

THE CHANGING NATURE OF ELECTORAL REFORMS IN INDIA: PROBLEMS AND CHALLENGES BY ADITI SINGH AND YOGESH CHHAJER*

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

One of the most Important Features of our Democratic Framework is ‘Election’ which is held at a systematic period. Electoral Reform is a very basic and pertinent concern which helps in choosing a government/ political party in a country for governing the Administration and legislative functions. It is an official decision-making process by which a population elects an individual to hold public office. By Electoral reform we mean that, introducing fair electoral system for accompanying impartial elections. It can also be defined as a system by which voters or electors, select their representatives by casting of votes¹. It is an issue of great interest to all sections of the people and society. The Electoral System in any Country should Support and strengthen the empowerment of the people of the country to use the system to guarantee an equitable Framework of economic and Social Justice². The main Objective of Electoral Reform is to ensure the welfare of the People, in India the constitution was framed to ensure welfare by an equitable dispersal of national wealth and resources.

“Elections are held to delude the populace into believing that they are participating in government.”
- Gerald F. Lieberman

Election forms the backbone of our Democracy. Our Democratic setup confers on us i.e. the right to elect the representatives of the state³. Besides, the elected people have the right to choose the head of the state. Governance is expected to ensure the welfare of the People, in India the constitution was framed to ensure welfare by an equitable distribution of national wealth and resources. Political parties are indispensable in parliamentary democracy. There are 1,200 political parties in India and of these about 150 are active and functioning⁴. The elections in India have a long history. India has both General and State Elections as promoted by our federal structure⁵. The Election Commission of India is the apex body that

* 3rd Year, B.Com. L.L.B (Hons)), Institute Of Law, Nirma University, Ahmedabad.

¹ Sia Shruti, Election Reform in India and challenges before the Election Commission, Available at: <http://www.mightylaws.in/905/election-reforms-india-challenges-election-commission>.

² M. Vijaya Kumar, Need of Electoral Reforms in India: Background Paper, All India Progressive Forum (AIPF), 2009.

³ Megha Shankar, Electoral Reforms in India: issues and Challenges before the Election Commission, Available at: http://www.academia.edu/1982828/An_essay_on_Electoral_Reforms_in_India.

⁴ *Id* 2

⁵ *Id*, 3

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conducts elections in India. Both the General and State Elections are held as per the rules prescribed by the Election Commission.

Elections are the most important and integral 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 power⁶. The essence of any democratic system is the healthy functioning of political parties and, consequently, free and fair elections⁷. The election at present are not being held in perfect conditions because of the vast amount of money required to be spent and large influential power needed for winning the elections. The elections today more or less have become a determined investment undertaking, where everyone wants to try their hand at. Money power, mounting election expenditure, Corruption and other electoral misconducts alter the electorate's results. Uncultivated corruptions in public life and criminalisation of politics result to distortions where the democratic credentials of the electoral system is being questioned seriously. This Trend of corruption in Electoral process was not new but gradually in a time span of several years, they increase in the process. Therefore, each and every step of election practice is packed with loads of inappropriateness.

The journey of corruption in politics is not new in this field. This seed was buried way past during the post-independence era. Initially the need of money was felt only for campaigning and promoting their party in the election, and since the majority voters were illiterate masses so, electioneering was required to be on a large scale. But in recent years inappropriately there has been a growing feeling that the Indian Political System was not Functioning very well.

The criminalisation of our political system has been detected almost consistently by all recent committees on politics and electoral reform⁸. Criminalisation of politics has many forms, but perhaps the most disturbing among them is the substantial number of elected representatives with criminal charges undecided against them⁹. Two measures recommended by previous committees are discussed in this paper: enforcement of the disclosure of criminal antecedents of candidates, and eligibility restrictions for candidates with criminal cases pending against them.

The entry of criminal elements in politics, defections of legislators, communalization of politics, misuses of public office by persons in high positions and money power in elections have made it clear that there are deep seated problems in many sectors of Indian Parliamentary System¹⁰. For example, in the current Lok Sabha, nearly a quarter (23.2%) of the MPs has reported criminal cases against them¹¹. One out of two among them (over 50%)

⁶ Dr. Bimal Prasad Singh, Electoral reforms in India-Issues and Challenges, Vol. 2 Issue 3, IJHSSI, 2013.

⁷ Rajiv Chandrasekhar, An Insider of Indian Democracy, Available at: <http://www.rajeev.in/blog/?p=395>.

⁸ Criminalization of politics Available At: <http://polityinindia.wordpress.com/tag/criminalization-of-politics/>
last visited: 6.09.2014.

⁹ Background paper on Electoral reforms, prepared by the core committee on Electoral reforms and Election Commission of India, 2010.

¹⁰ N.S. Upadhyaya and Ashish Shrivastava, "The Electoral Reforms in Contemporary India", Vol. 3, ISRJ, 2013.

¹¹ *Id*, 2

has cases that could fascinate penalties of imprisonment of five years or more¹². The major flaws which come in the passage of electoral system in India are: money power, muscle power, criminalisation of politics, poll violence, booth capturing, communalism, castism, non-serious and independent candidate's etc.¹³.

Taking cognizance of these grave faults, there have been a number of reports and recommendations on what is essential to be done. Some of the significant examples are the Indrajit Gupta Report, the Dinesh Goswami Report, the 170th Report of the Law Commission of India on Review of the working of political parties and Electoral Reforms and the Recommendations of the National Commission to Review the Working of the Constitution (NCRWC), Election Commission of India with Proposed Electoral Reforms, 2004 and the Second Administrative Reforms Commission 2008¹⁴. These committees first drawn the alarming deviation and irregularities of the Election process and then made recommendations for its implementation. The significant facts however is that almost none of the recommendations of these learned and thoroughly prepared reports have been applied.

Background of Elections and Election Commissions in India

Before 1947 India was under a control of British Constituency. India was wholly and solely controlled and governed by the British law and order. But after Independence, with the Continuance of the British legacy, India has elected for parliamentary democracy form to govern the country. Since 1952, the country has witnessed elections to the legislative bodies at both the national as well as State levels. The electoral system in India is confined by so many hitches and humiliating factors. Such problems encourage the anti-social elements to jump into the electoral dispute. Our system was completely free from any major flaw till the fourth general elections happened in the year 1967¹⁵. The alterations in its working appeared, for the first time, in the fifth general elections (1971) and these got increased in the succeeding elections, especially in those held in the eighties and thereafter¹⁶.

Many a time, the Election Commission has conveyed its concern and fretfulness for removing hurdles in the way of free and fair polls. It has had made a number of recommendations & Suggestions and repeatedly prompted the government the need of changing the existing laws to check the electoral malpractices¹⁷. The Tarkunde Committee Report of 1975, the Goswami Committee Report of 1990, the Election Commission's recommendations in 1998 and the

¹² Electoral Reforms, Vol. I: Recent developments and issues | Polity in India - India as an evolving polity, Available At:

<http://polityinindia.wordpress.com/2013/07/15/electoralreforms/> last visited on: 6.09.2014.

¹³ *Id.*, 5

¹⁴ *Id.*, 1

¹⁵ P.P. Rao, India's Ailing electoral System: Need for Reform, Available At:

<http://www.vifindia.org/article/2013/may/02/india-s-ailing-electoral-system-need-for-reforms#sthash.bw3p8NT7.dpuf> Last Visited: 24.09.2014.

¹⁶ Sumandeep Kaur, Electoral Reforms in India: Proactive Role of Election Commission, Mainstream Journal, 56, 2008.

¹⁷ [http://www1.imp.unisg.ch/org/idd/ipmr.nsf/ac4c1079924cf935c1256c76004ba1a6/9eb8196a99f94770c125722d004709e2/\\$FILE/IPMR_7_2_2006_ARORA_FINAL_001.pdf](http://www1.imp.unisg.ch/org/idd/ipmr.nsf/ac4c1079924cf935c1256c76004ba1a6/9eb8196a99f94770c125722d004709e2/$FILE/IPMR_7_2_2006_ARORA_FINAL_001.pdf) last visited on: 24.09.2014.

Indrajit Gupta Committee Report of 1998 and other committees' reports which we mentioned in the above paragraphs produced a comprehensive set of proposals regarding electoral reforms¹⁸. But the legislature has failed to address the recommendations presented by the various committees. This was the condition before the pre-classical era. Now, Indian legislature, Judiciary and Executive played a crucial part in organizing fair elections in every part of the state. They all clubbed into one party and work in the field of developing the electoral process in India.

A number of new initiatives have been taken by the Election Commission to clean the electoral process in India¹⁹ like: by studying the norms for cataloguing of political parties which cultivate like mushrooms and help in the emergence of two national parties or at least two mixtures of parties (proliferation of political parties), All political parties have protected registration by giving a written undertaking to the Election Commission of India in terms of Section 29(5) of the Representation of the People Act, 1951, Coalition Government etc. are some of the initiatives taken by the Election commission to improve the electoral process in India and conduct a fair election in every region and state.

Electoral System in India

The Constitution of India provides sufficient and efficient provision to control elections under Part XV- Election and Article 324 to 329. Electoral systems are the thorough constitutional activities and voting systems that alter the vote into political decision. The first step is to tally the votes, for which various vote counting systems and ballot types are used. Voting systems then determine the result on the basis of the tally. Most systems can be considered as either proportional or majoritarian. Among the former are party-list proportional representation and additional member system and among the latter are First Past the Post (FPP) relative majority and absolute majority²⁰. Indian democracy has the First Past the Post (FPTP) as its electoral system to provide representation to voters in State Assemblies and in the Parliament of India.

Free and fair elections are the hallmark of a well-functioning democracy. While we are justifiably proud of our democracy, there are a number of areas which need to be strengthened for us to realise the true potential of a well-functioning democracy. India is considered as the largest democracy in the world. However, there is an urgent need to strengthen this democracy which can be done only with some improvements in our electoral process. With the Development in other fields, India is also developing their electoral process. The secret ballot is a relatively modern development, but it is now considered crucial in most free and fair elections, as it limits the effectiveness of intimidation.

Problems of the Political Uncertainty

There has been a prodigious deal of political uncertainty during the last decades. The result has been unstable administration, unregulated rules and unstable policies, the hallmark of minority governments²¹. The reasons are not far to seek. India adopted Westminster model of UK, which works mainly on the basis of a limited number of political parties. Though we

¹⁸ *Id* 15

¹⁹ <http://www.udaipurtimes.com/why-electoral-reforms-must-for-india/> last visited: 6.09.2014.

²⁰ *Id* 8

²¹ Dr. Bimal Prasad Singh, Electoral reforms in India-Issues and Challenges, Vol. 2 Issue 3, IJHSSI, 2013

adopted Westminster model but still the situation is different in India. Politicisation at ground level coupled with a highly uneven society, has given rise to a multiplicity of political parties. This makes very difficult for the voters to decide to whom to vote and invest their vote wisely. The resultant divided vote has made it increasingly tough for single parties to get a workable majority to form a government at the centre. Then ultimately the Political parties choose the form of coalition government to come in power of the government and set aside all the ideologies and faith of the citizens on them. Corruption has thrived, law and order has agonized and control mechanisms have broken down or become very loose. Ultimately, the common citizen has been the victim of all resultant mis-governance²².

• **Reasons for Uncertainty In The Political Parties**

1. **CASTISM:** Although there is hardly any occurrence in India of a political party being absolutely recognized or being known with any particular caste group, yet there are cases of certain castes or group of peoples who are lending strong support to particular political parties. Thus while political parties scuffle among themselves, to win different caste groups in their support by making offers to them by promising to bring betterment to their society or bring them cultured lifestyle, caste groups too try to force parties to choose its members for candidature in elections, If the caste group is dominant or powerful and the political party is an important one, this contact is all the more projecting²³.
2. **COMMUNALISM:** The emergence of India as a 'secular' state, the Diplomacy of communalism and religious fundamentalism in the post-independence era has managed to a number of isolated movements in different parts of the states and regions of the country. Communal divergence, rather multi-polarization, has posed a menace to the Indian political philosophy of pluralism, parliamentarianism and federalism²⁴. Despite the adoption of the principle of Secularism" as a constitutional credo, which fatefully lets communal parties to contest, the trend towards communalism and fundamentalism in Indian politics have been increasing day by day.
3. **PROLIFERATION:** In every Election there is a proliferation of candidates. It has been observed by the Election Commission that a large number of candidates in the Elections are non-serious candidates, which according to the Law Commission of India, makes elections "cumbersome, expensive and unmanageable – indeed ridiculous in some cases. It puts unavoidable stress on the election commission and sometimes it becomes unmanageable for them to control the process.

According to the Election Commission of India, "too many candidates in the election fray puts unnecessary and avoidable stress on the management of elections and increases expenditure on account of security, maintenance of law and order, and requires extra number of balloting units of voting machines, etc.". " The National Commission to Review the Working of the Constitution notes that out of the 1900 independent candidates who contested the general election of 1998, only six actually won.

²² Panandikar. VA. Pai and Kashyap, Subhash C, Political Reforms: Asserting Civic Sovereignty New Delhi, 2001.

²³ *Supra* 2

²⁴ *Id* 23

Issues in Electoral Politics of India

The election at present are not in a very good position because of the amount of money required to be spent on fighting elections and large influential power needed for winning the elections, make the condition of the electoral process even worst²⁵. The foremost defects which come in the path of electoral system in India are: money power, muscle power, criminalisation of politics, poll violence, booth capturing, communalism, castism, non-serious candidates and independent candidate's etc.²⁶. There are some major issues which the election commission should look forward too and made some improvements in the machinery.

1. **MONEY POWER:** In India, Electioneering is a costly affair in every democratic polity which plays a more important role in India. Money power plays in our electoral system and it destructively affects the working of periodic elections, It leads to all round corruption and contributes mainly to the generation of black economy which gives any person to rule the democracy²⁷. A prospective candidate in each constituency/Region has to spend millions and millions of money towards transport, publicity and other essential items of election campaign. Campaigning is also the very essential part of every election and it is the base on which the political parties build their reputation and agenda in the political market and because of which the political parties need to spend tons of money on successful run of the election campaign²⁸. In recent years the expenses on election have increased beyond any limits due to the desire on the part of every political party to spend more than their competitors in the competition. The elections were not as expensive in 1952 as they have become today. Scenario has completely changed from the period of pre Independence era. Elections in India so far from a common man, only those people can participate/Join in elections as a candidate who has a lot of money in his hand. Because of this entire problem, vote is not a right of a common man or not a mean of Public opinion. Today, votes are not cast they are purchased.
2. **MUSCLE POWER:** Violence, pre-election pressure, victimisation, most of the supports of any type, booth capturing etc. both silent and violent is mainly the products of muscle power of politics. These kinds of activities exist in many parts of the country like Bihar, Western Uttar Pradesh, Maharashtra etc. and this Havoc disease is slowly spreading like a wild fire to south like in Andhra Pradesh. Criminalisation of politics and entrance of criminals in politics, freely indulged in now, are like two sides of the same coin and are mainly responsible for the indicator of muscle power at elections²⁹.
3. **NON-SERIOUS CANDIDATES IN POLITICAL PARTIES:** In recent years there has been a steady increase in the number of candidates in elections. The number of candidates has swelled due to the participation of Independents. They contest elections light heartedly and lose their deposits. Non-serious candidates are largely floated by serious candidates either to cut sizeable portion of votes of rival candidates

²⁵ Kaur, Amandeep, Electoral Reforms in India: Problems and Needs (1989-2009), Chandigarh Unistar Publication, p.35, (2009).

²⁶ Ganeshan K., Electoral Reforms, Parliamentary Affairs, Vol. 12, Sangalare, No. 22-32, p.18 (1994).

²⁷ Shukia & Subhash, Issues in Indian Politics, Anamika Publishers, New Delhi, p.219 (2008).

²⁸ Singhvi, Elections and Electoral Reforms in India, New Delhi: Sterling Publishing House, p.165 (1971).

²⁹ Sundriyal, R. B. and Dighe, Sharde (Ed. 1997). Electoral Reforms. New Delhi: Shree Publishing House, p.122.

or to split the votes on caste lines or to have additional physical force at polling station and counting centres.

4. **CRIMINALISATION OF POLITICS:** During the election period, newspapers and broadcasting channels are generally full of information about the number of criminals entering in the field backed by each & every party. The main reason behind entering of criminals in the political field is to clear their track records of crime filed against them and not to proceed further. Political parties tap criminals for fund and in return provide them with political support and protection from any criminal charges. Rough estimates suggest that in any state election 20 per cent of candidates are drawn from criminal backgrounds³⁰. Mafia dons and other powerful gangsters have shown that they can convert their muscle power into votes often at gun point. Even National party gave tickets to the candidates with criminal records. Our politics have been corrupted because the corrupt and criminals have to entered it, Criminalisation of politics has become an all-pervasive occurrence. At one time politicians appointed criminals to help them win elections by booth capturing and other activities. In 2003, a law was introduces to prohibit the entrance of criminals in politics but however, person with criminal Records continue to hold seats in the parliament³¹.

A New Electoral Strategy: A Recent Development in the Election Reforms:

In recent years, we have seen some Development in our Democratic Reform agenda, and creating a serious issue for debate. All the changes which come into the picture are not positive or flawless, but cumulatively they all definitely help to improve the situation, exemplify the serious concern of political parties about the need to address the electoral and governance reform issues, and indicate more fundamental, hard-wearing and far-reaching changes in the electoral system in coming years. Few points which needs to be discussed:

CANDIDATE DISCLOSURE: On March, 2003 in the judgement of People's Union for Civil Liberties and ors. V. Union of India and Anr³², Apex Court of our country gave its verdict on candidate disclosures and declared Section 33B of the —Representation of the People Act, 2002 (Amendment Act)“ illegal, null and void, and go over its earlier judgment on May 2, 2002³³. Supreme Court held that citizens have the fundamental right to know the backgrounds of candidates who are competing for elective office, as part of freedom of expression guaranteed under Article 19(1) of the Constitution of India³⁴. Now, if candidate does not disclose there general information about their background then their nomination can be disqualified.

LIMITING THE SIZE OF COUNCLI OF MINISITERS: By 97th Constitutional Amendment Act it now also restricted the size of the Council of Ministers at the union and state level to 15% of the strength of the lower house³⁵. The impact of this decision will be good

³⁰ *Supra Bimal 6*

³¹ Election Commission of India Proposed Electoral Reforms, New Delhi: Nirwachan Sadan, 2004.

³² (2003) 4 SCC 399

³³ Voters must know the candidates, the SC rule, India Together, Available at: <http://indiatgether.org/legislation/rulings/candidate02/judgement.htm> last visited: 26.10.2014.

³⁴ Politics and Nation, Economics Times, Available At: http://articles.economictimes.indiatimes.com/2014-05-13/news/49820822_1_criminal-antecedents-apex-court-fundamental-right last visited at: 26.10.2014.

³⁵ Jayprakash Narayan, Electoral and Political Party Reforms in India, Available at: www.loksatta.org

governance structure and unnecessary expenditure by the government. This law will also have an influence on alliance politics, as the parties will now be constrained in doling out ministerial positions for oath of support.

Curbing the Cost of Campaigning:

It has been observed by various committees that in order to cure the negative impact of the excessive cost of elections, the first step should be to reduce the cost of elections themselves³⁶. Funds given by the parties for campaigning should be reduced so that, the misuse of money can be stopped. For this purpose the Committees (Indrajit Gupta committee) suggested that a suitable law should be enacted providing penalties or reasonable restrictions on these kinds of activities.

Checking Criminalisation in Politics:

“Power is the spoiler of men and it is more so in a country like India, where the hungry stomachs produce power hungry politicians³⁷.” The Election Commission (EC) has articulated its serious concern over the entry of anti-social and criminal persons into the electoral field. The Commission has advised all political parties and political personalities to reach an accord that no person with a criminal background/record will be allowed to enter in to the political arena. The candidates to an election are also obliged to submit an affidavit or undertaking in a prescribed form declaring their criminal records, including convictions, charges pending and cases initiated against them. The information so furnished by the candidates shall be scattered to the public, so that the common public would also come to know about the person to whom they cast their precious vote.

Recommendations and Suggestions:

1. To eliminate the expanding of parties in the political arena, the Election commission should now registers a party which has at least 100 registered electors as its members and is also charging a small processing fee of Rs 10,000 to cover the administration expenses.
2. The election commission should also put restriction on the amount of money invested in the campaigning of the political parties. Election commission also raised certain suggestions from time to time. The Commission has fixed legal limits on the amount of money which a candidate can spend during the election campaign. These limits also have been studied from time to time.
3. The EC was made a multi-member commission by the government in the stir of certain controversial decisions taken by the Chief Election Commissioner. It was observed in the decision of *S.S.Dhanao V. Union of India*³⁸, Supreme Court observed that when election commission worked in so many areas to control the misconduct in

³⁶ Background paper on electoral reforms, prepared by core committees on election reforms, 2010.

³⁷ *Supra* [Sumandeep Kaur 16](#)

³⁸ 1991 SCC (3) 567

the election, a multi member commission body should also be established to put check on the working of election commission.

4. Inclusion of a chapter in the Representation of the people Act, to govern the creation and functioning of political parties to avoid their rupture and to guarantee internal democracy and maintenance of funds.
5. In case of electoral offences and certain other serious offences, framing of a charge by the court should itself sufficient ground for disqualification, apart from conviction.
6. Any party, which receives less than 5% of the total votes in election to the Lok Sabha and Assemblies shall not be entitled to any seat in any political party and shall not be allowed to contest election.
7. Those candidates, whose criminal cases pending in the courts should be disposed of speedily by the courts by creating special courts by the government for speedy trial. Government should take initiative to introduce a far-reaching effect to this suggestion.
8. On state funding of political parties, it has recapitulated the recommendation of Indrajit Gupta Committee subject to certain changes.
9. Candidate should also declare their sources of income along with the declaration of their total assets and liabilities.
10. Introduce the option of NOTA on the EVM's for better alternatives to the voters. The option of "None of the above" should be there on the Electronic Voting Machines (EVMs) under section 49 (0) to protect the identity and right of the voters.

Conclusion

Over the years, the Election Commission has conducted a number of creditable electoral reforms to strengthen democracy and improve the fairness of elections. Nowadays, election has not become so easy and smooth. Corrupt practices have taken place in election these days. 'Criminal entry' in politics has become a regular or general practice. It should be checked in a proper and effective manner. It is not so easy task but Sincere and genuine efforts are required by all side; especially the 'political parties' should be neat and clean in this matter. The main problem is not lack of laws, but lack of strict implementation of these laws. In order to eradicate these unfair practices in election, there is a need to strengthen the hands of the Election Commission and to provide them more legal and institutional powers. A meeting of mind should be developed in political arena that all types of reforms in the election is the utmost need of the time. This is necessary to protect the democracy in the country.