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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

NEED FOR ELECTORAL REFORMS IN INDIA: A CRITICAL ANALYSIS

AUTHORED BY - ANUJ KUMAR RATNA

ABSTRACT

When the world is replete with examples where Democracy and electoral processes have failed leading to huge political crises, India is a huge success in the aspect of democracy, despite its multiculturalism and diversity. One of the most important features of a democratic polity is elections at regular intervals. Elections constitute the signpost of democracy. Elections are the central democratic procedure for selecting and controlling leaders. Our political process is swarming with dark alleys of crime, corruption and money power which have the potential to poison our democracy. Elections provide an opportunity to the people to express their faith in the government from time to time and change it when the need arises. Elections symbolise the sovereignty of the people and provide legitimacy to the authority of the government. Thus, free and fair elections are indispensable for the success of democracy. Free and Fair Election is a mandate given by our Constitution for a Parliamentary Democracy. The word 'Democracy' coined in the preamble can be realised if we have the content of free, fair and effective election process in our system. India has the distinction of being the largest democracy of the world. The size of Indian elections is overwhelming. Around 23.1 million or 2.7% of the total eligible voters were first time voters (18-19 years) in 2014. Only free and fair elections to the various legislative bodies in the country can guarantee the growth of a democratic polity. The need for electoral reform is usually to improve the voting process, for more transparency in the voting process, as well as to ensure that the voting process is fair and justified. In this paper an attempt has been made to analyse some of the major issues which are to be resolved and also tried to put forward certain suggestions in respect of electoral reform in India.

KEY WORDS: Elections, Reforms, Issues, Democracy, Criminalisation of Politics, Money

Introduction

In April or May this year, more than 800 million Indians will vote to elect the representatives to the 17th Lok Sabha (Lower House). So, what is at stake? The future. This election will not only decide the course of action for the next five years but will also decide the action plan for coming years. This election will either make or break this nation. So stakes are very high and a proper machinery of elections is needed to conduct free and fair elections¹.

India has the distinction of being the largest democracy of the world. 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 power. Democracy can indeed function only upon this faith that elections are free and fair and not rigged and manipulated, that they are effective instruments of ascertaining popular will both in reality and in form and are not mere rituals calculated to generate illusion of difference to mass opinion², it cannot survive without free and fair elections. The size of Indian elections is overwhelming, estimated number of voters in 2019 Lok Sabha elections is going to be approx. 86.3 crore and number of parties participating will close to be 7 national parties and 24 state recognised parties along with 2044 registered unrecognized party. Total number of seats to be contested is 543.

History of Past Elections

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. While the first three general elections (1952-62) in our country were by and large free and fair, a discernible decline in standards began with the fourth general election in 1967³. No such events were reported till the fourth general election. Over the years, Indian electoral system suffers from serious infirmities. The election process in our country is the progenitor of political corruption. The distortion in its working appeared for the first time in the fifth general elections, 1971 and multiplied in the successive elections especially those held in eighties and thereafter. Some of the candidate and parties participate in the process of elections to win them at all costs, irrespective of moral values. The ideal conditions require that an honest, and upright person who is public spirited and wants to serve the people, should be able

¹ Jain, M.P. (2008). Indian Constitutional Law. Nagpur: Wadhwa and Company

² Politics of Electoral Reform : Delimitation Deadlock in India, Aditi 2 SOAS L.J. 46 (2015)

³ Shukia, subhash 2008 Issues in Indian politics, New Delhi Anamika Publishers, p.219

to contest and get elected as people's representatives. However, in fact, such a person as previously mentioned has no chance of either contesting or in any case winning the election.

Electoral laws in India

Constitution of India-Part XV of the Constitution of India deals with elections. It contains six articles (Articles 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 State Election Commissions. Besides this there are a number of legislations dealing with the election process in India as: Representation of the People Act,1950,Representation of the People Act,1951,Indian PENAL Code,1860 ,The Delimitation Act,2002 ,The Election Commission (Conditions of service of Election Commissioners and Transaction of Business) Act 1991 ,The Parliament (Prevention of Disqualification) Act, 1959 ,The Presidential and Vice- Presidential Elections Act, 1952

Issues and Recommendations

1. Criminalization of Politics

The criminalisation of politics means increasing participation of criminals in the electoral process and selection of the same as elected representatives of the people. The preamble of our constitution aims to provide 'political justice' to the people. When the criminal elements are becoming a part of the legislature, then securing any form of justice, be it social, economic or political, is a hollow promise. The sovereign of India is crippled by these criminal elements that use threat, intimidation, violence and even sexual assault to win the election.

Over the last two decades, the influence of criminals in the political arena has shown a tremendous increase. Earlier these criminal elements used to influence the elections from outside but now they have become a part of the political system by contesting the elections themselves. The Supreme Court's constitution bench, in its judgment in **Public Interest Foundation & Others v Union of India**, explains its limitations in preventing those charged with heinous offences from becoming legislators and finds that Parliament alone is competent to do so. It satisfies itself by appealing to Parliament to make a law for this purpose on priority and issues a few directions to the Election Commission and the political parties to make the disclosure of the criminal antecedents of candidates contesting elections sufficient and clear to the voters, so that the latter could be warned not

to vote the candidates, charged with serious offences. All recent committees on politics and electoral reform have observed the criminalisation of our political system almost unanimously. Criminalisation of politics has many forms, but perhaps the most alarming among them is the significant number of elected representatives with criminal charges pending against them. Numerous government committees have taken up the topic of electoral reforms in the recent past, The Vohra Committee Report on Criminalisation of Politics was constituted to identify the extent of the politician-criminal nexus and recommend ways in which the menace can be combated. The report of the National Commission to Review the Working of the Constitution, cites the Vohra report as follows: “The nexus between the criminal gangs, police, bureaucracy and politicians has come out clearly in various parts of the country” and that “some political leaders become the leaders of these gangs/armed sense and over the years get themselves elected to local bodies, State assemblies, and national parliament.”

Recommendations

According to an analysis by the Association for Democratic Reforms, more than 30 percent of current Lok Sabha MPs have declared criminal charges including serious criminal charges like murder, kidnapping etc. Disclosure of criminal antecedents of candidates started with the Supreme Court judgment in Writ Petition (Civil) No. 515 of 2002 **Association for Democratic Reforms v Union of India and another**⁴, following which Election Commission of India issued order no. 3/ER/2003/JS-II, dated 27th March, 2003, requiring candidates contesting elections to the Parliament and State Assemblies to file affidavits in the specified format as essential parts of their nomination forms. The Election Commission has since revised the format of the affidavit vide their order no. 3/ER/2011/SDR dated 25th February 2011. This revision has been done based on the experience from 2003 to 2010. ADR recommendation is that this format should continue.

In addition, ADR support the Election Commission of India’s recommendation, in its report on Proposed Election Reforms, 2004, that (a) an amendment should be made to Section 125A of the R.P. Act, 1951 to provide for more stringent punishment for concealing or providing wrong information on Form 26 of Conduct of Election Rules, 1961 to minimum two years imprisonment and removing the alternative punishment of assessing a fine upon the candidate, and (b) Form 26 be amended to include all items from the additional affidavit prescribed by the Election Commission, add a column requiring candidates to disclose their annual declared income for tax purpose as well as their

⁴ (AIR 2003 SC 2363)

profession. ADR therefore recommend that Political Parties should certify the information submitted in the affidavits by the candidates. Information given by candidates in their affidavits will be ceased to have any useful effect if its correctness and accuracy are not ensured. It is therefore recommended that the information given in the affidavits of the candidates on criminal charges, assets etc. should be verified by an independent central authority in a time bound manner. and (c) any person against whom a charge has been framed by a court of law, in a criminal case for which the punishment is imprisonment of two years or more, not be allowed to contest elections, and (d) any political party that gives a ticket to such an individual be “deregistered and derecognized forthwith”. The Law Commission of India, in their 170th report in 1999, proposed enactment of Section 8B of the Representation of the People Act, 1951, by which framing of charges by court in respect of any offence, electoral or others, would be a ground for disqualifying the candidate from contesting election. The National Commission to Review the Working of the Constitution (NCRWC) said, in Para 4.12.3 of their report in 2001, that —Any person convicted for any heinous crime like murder, rape, smuggling, dacoity, etc. should be permanently debarred from contesting for any political office”.

2. Money Power in 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. While this comment is indeed true, the complexity of the issue can be appreciated by the fact that, there has been, and continues to be, a general clamour, particularly by political leaders, that election expenditure limits are too low, and that these should be increased. The Election Commission of India is often blamed for keeping the limits too low. The fact however is that these limits are fixed by the Ministry of Law and Justice, Legislative Department, under Rule 90 of Conduct of Elections Rules, 1961. Only the government has the power to amend these rules. The Election Commission only makes recommendations for what the limits should be; the final decision is taken by the government of the day. There is a widespread belief, often accepted by politicians, that the actual expenditures far exceed the limits. There are however legitimate concerns about the excessive use of —money power in the electoral process, causing severe distortions in the basic functioning of democracy in the country. The high cost of elections creates a high degree of compulsion for corruption in the public arena, that the sources of some of the election funds are believed to be unaccounted criminal money in return for protection, unaccounted funds from business groups who expect a high return on this investment, kickbacks or commissions on contracts, etc., and that Electoral compulsions for funds become the foundation of the whole super structure of

corruption. This will lead to crorepatis and people with criminal records winning the election. Over time, the money power thus acquired is used for building up contacts with bureaucrats, politicians, and expansion of activities with impunity. The money power is used to develop a network of muscle-power, which is also used by the politicians during elections. The nexus between the criminal gangs, police, bureaucracy and politicians has come out clearly in various parts of the country. While the reasons for high cost of campaigning may be many and varied but one of the reasons out of it is selection of candidates solely on the basis of an all-inclusive characteristic called “win ability”. Given the widely known and widespread use of money and muscle power in the electoral process, candidates who are able to spend more money seem to have higher “win ability”. This is also proved by the data from several elections, collected and analyzed by ADR. For example, in the 2014 Lok Sabha election, 33% of the candidates who declared assets of Rs 5 crore and above were elected, whereas less than 1% of candidates with declared assets of less than 10 lakh were elected.

Recommendations

It is understood that money power and muscle power go together to vitiate the electoral process and it is their combined effect, which is sullyng the purity of electoral contests and effecting free and fair elections. The idea is to establish such conditions where even the parties with modest financial resources may be able to compete with those who have superior financial resources. Meaningful electoral reforms in other spheres of electoral activity are also urgently needed. Additionally, it is strongly recommended that the appropriate regulatory framework be put in place with regard to political parties (provisions ensuring internal democracy, internal structures and maintenance of accounts, their auditing and submission to Election Commission) before state funding of elections is attempted⁵. There is also a need to curb the high cost of campaigning to provide a level playing field for anyone who wants to contest elections. In view of the foregoing and the experience of watching the electoral process unfold over the last fifteen years, ADR recommend as follows:

1. Political parties should implement CIC’s order and be open for public scrutiny under the provisions of the Right to Information Act, 2005.
 - The Institute of Chartered Accountants of India (ICAI) guidelines should be made mandatory, and any failure to comply with these should lead to automatic de- registration of the party.

⁵ Election Commission of India, Model Code of Conduct for the Guidance of Political Parties and Candidates

- There should be a ceiling on expenses that can be incurred by political parties during the election period.
 - There should be intra-party democracy in the political parties and candidates should be selected democratically.

3. Internal democracy in political parties

It is absolutely beyond any doubt that political parties are sine qua non (political parties are an essential requirement) of a representative democracy, that India has chosen for itself. The critical issue is how do they function or how should they function. It is normally expected that political parties which function in a democracy claims to be the defenders of democracy at every opportunity, but unfortunately, this does not happen. Lack of internal democracy makes any organisation Chaotic and fruitless and political parties are not an exception here, over-centralised. In addition, in a party, which does not have internal democracy, power will be exercised more remotely from the people (members of the party), thereby increasing the distance between authority and accountability. Moreover, in large political parties without internal democracy, there will be very few decision makers. As a matter of fact, it is no secret that in an overwhelming number of parties in India, there is usually only one decision maker.

Recommendations

ADR therefore strongly recommends that provisions should be made to introduce inner-party democracy within the political parties. This should include mandatory secret ballot voting for all elections for all inner party posts and selection of candidates by the registered members, overseen by Election Commission of India.

4. Financial transparency in political parties

Bulk of the donations is currently from unknown sources of funds and the introduction of 'Electoral Bonds' has made the financial transparency even more opaque than earlier. There is a need of providing clarity about political funds – their sources and their utilisation.

Recommendations

In order to bring a sense of discipline and order into the working of our political system and in the conduct of elections, it is necessary to provide by law for the formation, functioning, income and expenditure and the internal working of the recognised political parties both at the national and State

level. Political parties should be required to maintain proper accounts in predetermined account heads and such accounts should be audited by auditors recommended and approved by the Comptroller and Auditor General of India (CAG), and available for the information of the public. ADR therefore recommends that a comprehensive law be enacted to regulate the functioning of political parties.

Also apart from all this stalwarts of RTI fraternity have done a great job by bringing the subject of political finance into prominence. India now needs a law to bring it on par with progressive countries world – wide.

5. Regulation of Political Parties

It is a desirable objective to promote the progressive polarisation of political ideologies and to reduce less serious political activity. There is wider proliferation of smaller parties⁶. There are more than 1600 political parties registered with the ECI, however, only a few ever contest elections.

Recommendations

Election Commission should progressively increase the threshold criterion for eligibility for recognition so that the proliferation of smaller parties is discouraged⁷. There are more than 1600 political parties registered with the ECI, however, only a few ever contest elections. ECI should be authorised to de-register such parties, which do not contest elections where the power of registration and de-registration solely lies with Election Commission subject to review only by the Supreme Court of India in order to make it final and binding.

Other Proposed Reforms over the Past Years

1. **Goswami Committee on electoral reforms (1990)** – This committee proposed reforms that Post Offices should be the agencies for preparations and maintenance of electoral rolls. Election Commission should be empowered to take strong action on the reports of the returning officers and also they shall have the power to make recommendations to appropriate authority to prosecute any person who has committed an electoral offence.
2. **Indrajit Gupta Committee on state funding of elections (1998)** – Reforms of this committee are that state funding of elections is fully justified and it is to be confined only to the parties recognised by EC. Parties are responsible to file complete account of expenditure with EC and any political

⁶ Territorial Democracy: Caste, Dominance and Electoral Practice in Postcolonial India (article) 32 PoLAR 64 (2009)

⁷ Embedded Mobilization: Nonstate Service Provision as Electoral Strategy in India (article) 63 World Pol. 434 (2011)

contribution above Rs.10000 should be accepted only in cheque or draft.

3. **Law commission report on reform of electoral laws (1999)** – Reforms made under this are that:
4. Alternative method of election in which no candidate should be declared elected unless he obtain at least 50% of votes cast and if no person gets 50% or more vote, then there should be a ‘run-off’ election between the two candidates receiving the highest number of votes. Only political parties recognised with EC can put forward candidates for Lok Sabha polls. Also proposed the idea of partial state funding.
5. **National commission to review the working of the Constitution (2001)** – under this EC should be authorised to take a decision regarding booth capturing. Any person convicted for a heinous crime like murder, rape, smuggling, dacoity etc. should be permanently debarred from contesting for any political office and also candidates should not be allowed to contest elections from more than one constituency.
6. **Election Commission of India – proposed electoral reforms (2004)** – Reforms under this were stringent punishments were imposed for leaving columns blank in election affidavits. It empowers EC to prescribe security deposit before every general election and only those cases filed prior to six months before an election alone would lead to disqualification as proposed.
7. **Second Administrative Reforms Commission (2008)** – It proposes a system of partial state funding and s constituted by each house of parliament seeks a fresh mandate if a pre or post poll alliance runs into rough weather. Proposes an office of ‘ethics commissioner’ to be constituted by each House of parliament.
8. **Justice Verma Committee on amendments to criminal law (2012)** – Proposed reforms under this is that a candidate who fails to disclose a charge or the commission of an offence should be disqualified subsequently. Legislations should be enacted for compulsory registration of all political parties. A certificate from the registrar of the High Court should be necessary for the validity of nomination. Scrutiny and verification of disclosures made by candidates in respect of their assets may be made by CAG.
9. **20th Law Commission on electoral disqualification (2014)** – A person against whom a charge has been framed for an offence punishable for at least 5 years imprisonment shall be disqualified from the date of framing the charge for a period 6 years or till acquittal, whichever is earlier. False disclosure shall be punishable with imprisonment for a term which shall not be less than 2 years along with fine.

10. **Law Commissions 25th report on electoral reforms (2015)** - Reforms made under this are that Political parties must maintain and submit annual accounts audited by a qualified and practicing CA from a panel of such accountants maintained for the purpose by CAG to EC every fiscal year. Political from a company's coffers must be approved by an annual general meeting of shareholders and not just the board. The president should appoint all election commissioners, including the chief election commissioner, in consultation with a three member panel comprising the prime minister, the leader of the opposition of the Lok Sabha and the chief justice of India.

Conclusion

The theory of Electoral Reforms has special significance in countries such as India where the legislative competence of adopting reform lies with the people most affected by it. Article 327⁸ vests the power of formation of laws regarding election in the legislature. This was done to keep the electoral processes free from executive interference, so as not to give the ruling party an unfair advantage in the functioning of the electoral system. However, in India, the deadlock of electoral reform is not just created by the ruling actors but all the political parties involved, whether or not in power, in furtherance of their common interest. Most parties find them plagued by the same issues and the same power interests. Hence, no matter which party comes to power there is a high motivation to maintain the status quo and the doors to electoral reforms remain closed. This has resulted in the **control of politics being vested in politics itself, thereby creating deadlock in reformative processes in electoral laws**⁹.

Despite landmark judgments delivered by the SC and efforts by the ECI, the system continues to be prone to mischief. To stamp out these tendencies, there is a need to strengthen the EC to punish errant politicians and defiant political parties. Maintaining the sanctity of electoral process requires a multi-pronged approach, including removing criminal elements and moneybags in politics, disposing poll petitions, introducing internal democracy and financial transparency in the functioning of the political parties.

Free and fair Election process is a foundation of healthy democracy. The Democratic future of India

⁸Constitution of India 1950

⁹ From Inertia to Imperative Reforms - Contemporary perspectives in the Indian Electoral System (article) 6 NUALS Law Journal 80 (2012)

depends upon healthy political environment, and to protect it free and fair election process is inevitable. The entry of criminals in election must be restricted at any cost. A number of commissions and committees have examined the issue of criminalization of politics however; the problem is increasing day by day. The parliament has taken efforts by amending the laws but the exercise has proved futile. The Supreme Court of India has also made efforts to keep a check on the evil of criminalization of politics but the problem remains unbeatable, suggestions made by them are not acceptable to the politicians. There exists a wide gulf between preaching and practice in today's modern political era which has to be reduced. Weak electoral system is a biggest threat not only to the national integration but also to the Democratic Consolidation of India. Hence there is a need of a strong political will to combat the problem.

'Electoral Reforms of radical nature can only save this glorious nation from political deterioration. Sanctity and purity of Elections must be protected at any cost, as the future of India depends on it.'



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