

Electoral reform in India

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Abstract

The primary objective of this research is to introduce law and practice of election so as to discuss issues selectively for specific suggestions after arriving at rational conclusions. The conclusions may summarize issues discussed but they may not become suggestions, but they play important role in selecting important issues so that system of elections can be improved. Free, fair, fearless and impartial elections are the guarantee of a democratic polity. Effective mechanism is the basic requirement for having such election. For conducting, holding and completing the democratic process, a potential law based upon requirements of the society tested on the touchstone of the experience of times is concededly of paramount importance. The purpose of all the provisions mentioned in Article-325 is to integrate the minorities into one mainstream of national life and thus keep check on the diverse forces which may be released by the existence of several minority groups. That is why the system of separate electorates was not adopted and elections to all legislatures are held on the basis of joint electorates.

Keywords: elections, reforms, democracy, money power, representation of people

Introduction

Electoral reforms are necessary in India to ensure free and fair elections. Over a period of time, the election commission may feel the need to bring in new changes so that the very ethos of free and fair election is not defeated. The term 'Electoral Reform' refers to the change in the systems of election process in order to improve on the desirability of the public in the election results. One of the prime factors in electoral reforms is the change in the process and procedure of voting System. Electoral reforms are a must in India and to introduce these reforms, the younger generation and the middle-class need to be more sensitized hence making them more aware. To make the younger generation more aware about the electoral reforms it is necessary that the universities in the country produces more people who knows the art of playing with democracy. The role of the politician in this regard would be that, they would never allow these reforms. There are 542 members in parliament since the 12th Lok Sabha elections, whereas during this period the population of the country has increased manifold and to add to that the voting age has been brought down to 18 years.

To look at it in another way we will find that one Member of Parliament (MP) represents 1.2 million people which is something very unfortunate and needs to be changed immediately.

If we look into the issue of delimitation of constituencies in the country we will find that the boundaries have changed but the number of constituencies has remained the same. In this case the delimitation should have been in the number of voters and not the geographical boundaries. Talking about the Indian Constitution it can be said that the Constitution has maintained its dignity of democracy for the last 62 years even when a developed country like United States failed. Talking about the Indian Constitution it can be said that the Constitution has maintained its dignity of democracy for the last 62 years even when a developed country like United States failed. Although the Indian constitution has had a

success story for the last 62 years yet it is reaching the crossroads. There are many reasons for it and one of them being the great disparity existing in Indian democracy where 61 Indians with billions of dollars regulate the one-third of GDP growth of the country whereas 80 per cent of the population earn only Rs 20 daily. In order to effectively implement the electoral reforms and make it functional there are certain changes that have to be implemented by the Election Commission.

The first thing is the amount of money and muscle power that is involved in elections has to be very closely monitored and stern steps should be taken against people involving in the malicious use of money and muscle power.

Secondly the people of a constituency should be accorded the power to recall. In order to avoid illegal use of money in promoting one's candidature and party for election, annual audit of the representatives from various parties should be regularly conducted. There should be a close monitoring on people's participation. In this age of technological advancement effective use and role of technology is very important.

If the process of voting instead of visiting the polling station with the help of technology can be made through the internet where one can visit the website and cast one's vote then the voting percentage might be on higher side unlike the contemporary poor percentage of voters turning out to cast one's vote. Besides this, the political parties should also function democratically with periodic elections, well defined code of conduct and subject to a stubborn anti defection law.

The beginning of electoral reforms should be first of all implemented at the student's union level because it is the nursery of political parties where various students' unions follow various political parties and is also supported by the political parties in various ways. Like strong roots is the major reason behind a huge tree standing tall and facing all the natural atrocities, in that same way electoral reforms should be implemented first from the roots i.e. the student's

union.

Meaning of Election

According to Webster's dictionary 'election means the act or process of choosing a person for an office, position or membership by voting. In the Representation of people act, 1951, the word election is defined as election means an election to fill seat in either house of parliament or in the house of the legislature of each state [section 2(d)].

According to Black's law dictionary the term "Election" means choice of persons to fill public office. According to Advanced Oxford dictionary "Election" means the process of choosing a person or a group of people for a position, especially a political position choosing, by voting.

In Election commission of Election Commission of India v. Shivaji & ORS ^[2], the apex court held that the word "Election" "covers every part of the process. The word "election" "has been used in part XV of the constitution of India in a wide sense that is to say, to connote the entire procedure to be gone through to return a candidate to the legislature. Thus the term "election" includes every stage from the time of notification calling for the election to the declaration of the result.

History of Indian Election

Election in India is not new concept. Ancient historians have recorded graphic details of the people of choosing their own heads, ganapatis, of the great vaishhali ganarajya Thousands of years back, to lead them in times of peace and war. They were assisted by other wise men and nobles in their decisions making, like the present council of ministers. Although complete details of the working of the republican forms of government in ancient India are not available it is known that in some of these republics every adult member had the right vote and to be present in the general assembly, which decided all public affairs. With the increase of population and the growing complexities of the structure it became increasingly difficult for all citizens to assemble at one place for the purpose of deliberation on state affairs gradually this resulted in the evolution of some kind of representative government. We find numerous references to election referendum, voting ballot papers, etc in the history of Hindu polity.

Election in the modern form have seen their evolution in India in the early part of the twentieth century. Even in the 19 century, the British parliament had provided for the of bodies to the legislate on local laws under the Indian councils Acts of 1861 and 1892. But the legislative bodies created there under were only of nominated members, with no representation of the local people under the former act and with small element of local representation under the latter. The elective element for the natives in legislative bodies in British India found its introduction for the first time under the Indian councils act 1909. This act was passed by the British parliament to give parliamentary approval to a scheme, known as the Morley-Minto reforms ^[3]. The act provided for the setting up of legislative councils at the centre under the governor -general of India and in the provinces under the provincial governors. The first central legislative council constituted under that act consisted of 68 members, of whom 27 were elected members. They were however chosen not by the common people of India but by special constituencies, such as municipalities, district and local boards, universities chamber of commerce and trade

associations and group of person such as landholders or tea planters. Further, this act, far from being beneficial to the Indian people, was responsible for sowing the seeds of communal disharmony and hatred between Hindus and Muslims, which ultimately lead to the partition of India in 1947 in to two separate countries, India and Pakistan, on the ground of religion. The said act provided that certain seats in the legislative councils would have be reserved exclusively for Muslim and the members to hold those seats would be elected by separate electorates consisting of Muslim electors only.

The 1919 act was considered to be some improvement over the earliest set-up under the 1909 act. However, It also continued the old practice of reservation of seats for Muslim and separate electorates for them. in addition from the first time, this act provided for further reservation for Sikhs. Under this act, a bicameral legislative body was created at the centre -the council of state as the upper house, and the central legislative assembly as the lower house for the first time, the elected members constituted the majority in each of the house. The central legislative assembly was to consist of 145 members, of which 105 were to be elected and the remaining to be nominated. The tenure of assembly were to be three years. The council of state was to have 60 members, of which 34 were to be elected, and the rest would be the governor general and nominees. the term of the council was to be for five years. Though the act provided for direct elections from the constituencies to both the houses, only a limited number of persons were granted the right to vote on the basis of certain high qualifications, like the ownership of property ;or payment of income tax, or payment of municipalities tax, or the holding of land, etc. The franchise to the council was far more restricted property qualifications had been pitched so high as to secure the representation of only the wealth landowners and merchants. for other interest for whom seats were reserved, previous experience in a central or provincial legislature, service in the chair of a municipal council, membership of a university senate and similar tests of personal standing and experience in public affairs were necessary qualifications for a vote. The 1919 act also fell far of the demands and expectations of the Indian people. The National Congress spearheading the freedom movement described it as "inadequate" 'unsatisfactory' and 'disappointing' in its annual session of 1919.

As a result of disenchantment if the Indian people with the constitutional setup under the 1919 act, the British government held a series of Round Table conferences with the Indian leaders. It then published a white paper in March 1933, proposing a new constitutional order for Indian with diarchy at the centre, and a responsible government in the provinces. However, the white paper was also rejected by the people of India. Regardless of this rejection, the British Parliament passed on, 2 August, 1935, the government of India act 1935.

The 1935 act also provided for a legislature in every British province. Assam, Bengal, Bihar, the united provinces, Bombay, madras were to have bicameral legislatures, consisting of two chambers, namely, the legislative assemblies and legislative councils; the other provinces were to have a single chamber called the legislative assembly. The strength of these assemblies and councils varied from province to province. Whereas the legislative councils were to be permanent chambers without one-third

of their member retiring every third year, the legislative assemblies were to have a term of five years, unless dissolved earlier by the provincial governor^[4].

Pillars of electoral reforms

Indian democracy is among the largest in the world. This year, over 90 crore people will exercise their vote to send 543 representatives to India's 17th Lok Sabha. The number of voters has gone up by over 8.4 crore since 2014, with 1.5 crore voters in the age group of 18-19 years, exercising their right to vote for the first time. The entire electoral exercise rests on three pillars — Article 326 of the Constitution, the Representation of the People Act 1950 and the Representation of the People Act 1951.

Who can vote?

Article 326 of the Constitution prescribes who can vote. Voters in the age bracket of 18 to 19 should thank the 61st amendment in the Constitution on March 28, 1989 which lowered the voting age by three years. The article says, "The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage. Every person who is a citizen of India and who is not less than eighteen years of age and is not otherwise disqualified under this Constitution or any law on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any election."

What about the Representation of the People Act, 1951?

This was enacted to regulate the conduct of elections, specify the qualifications and disqualifications for membership of these houses, curb corrupt practices and other offences and to lay down the procedure for settling doubts and disputes arising out of elections.

This Act, too, has been amendment many times with the latest in 2017 to make certain provisions gender neutral and also permit overseas voters to exercise their rights through proxy. It may be noted that Section 20A of the Representation of the People Act 1950 provides for registration and enrolment of overseas voters in the electoral rolls.

The Registration of Electors Rules in 1960 had allowed overseas voters to register themselves in the electoral rolls of their respective constituencies on the basis of self-attested copies of their passport and a valid visa. They could exercise their franchise in person on production of original passport at the time of voting at the specified polling booth. This effectively required physical presence for people residing overseas to cast their vote which caused practical problems.

With the 2017 amendment, it has become possible for overseas voters to exercise their franchise remotely from abroad, by appointing a proxy to cast the vote on their behalf, subject to certain conditions. According to the Election Commission, 71,735 overseas voters have been enrolled in the electoral rolls for the upcoming polls.

Electoral reforms by Supreme Court^[5].

The motto of the Supreme Court of India is *Yato Dharma Tato Jaya*^[6] which roughly translates to "where there is the truth, there will be victory" and it has been widely perceived by the public as the last hope of the common people. Supreme Court of India is the watchdog of our Constitution and the highest court of law in India. Other than its routine

powers, it has the power of legislative, administrative and judicial review. Elections in India are often influenced by money and muscle power of the political parties and wealthy industrialists. Election Commission and the Supreme Court of India have played an important role in trying to reduce the influence of money and muscle power in elections in order to make elections more transparent and honest. It is of no doubt that we need a lot of electoral reforms and the legislature and executive has been lax in their duties to formulate and implement meaningful reforms. They have, at times, tried to undermine the electoral process some of which will be discussed later in the article. Meanwhile, the Supreme Court has made up for these misdemeanours by legislature and executive.

One of the landmark judgments given by Supreme Court has been on the case of *Union of India (UOI) vs. Association for Democratic Reform (ADR) (2002)*^[7]. In this case, the Supreme Court directed the election commission to ask the candidates who are standing for elections for either State Legislature or Parliament to file an affidavit stating their financial position, criminal background and educational qualifications. This will help people to make an informed choice with respect to their representatives as well as motivate political parties to pick deserving candidates who are well reputed for elections. The Supreme Court had to intervene to make sure that its directive was followed since the Parliament tried to hoodwink the ruling by introducing an ordinance to amend The Representation of People Act, 1951 by adding section 33-B and further passing it in the Parliament to make it a law. The Supreme Court struck down the amendment on the basis that it was in violation of article 19(1) (a) for it sought to nullify court's order in *UOI vs. ADR (2002)* case. In *Resurgence India v Election Commission of India (2013)*, Supreme Court ruled that "returning officer can reject nomination papers of a candidate for non-disclosure and suppression of information, including that of assets and their criminal background". This was a huge boost for the proper implementation of the *UOI vs. ADR (2002)* case.

In *Union of India vs. Ramesh Dalal (2005)*^[8], the SC stated that a sitting Member of Legislative Assembly (MLA) or Member of Parliament (MP) will be disqualified if they are found guilty of a crime and sentenced to more than 2 years of imprisonment. However, if the person who got convicted opts for appeal within 3 months, then he/she won't be disqualified. In *Lily Thomas vs. Union of India (2013)*^[9] case, the Supreme Court ruled Section 8(4), which gave candidates relaxation from disqualification, to be void. As a consequence, the convicted MP or MLA will get disqualified immediately. 11 representatives (both MLAs and MPs) have lost their seats due to this as of now and hopefully, this will lead to better conduct by the representatives in the future.

None of the above (NOTA) button was introduced in the election due to a writ petition filed in Supreme Court by *People's Union for Civil Liberties (PUCL)*^[10]. This gave the common man the power to show his dissent against the candidates who are standing for elections by not voting for any of them. However, it is only a way to show your feedback and doesn't nullify the victory of the candidate even if NOTA get most votes. NOTA have improved the voter turnout and have even gotten more votes than many political parties. This will ensure that the message for empowerment and projection of good candidates reaches the

political parties.

After the Emergency, Supreme Court has steadily increased its power over the years, at times even stepping on the toes of executive and legislature. This is often justified to the public by saying that the Supreme Court was “*compelled*” to act due to the inefficiency of legislature and executive, who is true, at most times. India prides itself as the largest democracy in the world and it is not desirable for it to have a legislature and executive which are considered to be inferior to its judiciary. The Judiciary does have a long history of taking bold decisions and implementing them for the betterment of the nation which should be appreciated and nobody can deny its role in reforming the country whether it is electoral, moral or social.

Issues in election politics of India

Money power

Election in India is an extreme affair. Large amount of money are collected by political parties and during elections. Though there is a limit for candidate but there is no limit for parties. In the increasingly high stakes world of election campaigning, aggressive display of candidate wealth, from cash handouts to alcohol distribution, to big rallies, are becoming more common and extravagant. A prospective thing of election candidate has to spend millions of money towards transport, publicity, and other essential thing of election campaign. The first election were held in 1952 after independence of India, at that time election were not costly as compare to today time. From 1952 to 2019 no of times election has been held in the country, with the time money power in election is also increasing day by day. Recent election of 2019 was most election in Indian history. In this election India has defeated America in context of money power.

Muscle power

Booth capturing, violence, pre-election intimidation, victimisation are mainly the product of muscle power. These are prevalent in many parts of India like Bihar, Bengal, UP, Maharashtra etc, this transferable disease is spreading in south India like Orissa, Andhra Pradesh etc. In 2019 election muscle power was on top mode specially in Bengal muscle power was used by different political parties along with candidates. Even in one of the most VIP constituency of UP that is “AMETHI” The cases related to booth capturing came in to eyes of election commission. In this constituency there is a village “GAURIGANJ” In which 90 years old lady was forced to vote on particular party [11].

Criminalisation of politics

The criminalisation in politics refers to the increasing participation of criminals in election process. Hardly any election passes without crime in election. In India many politicians facing charges of murder, riots, violence, rape etc. According to ADR report around 1/3 member s in parliament comes for criminal background. In 2019 general election nearly half of the newly elected members in Lok Sabha have criminal charges against them, as compared to 26% increase as compared to 2014 election. Powerful men, gangsters, mafia, dons have shown that they can convert their power in to votes. Politics have been corrupted in India because corrupts and criminals has entered in to politics. Not only the Member of Parliament but also minister has

also an criminals charges like violence riots rape murder etc [12].

Corrupt practice

Corrupt practice is basically a general term it includes

1. Giving of bribery
2. Undue influence
3. Bogus voting by impersonation
4. Unauthorised of removal of ballot paper from a polling station
5. Publication of false statement against the candidate
6. Free conveyance voter
7. Incurring of election expenditure in excess of the prescribed limit and
8. Seeking the assistance of government servants. Any of the above acts are considered to be major corrupt practices if done by any candidate or by agent or by any person with the “connivance” of candidate or his agent. It has been one of the important issues in elections; even parties are mentioning this issue in their respective manifesto. Even in recent general election the cases of corrupt practice were on top.

Misuse of government machinery

It is well known fact that the party who is in the power misuse the official machinery for election purpose. In simple words misuse of the official machinery that unfair advantages to the ruling party at the time of election. Before two or three month general election of 2019, when ruling party was near of end its term, the list of constitutional and statutory institutions were unable to bear its destructive interference, and are openly protesting had been extending day by day [13].

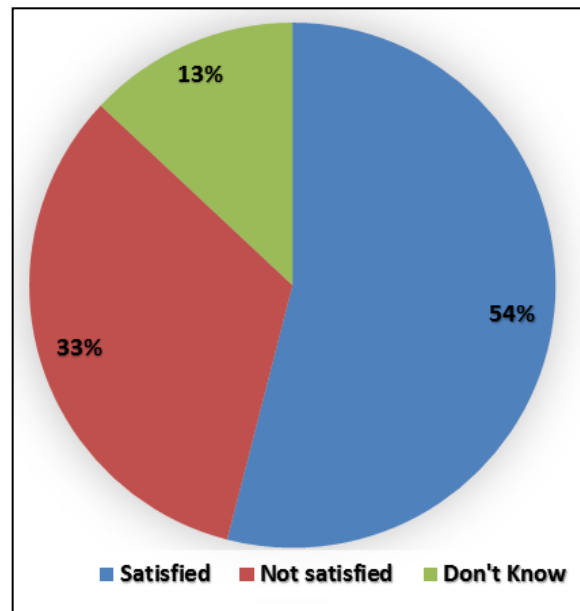


Fig 1: Indians feels about democracy

Steps taken by judiciary

Supreme Court asks Centre to list steps taken on electoral reforms

The Supreme Court on 13th March 2019 asked the Centre for details of the steps it has taken to implement directions on electoral reforms issued by the court in February last year, including one on the creation of a permanent mechanism to monitor the wealth of sitting lawmakers.

A bench led by CJI Ranjan Gogoi did not issue a formal notice to the government but asked secretary of the legislative department, ministry of law and justice, to file an affidavit before the court within two weeks. The court was hearing a contempt petition filed by a Lucknow - based activist group, Lok Prahari, which also filed the public interest litigation on which the 2018 February judgment was given.

SC ruled at the time that politicians, their spouses and associates would have to declare all sources of income, and details of assets, before the former could contest polls. The law ministry said it can't comment on the issue as the matter was sub judice.

The court's order also suggested an amendment to Form 26, filled up along with nomination papers, in which a candidates could swear that they were not disqualified to contest polls as per election rules. The government was also asked to publicize the changes suggested by the court. Lok Prahari subsequently filed a contempt petition claiming the government did not follow up on some of the court's decisions.

Lok Prahari's SN Shukla said the government has not taken steps to give effect to the judgment. He told the court the EC had only complied with two of its directions: on the disclosure of assets and source of income and the provision in Form 26 regarding income from governments.

Suggestions

The following suggestions should be taken into consideration for making electoral system free and fair manner: At Present, the EC does not have independent staff of its own. Whenever elections take place, the Election Commission has to depend upon staff of Central and State Governments. The dual responsibility of the administrative staff, to the government for ordinary administration and to the EC for electoral administration is not conducive to the impartiality an 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 EC. Now, when the elections have ceased to be a mere periodical affair, it is desirable that the EC should have a permanent electoral administration with adequate disciplinary control over the staff. Efficient Electoral Commission is a requirement of the day to conduct free and fair elections. Democracy and fearless elections cannot exist without each other. To stop unfair practices in elections like rigging by using official machinery and to ensure existence of democracy, following methods or means should be adopted.

- The CEC should not be at the mercy to Executive and Parliament for its requirements. He should have Separate and independent election department to enhance its objectivity and impartiality. Political corruption should be stopped by providing funds to genuine candidates through political parties.
- Whose account should be auditable? Candidate involving in corruption should be disqualified. For having a true democracy the registration and recognition of the political parties should be fair and without any kind of influence. Mass Media should play a non-partisan role in election and as a safeguard of democracy.
- Periodic elections are the foundation of a democratic system. For fair electoral system every aspiring

Candidate must have fettered freedom to offer himself as a candidate for election and to conduct his election campaign in his own way so long as he keeps him within the law.

- The election machinery must function honesty and impartially at every stage. Parliament must pass a law dealing with this serious problem of de-listing of valid electorates from Electoral rolls because illiterate electorate residing in far villages cannot watch over publication of electorate lists.
- Preparation of electoral rolls by EC is to be supervised at village level and certificates from officials who prepare electoral rolls to the effect that the electoral rolls have been thoroughly revised. They do not include that persons and legally disenfranchised citizens and intentionally no name should be left in them.
- Accountability to be fixed for intentional exclusion of name of voters from electoral rolls. The names of the voters may be included in the electoral rolls even at the time of casting of votes by the Polling officer, when he finds a genuine case. Unearth and confiscate black money, which is widely used for buying votes.
- Make politicians as well as voters law abiding.
- Strictly apply the Code of Conduct and punish those who violate it.
- Prompt action by the judiciary, if any kind of violation is detected during elections
- Declare elections results in mandatory in democracy the public is most powerful entity.

Conclusion

In democracy the public is most powerful entity. If the public do not vote in favor of criminals, dishonest and corrupt politicians who wish to purchase their votes by money or muscle powers, everything shall function effectively and the democracy will shine in the dark spectrum of hitherto corrupt and criminalized political system. So, though the EC is working hard in this direction, but it cannot succeed unless all political parties and voters realize their responsibility. Finally there should proper mechanism, fully functional and fully equipped to fight with any triviality.

References

1. Report of the Advisory Committee on minorities
2. 1988 AIR 61 1988 SCR (1) 878 1988 SCC (1) 277 JT 1987 (4) 298 1987 SCALE (2)996
3. Also known as Indian council act 1909
4. Avinash Kumar(2019).Law Relating To Elections(Second Edition) Delhi:Singhal Law Publications
5. Judgements and PILs. (n.d.). Retrieved from <https://adrindia.org/legal-advocacy/judgements-and-orders>
6. Venkatesan, V. (n.d.). ELECTORAL REFORMS: A forceful reiteration. Retrieved from <https://www.frontline.in/static/html/fl2007/stories/20030411004203000.htm>
7. India, L. S. (n.d.). Retrieved from <http://www.legal-servicesindia.com/article/1614/Electoral-Reforms-Towards-Decriminalizing-Politics.html>
8. Electoral reform decisions by Supreme Court. (2017, September 21). Retrieved from <https://www.civildaily.com/electoral-reform-decisions-by-supreme-court/>

9. Resurgence India v Election Commission of India and Another. (n.d.). Retrieved from https://www.lawnotes.in/Resurgence_India_v_Election_Commission_of_India_and_Another Image Source: The Hindu
10. Yato Dharmastato Jaya (Sanskrit: यतो धर्मस्ततो जयः) is a Sanskrit shloka. The motto of Supreme Court of India is Yato Dharma Tato Jaya, which occurs a total of eleven times in the epic Mahabharata, and means "Where there is Dharma, there will be Victory" 2002 5 SCC 294 1988 AIR 775, 1988 SCR (2)1011 2000 (2) ALD Cri 686, 2000 (1) ALT Cri 363, 2001 (1) BLJR 499, 2000 CriLJ 2433, II (2000) DMC 1 SC, JT 2000 (5) SC 617, 2000 (4) SCALE 176, (2000) 6 SCC 224, 2000 (2) UJ 1113 SC 2003 4 SCC 399
11. Sundriyal, R.B and Dighe, Sharde (E.d.1997), Electoral Reforms. New Delhi:Shree Publishing House,p.122
12. Gupta SC.). 151 Essays, Meerut, 2004.
13. Singhvi LM. Elections and electorates reforms in India New Delhi: Streling publishing House, 1971, 16.