

ADR ADDRESS BY SHRI. OM PRAKASH RAWAT,
HON'BLE CHIEF ELECTION COMMISSIONER OF INDIA

ELECTORAL REFORMS PROPOSED BY THE
ELECTION COMMISSION OF INDIA

Gen. Anil Verma, Head of ADR, Prof. Jagdeep Chhokar,, prof. Trilochan Sastry both Founder Members and Trustees of ADR, Shri **Harish Narasappa**, coordinator of Karnataka Election Watch (KEW), Prof. G Raghuram Director IIM-B; Distinguished Resource Persons for 14th Annual National Conference on Electoral and Political Reforms, Learned participants, Friends from Media, Ladies & Gentle men.

It gives me immense pleasure to be here with you all who have gathered today to brainstorm and to seek insights into various aspects so as to bring about necessary improvements in our electoral systems, processes and governance so as to strengthen democracy.

Let me set the context for such an important exercise at the outset. Two Centuries ago only one percent of people lived in democracies globally and even there women and working class men were denied the vote. Now two thirds of people live in democracies and even authoritarian states are freer than they were, phenomenal progress indeed. As a consequence, quality of life has considerably improved for a large number of people worldwide. Health indicators of world population are improving and poverty levels are declining globally. In Indian Context, democracy has effectively worked for people and one of the singular achievement 70 years after independence has been holding of free and fair elections.

The credit goes to our political leadership, parties, institutions, Civil Society, election managers and above all the real sovereign, the people of India. But new challenges are emerging and our efforts to meet them appear to be falling short; requiring all of us to sit down, brainstorm and innovate to put in place a better and more effective system to squarely meet the challenges of the day and be prepared to meet the challenges of tomorrow.

The Election Commission, drawing from its experience in the conduct of elections, proactively strives to improve and reform the electoral system. While the management aspects of election process can be improved and fine-tuned by the Commission itself, there would be several aspects that need changes in the statutes. The Commission has made several recommendations for amendments in the Act and the Rules, by way of reform proposals made from time to time, some of which have been accepted by the government at different points of time.

The important proposals relate to areas ranging from decriminalization of politics, to reforms relating to political parties, election expenditure regulation and election management issues. Several of these issues have gained heightened relevance in the present day context.

A few of the important proposals, are highlighted here. Many of these have already attracted public interest and generated debates, notably in conferences of ADR itself.

A. DECRIMINALIZATION OF POLITICS

1. Disqualification upon chargesheeting in cognizable offences

1.1. The Supreme Court has observed that (*Krishnamoorthy v. Sivakumar & Ors* 2015), concealment or suppression of his criminal antecedents by a candidate, particularly of serious offences, amount to interference with the free exercise of voters' right to vote as it prevents the voter from making an informed choice, and hence, it amounts to 'undue influence'.

1.2. The Commission has proposed that persons charged with serious offences should be de-barred from contesting in the elections at the stage when the charges are framed by the competent court provided the offence is punishable by imprisonment of at least 5 years, and the

case is led at least 6 months prior to the election in question. The Law Commission has also taken note of the menace of criminalization of politics and they have suggested a middle- path that disqualification may be triggered after one year from the stage of framing of charges. Either way, considering the long time taken in conviction, especially of those with political clout, there is a felt need to consider disqualification even prior to the stage of conviction, not for petty offences, but for serious offences.

The Supreme Court has directed that cases of legislators should be decided in one year. Even this will help as a Member facing serious charges will not continue indefinitely during pendency of the case.

2. Making Bribery a Cognizable Offence and Countermanding Elections on Ground of Bribery

- 2.1. Incidents of bribery in elections have been on the rise; however, bribery is still a non-cognizable offence, attracting minimal punishment when compared to the seriousness of the offence in democratic elections. Accordingly, the Commission has recommended that bribery be made a cognizable offence with a minimum of 2 years imprisonment for effective deterrence.
- 2.2. In cases following large-scale instances of bribing of electors by candidates and workers of political parties, the Commission, has used its plenary powers under Article 324 to cancel the election. This was recently done in the case of the RK Nagar bye-election last year. In the Commission's view, there should be a provision in the Representation of the People Act, 1951 enabling the Commission to take appropriate action including countermanding of election in the event of widespread incidents of bribery of electors in a constituency, if in the opinion of the Commission such incidents are likely to vitiate the election.

B. REFORMS RELATING TO POLITICAL PARTIES

3. Deregistration of Political Parties

3.1. The Election Commission of India should be authorized to issue necessary orders regulating registration and de-registration of political parties. Many political parties obtain registered, but never contest an election, existing only on paper, perhaps with an eye on availing the income tax exemption afforded to parties.

3.2. Furthermore, the Commission has also proposed that Income Tax exemption should be available only to political parties that contest elections and win seat(s) in the Parliament or Legislative Assemblies. This was proposed in order to prevent proliferation of non-serious parties who may seek registration only to avail income tax benefits.

4. Compulsory Maintenance of Accounts by Political Parties and Standardized Auditing Guidelines

4.1. The Commission wants:

- i. Parties should be statutorily required to submit to the Election Commission, its audited accounts,
- ii. These accounts will be made publicly available for inspection.
- iii. Furthermore, the accounts should be audited by a panel of such accountants maintained for the purpose by the Comptroller and Auditor General.

4.2. Since there is no legislation or regulation or rule which prescribes standard financial accounting and reporting framework for financial statements of political parties in India, the Commission requested the Institute of Chartered Accountants of India to assist in this regard. The Institute made certain recommendations in February 2010 under its "Guidance Note on Accounting & Auditing of Political Parties" to the Election Commission for improving the system of accounting followed by political parties in India. The Election Commission's Transparency Guidelines notified in August 2014, require political parties to conform to the Guidance Note released by the ICAI, however it is desirable that

this requirement be legislated with appropriate penal consequences for non-compliance.

5. Ceiling on Campaign Expenditure by Political Parties

- 5.1. The Commission has proposed that there should be a limit on the ceiling of election expenditure by political parties in Assembly and Parliamentary elections, in order to maintain a level playing field and control the use of money power in elections. This ceiling should not exceed the expenditure ceiling specified for individual candidates, multiplied by the number of candidates of that party, contesting elections. Furthermore, the Commission has also suggested that the amount of financial assistance given by a political party to any of its candidates should not exceed the limit prescribed under Section 77(3) of the RP Act, 1951.

C. ELECTORAL BONDS

Government took an initiative to impact political funding by bringing in the concept of Electoral bond through Finance Bill presented last year. Commission considered the provisions and ^{took action} ~~informed the Government~~ as under.

6. The Commission has written to the Govt. drawing attention to amendment to section 29C of the Representation of People Act, 1951 carried out vide the Finance Act, 2016 (excluding electoral bonds from the requirement of reporting) which will impact the transparency of political finance.
- 6.1. Furthermore, the Commission had also recommended that the RP Act, 1951 should be amended to reduce the limit of anonymous donations to Rs 2000 in order to bring this in consonance with the Income Tax Act, 1961 which has been amended to prohibit the receipt of donations exceeding Rs. 2,000 in cash.
- 6.2. The Commission also recommended to reconsider ~~of~~ the amendments introduced in the Companies Act omitting the limit of 7.5% of

companies' average net profits in the preceding three financial years. The Commission recommended that a provision should be made in the Companies Act, to declare party-wise contributions made by companies in the profit and loss account, in order to bring about transparency in the fundraising of political parties.

6.3 This scheme has been notified on 02.01.2018 and the first tranche of electoral bonds are under issue w.e.f 1st to 10th March, 2018.

6.4 Commission would review the working of the scheme thereafter and furnish further suggestions to the Government.

D. ELECTION CAMPAIGN AND ADVERTISEMENTS

7. Ban on Government Sponsored Advertisement before Elections

7.1. Central and State Governments embarking often undertake 'election advertising' in the guise of providing information to the public, shortly before elections, with a view to influencing voting decisions. Advertisements highlighting achievement of the government are incurred from the public exchequer and have the effect of influencing the electorate in an upcoming election.

7.2. Item VII, clause vii in the Model Code of Conduct prohibits issue of advertisements at the cost of the public exchequer in newspapers and other media. Use of official media during the election period for coverage of the government's achievements, which have the effect of furthering the prospects of the ruling party, is also prohibited by item VII. However, the Model Code comes into effect only from the date the Commission announces the election, while advertisements are released much prior to the announcement of elections.

7.3. The Commission has proposed that¹ advertisements of achievements of the governments, either Central or State, should be prohibited for a period of six months prior to the date of expiry of the term of the¹ House.

- 7.4. Where unavoidable, exception could be carved out for educating the general public on matters of public health etc. in exigent circumstances. However, there should not be display of political personalities in the said advertisements and the practice of putting up banners and hoardings in public places, depicting achievements of governments should be banned. Furthermore, there should be specific provisions that a name or symbol of any political party or photograph of any of the leaders of the party should not appear on such hoardings/banners. Such steps would help in ensuring that the ruling party or candidate does not get an undue advantage over another in the spirit of free and fair election.

8. Amendment to Section 126

- 8.1. The Commission has proposed that that print media be brought within the ambit of section 126 of the RP Act, which prohibits any electioneering activities by way of public meetings, public performance, processions, advertisements through cinematograph, television or similar apparatus during the period of 48 hours before the conclusion of poll. The exclusion of print media is a lacuna in the law which must be addressed. The Commission is also considering ways in which all media may be regulated equally during the last 48 hours before close of poll, in order to preserve an atmosphere of neutrality in which electors can reflect before exercising their franchise.

9. Paid News

- 9.1. The Commission is of the view that 'paid news' vitiates free and fair elections and proposes that the publishing and abetting the publishing of 'paid news' furthering the election prospects of any candidate or prejudicially affecting the prospects of a candidate, should be an electoral offence under Chapter III Part VII of The Representation of the People Act, 1951 with exemplary punishment of a minimum of two years imprisonment.
- 9.2. Free and fair elections are the foundation of any democracy; this can only be achieved when the media educates and informs the voting

public about political parties and candidates to an election, in a responsible manner. According to a study¹ conducted by the Commission, during the assembly elections held in the period 2011-2013 there¹ have been 1987 cases where a notice for paid news ~~were~~ ^{was} issued to the candidates and 1727 cases¹ where the practice of paid news were confirmed¹ by the District/State Level Committees appointed for the purpose. There could be many more undetected cases.

10. To conclude, I would like to request all the learned participants gathered here to contribute to their fullest in the discussions so as to bring out comprehensive and workable proposals to further improve our elections and governance at large.

11. I would like to thank ADR and Karnataka Election Watch to have given me this opportunity to interact with you.