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Electoral Reforms in India - Issues and Reforms

Nilesh Ekka
Senior Researcher
Association for Democratic Reforms

ABSTRACT: *One of the most important features of a democratic polity is elections at regular intervals. Elections constitute the signpost of democracy. The attitudes, values and beliefs of the people towards their political environment are reflected through these medium. Elections grant people a government and the government has constitutional right to govern those who elect it. Elections are the central democratic procedure for selecting and controlling leaders. 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 symbolize 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 realized if we have the content of free, fair and effective election process in our system. Only free and fair elections to the various legislative bodies in the country can be guarantee the growth of a democratic polity.¹*

KEY WORDS: *Elections, Reforms, Issues, Democracy, Criminalization of Politics, Money Power*

Introduction:-

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. A total of 8251 candidates contested for the 543 Lok Sabha seats. It was conducted in 9 phases and the voter turnout 66.38% was the highest ever recorded in the history of Indian General Elections. The nation spent Rs. 3426 crores to conduct the Lok Sabha polls. 81.45 crores of Indians were on the eligible voters list. 55.1 crore voters exercised their franchise. About 9,30,000 polling stations were set up all over the country. The ballot boxes were sealed on May 12, 2014 for the last time and the results were declared on May 16, 2014. 10 million officials (including police security) were deployed to conduct the elections. The sheer size of the work force involved in the elections is greater than the population of most countries in the globe. It is to the credit of India that it has successfully conducted 16 elections to the Lok Sabha and several to the states since independence.

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 opinion, it cannot survive without free and fair 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 1967. 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 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.

Issues and Recommendations:

1. Criminalization of Politics

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 who uses 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. Once an accused is elected during the trial, he uses his position and power to dilute the case or pressurizes the government to withdraw the prosecution against him or her.

All recent committees on politics and electoral reform have observed the criminalization of our political system almost unanimously. Criminalization 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. The topic of electoral reforms has been taken up by numerous government committees in the recent past, including but not limited to:

- Goswami Committee on Electoral Reforms (1990)
- Vohra Committee Report (1993)
- Gupta Committee on State Funding of Elections (1998)
- Law Commission Report on Reform of the Electoral Laws (1999)
- National Commission to Review the Working of the Constitution (2001)
- Election Commission of India – Proposed Electoral Reforms (2004)
- The Second Administrative Reforms Commission (2008)

The Vohra Committee Report on Criminalization 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 senas and over the years get themselves elected to local bodies, State assemblies, and national parliament.” This point becomes self-evident when one looks at the number of elected representatives with pending criminal cases against them at all levels in our federal system. 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 vs Union of India and another) (AIR 2003 SC 2363), 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 profession.

Since an overwhelming majority of candidates are put up by political parties, and political parties also campaign for candidates including spending money on their campaigns, it is logical that the parties take responsibility and vouch for the candidates' antecedents.

ADR therefore recommend that the information submitted in the affidavits by the candidates should be certified by Political Parties. Information given by candidates in their affidavits will cease 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.

The issue of eligibility of candidates with criminal cases pending against them has been discussed for a long time. The Election Commission of India recommended, as far back as 1998, that candidates with pending criminal cases against them not be allowed to contest elections. It reiterated that recommendation in 2004.

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”.

The Second Administrative Reforms Commission (2008) has also recommended the amendment of Section 8 of the Representation of the People Act, 1951. It states, “Section 8 of the Representation of the People Act, 1951 needs to be amended to disqualify all persons facing charges related to grave and heinous offences and corruption, with the modification suggested by the Election Commission [Para 2.1.3.3.2].

As seen from the above, there is near-unanimity in all the recommendations about keeping people who have criminal cases pending against them out of the legislatures. The Election Commission has stated this elegantly in their recommendation of 2004, —The Commission

reiterates that such a step would go a long way in cleansing the political establishment from the influence of criminal elements and protecting the sanctity of the Legislative Houses. The counter view to this proposal is based on the doctrine that a person is presumed to be innocent until he is proved guilty. The Commission is of the view that keeping a person, who is accused of serious criminal charges and where the Court is prima facie satisfied about his involvement in the crime and consequently framed charges, out of electoral arena would be a reasonable restriction in greater public interests”.

ADR, therefore, recommend that (a) 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 (b) any political party that gives a ticket to such an individual be “deregistered and derecognized forthwith”.

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, (a) 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 (these have since been increased), and (b) Majority of the candidates contesting elections declared, in their election expenditure statements submitted to the Election Commission, that they had spent between 45% to 55% of the limit. Only a few candidates declared having spent between 90 and 95% of the limit.

A large number of candidates and political parties often complain about the limits being unrealistically low, and seek a revision. 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. It has often been suggested by many people including politicians, and also former Chief Election Commissioners, that the limits really do not seem to serve any purpose and should be abolished. 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.

The pernicious influence of big money in derailing the democratic process was noticed and documented as early as 1993 in what has come to be called the Vohra Committee Report. Mr. N.N. Vohra, then Union Home Secretary, quoted reports from the Central Bureau of Investigation (CBI), “An organized crime Syndicate/Mafia generally commences its activities by indulging in petty crime at the local level, mostly relating to illicit distillation/gambling/organized satta and prostitution in the larger towns. In port towns, their activities involve smuggling and sale of imported goods and progressively graduate to narcotics and drug trafficking. In the bigger cities, the main source of income relates to real estate – forcibly occupying lands/buildings, procuring such properties at cheap rates by forcing out the existing occupants/tenants etc. *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*” (Para 3.2).

In view of the increasing cost of the election campaigns, it is desirable that the existing ceiling on election expenses for the various legislative bodies be suitably raised to a reasonable level reflecting the increasing costs. However, this ceiling should also apply to the political parties. As of now, there is no limit on how much a political party can spend on elections.

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. While the reasons for high cost of campaigning may be many and varied, one of the contributory factors could well be that political parties do not pay much attention to their traditional role, that of mobilizing public opinion and acting as a mediator between the public at large and the government, but have decided that they are in the business of winning elections at any cost. One outcome of this is the selection of candidates solely on the basis of an all-inclusive characteristic called “winnability”. 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 “winnability”. 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.

Another recommendation that has been suggested by previous committees to reduce the cost of elections is state funding of 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. However, ADR feels that prior to state funding of elections, an immediate overhauling of the electoral process is needed. Elections need to be freed from the influence of all vitiating factors, particularly, criminalization of politics. 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. 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 attempted.

In view of the foregoing and the experience of watching the electoral process unfold over the last fifteen years, ADR recommend as follows:

- No worthwhile measures concerning financing of elections can even be contemplated until there is reliable data about the cost of elections. The largest proportion of election expenditure is presumably done by political parties. As of now, there is no reliable data about the financial affairs of political parties. More than 70 percent of their donations are from unknown sources. With the introduction of 'Electoral Bonds' opacity in their funding will only increase and it has been seen in the coming years what are its effects on our electoral process and elections. The foremost requirement for getting a clear and comprehensible picture of financing of elections is to get financial transparency in the financial affairs of political parties.
- 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.
- 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.
- ADR is not against the concept of state funding of elections but is NOT in favour of state funding being provided for elections in any form in the current situation till the functioning and finances of political parties are not made transparent and amenable to public scrutiny.

3. Misuse of caste and religion for electoral gains

This has been the subject for discussion from time to time. The use of religion, caste, community, tribe, and any other form of group identity for electoral gain or for gathering political support should not be allowed and the Representation of the People Act, 1951, be suitably amended to give the Election Commission powers to take deterrent actions against those candidates and political parties who resort to it, such actions should include, but not limited to, disqualifying candidates from contesting elections and de-registering the offending political parties. Political parties should also not be allowed to use overtly religious, caste, community, tribe, and other such expressions and words in their names.

4. Regulating Political Parties

It is a desirable objective to promote the progressive polarization of political ideologies and to reduce less serious political activity. The Election Commission should progressively increase the threshold criterion for eligibility for recognition so that the proliferation of smaller parties is discouraged. There are more than 1600 political parties registered with the ECI, however, only a few ever contest elections. ECI should be authorized to de-register such parties, which do not contest elections.

5. Political Reforms

It needs to be understood that mere periodic holding of elections to Parliament and State Assemblies, and occasionally to Municipalities and Panchayats, is not enough for an effective or a vibrant democracy, as we pride in calling ourselves. The underlying democratic foundations are severely lacking in the political system in India. No electoral system can provide real and effective representation for the larger societal aspirations unless the political system underlying it is not democratic in real terms. Some of the areas of concern are:

- *Institutionalization of political parties:* Need for a comprehensive legislation to regulate party activities, criteria for registration as a national or State party, de-recognition of parties.
- *Structural and organizational reforms:* Party organizations-- National, State and local levels; Inner party democracy-- regular party elections, recruitment of party cadres, socialization, development and training, research, thinking and policy planning activities of the party.
- *Party system and governance:* Mechanisms to make parties viable instruments of good governance.

In view of the above, the deeper political reforms can be presented in three interrelated but distinct parts: registration and de-registration of political parties, internal democracy in political parties, and comprehensive legislation for the regulation and functioning of political parties. These are discussed below and recommendations presented.

- **Registration and de-registration of political parties:**

The authority for registration, de-registration, recognition and de-recognition of parties and for appointing the body of auditors should be the Election Commission. The decisions of the ECI should be final subject to review only by the Supreme Court of India.

- **Internal democracy in political parties:**

This is arguably the single most critical and important reform needed to make India a truly democratic society. 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. While it would be normally expected that political parties which function in a democracy, and claim to be defenders of democracy at every opportunity, would should function, in their own internal functioning, in a democratic manner but that, as we have observed, unfortunately, this does not happen.

Lack of internal democracy makes any organization, and political parties are not an exception here, over-centralized. 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. 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.

- **Financial transparency in political parties:**

This is also one of the fundamental deeper political reforms that is a necessary precondition that must be satisfied before any meaningful electoral reforms can actually take place on the ground. Bulk of the donations are currently from unknown sources of funds and the introduction of 'Electoral Bonds' has made the financial transparency even more opaque than earlier. 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.

For bringing 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 recognized political parties both at the national and State level. ADR therefore recommends that a comprehensive law be enacted to regulate the functioning of political parties.

Conclusion

Despite landmark judgements 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 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, though it had not made any radical suggestion however, whatever suggestions being made are not acceptable to the politicians. There exists a wide gulf between preaching and practice in today's modern political era. Actually, the roots of the problem lie in the political system of the country. There is lack of political will to combat the problem. As being said earlier, Election is a soul of Democracy, that not only nourishes the faith of common person in the ideals of democracy but also protect the nation from the threat of authoritarian politics. Weak electoral system is a biggest threat not only to the national integration but also to the Democratic Consolidation of India. 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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