

KEYNOTE ADDRESS BY SH. O.P. RAWAT,
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ON "REGIONAL CONSULTATION ON ELECTORAL AND
POLITICAL REFORMS – NORTHERN REGION" ORGANISED BY
ASSOCIATION FOR DEMOCRATIC REFORMS (ADR)
AT IIC (ANNEXE) on 17TH AUGUST, 2017

Chairperson of this consultation Maj. Gen. Anil Verma, Head ADR/NEW, Professor Jagdeep Chhokar, Professor Trilochan Sastry, Dr. S.Y. Quraishi, Former Chief Election Commissioner of India, distinguished Resource Persons/Participants, Ladies and Gentlemen.

2. At the outset, I would like to express my gratitude to ADR and especially to Gen. Anil Verma, Professor Jagdeep Chhokar and Professor Trilochan Sastry for inviting me to this "Regional Consultation on Electoral and Political Reforms" focused on northern region. ADR has been doing yeoman service in the cause of informing electorate about the credentials of political parties, their sources of funding etc. as also of their candidates and about the details furnished by them at the time of contesting elections giving considerable analytical insight to help the elector to take a well informed decision about casting his or her vote. I am sure their efforts must have contributed considerably in improving the Electoral Integrity of India's elections over the years.

3. Today's deliberations would be focusing on electoral malpractices, First-Past-The Post (FPTP) versus Proportional Representation System, electoral bonds, election expenditure of political parties etc. These are some of the extremely important issues throughout the democratic world and EMB's the world over have been struggling to improve upon the regulations/enforcement on these aspects. In Indian context, I am proud to state that our past Election Commissioners, Governments of different hues, political parties, Civil Society Organizations,

honourable Courts, media and Indian citizens at large have contributed to build an electoral system which has delivered bloodless transfer of political power time and again, strengthening the roots of democracy and setting an example to the whole world. Here, I would like to mention that our noted historian and writer Dr. Ram Chandra Guha, while speaking at Jammu during the 2017 Balraj Puri Memorial Lecture-2017 on 'India at 70: A Historian's Report Card' in the first week of August, 2017 said that Indian Democracy's 70 years have been 50:50 success story and India's greatest achievement in this context has been holding of free and fair elections.

4. I would also like to mention here about the Electoral Integrity Project managed by research teams at the University of Sydney and Harvard University lead by Professor Pippa Norris. They have developed a Perception of Electoral Integrity Index (PEI Index) based on the views of identified experts in different countries on 11 selected parameters relating to elections, namely, electoral laws, electoral procedures, voter registration, party registration, campaign media, campaign finance, voting process, vote count, post elections and electoral authorities. On a scale of 1-100, elections scoring 60 and above are graded with high /very high electoral integrity, 50-59 are graded with moderate electoral integrity and below 50 poor/very poor electoral integrity. Based on their survey, after 2014 Parliament Elections of India, we are put on the top of the moderate electoral integrity slab (with a score of 59) due only to our score of less than 50 on three counts, namely Campaign finance, campaign media and voter registration. Therefore, in the past few years, Election Commission of India have been focusing on improving performance in these crucial areas.

5. Before I dwell on the electoral malpractices, I would like to bring up a word of caution. No system is immune to the malfunctioning of the general environment

of a society and the culture of a polity. Transparency international report “corruption in Asia Pacific” released in march 2017 states that the India is the highest bribery country among the 16 Asia Pacific countries. Nearly 7 out of 10 Indians who had accessed public services, had paid bribe. Although, it hurts our national pride yet, while reforming important systems like elections, it is imperative that we keep in mind the big picture, human vulnerabilities and general environment affecting election machinery’s overall conduct. Here one example will clarify the matters fully. In a remote polling station of a remotely located State, webcasting of polling process revealed that in otherwise peaceful and orderly polling, appearance of one individual at the polling station made everyone, polling officials and polling agents to stand up and salute to him and thereafter two voters had to just stand at the voting booth while he pressed the EVM button before he was arrested after a phone call from Delhi to CEO.

6. I would now like to remember the past efforts at improving electoral integrity and tackling electoral malpractices in the past. Article 324 of the Constitution of India provides to the ECI adequate independence from the executive. It is this clause that was used by a determined Election Commissioner – Shri T.N. Sheshan and others thereafter in developing a series of preventive measures to control electoral malpractices. The Commission, supported by Hon’ble Court judgments in many cases, has been able to slowly develop and enforce rules governing many important issues such as the disclosure of party campaign expenses [*Common Cause v Union of India*, (1996) 2 SCC 752] and the disclosure of a candidates’ economic assets, criminal records, educational qualifications etc. [*Union of India v Association for Democratic Reforms* [(2002) 5 SCC 294].

Another initiative was to provide for strict supervision over the preparation of electoral rolls and emphasis upon photo-identity of the voters was introduced.

The Commission has worked hard to provide specifically designed photo identity cards across the country. The Commission has also undertaken a massive administrative measure to prepare these rolls in electronic format that could help detect duplicate and suspicious names. The latest is 'ERO NET' a network of Electoral Registration officers across the country facilitating seamless migration of voters according to voters geographical shift and obviating the need for lot of paper work. A robust system of General Observers and Expenditure Observers has been put in place to oversee overall electoral activities in general and monitor campaign expenditure in particular.

Another strategy that has been adopted by the ECI is to hold elections over longer periods in phases to enable extensive deployment of CAPF to facilitate neutral FSTs/SSTs to assist Expenditure Observers to detect vote buying/expenditure on campaign etc. besides securing all sensitive/critical polling booths. The Commission has also forbidden reporting of election results till all phases are completed.

7. The Election Commission has further developed several rules to block situations that enable incumbent Government to misuse government machinery and influence officials in the elections. Backed by a number of Court judgments that have supported the efforts of the Commission, rules have been made providing greater control over the personnel deputed for election duties. The Commission has been able to acquire powers to change Returning and Presiding officers at any given time if allegations of doubtful discretionary decisions are found true against them. Moreover, the Election Commission has asserted control over the entire apparatus of the bureaucracy and has begun selecting officers on its own rather than engage the ones deputed by State Governments. This has enabled to select independent and totally neutral officers for election duties. Finally, using the

reservoir of power Article 324 Election Commission made it compulsory to have pre-certification of advertisements in print media on the poll day and a day before. This has now become a standard practice. With such measures in place, Electoral Integrity Project has rated General Elections to Legislative Assembly of Bihar (October-November, 2015) with very high Electoral Integrity with a PEI score of 69.

8. Now Let us discuss various malpractices and the related legal provisions. Corrupt practices described in Section 123 of the Representation of People Act. Include (i) Bribery;(ii) undue influence, (iii)Appeal on the ground of religion, race, caste, community, language, religious symbols or national symbols; (iv) Promotion of enmity or hatred between different classes of citizens of India on grounds of religion, race, caste, community of language; Publication of false statement in relation to the personal character or conduct of any candidate, (v) Illegal hiring or procuring of vehicles or the use of such vehicles for free conveyance of voters, (vii) Incurring or authorising election expenditure in excess of the prescribed limit; and(viii) Obtaining or procuring assistance from Government servants of specified categories and (viii) booth capturing.

Corrupt practice has to be established through the order of a High Court in an Election Petition. One difficulty here is that Election Petition can only be filed against the winning candidate. This would mean that if a defeated candidate commits corrupt practice in election, there is no way it can be questioned and established. The EC has made a proposal to amend the relevant law so as to enable filing of EP in respect of corrupt practice by a defeated candidate. The consequence is that if High Court holds a person elected or otherwise, guilty of corrupt practice, there could be further disqualification of the person for a maximum of six years.

9. In addition to the corrupt practices at elections, various acts of commission and omission have been termed electoral offences. While the commission of a corrupt practice, if found proved, might cost the elected candidate his election, the commission of an electoral offence would expose a person who commits it for penal consequences. Further a person committing electoral offence is liable for punishment irrespective of whether such act was done by him with the consent of the candidate or not. The following acts are regarded as electoral offences within the meaning of Sections 125 – 136 of the Representation of People Act :Promoting Enmity between Classes of Citizens in Connection with Election, Prohibition of Public Meetings during the Specified Period, Disturbance at Election Meetings during the Specified Period, Restrictions on Printing of Pamphlets, Posters etc., Maintenance of Secrecy of Voting, Officers etc., at Elections not to Act for Candidates or to Influence Electors, Prohibition of Canvassing in or Near Polling Station, Disorderly Conduct in or near Polling Station, Misconduct at the Polling Station, Penalty for illegal Hiring or Procuring of Conveyance at Elections, Breach of Official Duty in Connection with Elections, Penalty for Government Servants for Acting as Election Agents, Polling Agent or Counting Agent and Removal of Ballot Papers from Polling Stations.

10. Other electoral malpractices include voter intimidation, forms of voter inducements in various manner and form. Another critical malpractice that has assumed increasing proportions in recent times, is paid news. Paid News has been defined by the Press Council of India as any news or analysis appearing in any media (print & Electronic) for a price in cash or kind as consideration. Instances of paid news initially included the appearance of identical articles, with photographs and headlines, in competing publications carrying by-lines of different authors,

during the same time period. But, candidates and parties are bound to change their strategies to avoid easy detection of paid news. EC has proposed that abetting and publishing of ‘paid news’ in elections should be made an electoral offence punishable by imprisonment of 2 years. Once it is made an electoral offence, stakeholders like political parties and media and the general public may be encouraged to report incidents to ECI for investigation and taking penal action.

11. Although money is necessary for political parties and candidates to operate and reach out to their voters, experience has shown that there is a real and present risk that some parties and candidates once in office will be more responsive to the interests of a particular group of donors rather than to wider public interest. The risk that unregulated and non-transparent money in elections present, is that elected officials may use their office to arrange for donors to secure contracts, gain access to public loans on beneficial terms, or earn other benefits.

“Policy capture” occurs when the interests of a narrow group dominate those of other stakeholders, to the benefit of that narrow group. When “policy capture” occurs, the rules and regulations may be swayed to benefit a handful of powerful interests. This is one of the consequences of a large influx of money from special interest groups into the electoral process, which in turn, results in the weakening of democratic governance, equal opportunities for all and decline of public confidence in the democratic process itself. In cases where money is perceived to have undermined the government decision-making process, it results in low levels of trust in government.

12. In this context it is pertinent to mention that the Finance Act 2017 which has introduced certain amendments to the Income Tax Act, the Representation of People Act 1951 and the Companies Act, 2013, makes it clear that any donation

received by a political party through an electoral bond, has been taken out of the ambit of reporting in the Contribution Report under Section 29C of the Representation of People Act. The implications of this step can be retrograde, as far as transparency is concerned. Furthermore, where contributions received through Electoral Bonds are not reported, a perusal of the Contribution Reports of the political parties, will not make it clear whether the party in question has taken any donations in violation of Section 29B of the Representation of People Act, which prohibits the political parties from taking donations from government companies and foreign sources.

Furthermore, the Commission has expressed apprehension that the abolition of the relevant provisions of the Companies Act (removing the cap of 7.5% of profit for political donations) could lead to money laundering by setting up shell companies for diverting funds for donations to parties.

13. Curbing the abuse of money power during the election process is a challenging task in view of the inherent complexities involved. The process is still evolving and requires tremendous effort and cooperation from all stakeholders in order to ensure the purity of elections. I am happy to state that most of the political parties and politicians of different ideologies are also strongly in favour of such efforts with only one rider that the system so evolved should not be vulnerable to misuse by vested interests and manipulative corporates.

14. It is needless to say that high cost of election and corruption go hand in hand. As all candidates or parties do not have equal access to such funds, it is necessary to have a cap on spending by political parties as no-limit leads to skewed turf for the contestants. There is a proposal of EC for limiting the election expenditure of political parties. Over a period of time, we should try to provide

State assistance in various forms while progressively restricting expensive meetings, rallies and advertisements so as to make election campaign cheaper and affordable.

15. The challenge for policy makers and politicians is to strike the right balance: limiting negative effects while encouraging democratic consolidation through competition. In this effort, it is important to view both the use and control of money in politics as the means to an end, rather than the end itself.

16. It has come to the notice of the Commission that paid operators run by PR firms are being actively deployed to shape public opinion online. With increasing spread of mobile-internet technology, the influence of social media has also been increasing and it is high time that Social Media is recognised as media and its content is monitored too. I am happy to state that ECI is formulating its social media policy and we are hopeful that it is likely to address such issues.

17. It is often observed that the panel discussions on News Channels are one sided or motivated. In the name of panel discussion on probable election results based on astrology, social dynamics, media insights etc. before the expiry of prohibition on telecast of exit polls is another emerging area to manipulate tail-end polling. However, these could be stopped by timely intervention of the Election Commission.

18. Democracy thrives when elections are free, fair and transparent. However, it appears to a cynical common man that we have been scripting a narrative that places maximum premium on winning at all costs – to the total exclusion of ethical considerations. In this narrative poaching of Legislators is extolled as smart political management; strategic introduction of money for allurements, tough

minded use of state machinery for intimidation etc. etc. are all commended as resourcefulness. The winner can commit no sin; a defector crossing over to the ruling camp stands cleansed of all the guilt as also possible criminality etc. It is this creeping 'new normal' of political morality that should be the target for exemplary action by all political parties, politicians, media, civil society organizations, Constitutional authorities and all those having faith in democratic polity for a better election, a better tomorrow.
