

## Electoral Reforms in India: Problems and Prospects

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### Abstract

Democracy has not been a free gift for India. India earned its long awaited independence after a long freedom struggle. Election is an important feature of a democracy. Free and fair elections are essential in a healthy democracy. For the success of democracy, it is necessary that people maintain their allegiance towards the democratic institutions based on rule of law. Free and fair election is a key to the success of democracy. In other words we can say if the elections are not free and fair, the people will not have faith in democracy. The experiences of the last fifteen General Elections of our country have shown the pros and cons of the election system. Minor changes have been made from time to time in the election system of our country. Irrespective of reforms our electoral process is facing with many evils like use of black money, casteism, communalism, rigging, abuse of administrative machinery, criminalisation of politics, and even capturing of booths in some areas. All these abuses lead to eroding of faith of the people in free and fair elections. This article is an attempt to critically analyses why electoral reforms are necessary and what steps are taking in this direction.

**Keywords:** Elections, Reforms, Issues, Democracy, Criminalization of Politics, Money Power, Muscle Power

### INTRODUCTION

Elections are the most important and integral part of politics in a democracy. Election is a process of legitimisation of power. The election at present are not being hold in ideal conditions because of the enormous amount of money required to be spent and large muscle power needed for winning the elections. The first three general elections (1952-62) in our country were by and large free and fair. But after that a trend of declination in standards began with the fourth general election (1967). Over the years, Indian electoral system suffers from serious shortcomings. The election process in our country is the enunciator of political corruption. The shortcomings in the working of electoral process seen for the first time in the fifth general elections (1971). This trend was continuing with the successive elections especially those held in eighties and thereafter. Some of the candidate and parties try to win elections at all costs. They forgot all moral values and ethics. So an ideal

condition is required to make the election process healthy and transparent.

### Why Electoral Reforms is essential?

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 worst. The important defects of

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electoral system in India are: money power, muscle power, criminalisation of politics, poll violence, booth capturing, communalism, casteism, non-serious candidates and independent candidate's etc (Gehlot: 2019). Now Indian politics has been facing a number of shortcomings which barely demanded for electoral reforms. Some prominent shortcomings are discussed as follows:

1. **Money power:** In present days election became a costly affair. Money power plays an important role in the election system. It leads to corruption. It also contributes to the generation of black economy. A prospective candidate in each constituency or region has to spend millions and millions of money to win in the election. In recent years the expenses on election have increased beyond any limits. The elections were not as expensive in 1952 as they have become today. Today, votes are not cast they are purchased. (Sanjaya: 2002)
2. **Muscle power:** Now a days muscle power is a basic character of the election process. It leads violence, pre-election pressure, victimisation, booth capturing etc. These kinds of activities are prevailed in many areas of our country like Bihar, Western Uttar Pradesh, and Maharashtra. Slowly and slowly this mayhem disease is slowly spreading like a wild fire to other areas of our country. Criminalisation of politics and entrance of criminals in politics are like two sides of the same coin.
3. **Non-serious candidates in political parties:** In recent time the role of non serious candidates are increasing. The number of candidates has increased now due to the participation of independent candidates. They are not serious about elections. They only contest elections light heartedly. They lose their deposits. They are contesting only to split the votes on caste lines.
4. **Criminalisation of politics:** Now a day a new trend has been dominating Indian electoral system is called criminalisation of politics. The main factor which is responsible for this is that a number of cases have been lodged against the criminals. To remove all these black spots(criminal cases) they are bound to take shelter in politics. In some other cases political parties are taking funds from criminals. In exchange of it politicians provide them political support. So some critics are rightly said that "the battle of ballot turned into battle of bullet".
5. **Misuse of Government Machinery:** In electoral process misuse of government machineries is common affair. It includes using government vehicles for campaigning, advertisements, disbursements out of the discretionary funds at the disposal of the ministers.
6. **Casteism:** Caste is working as an important factor in Indian politics since time immemorial. Different caste groups lend their support to different political parties. This support is not constant. It is changing from time to time. Even many political parties are formed only on the basis of caste. By this political parties make polarization to voting process in the name of caste. So J. P. Narayan rightly said "Caste is a political party in India".
7. **Communalism:** Communalism is a major virus of Indian electoral politics. To catch the fish of power from the trouble water of politics, politicians uses the mud of communalism. From distribution of tickets to allotment of portfolios they are doing everything in the name of communalism. Lives and properties of common masses are meaningless for them. The extreme form of communalism is communal riots. It poses a serious challenge to plural culture, unity in diversity, parliamentarianism, secularism and federalism.
8. **Lack of Moral Values in Politics:** Once upon a time politics was treated as a way to serve people. But, now a day it is treated as a profession. Even many thinks it is a way to earn money. People enter the political arena for making money. They try to retained their money and power. There are very few extinct politicians who enter into politics to the people.

### **Electoral Reforms: An Overview:**

Indian parliamentary system stands as model for many emerging democracies around the world. Free and fair elections are heart to democracy. The democratic system of our country observes regular elections. We have the largest electorate in the world. To make our democracy healthy, many areas need to be strengthened. Indian electoral process is badly needed changes.

Electoral reform means introducing fair electoral systems for conducting fair elections. The process of electoral reforms is successful only when there are

coordination among the electoral machinery, the political parties, the candidates and electorate at all levels (Subash:2008) Therefore, the Election Commission of India, numerous government committees and Supreme Court have been introducing many electoral reforms from time to time to strengthen our democracy.

The legislative approach for electoral reforms is not satisfactory in India. Only, the Parliament has passed the Anti-defection Act in 1985. In the recent time, the constitutional provision of anti-defection law has lost its legitimacy. The purpose of anti-defection law is to deter MLAs and MPs from defecting from their political parties. The anti-defection to address the political parties' loyalties of elected representatives has multiple problems. The topic of electoral reforms has been taken by numerous government committees in the recent past.

- Joint Parliamentary Committee on Amendments to Election Laws (1971-72)
- Tarakunde Committee (1974)
- Dinesh Goswami Committee on Electoral Reforms (1990)
- Vohra Committee Report (1993)
- Gupta Committee on State Funding Elections (1998)
- Law Commission Report on Reform of the Electoral Laws (1999)
- National Commission to Review of the working of the Constitution (2001)
- National Commission to Review the Working of the Constitution or Venkatachaliah Committee
- Election Commission of India- Proposed Electoral Reforms (2004)
- The Second Administrative Reform Commission (2008)
- Tankha Committee or Core Committee (2010)
- J. S. Verma Committee Report on Amendments to Criminal Law (2013)
- Law Commission of India 244<sup>th</sup> Report on Electoral Disqualifications (2014)
- Law Commission of India 255<sup>th</sup> Report on Electoral Reforms (2015)

The following electoral reforms have been introduced in Indian electoral system in the last few years:

### **1. Lowering of Voting Age:**

The 61<sup>st</sup> Constitutional Act of 1988 reduced the voting age from 21 years to 18 years for the Lok Sabha as well as assembly elections.

### **2. Deputation to Election Commission:**

Under the Representation of the Peoples (Amendment) Act, 1988 a new section 13CC was inserted. It provides that officers or staff engaged in preparation, revision and correction of

Electoral rolls for elections shall be deemed to be on deputation of Election Commission for a specific period.

### **3. Increase in Number of proposers:**

Number of electors who are required to sign as proposers in nomination papers for elections to Council of States and State Legislative Council has been increased. It has been increased to ten per cent (10%) of the electors of the constituency or ten such electors, whichever is less. The objective of this step is to put a check to prevent non-serious candidates.

### **4. Electronic Voting Machine:**

Electronic Voting Machines (EVMs) were first used in November, 1998 in various constituencies in the State elections of Rajasthan, Madhya Pradesh and Delhi. EVMs have been widely used in the Fifteenth Lok Sabha Elections in 2009, (Sanjay:2002). Now it is used in national, state and local elections.

### **5. Booth Capturing:**

Section 58A has been inserted in the Representation of the Peoples Act, 1951 by Act 1 of 1989 providing for adjournment of poll or countermanding of elections because of booth capturing. Booth capturing has been defined in Section 135 A of the Representation of the Peoples Act, 1951 (Jai Kumar:2017). Election Commission on such report may either declare the poll at the particular polling station as void and appoint a date for fresh poll or countermand election in that constituency.

### **6. Disqualification on Conviction under the Prevention of Insults to National Honour Act, 1971:**

Any conviction under Section 2 (offence of insulting the Indian National Flag or the Constitution of India) or

Section 3 (offence of preventing singing of National Anthem) of the Prevention of Insults to National Honour Act, 1971 shall hereafter entail disqualification for contesting elections to Parliament and State Legislatures for a period of six years from the date of such conviction (Hardeep:2016).

### **7. Increase in Security Deposits and Number of Proposers:**

The amount of security deposit of a candidate at an election to the Lok Sabha and Vidhan Sabhas has been enhanced (Hardeep :2016). It is aimed to check the participation of non-serious candidates in elections.

### **8. Restriction on Contesting Election from More than Two Constituencies:**

A candidate can't contest election from more than two Parliamentary or Assembly constituencies at a general election or at the bye-elections which are held simultaneously.

### **9. Listing of Names of Candidates:**

For the purpose of listing of names of candidates, they shall be classified as (i) candidates of recognised political parties, (ii) candidates of registered- unrecognised political parties, and (iii) other (independent) candidate(Srinibas:2020). Their names in the list of contesting candidates and in the ballot papers will now appear separately in the above order and in each category they will be arranged in alphabetical order.

### **10. Death of a Candidate:**

Previously, the election was countermanded on the death of a contesting candidate. Now, according to new provision of electoral law, in the case of the death of the candidate, the party concerned will be given an option to nominate another candidate within seven days of the issue of a notice to that effect to the party concerned by the Election Commission.

### **11. Prohibition of Going Armed to or Near a Polling Station:**

Going armed with any kind of arms as defined in Arms Act 1959 within the neighbourhood of a polling station is now a cognizable offence punishable. According to this act the violation of above rules met with imprisonment up to two years or with fine or with both(Prasad:2013).

### **12. Grant of Paid Holiday to Employees on the Day of Poll:**

Voting right is a sacred right. All citizens must participate in the holy work. So the governments have been declaring the day of election as holiday, by which, all registered electors employed in any business, trade industrial undertaking or any other establishment shall be entitled to cast their votes.

### **13. Prohibition on Sale, etc., of Liquor:**

To make the election transparent and corruption free selling of liquor or other intoxicants are prohibited. Before 48 hours of election all these things can't be sold or distributed at any shop, eating place, hotel or any other place, whether public or private.

### **14. Time Limit for Holding Bye-elections:**

Bye-elections to any House of Parliament or a State Legislature will now be held within six months of occurrence of the vacancy in the House. However, this stipulation will not apply

where the remainder of the term of the member whose vacancy is to be filled is less than one year or where the Election Commission, in consultation with the Central Government, certifies that it is difficult to hold the bye-election within the said period (Election Commission:2004).

### **15. Ceiling on election expenditure:**

At present, there is no limit on the amount a political party can spend in an election or on a candidate. In 2014, the Central Government raised the maximum ceiling on election expenditure by candidates for a Lok Sabha seat in a bigger states to 70 lakhs from earlier 40 lakhs. In other states the union territories, it is 54 lakhs from earlier 16 to 40 lakhs. Similarly, the limit for an Assembly seat in the bigger states was increased to 28 lakhs from earlier 16 lakhs. In other states and union territories, it is 20 lakhs from earlier 8 to 16 lakhs.

### **16. Restriction on exit polls:**

The EC issued a statement before the 2019 Lok Sabha elections saying that exit poll results could be broadcast only after the final phase of the elections were over. This was done to avoid prospective voters being misguided or prejudiced in any manner.



### **17. Voting through postal ballot:**

In 2013, the EC decided to expand the ambit of postal ballot voting in the country. Previously, only Indian staff in missions abroad and defence personnel in a limited way, could vote via postal ballots. Now, there are 6 categories of voters who can use the postal ballot: service voters; special voters; wives of service voters and special voters; voters subjected to preventive detention; voters on election duty and Notified voters.

### **18. Awareness Creation:**

The government decided to observe January 25th as 'National Voters Day' to mark the EC's founding day.

### **19. Voting Rights to Citizens of India Living Abroad:**

In 2010, a provision was made to confer voting rights to the citizens of India residing outside India due to various reasons.

### **20. Photoes of Candidates on EVMs and Ballot Papers:**

According to an Election Commission order in any election being held after May 1, 2015, the ballot papers and EVMs will carry the picture of the candidate with his or her name and party symbol. It can avoid confusion among the electorates in constituencies where name shakes are contesting.

Since 1990s the Election commission of India (ECI) has taken initiatives for electoral reforms. The role of the Election Commission of India in conducting free and fair elections has become more crucial for the consolidation of India's democracy (Gehlot : 2019, ). During 1990s, the Chief Election Commissioner (CEC) T.N. Seshan has been credited for several electoral reforms that end malpractices and brought transparency. The CEC Seshan's reforms by and large change the face of Indian elections.

The ECI has effectively enforced Model Code of Conduct during election process till 2014. But implementation of Model Code of Conduct during elections gradually has been dependent on the will of the CEC. In this regard, the ECI has introduced voter lists with photo to prevent bogus voting in elections. Further, the ECI has proposed linking Aadhaar with voter identity card in an effort to clean up electoral rolls. The ECI has also proposed making paid news and filling of false affidavit a corrupt practice with punishment of two

years imprisonment (Saroja:2017). The ECI has asked the Ministry of Law and Justice to make bribery during poll period a cognizable offence. The ECI wants to bring bribery in the category of 'serious' crimes like murder, dowry, death and rape. Presently, conviction is an electoral offence is a ground for disqualification. The ECI has demanded powers of de-register a party on the ground of poll violation rules.

The financing of elections has become a major issue in the electoral process. The cost of contesting elections has climbed for above the ECI's spending limits. This has resulted in lack of transparency, widespread corruption, and the pervasiveness of so-called 'black money' (Pathi: 2020). The Supreme Court has given order in 2018 that candidates now have to declare source of income with reveal their income. In this judgement the Supreme Court asked the candidates while filling their nomination papers, declare their assets, assets of their spouse, children and other dependents.

The ECI has taken steps to maintain trust of electors on use of EVMs in the elections. In this regard, Voter Verifiable Paper Audit Trail (VVPAT) machines are used during election process to verify that the vote polled by voter goes to the correct candidates. VVPATs are a second line of verification. VVPATs have been used in some elections in a bid to prevent tempering of EVMs. It is essential to improve voter confidence and ensure transparency of voting through VVPATs (Kaur: 2016). During 17th election, the 'C-vigil' app was launched as a step towards greater citizen empowerment. Citizen could geotag pictures and report cases of violation on the portal, with assured action within 100 minutes of reporting (Ravinder: 2019).

### **Supreme Court & Electoral Reforms:**

Several measures have been undertaken and umpteen measures further needs to be taken to ensure decriminalisation of politics.

1. The Supreme Court in Union of India vs. Association for Democratic Reforms 2002 held that the voters enjoy right to make informed choices during elections and hence directed Election Commission of India to make it mandatory for contesting candidates to declare their assets and liabilities, that of their spouses and dependent children, any criminal conviction in the court of law, any criminal case pending and the educational qualifications at the time of filing the nomination papers ( Kaur: 2016)

2. In *Ramesh Dalal vs. Union of India* 2005, the Supreme Court held that a sitting Member of Parliament (MP) or Member of State Legislature (MLA) shall also be subject to disqualification from contesting elections if he is convicted and sentenced to not less than 2 years of imprisonment by a court of law (Singh: 2013).
3. In 1997, the Supreme Court directed the High Courts to not suspend the conviction of a person if he is convicted under The Prevention of Corruption Act 1988.
4. The Supreme Court has come out with certain judgments to cleanse the political system off the criminals. Section 8(1), 8(2), and 8(3) of the RPA, 1951 provide grounds of disqualification for any person who is convicted and given varying range of imprisonment, for a period of 6 years from the date of his release from prison (Sunderiyal & Shroad: 1997).
5. The Supreme Court in *Lily Thomas vs. Union of India* 2013 held Section 8(4) as unconstitutional and void. Hence, now if a sitting Member of Parliament or state legislature is convicted and sentenced to not less than 2 years of imprisonment, he will get immediately disqualified from being member of house (Singh:2013).
6. In another judgment, Supreme Court held that a voter could exercise the option of negative voting and reject all candidates as unworthy of being elected. The voter could press the 'None of the Above' (NOTA) button in the electronic voting machine (EVM). The court directed the Election Commission to provide the NOTA button in the EVM.

### **Recommendations of Law Commission:**

The Supreme Court of India, in the matter of *Public Interest Foundation & Others V. Union of India & Anr*-Writ Petition (Civil) No. 536 of 2011, directed the Law Commission of India to make suggestions on two specific issues, viz., (i) curbing criminalization of politics and needed law reforms; and (ii) impact and consequences of candidates filing false affidavits and needed law reforms to check such practice. In the light of this judgment, the Commission worked specifically on these two areas and, after series of discussions, followed by a

National consultation held on 1st February 2014, submitted its 244th Report titled "Electoral Disqualification" on 24th February 2014 to the Government of India (Sanjeev Kumar:2016).

The law Commission of India submitted its Report No. 255 on "Electoral Reforms" to the Union Law and Justice Ministry. Justice Shri A. P. Shah, Chairman of the Law Commission of India presented the 201 page report after due consideration and deliberations with the stakeholders including of registered national and state political parties and extensive and in-depth analysis of various issues by the commission (Law Commission Report:2015).

The report of the Law Commission includes various issues like Election Finance, Regulation of Political Parties and Inner Party Democracy, Proportional Representation, reformation in Anti Defection Law in India, Strengthening the office of the Election Commission of India, Paid News and Political Advertisements, Opinion Polls, Compulsory Voting, Election Petitions, NOTA and the Right to Reject, The Right to Recall, Totaliser for Counting of Votes, Restriction on Government Sponsored Advertisements, Independent Candidates, Preparation and Use of Common Electoral Rolls.

### **CONCLUSION**

It is very important that democracy forms the basic structure of the society. Democracy is a way of life for the people of India. The responsibility of success of democracy can't be entrusted on the state institutions alone. The citizens have an equal role to play for the smooth functioning of the democracy. Hence electoral reforms are the need of the hour in order to attain sustainable democratic India. The objective of electoral reforms is to make the General Will conscious and alert. Criminals should have no place in the sacred electoral process of obtaining Popular Will. Electoral system should be worked in such a way by which it can able to attract the best talent in the country. Elections should not be treated as mere rituals but the soul of democracy. For a true decriminalisation of politics, there is a need to abolish the patronage to criminals by politicians and political parties. For this a strong political will is required from the Government side. The Supreme Court of our country has also held that free and fair elections are a part of the basic structure of the Constitution. There is an urgent need to break the illegitimate criminal-political nexus. This will help to make our election system free from criminals. If we are not going to take some decisive

action very soon, the public will lose all faith in politics, politicians and democracy itself. This will do irreparable damage to our Republic. In this direction more steps should be taken which will be definitely making our democracy healthy and vibrant.

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