

Old Problems Needs New Rules-Revisiting India's Electoral Reforms

Deepika

JRF Awardee (political science), Delhi, India, E-Mail- deepikadahiya78@gmail.com

Contact No.-011-64544182, 9818684182

Abstract

The word 'Democracy' coined in the preamble can be realized if we have the content of free and fair election process in our system. Election is the medium through which the attitudes, values and beliefs of the people towards their political environment are reflected. Elections impart people a government. The elections today more or less have become an ambitious investment venture, where everyone wants to try their hand at. Therefore each and every step of election process is packed with loads of inaptness. Present paper is an attempt to look at the various issues confronting the electoral reforms in India. The paper indicated the total happenings in the present days Electoral exercise and also suggested some remedies for the betterment of the Electoral system.

Key Words: Elections, Democracy, Election commission, Issues, Electoral Reforms

Introduction

India is the largest democracy in the world. Elections are the most important and immanent part of politics in a democratic system of governance. While politics is the art and practice of dealing with political power, election is a process of legitimization of such power. Democracy can truly function only upon this faith that elections are free and fair and not fixed and influenced, that they are effective instruments of determine 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.

Now a days the election at present are not being hold in ideal conditions or Indian democracy passing through a very difficult phase as the majority of the elected representative who are supposed to be law makers and on whom are entrusted sacred duty of taking our country forward are having criminal background. In other words, Indian political elite is characterized by criminals, who were once law breakers and now have entrusted on to themselves the responsibility of law making. People who are facing criminal charges of rapes, murder, extortion, kidnapping are now sitting at the house of democracy deciding the future of the great India. The commissions to review the electoral reform said "the main cause and source of political decay is the ineptness of the electoral

process which has not been able to keep out criminal, anti-social and undesirable elements from participation in and even dominating the political scene...". Therefore, a reevaluation of the laws and procedures in light of new developments and complexities is essential. The conditions demand 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.

Historical background

The journey of corruption in election process did not happen all of a sudden but gradually in a time span of several decades. The first three elections (1952-62) in our country were by and large free and fair, at that time, challenges were many as it was the first litmus test of a nascent democracy which is going to lay foundation for the years to come, and a decline in standards began with the fourth general election in 1967. ¹ After this, Indian electoral system suffers from serious infirmities. However, with the induction of low quality human materials and increased criminalization of Indian politics and rampant use of corrupt practices need for electoral reforms is now being felt more strongly than ever before. The issue of electoral reforms has been taken up by numerous committees and commissions in the past. Many commissions came up with the proposal to improve Electoral

process in India. Some of such committees and commissions are: Dinesh Goswami Committee on Electoral Reforms 1990, Vohra Committee Report 1993, Indrajit Gupta Committee on State Funding of Elections 1998, Law Commission Report on Reforms of the Electoral Laws 1999, National Commission to Review the Working of the Constitution 2001, Election Commission of India- with Proposed Electoral Reforms, 2004 and the Second Administrative Reforms Commission 2008. These committees first outlined the alarming divergence and irregularities of the Election process and then made recommendations for its implementation.

Issues

There are lots of contentious issues involved in electoral reforms in India, which need to be tackled in order to bring about meaningful electoral reforms in India. Some of the major defects or more important issues are:

1) Law breakers become law makers- Criminalization of politics

Criminalization of electoral process refers to the phenomena of criminals joining the election, contesting elections and often even getting elected to the political offices, some of them also become ministers. This is what is evident in India today. The reason of the criminals behind entrance to politics is to gain influence and ensure that cases against them do not proceed. They are able to make it big in the political arena because of their financial influence. Political parties tap criminals for fund and in return provide them with political patronage and protection. Our politics have been corrupted because the corrupt and criminals have to involved it.² However, since the 70's of the last century, an alarming trend started in the form of penetration of low quality human material in politics at all level- 1) central 2) state and 3) local. Many of the elected members are directly involved in case of extortion and murder. The country side is brimming with gun carrying, criminals, totting as politicians.³ Crime is their source of livelihood but politics provides them the necessary cover of protection from law. This is what is called criminalization of politics. Since the 9th lok sabha election, criminalization of politics and violence has taken widespread turn throughout India. In present day, the influence of

crime on politics has become so overbearing that no party can claim immunity from it. In 1993, the government of India appointed Vohra committee⁴ to examine the connection between politicians and the criminals. The report has made a scathing commentary on the nexus between politician and criminals.⁵ According to the committee, money power acquired by criminals through various illegal activities is used for building up contacts with bureaucrats and politicians and expansion of activities with impunity. The element of muscle power in politics helps the politicians to gain political support. The money power is used to develop a network of muscle power which is also used by the politicians during elections. Violence, pre-election intimidation, post election, victimization, booth capturing both silent and violent is mainly the products of muscle power. These are rife in many parts of the country like Bihar, Western Uttar Pradesh, and Maharashtra etc.⁶ by using of violence, the criminals are able to achieve success at elections for their benefactors. The muscle men have become the order of the day especially in rural areas. It is generally complained that the government in power at the time of election misuse official machinery to further the election prospects of its party candidates. The misuse takes different forms, such as issue of advertisements at the cost of government and public exchequer highlighting their achievements, disbursements out of the discretionary funds at the disposal of the ministers, use of government vehicles for canvassing etc.

The country criminal justice system is too deficient to deal with the activities of the mafia. The provision of the law are particularly weak to put them behind bar. The committee has recommended the setting up an agency to collate the information from all agencies and take immediate, effective and deterrence action against the crime syndicates. Peoples of Representatives Act, 1951(RPA).S.8 (1) lays down the criteria for disqualification of an elected representative. However, S.8(4) of the Act provides: Notwithstanding anything in Subsection -1, Sub section- 2 or Subsection- 3 a disqualification under either section shall not, in the case of a person who on the date of the

conviction is a member of parliament or the Legislatures of the state, take effect until three months have elapsed from the date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the Court.

It is this provision which has been challenged as violative of Article 14, which provides equality before law. It has been alleged that s.8 (4) is discriminatory as it creates two classes of convict- one, the common man who on conviction cannot contest election and second, sitting MPs and MLAs, who would continue to be treated as not convicted despite being found guilty for a heinous offence by a court of law. As a result, the Supreme Court put the question to the centre seeking a detailed response from the Union government on the constitutional validity of S.8 (4) of the Representation of People Act which allows for special treatment to lawmakers. In its 2013 verdict⁷, the Supreme Court has struck down a provision in electoral law that protects convicted lawmakers from disqualification on the ground of pendency of appeal in higher courts. However, the government is not happy with the decision and is considering moving a Bill overruling Supreme Court with the rider that convicted law-makers will not draw salary nor will be entitled to vote till the pendency of the appeal, he can participate in proceedings of the House and will continue to be member. Currently rule 4A of the conduct of Election Rules 1961 requires disclosure of criminal antecedents of candidates S.125 of the Representative of peoples act, 1951 prescribes penalty for withholding or providing incorrect information which amounts to imprisonment of up to six months. The law commission has recommended insertion of s.4A in the Representation of Peoples Act, 1951 to make declaration of assets and criminal cases pending against the candidate's part of the qualification necessary for membership to the House of the People.

Issue of funding – (1) State funding of elections

Electioneering is an expensive affair in every democratic polity. Money power plays a

destructive role in electoral system, affecting seriously the working of periodic elections, It leads to all round corruption and contributes mainly to the generation of black money economy which rules at present our country? The elections were not as costly in 1952 as they have become today, candidate in each constituency has to spend a large amount of money towards election campaign. The adoption of planning and of mixed economy with a large amount of control, regulation, licenses, permits and quotas in India provided enormous opportunities for political corruption and resulted in an unethical nexus between the electoral politics and the business sector of the country. This seems to be continued even today with more disastrous consequences of an overflow of black money into the corridors of political parties despite the liberalized economy induced to the political system of country.

So, a major concern associated with high cost of election is that it prevents parties and candidates with modest financial resources from being competitive in election. In 1972, the joint parliamentary committee on amendments to election laws and others suggested that the state should assume the burden of legitimate election expenses of candidates. However, nothing much could be done and as a result election expenses limits set up by the election commission⁸ are grossly violated by all the political parties thus facilitating criminalization of politics. It would be much better if state funding can be supplemented. In addition, the National commission to review the working of the constitution suggested some measures: 1) state and parliamentary level election to the extent available should be held at the same time. 2) The campaign period should be reduced. 3) Candidate should not be allowed to contest election simultaneously for the some office from more than one constituency.

(2) Audit of assets and liabilities of candidates

Election commission noted that there have been cases where the candidates are alleged to have given grossly undervalued information, mainly about their assets. Lack of proper auditing of their assets and liabilities facilitates use of unaccounted money in election on a widespread

basis. The election commission of India issued an order in pursuance of the Supreme Court verdict in 2003 in the Peoples union for civil liberties v/s Union of India, that candidates for electoral office must submit an affidavit disclosing their assets. National commission to review of working of the constitution has recommended a follow up action to the declaration of assets and audited by a special authority.

(3) Audit of assets and liabilities of political parties

As mentioned above, high cost of election facilitates corruption and criminalization in the public life. Supreme Court judgment in 2003 notified that the candidate must submit an affidavit disclosing his assets. This order, however, does not apply to political parties. In 2004, election commission declared that political parties should be required to public their accounts and gets them audited. The auditing may be done by any firm of auditors approved by the Comptroller and Auditor General of India. The law commission recommended steps to be taken to amend the representation of peoples Act, 1951, inserting a new s. 78A requiring the maintenance, audit and publication of accounts by political parties.

(4) Disqualification for Failure to Reporting Election Expenses

Under s. 10A of the Representation of Peoples Act, 1951, the Election Commission may disqualify a candidate for three years for failure to lodge the account of election expenses as per the requirement of the law. Thus the period of disqualification may end by the time of the next general election to that House. The Election commission has recommended that the period of disqualification should be increased to five years so that the disqualified person does not become a candidate at the next general election to the House concerned.

**Restriction on Media campaign – (1)
Restriction on Government sponsored
Advertisements.**

The Election Commission noted that on the eve of elections, the central and state governments advertise their achievement for the purpose of influencing election. It recommended that where any election is due. Such advertisements should be prohibited for a period of six months prior to the date of expiry of term of the house.

(2) Restriction on Opinion Polls

Previous Committees have pointed out that opinion polls have the tendency to influence voters. The Election Commission has recommended that there should be provision in the law putting restrictions on publishing the results of opinion polls and exit polls for a specified period during the election process. By a recent amendment of the Representation of Peoples Act, 1951, a new s. 126A has been inserted in the Act prohibiting conduct of exits polls and publishing result in any manner during the period started from 48 hours before the closure of the polls in an election. However, the amendment does not cover opinion polls. Consequently, results of opinion polls can be published even on the day of polling. However, the Election Commission is of the view that opinion polls should be banned from the date of notification of election dates which ranges between thirty and forty five days.⁹ However, the opinion that such ban on polls was unconstitutional. However, that freedom of speech and expression under Article 19(1) (a) of the Constitution was fundamental rights but it could be subject to reasonable restrictions and, therefore, telecast of exit polls could be allowed only after voting was completed in all phases.

(3) Restriction on paid news culture

The paid news is undermining democracy in India.¹⁰ Freedom of press is important for any democracy. So, the menace of paid news is to be curbed as soon as possible and it must be a part of larger agenda of electoral reforms. Hence, the time has come for amending the Press Council act, 1978 and gives more teeth to the council to deal with the issue.

Strict adherence to the model code of conduct during election

The Election Commission should be adequately empowered including the power of cancellation of the candidature of those who violate Model Code of Conduct during elections.

(1) Proliferation of candidates

According to the commission, overwhelming number of candidates in election puts unnecessary stress on the management of election and increased expenditure on account of security maintenance of law and order etc. Non-serious candidates are largely floated by serious candidates either to cut sizeable portion of votes of rival candidates or to split the votes on caste lines or to have additional physical force at polling station and counting centers. The voters are also handicapped in identifying the candidates of their own choice. The commissions have recommended measures to check the proliferation of non-serious candidates or the independent candidates should be debarred from contesting election and existing security deposits should be doubled every year for those who fail to win.

(2) Punishment for electoral offences

The widespread and serious violation of election law, it is high time that punishment for various offences should be increased substantially. For instance, undue influence during election times is a common malpractice but these are considered to be non-cognizable offence and punishment for them is either imprisonment of one year or fine or both as per the relevant provisions of the Indian Penal Code (S.171 B/171E in case of bribery and S.171C/171F in case of undue influence). It would be better if the punishment ranges from minimum one year to maximum three years in addition to fine and the offences is made cognizable as it is more of a public wrong than a private wrong rather than vice versa.

(3) Restriction on the number of seats contest

S. 33 of the Representation of the Peoples Act, 1951 provides that a person can contest election from a maximum of two constituencies. If he wins in both the constituency, he will give up one seat in which bye election shall take place

thus adding to the election expenses. Why there is a need for a candidate to contest election from more than one constituency? It does not go with the true spirit of democratic polity. A candidate must be democratically accountable to the voters in a single constituency. If he contests from two constituencies it shows his lack of commitment to both the constituencies.

(4) Educational qualification for representatives

It is imperative that certain minimum educational qualification for those contesting elections and shoulders heavy responsibility of guiding the states and nation. Politics time has come for the flushing out the bad human materials from Indian politics and facilitating the entry of educated and well qualified peoples into the political system. If the parliaments fail in this direction, initiative should come from the Supreme Court through judicial legislation.

(5) Preparation of electoral rolls in proper manner

All commission rightly noted that the electoral process begins with the preparation of electoral rolls. If the rolls are incomplete or defective, the whole process is vitiated. There is large scale registration of bogus voters. All commissions recommended that an automated online database should be created by the election commission, in which each voter would be provided a unique bar-coded ID number. The current unique identification number (UID) can play a main role in weeding out bogus voters.

Strengthening the anti- defection laws

Defection has long been a doldrums of Indian political life. It has been effective source of political corruption. The Anti- defection provision of the 10th schedule of the constitution, 1985 fixed a certain number above which group defections were permitted. The 91st Amendment to the constitution, 2003, changed this by making it mandatory for defectors to resign their positions regardless of whether they defected as an individual or as part of a group. Currently, the issue of disqualification of members of parliament is decided by the speaker. A part from

10th schedule, all other matters of post- election disqualification is decided by the President on the advice of the election commission.

(1) Adjudication of disputes

Ss. 86 (6) and 86 (7) of the representation of peoples Act, 1951 provides that the High Court shall make an endeavor to dispose of an election petition within six months from its presentation. In practice, however, cases involving election petition are rarely resolved in a timely manner. The commissions recommended that special election benches designated for election petitions only should be formed in the High Court and Special election tribunals should be constituted at the regional level under Article 329B of the constitution to ensure speedy disposal of election petitions within six months.

Multi- cornered contests

The mushrooming of political parties is contributing to the political instability in the country. It is high time that non- serious political parties are de- recognized and the security deposit should be increased. The multiplicity of parties has led to destabilization, lack of good governance¹¹ and also decline in political standards. Each one of these exists not on a different ideology or economic programme, but on the basis of having nursed a narrow parochial, mostly caste or religion based, identity for itself and its band of followers. Even this support is usually earned not by doing some constructive work for the concerned group but negatively by bad-mouthing others and the entire time pitting one group against the other. However, given the cultural diversity of India, it is not possible to have two party systems. However, still effort must be made to weed out non- serious political parties.

Need a two- stage electoral process

In the presently prevailing 'first past the post' system of election in India, several of the elected candidates do not represent majority of the voter which amounts to obstructing the basic democratic ethos.¹² The irony of the system is that a candidate with as low as 10 percent votes polled in his favor can win an election.¹³ It also

undermines the ethos of nationalism since local interest is preferred over national interest. This system should be replaced with the proportional representation system under which a candidate must secure at least 50 percent of the total votes in a constituency in order to win. In this system, if none of the candidates gets more than 50 percent votes at the first stage, then at the second stage only two candidates securing maximum number of votes shall contest in which whoever gets more than 50 percent shall be declared winner.

Simultaneous elections

Holding of elections can substantially reduce the burden on state exchequer. A provision should be made that if a government falls in state, an alternative arrangement such as a coalition of all parties can be formed for the time being without going for polling. However, if the government in a state falls and next election is to take place after a considerable amount of time, then fresh election may be held in that state without waiting for national election.

Current Reforms

(1) Judgment of supreme court, July 2013

In, 2013 the Supreme Court ruled that Parliamentarians and Legislators who were convicted of serious crimes, meaning carrying a jail of two years or more would be barred from contesting elections. The court structure down section 8 of the representation of the People Act, 1951 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.

(2) None of the above or Neutral voting

The criminalization of politics, widespread corruption and violence in the system, voter intimidation etc may result in there being no desirable candidate among within those

contesting election in a particular constituency. Currently, there is no way for voters to express their dislike for all the candidates. In this context, a petition has been filed in Supreme Court in 2009 by Peoples Union for Civil Liberties (PUCL v/s UOI) demanding the right to negative vote.¹⁴ Neutral voting means allowing voters to reject the entire candidate on the ballot by a selection of "None of the above" option in the electronic voting machines (EVMS).¹⁵ 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. The main advantage of NOTA is 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. 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.

Conclusion

The reports of various Electoral Commission and a number of formal and informal group discussions at various forums have categorically pointed out the defects in the electoral system, some of them have come out with some useful suggestions, yet the problems remaining to be as critical and challenging as ever. The problem is not lack of laws, but lack of their strict implementation. In order to stamp out these unfair tendencies, there is a need to strengthen the hands of the Electoral Commission and to give it more legal and institutional powers. So, though the Electoral Commission is working hard in this direction, but it cannot succeed unless all political parties and voters realize their responsibility. As mentioned above, the challenges of electoral reforms are many and varied and it is high time that we adopt a pragmatic approach towards the issue. If we want better future for India, the first effort should be in

the direction of electoral reforms which encompasses a number of issues as mentioned above in the paper. It must be remembered that if the democratic institutions are tainted with low quality of human materials, then all efforts to create better and incredible India will be futile.

References

- ¹ Shukia, Subhash (2008). Issues in Indian Politics, New Delhi: Anamika Publishers, p.219.
- ² Kaul Summer (2002). 'Who wants to cleaner Electoral System? Not the Politicians', Parliamentary Affairs, August Bangalore, p.13.
- ³ Vohra, committee report on criminalization of politics.
- ⁴ The committee was set up under the former union home secretary N.N.Vohra in 1993. The report dealt with criminalization of politics in India administration.
- ⁵ <http://www.merineews.com/article/criminalisation-of-politics/154750.shtml> accessed on Sept 12, 2013.
- ⁶ Sundriyal, R. B. and Dighe, Sharde (Ed.) 1997, Electoral Reforms, New Delhi: Shree Publishing House, p.122.
- ⁷ MPs and MLAs will be disqualified on date of conviction: Supreme Court, available at http://www.business-standard.com/article/politics/mps-mlas-will-be-disqualified-on-date-of-conviction-sc-113071000492_1.html accessed on Sept 09, 2013.
- ⁸ Government raises poll expenditure limit, available at <http://articles.TimesofIndia.com/2011-02-25/India/286333481-upper-limit-poll-expenditure-parliamentary-election>, accessed on August 16, 2013.
- ⁹ Govt backs EC move to ban opinion polls, available at <http://www.hindustantimes.com/India-news/New-Delhi/in-election-year-govt-backs-EC-move-to-ban-opinion-polls/Article-1096244.aspx> accessed on August 23, 2013.
- ¹⁰ Majumder, Kunal, Putting paid to media ethics, available at <http://www.tehelka.com/putting-paid-to-media->

ethics.Oct 22, 2011, vol.8, issue 42, accessed on Sept 10, 2013.

¹¹ Panandikar. VA. Pai and Kashyap, Subhash C. (2001). Political Reforms: Asserting Civic Sovereignty New Delhi: Konark Publishers, p. 325.

¹² Ansari, 'First Past the Post' not Real Victory in Polls, available at http://www.thehindu.com/news/national/first-past-the-post-not-real-victory-in-polls-ansari/article_4345360.ece, accessed on Sept 12, 2013.

¹³ Seats by Vote Share, available at <http://www.telegraphindia.com/1130403/jsp/opinion/story16741119.jsp#.Uj8t3bLZp4o>, accessed on Sept 15,2013.

¹⁴ Right of Negative Voting, available at <http://www.www.indianexpress.com/news/right-of-negative-voting/429335/> accessed on Sept 5,2013.

¹⁵ The Negative Voting Option, available at <http://www.livemint.com/opinion/5X0P1xbE0DHY2nAzpqL1O/The-negative-voting-option.html> accessed on Sept 10,2013.