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CRITICAL ISSUES IN ELECTORAL REFORMS

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ABSTRACT

Electoral reforms have been an issue of intense debate in contemporary India, particularly in the last two decades. The recent growth in electoral malpractices and the fact that none of the serious proposals for electoral reforms have ever got implemented have kept the issue alive. This has been a cause for concern for the election authority, political parties and the public in general. In view of this, it is appropriate to examine the working, on the basis of experience, and ascertain the distortions and search for legal, administrative measures to eliminate them.

Introduction

The Constitution of India provides for a permanent and independent body, the Election Commission of India, and vests in it the 'superintendence, direction and control of the preparation of electoral rolls for the conduct of all elections to Parliament and to the Legislature of every State and of elections to the offices of the President and Vice-President' (Article 324). The Commission may have one or more than one member to be appointed by the President, i.e., the Executive. The Chief Election Commissioner enjoys a constitutional protection in manner of removal from the position, which requires parliamentary impeachment [Article 324(5)]. Apart from the Commission, the Constitution or the law-does not provide for any other permanent structure to administer the elections. Administrative Officers at the State and district level are assigned additional charge to Ibok after the elections; some of them are temporarily deputed to the Election Commission during the period of the general elections.

In balance, this semi-autonomous and technically weak institutional apparatus has served the Indian democracy better than many other institutions (e.g. the office of the Speaker, the UPSC or middle rung judiciary). This is not to deny that there have been a number of serious complaints of irregularities and partisanship involving the Election Commission but merely to recognise that the Election Commission has norm or where corruption begins from the top. The district and lower level functionaries are, of course, a different matter. In a number of States the partisanship of the local functionaries has become a regular feature. The paper discusses the major areas of electoral reform, the measures taken by the Election Commission and various proposals that have been put forth in various forums for ensuring free and fair elections and representatives of the elected candidates.

Election Financing

In spite of the recommendations to curb the role of money power, the ground realities have defined a contrary movement, especially as regards the ceiling

of expenditure. The Indian Electoral Law, under Section 77 of the Representation of the People Act, 1951, requires that all candidates should disclose the correct account of all the expenditure incurred in connection with the elections and that they are bound to submit the accounts between the day on which they have been nominated for election and the day of declaration of the result thereof. Furthermore, Section 123(6) of the Act defines incurring of excessive expenditure in elections as a corrupt practice. It also lays down a limit on expenditure on elections. The spirit of the above section can further be seen in Section 78(1) of the Representation of the People Act, 1951. The maximum amount of election expenditure, which may be incurred by the candidate in various States, has been laid down under Rule 90 of the Conduct of Elections Rules, 1961. It specifies that mere non-disclosure of expenditure is not a corrupt practice but becomes so as it amounts to an expenditure in excess of the prescribed amount and contravention of Section 77 (1& 2) of the Representation of the People Act, 1951, which falls within the ambit of Section 123 Clause 6.

In addition, failure to furnish an account of election expenses within the time limit prescribed under Section 77(6) of the Act, 1951 can lead to disqualification of membership to the Parliament or State Legislature, which is enforced by the President of India after seeking the opinion of the Election Commission. The President here acts in his/her capacity of a constitutional authority, to discharge constitutional obligations. But, according to Section 10A of this Act, the Election Commission itself has the right to disqualify a candidate, if it is satisfied that s/he has failed to submit an account of the expenses incurred within the specified time limit and in the manner required by the Act. In fact, under Section 77 of the Act, the election returns are to be filed within 30 days of the publication of results. All accounts of election expenditure and other expenses are to be filed by the candidate with the concerned District Election Officer (DEO), as stipulated under Rule 89(1) of the Conduct of Election Rules 1961 and each District Election Officer is required to send his/her report about the filing of such accounts to the Election Commissioner's office. On receipt of this report from the District Election Officer, the Election Commission scrutinises the account. In cases of default, it issues notification to the candidates about their disqualification under section 10A of the Representation of the People Act, 1951, but before doing so, the Election Commission provides ample opportunity to the candidates to represent their cases. Valid for 3 years from the date of the order, the disqualification notification under Section 10A has to be published in the official gazette.

In the final analysis, one of the most pressing needs of Indian democracy today is a certain level of institutionalised funding of elections. But this should, as far as possible, be in kind, to assist better monitoring and implementation. Furthermore, it should be adequate, for its purpose would otherwise be defeated; as, the main purpose of state funding is not only to reduce the cost of elections but also to curb illegal ways of political financing of elections, which are at present rampant.

In fact, state funding will certainly ensure a healthy democratic functioning of parties, however limited the extent may be (Kumar, 1999).

Democracy within the Party

While pronouncing his order in the Janata Dal symbol case on October 16, 1994, the Chief Election Commissioner, T.N. Seshan, warned the political parties that if they failed to hold their organisational elections according to their constitution, necessary action would be initiated according to the Election Symbols (Reservation and Allotment) Order. Thereby their status of being legitimate democratic parties could be in jeopardy.

Some of the political parties particularly the Communist parties had reacted sharply and questioned the authority of the Chief Election Commissioner to interfere in internal party matters. In any case, these parties, when in power, are not perceived as votaries of democracy and free elections. The fundamental purpose of holding national elections is to find a set of persons who can represent the people, make laws and govern the country democratically. Elections provide a legislature and a government that are representative and draw their legitimacy from the consent of the people.

A necessary concomitant of representative democracy is the institution of political parties. After the insertion of the 10th Schedule in the Constitution, political parties have also received constitutional recognition. It is usually the parties that fight elections and even after the electoral battle is over, the roles of the government and the opposition are assumed by the political parties. Governments in our democratic polity have got to be party governments.

The role of political parties in elections and thereafter certainly necessitates that any reforms in the political system or in the electoral processes would have to start with the political parties. No party should be eligible to participate in the democratic processes of the nation's governance unless its own internal organisation and functioning are fully democratic. The provision of the respective party constitutions must be strictly followed and elections to constitute various party bodies should also be held regularly. The dismal record of almost all our parties in this regard dictates the need for regulating and disciplining by enforceable law with provision for deregistration of defaulting parties.

However, democratic principles and proprieties apart, it would be necessary to examine whether the Chief Election Commissioner had exceeded his authority in this case or whether his warning can be upheld at the altar of legality. Article 324 of the Constitution vests the authority of superintendence, direction and control of elections in the Election Commission, which in fact is very wide and comprehensive.

Section 29A of the Representation of the People Act, 1951, provides for the registration with the Election Commission of political parties on application. The application for registration has to contain inter alia the names of party officer bearers, the numerical strength of party membership, memorandum or rules and regulations (or the Constitution) of the party. The Commission has been authorised to call for 'such other particulars, as it may deem fit'. The decision of the Commission in the matter of registration 'shall be final'. Under Section 170 of the same Act, the jurisdiction of the civil courts to question the legality of any decision has been barred. The conduct of Election Rules, 1961 issued under the Representation of, the People Act'1951, provides for the Election Commission specifying and assigning the symbols under Rules 5 and 10. The Election Symbols (Reservation and Allotment) Order 1968, as modified by the Election Commission in exercise of the powers under Article 324 of the Constitution, Section 29A and of the Representation of People Act the 1951 and Rules 5 and 10 of the Conduct of Election Rules, 1961 inter alia lay down the regulations for recognition of political parties for purposes of allocation of symbols.

Since the 1990s, the Commission has donned a proactive role in its efforts to cleanse the electoral system. The Commission has ordered repolls at polling stations and whole constituencies, if the original poll were vitiated. The Model Code of Conduct was strictly enforced and scheduled and bye-elections to the Legislative Assemblies of some of the States were postponed for breach of Code by the party in power in the concerned State. The election law was also implemented effectively for disciplining the candidates and parties. The effective enforcement of election law and Model Code of Conduct by the election authorities had salutary effects in the conduct of elections in the mid-nineties. Elections were more peaceful and less expensive, compared to the elections held during the eighties. Seshan deserves the full credit for improving the functioning of the election machinery in the country. He was regarded by the common man as having interest, beside power and position in cleansing the electoral process and setting up conventions in the interest of free and fair elections. His example deserves emulation by his successors.

Criminalisation of Politics

Criminalisation of politics is one of the most urgent issues for the Parliament to consider and legislate to tackle the problem. The Commission, in its declared statistics of August 1997, revealed that nearly 40 Members of the Parliament present were involved in criminal cases pending against them, whereas nearly 700 Members of the Legislative Assemblies, out of the 4072 members, were involved in criminal casei and trials were pending against them (The Tribune, 21 Aug. 1997). The Election Commission suggested a series of steps including the filing of declarations by political parties with the Commission that they would not field candidates and give tickets to those who were convicted as criminals, even if imprisoned for a period less than five years for a cognizable offence, in any election. Another suggestion to enable the Commission to crack the whip was that powers be given to it to de-recognise and de-register political parties, which were

found to field such convicts, who were imprisoned for five years or more, as candidates for the Parliament or Assembly elections, after giving them an opportunity to be heard. The Commission felt that the nomination form should contain a column seeking information if the candidate had ever been jailed and its duration, criminal cases pending against the persons, and, if the person had been charge-sheeted for any offence. In the event of any person providing false information or suppression of any information, not only should the election be set aside, but it should be cancelled as well, and the person should be punished with imprisonment up to 5 years or fine or both.

In a significant order to curb the criminalisation of politics, the Election Commission on 28th August 1997 passed an order, which prohibited convicted persons, regardless of whether an appeal was pending in a higher court, from contesting elections. The Election Commission felt that though Section 8 of the Representation of the People Act, 1951 provided that any convict would stand disqualified from contesting elections to the Parliament and Legislatures for six years, those on bail or with an appeal pending were being allowed to contest. The Commission had referred to Article 324 of the Constitution and judgements of High Courts (Madhya Pradesh High Court in the Purshottam Kaushik v. Vidya Charan Shukla Case, the Allahabad High Court in Sachindra Nath Tripathi v. Doodnath Case and the Himachal Pradesh High Court in Vikram Anand v. Rakesh Singh Case) on Section 8 of the Representation of the People Act. It had directed the States, Union Territories and Chief Electoral Officers that disqualification of candidates under section 8 of the Representation of the People Act would commence from the date of conviction, irrespective of whether the person was out on bail. The Election Commission had asked the Returning Officers to get affidavits from candidates mentioning whether they were convicted by a court of law, beside the date of conviction, the nature of offence, the punishment imposed and the period of imprisonment, on a prescribed form (The Indian Express, 29 Aug. 1997).

The Commission, in continuation of its desire to curb the menace of criminalisation, recommended to the Government sweeping changes in the election laws, suggesting that a person sentenced for more than six months should be debarred from contesting in elections for a period of six years and above. It further suggested that by clubbing Sections 8(1), 8(2) and 8(3) of the Act, it would make it mandatory for a person convicted by a Court of Law and sentenced to imprisonment for six months or more to be debarred from contesting elections for a period totaling the sentence imposed plus an additional six years (The Indian Express, 4 Sept. 1997).

Recommendations on Electoral Reforms: The Law Commission and the Election Commission

The Law Commission of India, in its 170th Report, came out with several proposals relating electoral reforms, which are worth considering. One of the proposals relate to the introduction of the List System to cover the 138 additional

seats to be created in the Lok Sabha, taking its total strength to 688. The suggestion made was to allocate the 138 seats to various States or territorial units and fill them from previously published lists of candidates nominated by recognised parties, in proportion to the total number of votes polled by each party in a State/territorial unit. The object was twofold: (a) to secure representation for a party which secures a large number of votes, but fails to win a proportionate number of seats and (b) to enable eminent persons who do not like to contest to be thus elected.

It is not uncommon that a party secures a large number of votes polled in a State but still does not win a single seat in the general election. The List System helps such a party to some extent. It will benefit the leading parties, more than the smaller ones. Although the List System is desirable, the suggestion to increase the strength of the Lok Sabha needs to be carefully considered.

The Law Commission's suggestion for amending the Tenth Schedule of the Constitution to checkmate unprincipled defections and desertions under the guise of a 'split' is most welcome. The Commission suggests that once a candidate's elected to a party, s/he will remain thus till the dissolution of the House or the end of his/her membership and the concepts of 'split' and 'merger' should have to be given up. If one or more members decide to leave a party and join another, they should resign their membership of the House forthwith, and seek a fresh mandate on the ticket of another party. Another suggestion that the disputes arising under the Tenth Schedule be decided by the Election Commission under Article 103 or 192 as the case may be, and not by the Speaker/Chairperson of a House is equally good, as some of the Speakers have exercised their power under para 6 of the Tenth Schedule in a partisan manner.

Yet another important suggestion made by the Law Commission is the amendment of the Representation of the People Act, 1951, which now provides for disqualification on the grounds of conviction, for certain offences. The proposal is that on the framing of charges by a criminal court for any of the specified offences, the accused should remain disqualified till s/he is acquitted. The Election Commission holds the same view. There are few connected suggestions aimed at checking the entry of criminals into Legislatures, which are good but not sufficient.

The need for a law mandating the political parties to maintain regular accounts of income and expenditure and have them audited every year .and to have an authority to oversee the functioning of every political party has been long felt. In 1994, the Justice V.R. Krishna Iyer Committee suggested a law for the regulation of political parties. The Supreme Court has, in several decisions, pointed out the futility of prescribing a ceiling on election expenses, without removing the existing loopholes in the law (Law Commission of India, 1988).

The Commission suggests the deletion of explanation-I to sub section (1) of Section 77, which permits a political party or any other person interested in a

candidate to spend any amount of money on his/her election and recommends the insertion of a new section, Section 78-A dealing with the maintenance of accounts by recognised political parties. It favours a partial state funding of the election expenses incurred by the parties and for this purpose suggests the insertion of Section 78-B, providing for the free supply of copies of the electoral rolls, diesel and petrol and reimbursement of the expenditure on microphones and loudspeakers. Although state funding to a much larger extent is desirable, financial constraints stand in the way (Rap, 1998).

The Election Commission is in favour of the expenditure incurred by a political party to be included in the election expenses of a candidate, for purposes of ceiling on election expenses. In fact, the Commission has been insistently pressing for such a reform, right since the mid-seventies. The Supreme Court of India has also, time and again, commented on the inadequacy of the existing provisions in this regard. The role of money power definitely, disturbs the level playing field in the election process between contesting candidates and contesting political parties. There is a great need to ensure that the role of money power in elections and in the election arena is curbed significantly, if not, totally eradicated.

The Election Commission is in favour of empowering itself to fix a ceiling on election expenses before every general election. The Election Commission, which is in touch with the ground realities, with the political system in the country and with the elections and electioneering that takes place in various constituencies, is best equipped to fix a ceiling on election expenses for various constituencies, before every general election.

In 1998 the Election Commission came out with a proposal that the procedural delay in invoking Section 8A, the automatic disqualification of a person found guilty of corrupt practices, should be plugged through suitable amendments to the Representation of the People Act, 1951.

The Commission felt that Article 324 of the Constitution should bi amended to provide that (a) there should be a maximum of two Election Commissioners, along with the Chief Election Commissioner; and (b) the method of appointment and the constitutional protection after appointment, should be the same for the Chief Election Commissioner and other Election Commissioners. The Election Commission reiterated and urged early action on the need to have an independent Secretariat on the lines of the Lok Sabha and the expenses of the Commission should be 'charged' to the Consolidated Fund of India.

The Election Commission reiterated its proposal that the Commission should be specifically empowered under the statute to frame rules for disciplinary proceedings and impose suitable penalties on Election Officers, who are on deputation to the Commission and subject to its control, superintendence and discipline, if found guilty of acts of omission and commission while performing

election duties, as mentioned in Section 13 CC of the Representation of the People Act, 1950 and Section 28 A of the Representation of the People Act 1951.

Government vs Election Commission

In an effort to curb the growing menace of criminalisation of politics, the Delhi High Court, in a landmark judgement (November 2000 and as a result of a Public Interest Litigation filed by a group of committed individuals, under the aegis of Association for Democratic Reforms), has reinforced and strengthened the Election Commission's desire to cleanse the political system ridden with criminal elements. The Court has asked the Election Commission of India to inform voters about the criminal background of candidates contesting elections to the Parliament and Legislative Assemblies. The Court observed, "The Election Commission shall secure to the voters information whether a candidate is accused of any offence punishable with imprisonment" (Judgement of the High Court of Delhi, C.W.P. No. 7257 Of 1999, dated 02nd November on Criminalisation of Politics).

When the Union Government appealed against the judgement to the Supreme Court, the latter upheld the Delhi High Court's verdict. The Supreme Court's judgement is based upon two premises: the citizen's right to know and of informed voting under Article 21 and the Election Commission's power and duty under Article 324 to superintend elections. What Court has done is to merely fill "the void in the absence of suitable legislation" pending action by the legislature. The Supreme Court has merely reminded the Election Commission that the Constitution gives it wide-ranging powers. Unfortunately, the present controversy is being construed as a fight between the Supreme Court and the Election Commission on the one hand, and Parliament on the other, over who has the right to legislate on electoral reforms. Pursuant with the Court's Judgement, the Election Commission issued its order requiring each candidate to furnish information to the Returning Officer on (i) past criminal convictions, (ii) pending criminal cases carrying a conviction of more than two years, (iii) assets, (iv) liabilities (especially public dues) and (v) educational qualifications.

Subsequently, the government prepared a draft poll bill which when passed by the Parliament could override the Election Commission's guidelines. The draft bill is silent on the need for candidates to declare their assets, liabilities and educational qualifications. This bill also provides for "disqualification of those candidates against whom there are two separate criminal proceedings concerning heinous offences charged by a court at least six months prior to filing the nomination". It further stipulates that a candidate will have to furnish information as to whether he/she has been accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by a court.

The bill is a complete dilution of what the Supreme Court had pronounced. In fact, the government was forced to come out with this draft bill (likely to be

passed in the monsoon session), lest the Election Commission's guidelines which are far more stringent be implemented. It is thus perceived that though the ostensible purpose of the legislation is to implement the Supreme Court judgement, there is reason to worry that the actual object of the proposed law would be to dilute it in a manner which negates its impact. The reform bill doesn't address many other issues such as election financing and corruption, anti defection laws, reforms in electoral machinery, which have been long debated and call for urgent reforms. Unfortunately, the political elites don't seem to be serious with the agenda for pursuing serious electoral reforms. In the absence of such initiative and vigour, the institution of civil society alone can bring about a sea change by electing representatives whose efforts find fruition in validating a vivacious democracy (Kumar, 2002).

Conclusion

The Commission continues to carry forward the mantle of activism which it had donned during Seshan's era. Among the notable achievements in recent times have been the raising of the expenditure limit to Rs. 15 lakhs for a Parliamentary Constituency and Rs.6 lakhs for an Assembly Constituency, ensuring inner party democracy among all the recognised political parties, issuing the order on breakaway factions and awarding national and State recognition to breakaway groups, effectively enforcing the Model Code of Conduct, from the day of the announcement of the elections by the Election Commission, barring the entry of criminals in the electoral arena . It is, therefore, worth observing that the Commission has in the last decade moved largely from being a 'procedural' institution to a 'proactive' one, thereby discharging the onerous responsibility that has been entrusted to it by the Founding Fathers of the Constitution and the people of India.

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. This could be realised by strengthening the hands of the Election Commission and plugging those loopholes that permit the Executive to interfere with the working of the Commission. An Election Commission that is able to assert its role and stand up to the political pressures exerted by the Government of the day would significantly contribute to enriching the quality and content of Indian democracy. In the light of the four decades of experience and experimentation with parliamentary democracy and with a view to strengthening the commitment of the system to democratic values and principles, a review of the organisation and functions of the Election Commission has today become necessary.

Political Institutions encompass three kinds of entities – elected institutions of the state such as Parliaments, non-elected institutions of the state, such as the bureaucracy, police, judiciary and armed forces and the organisations of civil society, such as the press and myriad professional and other associations. In the final analysis, it would appear that the process of institutional decay is ending and a

phase of institutional reinvigoration has begun, especially because India's civil society has become much more powerful than it was before. Additionally, the institutions with overseeing responsibility, namely the Election Commission and the Judiciary, have begun to represent the urges of civil society much more effectively than before.

Finally, the success of the reform(s) would depend upon the working of and adherence to the system on the part of the electoral machinery at all levels – the political parties, the candidates and the electorate. An independent press and enlightened public opinion have no substitute and their role is crucial in pushing through reforms.

REFERENCES

Basu, Abhijit (1994). 'Process of Elections under Seshan', Democratic World, 33(22), pp. 6-7.

Baweja, Harinder (1994). 'Assembly Elections: Crisis on the Cards', India Today, 19(19), October 15, pp. 114-5.

Bhandari, Kusumlata (1988). Indian Electoral Reforms. New Delhi: Election Archives,

Butler, David (1991). India Decides Elections 1952-1991. New Delhi: Living Media India Limited.

Ganesan, K. (1991). 'Making a choice: On Some Alternative Electoral Systems', Frontline, April 27 -May 10, pp.45-48.

Gill, M. S. (1997). 'Role and Functioning of Election Commission of India', Indian Journal of Public Administration, 43(3), July -September, pp. 416-20.

Jain, Kiran and P.C. Jain (1998). Chawla's Elections: Law and Practice. New Delhi: Bahri Brothers.

Kashyap, Subhash C. (1992). 'Urgent Need for Electoral Reforms', Monthly Public Opinion Survey, 37(10), July, p. 21.

Kaviraj, Sudipta (1997). 'General Elections in India', Government and Opposition, 32(1), pp.3-24.

Kumar B. Venkatesh (1999). 'Funding of Elections (Case for Institutionalised Financing)', Economic and Political Weekly, 34(28), pp. 1884- 1888.

Venkatesan, V. (1994) 'Positive Bill: For Elections Free', Frontline, 11(24), December 2.

Venkatesh, V. (1996). 'Step forward: Promise of Change in the Electoral System', Frontline, 13(16), pp.29-30.

Yadav, Yogendra (2002). 'Free and Fair (EC shows the way in Gujuart)', Times of India, August, p. 12.