

## **15<sup>th</sup> Annual National Conference on Electoral and Political Reforms**

**Date and Venue: 2<sup>nd</sup>- 3<sup>rd</sup> March, 2019 at DDU Institute of Rural Development, Lucknow**

### **Background Note**

#### **Session: Electoral and Political Reforms and Role of Judiciary**

*Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. Law has to bend before Justice".*

-S. Nagaraj v. State of Karnataka; 1993 Supp (4) SCC 595

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. However, election process in most democracies is also the progenitor of political corruption.

#### **A. Reforms brought by Indian Judicial System:**

Judiciary being the ultimate custodian of "Justice and Rule of Law", it is expected that some reforms are introduced by the courts in order to make our electoral and political process clean. One cannot disregard the fact that Indian judicial system is also trying to resuscitate free and fair elections through various judicial pronouncements. In a catena of its decisions, judiciary has recognised and exercised its powers, if need be, by issuing necessary directions to fill the vacuum till such time the legislature steps in to cover the gap or the executive discharges its role. Some of the prominent judgments which introduced electoral and political reforms are as follows:

1. On 2<sup>nd</sup> May 2002<sup>1</sup>, the Supreme Court ordered disclosure of criminal, financial and educational details by candidates contesting elections to Parliament and State Assemblies.
2. On 10<sup>th</sup> July, 2013<sup>2</sup> the Supreme Court declared Section 8(4) of the Representation of People Act unconstitutional, which allowed a convicted Member of the Parliament and State Legislative Assemblies to retain their membership of the House they were elected to, for three months to enable them to file an appeal in the higher court.
3. On 11<sup>th</sup> July, 2013<sup>3</sup>, the Allahabad High Court held that unrestricted freedom to hold caste based rallies is contrary to the public interest and cannot be justified.
4. On 13<sup>th</sup> September, 2013<sup>4</sup>, Supreme Court made it compulsory for the Returning Officers to ensure that the affidavits filed by the contestants are complete in all respects and to reject the affidavits having blank particulars.
5. On 27<sup>th</sup> Sept. 2013<sup>5</sup>, Supreme Court gave a favourable ruling and ordered inclusion of NOTA buttons on the EVMs. The NOTA button was inserted in the EVM machines first time during the 2014 Lok Sabha elections.

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<sup>1</sup> (2002)5 SCC 294

<sup>2</sup> (2013) 7 SCC 653

<sup>3</sup> MISC. BENCH No. - 5889 of 2013

<sup>4</sup> AIR 2014 SC 344

<sup>5</sup> (2013) 10 SCC 1

6. On 10<sup>th</sup> March, 2014<sup>6</sup> Supreme Court directed all High Courts to conclude trial against sitting MPs and MLAs who have charges framed against them for the offences specified under Section 8(1), 8(2) and 8(3) of the RP Act, within one year from the date of the framing of charge(s).
7. On 28<sup>th</sup> March, 2014<sup>7</sup>, the Delhi High Court held BJP and the Congress guilty of violating the Foreign Contributions Regulation Act, 1976.
8. On 5<sup>th</sup> May, 2014<sup>8</sup> Supreme Court held that the Election Commission has the power to disqualify a candidate in relation to filing of wrong election expenditure statements.
9. On 9<sup>th</sup> May, 2014<sup>9</sup> the Supreme Court held that non-disclosure of information, which is very vital to enable the voter to form his/her opinion about the candidate's antecedents, results in misinformation and disinformation thereby influencing the voters to take an uninformed decision.
10. On 5<sup>th</sup> February, 2015<sup>10</sup> the Supreme Court ruled that non-disclosure of criminal antecedents of a candidate, especially, pertaining to heinous or serious offence or offences relating to corruption or moral turpitude and where a candidate has the special knowledge of the pending cases and where cognizance has been taken or charges have been framed and there is a non-disclosure on candidate's part, it would amount to undue influence.
11. On 16<sup>th</sup> February, 2018<sup>11</sup>, the Supreme Court directed inclusion of column pertaining to "Sources of income" of the candidate, spouse and dependents in form 26 i.e affidavits. Supreme Court also directed to implement a permanent mechanism for scrutiny of affidavits

**B. Arbitrary Amendments and ADR's petitions:**

1. On 3<sup>rd</sup> June, 2013, , the Central Information Commission (CIC), in an effort towards making political parties transparent as well as accountable in their functioning, declared the six national parties as public authorities under the purview of the RTI Act 2005. All the six parties refused to comply with this decision of the CIC. A petition has since been filed by ADR in the Supreme Court.
2. The Central government through the Finance Act 2016, amended the Foreign Contribution (Regulation) Act, 2010 and changed the definition of a "foreign source" to quietly let BJP and the Congress off the legal hook of the Delhi High Court judgment. Since BJP and INC were guilty of taking foreign donations prior to 2009, the Central Government realised their mistake and amended the FCRA, 1976 with retrospective effect. A petition has been filed by ADR against the amendments in the Supreme Court.
3. In February, 2017, the Finance Act, 2017, which was enacted as a money bill introduced a system of electoral bonds to be issued by any scheduled bank for the purpose of electoral funding. The Act has also removed the previous limit of 7.5 per cent of the company's average three-year net profit for political donations with the result that a company is no longer required to name the parties to which such contributions are made. A petition has been filed by ADR along with Common Cause in the Supreme Court.

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<sup>6</sup> *W.P(C) No. 536/2011*

<sup>7</sup> *(2014) 209 DLT 607*

<sup>8</sup> *(2014) 7 SCC 99*

<sup>9</sup> *(2014) 9 SCC 1*

<sup>10</sup> *AIR 2015 SC 1921*

<sup>11</sup> *W.P(C) No. 784/2015*

**Conclusion:** The common theme in the above issues is that the Government and the entire political class join hands and attempt to oppose the judgments of the Courts which have introduced electoral and political reforms. Over a period, we have observed criminalization, burgeoning election expenditure, political party funding, and inadequate reporting and disclosure laws. Whatever few electoral reforms have been initiated over the last two-three decades have been due to legal advocacy and judicial activism. There is a complete agreement that change is needed, but there are serious differences on how to go about it. We may be at the centre or vortex of a whirlpool of events. Transparency is essential for accountability, both of which are in turn the quintessential cornerstones of good governance. ADR hopes this panel discussion will provide a platform to examine aspects of electoral and political reforms with a specific focus on the role of the Indian Judicial system on bringing such reforms and also suggest measures required to make elected representatives and political parties more responsive towards initiating reforms.

By Shivani Kapoor  
Program Officer (Legal)