process (Chhokar, 2001).

The criminalization of electoral process has become a global phenomenon. Even American system presently is under strain. Nixon organized burglaries in rival camp but finally was compelled to resign from Presidentship for his misdeeds. The former Prime Minister of Italy, Ginleo Andreofiti, had to suffer seven years of rigorous imprisonment for conniving with Mafia. In Japan, three Prime Ministers went to Jail for criminal activity. In U.S.A. again Vice-President, Spiro Agnew served three years of sentence on charges of public corruption. Willy Brandt of West Germany also had to go from his post of Chancellor. In England, Profumo scandle shocked the democratic psyche and Profumo had to go.

The British Parliament realized the need for cleansing public life and appointed NOLAN committee, which involved the attributes of honesty, integrity, objectivity, openness, and accountability in public life. In Rummania, Chesque was shot dead for enjoying at the cost of the public.

India, however, stands soft towards corrupt politicians. The Bandit Queen, Phoolan Devi, with charges of many murder on her head, become M.P. According to one estimate in 1996, 40 MPs had criminal records, which must have increased overtime (Kashyap, 2002). T.N. Seshan had declared that in U.P. 180 MLAs were convicted criminals cutting across party lines. In Bihar, 30 MLAs were having criminal records. 'Mafia against Mafia' approach inspired all parties. When Krishnayaa, IAS was murdered in Bihar, media reported that 800 criminals groups functioned in Bihar. A Politician gave shelter to key figure in Puralia arms dropping case. Politician of Rajasthan were booked for tapping 100 girls, mostly students, in the flesh trade by blackmailing them with their photographs in the nude. Green brigade founded in Haryana became a byword for lawlessness, rule of toughs in Orissa, Tandoor murder case in Delhi, etc. have shaken the democratic spirit of the people. 'Hafta collection' in Tea gardens in Assam, massive land grabbing—the demolition order by Supreme Court for Chyavan Rishi Apartments (on public land) in Delhi, Mafia in flesh trade and trafficking in women and girls, Mafia in sea ports, smuggling, liquor, narcotics, criminal activity in campuses, film and tourist and in places of entertainment and all such cases criminal politician—bureaucrats axis is eating into the vitals of our polity and democratic structure. Vohra Committee putting this cat out of the bag, highlighted criminalization of politics and the entire democratic process.

Before we deal with electoral reforms, we must inform you in brief that legal and administrative framework of elections rests on the provisions of the Constitution, the Representation of the People Act, 1950 and 1951, the Indian Penal Code and the Delimitation Act, 1972. There are also some other laws the Government of Union Territories Act, the Delhi Administration Act, 1966; and the Jammu and Kashmir Representation of the People (Supplementary) Act, 1968, which are special laws meant for specific areas.

The first step with regard to election reforms came from the Election Commission in the form of reports to the Government for changes in election law and procedure in the administrative efficiency and public convenience. Some of the suggestions advanced in these reports were accepted by the Government in modified form and converted into law by amending the Representation of the People Acts 1950, 1966, 1974, 1975 & 1988 (Bhalla, 1988).

The first exercise at what could be called comprehensive reforms was made in 1971, when a joint parliamentary committee of the two houses of Parliament was appointed under the Chairmanship of Mr. Jagannath Rao. The committee submitted two reports on January 18, 1972 and March 10, 1972. The first contained recommendations for the amendment of the

Representation of the People Acts of 1950 and 1951, while the second dealt with certain basic questions such as the voting age, the electoral system, etc. Some of the amendments in the Representation of the People Acts suggested by the Committee were incorporated in a Bill intended in the Lok Sabha in 1973 (Lok Sabha Bill No. 100 of 1973). The Bill did contain some important provisions such as—

1. Specifying four qualifying dates in a year instead of one for the qualification of voters;
2. Prohibiting capricious transfers of election staff on the eve of elections;
3. Disqualification of persons with contracts with the Government or any public sector undertaking, for contesting elections;
4. Counting of election expenses from the date of the notification calling for the election instead of the date of nomination;
5. Enhanced punishments for certain offences etc.

This Bill was not, however, passed before the dissolution of the Lok Sabha in 1975 and, therefore, lapsed. During 1974-76, however, certain amendments were effected in section 77 relating to election expenses which appear to be definitely retrograde and for the benefit of the ruling party (Gadkari, 1998).

The next important landmark with regard to electoral reforms was the appointment of a Committee by Shree Jayprakash Narayan under Justice V.M. Tarkunde. This was the most comprehensive exercise in electoral reforms till 1975. Some of the recommendations of the Tarkunde Committee were quite radical and aimed at reducing or curbing some of the advantages enjoyed by the party in power. Till 1977 more or less Congress had monopoly to rule India. It had been in power nearly 39 of the 43 years since the first elections in 1952 held under the Constitution. Important recommendations were:

- (i) Introduction of a partially proportional representation system of election,
- (ii) Appointment of the Chief Election Commissioner (CEC) by the President in consultation with the committee consisting of the Chief Justice, the Prime Minister and the Leader of the Opposition in the Lok Sabha (instead of consultation only with the Prime Minister).
- (iii) The government in office should work only as a caretaker government during the election period,

- (iv) Prohibition of contributions by Companies to political parties,
- (v) Audit of accounts of candidates and parties and,
- (vi) Some limited financial assistance to all political parties by the state.

The recommendations of this committee could not however, be implemented as Morarjee Desai, then Prime Minister, became out of power. However, in 1977, the government, through an executive order, allowed the use of public media of television and radio for election broadcasts and telecasts by political parties. This practice is continuing since then.

The sustenance of any system needs in depth examination of its basic law and procedure from time to time in the light of ground realities. A part of this exercise with regard to electoral system was undertaken in 1980s. During the decade either new statutory measures were enacted or the existing law was amended to strengthen the system. The first notable measure in this respect was taken in 1985 with the passage of Anti Defection Act (The Constitution [Fifty-Second Amendment] Act, 1985). The enactment prohibited floor crossing in Parliament and state legislatures for personal gains. It ushered in stable government at the state level. The company's act was also amended in the same year (1985). To permit any company (other than a government company or a company in existence for not less than three years.) to contribute any amount to a political party for political purposes upto five per cent of the average net profit of the company during three immediately preceding financial years. This enactment liberalized under the table donations made by business houses to political parties. Towards the end of 1988, alteration in Article 326 of the Constitution was effected for lowering the voting age of a citizen from twenty-one years to eighteen years (The Constitution [Sixty-First Amendment], Act, 1988). This amendment brought the country at par with other advanced Western democracies.

The provisions of the Representation of the People's Act, 1951, were tightened in the same year (1988) to eliminate the malpractice of booth capturing. An additional section 135A was inserted in the Act providing stringent punishment, ranging from six month to two years with fine, for the offence. The offence of booth capturing was also made a corrupt practice through insertion of a new sub-section in section 123 of the Act. Section 58 was added to the Act empowering the Election Commission to countermand the poll in the whole of a constituency, on the basis of the returning officer's report, if it is satisfied that result of election was materially affected on account of capturing of booths on large scale. The registration of political parties with the Election Commission was made obligatory through insertion of section 29A in the Act. Further, the officials connected with the conduct of election during the period of their work, are to be treated on deputation to

the Election Commission. This was achieved by adding section 13 CC in the Act of 1950 and 28A in the Act of 1951.

In the beginning of the same year (1988), the supplementary note to the Sarkaria Committee Report on Centre State Relations, had urged necessity of election reforms. Nothing, however, was done in the matter in the following two years. In January 1990, however, a committee comprising prominent members of National and State parties and experts in election law, headed by Shri Dinesh Goswami, the then Union Law Minister, was appointed by the Government of India, to suggest suitable electoral reforms. The Goswami Committee submitted its report in May 1990 recommending reforms in vital areas of elections. In 1991, the Government accepting some recommendations of the Committee, introduced four Bills in the Rajya Sabha dealing with delimitation of constituencies, rotation of reserved seats, elimination of non-serious candidates and appointment of the Chief Election Commissioner and other Election Commissioners. Only one of the four Bills, related to the terms and conditions of service of the Chief Election Commissioner and other Election Commissioners was passed by the Parliament. Meanwhile, the Lok Sabha was dissolved and the other Bills lapsed.

In October 1993, the Act referred to above was, however, amended through a Presidential order. The Presidential order was converted into an Act in the same year. The provision of the amended Act made the Election Commission a multi-member body with the appointment of two Election Commissioners. The constitutional validity of the amended Act was, however, challenged by T.N. Seshan, through a writ petition in the Supreme Court. The apex court upheld the constitutional validity of the provisions of the amended Chief Election Commissioner and the other election commissioners (conditions of service) Act 1993. The equation of the three is likely to be found fruitful in the effective and impartial functioning of the Election Commission as a constitutional body. The Goswami Committee had, however, suggested that the Chief Election Commissioner may be appointed by the President in consultation with the Chief Justice and the Leader of the Opposition in the Lok Sabha. For making appointments to the posts of Election Commissioners, the panel may be extended to include the Chief Election Commissioner, the Committee added.

The 15th Law Commission undertook a through review of the Representation of People Act, 1951 and associated legislation with the objective "to making the electoral process more fair, transparent and equitable". The effort was to reduce the several distortions and evils that had crept into the Indian electoral system (Report of the Law Commission, 1999).

The Election and other related laws (amendment) bill 2001, based on the proposals of a committee under the chairmanship of late Inderjit Gupta, was initiated in December 2001. The Bill proposed amendments in the Representation of the People act, 1951 to regulate fund raising by political parties in elections.

The Supreme Court judgement of 02 May 2002, affirming '*the right to know*' of the citizen-voters, came in the context of the Union Government's appeal against a Delhi High Court judgement of 02 November 2001 directing Election Commission to seek information on candidate's background, assets and capability to become MLAs or MPs (Singh, 2004).

The Parliament on 22 March 2003 enacted the Election Laws (Amendment) Act, 2003 and conduct of Elections (Amendment) Rules, 2003, which came into force with effect from 22 September 2003. By these amendments in the Act and Rules, those service voters belonging to the Armed Forces and members belonging to a force to which provisions of the Army Act applies, have been provided the facility to opt to vote through proxy (India Year Book, 2006).

The Parliament on 01 January 2004 enacted the Delimitation (Amendment) Act, 2003 whereby Section-4 of the Principal Act was amended to provide that Delimitation will be held on the basis of the 2001 census figure.

The General election for 14th Lok Sabha took place in 2004. For 543 Lok Sabha seats, there were 69,14,87,930 electorate. The Representation of People Act, 1951 was amended by the Indian Parliament in 1989 to facilitate the use of Electronic Voting Machine (EVMs). In General Election 2004, EVMs, were used for the first time through out the country making the election go fully electronic.

The changes effected in law and procedure so far for removing distortion in the working of the electoral system have been useful, but not successful in purifying the process. Some areas of the system are still vitiated by malpractices. Urgent measures are necessary to prevent further deterioration. The areas that call for prompt action are: non-serious candidates, money power, muscle power, criminalization of electoral politics, delimitation of constituencies, misuse of government machinery, political parties etc.

A changed law alone would not be enough to fight out erosion in the basic areas of electoral process. The legal remedies would help only in cooperation with other parts of the political system, particularly the political culture under which the role of political parties become very crucial. Here, it is necessary to point out that the ills of electoral politics are, in the ultimate analysis, a reflection of decaying political culture, and more specifically a

decaying party culture. Though, many forces and factors shape the political culture in a representative democracy, it will be preposterous to ignore or under-estimate the key role of the political parties in making or marring the electoral system and it is so, as *Newmann* has rightly pointed out because the parties in modern mass democracies have been taking over an increasing areas of commitments and responsibilities. The party system has an organic relations to the electoral process, it is rather the source of the practices and procedures which characterize the electoral processes. But have parties always played a constructive role of creating a congenial political environment for electoral system to operate smoothly and fairly? We have seen in the post-second World War period that the parties proved to be the undoing of the constitutional and political arrangements in Italy and France. They reduced election to a showdown for petty political gains and the electoral verdicts that emerged were put to nought in a very short time. The Indian experience since 1967 has been increasingly unsettling, provoking Election Commission to adopt harsher measures and deploy security forces at unprecedented scale to hold elections and maintain their credibility. A large part of the blame for this unfortunate situations must be borne by the political parties of India.

The political scientists have theorized variously on the essential nature of parties. One view advanced by the Lawrence Lowell holds that the parties are essentially "brokers & mediators". As Lowell puts it if politicians are largely brokers, the parties are the chief instruments with which they work. Yet Lowell himself is not satisfied with this view of the parties and accepts it only as a kind of second best in less than perfect world. He thinks that ideally a party should function in the manner of a statesman. Quite clearly if parties are brokers, we reduce politics to inferior realm of trade and bargain. The sociological forces that such a view engender would put aside all canons of morality, and under such circumstances, you can not save the electoral politics from the vicious tentacles of money and muscle powers. On the other hand, Pendelton Herring in his important book "*The politics of Democracy*" takes a saner view of parties and thinks that "the task of the leadership is to bring the diversities of our societies into a working harmony". Herring's "mediating and compromising role grows out of a more positive construction of the role of compromise and mediation. Democracy is essentially a process of furthering the dignity of individual and the dignity of individual demands that we do not intimidate and manipulate any body." Have we in India been able to build our party system on the dignity and sanctity of man?

The first two decades after independence saw parties being run more or less on these foundations. It was possibly because of the towering pressure of such leaders as Nehru, Maulana Azad, C. Rajgopalachari, Acharya Kriplani,

Meenu Massani, Bhupesh Gupta, Prakashvir Shastri, etc. that our party was wedded to some ideals and the leadership cared as much about political morality as about political success. The presence of such leaders in parties at various levels foreclosed any possibilities of dubious means or practices being employed in elections. The scene has changed enormously during the last two decades if electoral process has become full of malpractices, it is a grim reminder of a failing and fragmented party system. The parties now care only about power and have no scruple in adopting any means to get power. It is parties hot pursuit of power that makes the electoral process a vicious exercise. We also witness a new phenomenon. In the name of raising the issues of marginalized sections or regions of the society, the parties are loosing national perspectives. In the name of involving the masses in the political process the parties are ready to stoop to any level and give a good bye to all considerations of competence and credibility. Thus, we find parties using money and muscle power to appease castes and sub-castes, religions and regions, and in this mad rush for votes, not only is the humanity of voters disregarded and devalued, but also the perspective of looking at the parts from the view point of the whole is wantonly set aside. The electoral process and the constitutional provisions work at cross-purposes. In the telling words of Edmund Burke, the political arena degenerates into a clash of hostile and narrow interests.

Under such circumstances, it is neither strange nor unexpected that the electoral success and not the constitutional and political propriety should become the end and the considerations of fairness of means should get marginalized. Therefore, the question of electoral reforms has to be viewed from a multi dimensional perspective. Legal and Constitutional measures have their usefulness but they cover only a small ground. The real renovation of the electoral process depends upon a renovation of the political environments for which the ultimate responsibility lies with the political parties of India.

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