



## **ELECTORAL REFORMS IN INDIA: AN ANALYSIS**

*By: Shubham Kashyap Kalita<sup>1</sup>*

### **ABSTRACT**

India being the largest democracy in the world with low literacy rate and vast disparities among the people manage to conduct regular periodical elections. "Democracy" and "free and fair elections" are the two inseparable bones as democracy is sustained by "free and fair elections." Free and fair elections based on the adult franchise are the basis of democracy. But this basis is losing its way because of various unfair activities obscuring the lunar rays of our electoral process. Due to the growing deterioration in the election process, today the question of electoral reforms arises. There is a dire need for strengthening the electoral system of our country in order to achieve the true status of democracy. It is always said that justice must not only be done but must also be seen to be done. Similarly, elections should not only be fairly and properly held but also seen to be conducted in a fairly manner so as to inspire the electors. Keeping in view the importance of the subject-matter, an attempt will be made to discuss the major issues which are to be resolved and will also try to put some insight on the reforms that can be sought to bring to eliminate those unfair activities and in ensuring people free and fair elections in the country.

### **EVOLUTION OF ELECTORAL SYSTEM IN INDIA**

The origin and growth of election in India can be traced back to the Indian Freedom Movement where the Indian leaders had constantly demanded the introduction of the representative institutions and the association of Indian people with the administration. There was no regular election machinery under the Acts of 1861, 1892, 1909, 1919 and 1935. Only certain gap arrangements were made for the conduct of elections. In fact, no regular election machinery was required till the passage of the Government of India Act 1909.

The election procedure, which we are practicing presently in India, has its evolution in the early part of the twentieth century, with the British made Indian Councils Act, 1909 where the elective element for the natives in the legislative bodies in British India found its introduction. The legislative bodies which are created under the Indian Councils Act, 1909 continued up to 1915, when the Government of India Act, 1915 superseded the earlier act.

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<sup>1</sup> National Law University and Judicial Academy, Assam



This act of 1915 was further amended by the Government of India Act, 1919 in order to bring in reforms, known as Montague-Chelmsford reforms.

After India attained Independence in August 1947, there was a need to hold General Elections to elect a truly representative Government on the basis of universal adult suffrage. Article 324, which provides for the setting up of election Commission as an independent constitutional authority, was therefore brought into force from November 26<sup>th</sup>, 1949, whereas, most of the other provisions were made effective from January 26<sup>th</sup>, 1950 (when the Constitution of India became effective). Election Commission was formally constituted on January 25<sup>th</sup>, 1950, a day before India became the Sovereign Democratic Republic. The first Chief Election Commissioner, Shri Sukumar Sen, was appointed on March 21<sup>st</sup>, 1950.<sup>2</sup>

The Chief Election Commissioner and two Election Commissioners are given the same salary and allowances as of a judge of the Supreme Court. All the three Commissioners have equal powers in decision making and in case of any difference of opinion on any issue; the decision is taken by the majority. The term of the office of CEC and ECs is six years or till the age of 65, whichever is earlier. For the purpose of first General Election to the Lok Sabha and Vidhan Sabhas, the first delimitation order was issued by the president, in consultation with Election Commission and with the approval of Parliament on August 13<sup>th</sup>, 1951.

To provide a legal framework for the conduct of elections, Parliament passed the first act on May 12<sup>th</sup>, 1950 (Representation of the People Act, 1950) providing mainly for the preparation of electoral rolls and second Act on July 17<sup>th</sup>, 1951 (Representation of People Act, 1951) laying down the procedure for the conduct of elections to both Houses of Parliament and Vidhan Sabhas for each state.

Electoral rolls for constituencies were published in all states by November 15<sup>th</sup>, 1951. The total number of voters (excluding J&k) was 17, 32, 13,635 as against the total population of India (excluding J&K), 35, 66, and 91,760 according to 1951 census. The first General Elections to the Lok Sabha and Vidhan Sabhas were held between October 1951 and March 1952. The first Lok Sabha consisting of 497 members was constituted on April 2<sup>nd</sup>, 1952. The first Lok Sabha consisting of 497 members was constituted on April 2<sup>nd</sup>, 1952. The first Rajya Sabha consisting of 216 members was constituted on April 3<sup>rd</sup>, 1952. At the time of the first General Election in 1951-52, the commission had recognized 14 political parties as

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<sup>2</sup> Chopra, J.K. (1984). *Election Reforms in India since 1952* (Unpublished doctoral dissertation). Meerut University, Meerut.



multi-state parties and 39 parties as the state parties. Presently, there are seven recognized National Party and 40 state parties.

For the first and second general election elections in 1951-52 and 1957, the Election Commission adopted the 'Balloting system' of voting. Under this system, every candidate was allotted a separate ballot box at each polling station in a screened compartment and the voter was required only to drop his ballot-paper, the centrally pre-printed ballot papers into the ballot box of the candidate of his choice.

The Electronic Voting Machines (EVMs) were used for the first time in the part of Parur Assembly Constituency in Kerala in 1982, on an experimental basis. Later, the extensive use of EVMs started in 1998. The EVMs were used at all polling stations in the country in the 14<sup>th</sup> General Elections to the Lok Sabha in 2004 for the first time. Since then all elections to Lok Sabha and legislative Assemblies have been held using EVMs.<sup>3</sup>

Since 1951-52, Sixteen General Elections have been held to the Lok Sabha and 348 General Elections to the Vidhan Sabha and the country is now fully geared for the 17<sup>th</sup> countrywide general elections to Lok Sabha.

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### **ELECTORAL LAWS IN INDIA**

Elections are basically conducted according to the constitutional provisions, supplemented by laws made by parliament. The major laws are Representation of the People Act, 1950, which mainly deals with the preparation and revision of electoral rolls, and the Representation of People Act, 1951, which deals, in detail, with all aspects of the conduct of elections and post-election disputes. The Supreme Court has held that where the enacted laws are silent or make

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<sup>3</sup> Employment news, *Evolution of Electoral system in India*, (May 10<sup>th</sup>, 2018, 4:00 pm), <http://employmentnews.gov.in/Evolution-of-Electoral-System-of-India.pdf>

<sup>4</sup> Ibid



insufficient provision to deal with a given situation in the conduct of elections, the Election Commission has the residuary powers under the constitution to act in an appropriate manner.

Part XV of the Constitution of India deals with Elections. It contained six articles i.e., Article 324 to 329.

Under articles 243K and 243ZA of the constitution of India the elections of the local bodies' i.e. Panchayats and Municipalities are held and they are under the responsibility of the State Election Commissions.

There is a number of legislations which deals with the election process in India as:

1. Representation of the People Act, 1950
2. Representation of the People Act, 1951
3. Indian Penal Code, 1860
4. The Delimitation Act, 2002
5. The Election Commission (Conditions of service of Election Commissioners and Transaction of Business) Act 1991
6. The Parliament (Prevention of Disqualification) Act, 1959
7. The Presidential and Vice-Presidential Elections Act, 1952<sup>5</sup>

### **ISSUES AND CHALLENGES BEFORE THE ELECTION COMMISSION**

The question of Electoral reforms acquires importance in India at the present day due to the growing deterioration in Electoral politics. Today Most of the Indian citizens do not have faith in the way that our elected representatives are chosen and it seems to be a danger to the very idea of democracy itself. There are many issues which are standing as a challenge before the Election Commission. Widely held views among the public with regard to the criminalization of politics, the use of money power in securing votes, the paid-news disease are some of the issues that are enlarging the trust deficit with regard to our electoral process. Some of the problems which deteriorate our electoral system are being discussed-

#### **Criminalization of Politics**

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<sup>5</sup> Mahabir Prashad. Jain, Samaraditya Pal & Ruma Pal, M.P. Jain *Indian constitutional law: with constitutional documents* (2010).



During the Election period, newspapers are usually full of information about the number of criminals in the field sponsored by every party. The reason of the criminals behind the entrance to politics is to gain influence and ensure that cases against them are dropped or not proceeded with. They are able to make it big in the political arena because of their financial clout. Political parties tap criminals for the fund and in return provide with political patronage and protection. Rough estimates suggest that in any state election 20 percent of candidates are drawn from criminal backgrounds: Mafia dons and other powerful gangsters have shown that they can convert their muscle power into votes often at gunpoint. Voters in many parts of the country are forced to vote for the local strongman. Tickets were given to the candidates with criminal records even by National Party. All these instances reported time and again show that Democracy in India has largely failed to be what it was meant to be because the electoral system has been perverted. Our politics have been corrupted because the corrupt and criminals have to enter it Criminalization of Politics have become an all-pervasive phenomenon. At one time politicians hired criminals to help them win elections by booth capturing. Today, those same criminals have begun entering parliament and the state legislature.

**Misuse of Government Machinery:** It 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 of official machinery 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 misuse of official machinery in the ways mentioned above gives an unfair advantage to the ruling party at the time of elections. This leads to the misuse of public funds for furthering the prospects of candidates and of a particular party.

**Financing of elections:** It is widely believed that in many cases successfully contesting an election costs a significant amount of money that is often much greater than the prescribed limits. But the problem with the extravagant spending of money is that the person who wins the election spends all his or her time recovering the money that he or she spent during the election and in returning the favor to those who funded him or her, rather than focusing on real issues of governance. In addition to these citizens are directly affected because apart from compromised governance, the huge money spent on elections pushes up the cost of



everything in the country and in return the general citizen has to face the real hurdles. Moreover, it has been seen that electoral compulsion for funds becomes the foundation of the whole structure of corruption.<sup>6</sup>

**Conduct and management of elections:** The massive size of the Indian electorate makes general elections an enormous and daunting exercise. The National Commission to review the working of the constitution, 2001, stated in its report that holding of general elections in India is equal to holding of elections for Europe, the United States, Canada, and Australia if all put together. In order to administrate the electoral process successfully, it requires more than 50 lakh personnel and almost 1 million polling booths. Millions of security personnel are required to promote a peaceful and incident-free voting experience rigging of elections have become common facets of the electoral system in India.

### **ELECTORAL REFORMS IN INDIA**

The health of a democracy depends on the choice of representatives and leaders, which in turn is directly linked to the way political parties function and elections are conducted. While we have outstanding men and women in public life, a flawed electoral process is increasingly alienating public-spirited citizens from the political and electoral arena. The persons best equipped to represent the people find it impossible to be elected by adhering to law and propriety. If elected, decent citizens cannot survive for long in elective public office without resorting to, or conniving in, dishonest methods. Even if they survive in office, their ability to promote public good is severely restricted.

Indian people have often been changing governments and elected representatives. However, this change of players has a little real impact on the nature of governance. Even if all those elected loose, and all losers are elected, the outcome is not substantially altered. This sad situation calls for a change in the rules of the game, and citizens cannot be content with a mere change of players.

#### **Steps by the Government:**

The reports of various EC and a number of formal-informal group discussions at various forums and by individuals have categorically pointed out the defects in the electoral system, some of them have ventured to come out with some useful suggestions, yet the problems

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<sup>6</sup> *Election Reforms in India and Challenges before the Election Commission*, Mighty Laws Simplified... (2012), <http://www.mightylaws.in/905/election-reforms-india-challenges-election-commission> (last visited May 11, 2018).



remaining to be as critical and challenging as ever. The Joint Parliamentary committee on amendments to Election Law (1971-72), the Tarkunde Committee Report of 1975, the Goswami committee report of 1990, The Constitution Bill 1994 and the Representation of the People (second amendment) Bill, 1994 (passed by parliamentary), the Election Commission's Recommendation in 1998 and Indrajit Gupta Committee Report of 1998 etc. produced comprehensive set of recommendations regarding electoral reforms. Few reforms have been implemented but a lot has to be done.

The Election Commission has taken several new initiatives in the recent past as a use of state-owned Electronic Media for broadcast or telecast by political parties, checking: criminalization of politics, providing with electoral identify cars, streamlining the procedure for registration of political parties and requiring them to hold regular organizational elections, a variety of measures of strict compliance e of Model code of conduct for providing a level playing field to contestants during the elections, and so on. In India, the BC has established a set of guidelines known as the Model code of conduct that must be obeyed by political parties and candidates in the run-up to an election. These guidelines are intended to ensure that the ruling party at both the national and state levels- does not misuse its official position to gain an unfair advantage in an election.<sup>7</sup>

### **SUGGESTIONS**

The following suggestions can be taken into consideration for making electoral process in a free and fair manner:

- a) The influence of muscle power in Indian politics has long been a fact of political life since the First General Elections of 1952. The criminalization of politics is a serious threat to the electoral system and there is an urgency of taking some radical reforms so that the political parties could have taken certain initiatives in removing this trend, and it can be done by refusing tickets to politicians with a criminal background.
- b) If we see the Election commission does not have an independent staff of its own presently. Whenever elections take place, the Election Commission has to depend upon the staff of Central and State Governments. The Dual responsibility of the

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<sup>7</sup> *Electoral Reforms - Law Commission of India*,  
<http://www.bing.com/cr?IG=CFD80E0873BD4F5F924F34D713C8EC0E&CID=0A998D237DE867E4305A86D97C1566E0&rd=1&h=8A-HKhul30322MmiDcTznZRe6PoA0gJgp-pNAJ9Csk8&v=1&r=http://lawcommissionofindia.nic.in/reports/Report255.pdf&p=DevEx.LB.1,5542.1> (last visited May 13, 2018).



administration of the administrative staff, to the government for the ordinary administration and to the EC for electoral administration is not conducive to the impartiality and efficiency of the commission. Along with it comes the problem of disciplinary control over the staff deputed to do election work which generally generates confrontation between the government and the BC. Now, when the elections have ceased to be a mere periodical affair, it is desirable that the BC should have a permanent electoral administration with adequate disciplinary control over the staff.

- c) In the present day arena when the electoral reforms appear to be corroding the vitality of political parties and vitality of democracy it has been found that campaign expenditures play a significant role in election outcomes. If the laws relating to funding of elections intended to be effective with regard to their transparency, they should be general in nature and enforced with respect to everyone, and not just political parties or candidates, but also to the donors as well. Therefore, state funding to political parties should be introduced which will eliminate to some extent the influence of money power, black money support and raising funds in the name of elections by the political parties.
- d) The electoral process begins with the preparation of electoral rolls. If any attempt has been taken to reform the electoral process in our country one must first tackle the question of faulty electoral rolls. The electoral rolls should be updated constantly and periodically it should be posted on the website of the Election Commission. Prior to elections, these rolls should be printed and publicly displayed at the post offices in each constituency, as well as at the panchayats or relevant constituency Head Quarters.
- e) The election campaigns which are crafted to create or exacerbate tensions between communities and/or to incite feelings of hatred on the basis of caste, community, religion, race or language attract disqualification at present but effective implementation of laws in this regard is lacking. This deserves the highest degree of attention. If any election campaigns on the basis of caste and communal hatred in the society during elections should be punishable with mandatory imprisonment.

### **CONCLUSION**



Elections which imply a claim of processes from the filing of nominations to the declaration of results are the necessary concomitant of democracy. But free and fair elections provide the marrow to nurse a healthy democratic life and constitute the yardstick to measure its strength and vitality. The electoral administration saddled with the responsibility of conducting the election and must, therefore, be immune from any undue pressure either by the executive or the legislature. Independent election machinery should ensure that corrupt electoral practices should be kept to the minimum if not totally eliminated. It is quite common to put almost the entire blame for the current state of affairs on the so-called political class in the country. But what is overlooked is the fact that the political class does not exist in isolation; it emerges and evolves out of the society at large. Therefore, the society in general, of which all of us are a part, cannot escape the responsibility for the existing state of affairs. Any serious thought over electoral reforms must be based on clear thinking, rational analysis, and sensible goals. It is true that changing the electoral system is not going to be an easy task but it must be done if democracy has to be preserved and strengthened.