

Representative Democracy, Elections and Diversity: with special Reference to Electoral Reforms in India

MEENA KUMARI

Assistant Professor (Department of Political Science)
Kamala Nehru College, University of Delhi, New Delhi.
Email: meenakapoor84@gmail.com

Abstract: *The present paper attempts to discuss the various electoral reforms in India keeping into consideration the numerous difficulties experienced by Indian electoral processes. The spurt in electoral malpractices in recent times is the greatest issue of discussions and debates, which further paved the way for crisis in democracy. The electoral authority, political parties and in larger contexts the common people are the worst affected stakeholders in this concern. Viewing the various drawbacks into the electoral process in India the current paper aims to search for legal and administrative measures to eliminate them in more concrete manner.*

Key Words: *Democracy, Elections, Constitution, Representative.*

1. INTRODUCTION:

The feature of Unity in diversity in India is recognized through the constitutional provisions. In other words, India is highly differentiated society where the people belonging to different castes, religion, languages, are living together. Owing to these factors India has the status of one of the largest democracy in the world. The present paper attempts to discuss the various electoral reforms in India keeping into consideration the numerous difficulties experienced by Indian electoral processes. The spurt in electoral malpractices in recent times is the greatest issue of discussions and debates. The electoral authority, political parties and in larger contexts the common people are the worst affected stakeholders in this concern. Viewing the various drawbacks into the electoral process in India the current paper aims to search for legal and administrative measures to eliminate them in more concrete manner. For the need to understand the kind of democracy and the behavior of the people in democratic governance one should make himself familiar with the various types of democracy. (Held:1996) The Indian democracy is indirect and representative in nature. There are various types and models related to democracy because of this reason democracy is called an adjectival concept. The term democracy is generally understood as rule by the people and political equality. The democracy which gives equal importance to all the members concerned to that group and also respect the dissent into that group is known a legitimate one. Democracy is ,thus, both a method to arrive at collective decisions and a set of values and behavior with which people approach decision making. (Srinivasan : 2014:107) In a democracy people are the final source of power and authority and they give legitimacy to any authority .J. S. Mill one of the ardent supporter of representative democracy was of the view that a representative system must create maximum space for people to take part in the functioning of the government and not restrict their involvement by merely allowing them to vote.(Srinivasan : 2014:113) Indian democracy being indirect and representative democracy does give power to representatives to act on behalf of the people and not according to their own wishes.

Now the question arises in a representative democracy what are the means, methods, criteria through which people can choose their representatives. According to article 324 of the constitution which vests the power of “superintendence, direction and control of all the elections to parliament and to the state legislatures to the office of the President and Vice President in the election commission of India. (McMillan: 2010:100). Election Commission of India being the statutory body is playing an important role in strengthening the democratic politics by holding the elections at regular intervals. The nodal agency of Election Commission of India is provisioned to have one or more than one chief election commissioner to whom the constitution protection has been provided in terms of his or her removal through the process of parliamentary impeachment. Elections are the way to give legitimization to political power because in a democratic politics people are the final source of power (Sovereign), by making active participation in elections people give authority to political power to take political decisions in order to fulfill their wishes. Healthy democracy can flourish in a environment where people can express their choices in an independent way without any fear, or outside pressure, by judging the capability of contesting candidate and without getting affected by the factors of social construct .For this reason in order to conduct free and fair elections in India various provisions have been made in the constitution of India. Secularism is the state policy of India (Article-14,15(1), 29 (2)),common electoral rolls for all Indian citizens irrespective of religion, race, caste or sex(Article-325), to conduct free and fair elections is the part of ‘basic structure’(Smt. Indira Gandhi v/s Raj Narain case1975) of the Constitution of India. Reservation of seats for SCs and STs is in proportion to their share in population (to avoid under

representation of social minorities), universal adult franchise (61st amendment 1988 which reduced the voting age from 21 to 18), registration of all political parties with the election commission under section 29A of the RPA 1951. In continuance of the British legacy, India has opted for parliamentary democracy. Since 1952, the country witnessed elections to the legislative bodies both at the national and state levels. Our system was largely free from any major flaw till the fourth general elections (1967). The distortions in its working appeared, for the first time, in the fifth general elections (1971), and these got multiplied in the successive elections, especially in those held in the eighties and thereafter. (Kaur:2008). Many a time, the election commission has expressed its concern by recommending number of proposals, committees to remove all the malpractices and obstacles in order to conduct free and fair elections in India. Because of these reforms and institutional initiatives by the election commission of India in the sixteenth Lok Sabha election for the first time the level of participation at 66.4%, the highest ever since the introduction of universal suffrage puts India, the world's largest democracy, in the league of high participation countries. (Mitra:2014:41)

2. Nature and diversity of electoral reforms in India:

From 1952-75 at the national level and from 1952-67 at the state level till the coming of non-congress political parties at both levels there was 'congress system'. Congress party was the 'umbrella organization's popularly known as 'catch all political parties' which further characterized Indian party system during this period as 'one party dominant system' by Rajni Kothari. The basic transformation in the Indian party system came in the views of Zoya Hasan with the coming of multiparty competition, and intensification of political competition, the rise of BJP as single largest party in parliament and the decline of one party dominance best described by Yogendra Yadav as 'first democratic upsurge', with the coming of dalit, adivasis, OBC or inclusion of socially deprived communities to whom Yogendra Yadav described 'second democratic upsurge'. With the coming of these factors political parties at national and state level started to recognize themselves with caste, religion, class, issues etc. (Yadav:2000:2010) In a democratic set up political parties are generally recognized as the vehicle of democracy, they provide the choices to people to choose best alternatives. The appointment of various committees and to initiate various reforms are the steps to fulfill the aspirations of common people. The constitution and the Representation of people act 1950, RPA-1951 seek to provide for a free and fair election. At present our electoral process is affected by various challenges like-religion, caste, language, region, race, three M's namely money power, muscle power, mafia power and 4C's corruption, criminalization, casteism, communalism. In order to tackle with these challenges following reforms have been done.

3. Tarkunde committee's recommendations and its implementations (1975) :

This was the first step taken by Jayprakash Narayan on behalf of his organization 'citizens for Democracy', he set up a committee under the chairmanship of V. M. Tarkunde for electoral reforms, which suggested following reforms, Lowering of the age for candidates contesting elections, restrictions on contesting elections from more than one constituency, state funding of elections, empowering the election commission to cancel the elections on the basis of report from the election observer, empowering the election commission to withhold the candidature of a person guilty of corrupt practices. On the recommendations of Tarkunde committee by the 61st amendment to article 326 which brought the voting age down from 21 to 18 vastly extended the scope of enfranchisement. Whereas the second recommendation is concerned RPA-1951 make a provision that a person can contest elections from a maximum of two constituencies. The election commission of India is of the view that the law should be amended to provide that a person cannot contest from more than one constituency at a time, if the legislature is in favor of retaining this existing provision then expense provision should be added, where a contesting candidate should have to deposit in the government account 5 lakh in case of state legislature and 10 lakh in case of Lok Sabha election in order to bear the expenditure on bye-election.

4. Dinesh Goswami Committee's recommendations and implementations 1990:-

Prime minister V.P. Singh appointed Goswami committee officially called Committee on 'Electoral Reforms in 1990' which made 107 recommendations. The main recommendation of this committee was to make an amendment with respect to Anti-defection law to restrict disqualification only to those cases where an elected member voluntarily gives up his membership of the political party, or when he votes or abstain from voting contrary to party whips, directions, a model code of conduct be framed which would include issues relating to the use of official machinery, transport, media, funds etc, monitoring of expenses should be undertaken by the election commission. The introduction of Model code of conduct for the need to conduct free and fair elections is one of the recommendations given by the Goswami Committee. Model code of conduct is a set of norms evolved with the consensus of political parties and enforced by the election commission for the ministers and other authorities that how they have to behave during the time of elections. The anti defection law before the recommendation of this committee in 1985 came into existence in the form of 52nd amendment affecting articles 101,102,190,191, reinforced the power

of representation by forbidding the practice of individuals defecting from party under whose label they were elected .After this committee N.N Vohra committee, Indarjit Gupta Committee ,Law commission of India, NCRWC under M.V. Venkatachaliah 2002,Administrative Reforms committee etc. suggested various proposals and recommendations. Out of these recommendations few are here.

5. Electoral Reforms in India and the Responses of Political Parties:

5.1. Registration of political parties: Under RPA 1951 section 29A there is the provision for the registration of political parties .As a result of this provision there is the coming of large number of political parties in existence. To eliminate the mushrooming of large number of political parties the commission registers a party which has at least 100 registered electors as its members and is also charging a nominal processing fee of RS. 10,000 to cover the administrative expenses which it will have to incur on correspondence with the parties after their registration. (Kaur: 2008) Now under 29A all the parties have to submit the undertaking of allegiance to the constitution of India and the principles of socialism, secularism and democracy and to uphold the unity, sovereignty and integrity of India. The insertion of Schedule 10 into the Constitution of India the Political parties got the Constitutional status. To abstain the misuse of religion, caste for electoral gains the RPA 1951 forbids any appeal on the ground of religion, caste, race, etc made with a view to further the election prospects of a candidate. Moreover the phenomenon of media publicity through paid news is new in India. To this direction the publishing of paid news for the promotion of any candidate is an offence under chapter-III of part-VII of RPA, 1951, violation of this will result into two years of imprisonment. (Sridharan: 2002)

5.2. Criminalization of Politics: This is an issue being raised by the commission from 1998 onwards. Disqualification for criminal offences is provided in section 8 of the RPA-1951. The election commission has proposed that the law should be amended to provide that any person who is accused of an offence punishable by an imprisonment for five years or more should be disqualified from contesting election even when trial is pending, provided charges have been framed against him by the competent court. 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.

5.3. Exit Polls and Opinion Polls: Various agencies conduct poll surveys prior to the poll on the likely voting pattern and publish and disseminate the results of such surveys through different media . But publishing of exit polls is not a problem where polling is only for a single day but it becomes really a big problem where polling occurred in different phases because it has the potential to influence the voting pattern in the subsequent phases.

5.4. Use of scientific and Technological advancements: The election commission of India is in favor of making electoral process more transparent and less paper user, for this Electronic Voting Machines are introduced. These EVM's are also introduced in order to reduce the malpractices and improving the efficiency of the voting process. One of the unique features of EVM is the option of NOTA button. Such an option is given to the voter to express his disapproval with the contesting candidates.

Keeping the above mentioned reforms into consideration there are various other reforms which are essential to make Indian democracy truly a participatory one. The Representation of People's Act 1951, section 77 of the Electoral Laws requires that all the contesting candidates should have to provide the details of account on the day they have been nominated for elections and thereafter on the day of declaration of results. Moreover the intent of electoral reforms laws is to limit the excessive expenditure on elections, therefore 123(6) of the Act defines excessive spending on elections as a corrupt practice.(Chhokar:2014)

Failure of the individuals to furnish the information regarding the expenditure on elections within the specified time limit shall cause the disqualification of his or her membership under the section 77(6) of the Act, 1951 by the President of India after the opinion of Election Commission. Election Commission itself also has the right to disqualify the individuals candidature from the elections on the pretext of mentioned rules. However, within the stipulated time limit of 30 days after the publication of results the election returns are to be filed. The moment on which the District election commission found any default then the contesting person can be disqualified under section 10 of RPA, 1951.(Kumar:2002)

The aforementioned loopholes during the election process in India calls for the need to debate the issue of State funding of elections for the urge to curb the Corruption amongst scholars in India. Furthermore , it is believed that for the healthy functioning of democratic process in India state funding will definitely ensure a step in this concern.(Kumar:1999) The Political parties are themselves can become the agencies of change through the pursuance of internal organization and functioning fully democratic. The momentous shift concerning to electoral reforms were experienced in the year 2013 through the intervention of Judiciary and quasi-judicial bodies. In 2013 central information commission (CIC) asked to all the six national parties to appoint their public information officer being the part of public authorities under RTI, but till this date no step has been taken by political parties in this regard.(Hasan:2010) In one of the judgement (Lily Thomas and Lok Pahari) Supreme Court said that if any sitting

MPs or MLAs is convicted even by lower court then the membership of that person will be terminated without giving him any chance to file the appeal in higher court. This was done by the court while considering section 8(4) of RPA as unconstitutional. The coming of the mentioned judgement resulted into the disqualification of three members of Parliament.

Filing of the nomination paper is one of the important part of electoral process wherein every contestant have to give important information regarding himself ,in this regard while giving the judgement Supreme Court said, in case any column is left blank by the contestant ,then the returning officer has the power to reject the nomination paper of that candidate. Supreme Court also said in one of the historic judgments that if the contestant candidate fails to disclose full details of his criminal antecedents at the time of his nomination then the election of the candidate will be held as null and void. This was done by the court to stop the criminalization of politics and not to violate the voters right to take an informed choice and the voters can freely exercise their electoral right.

Section 29c of the RPA requires all political parties to furnish an annual statement of all contributions in excess of RS.20,000 giving the names and addresses of the donors. But according to the report prepared by National Institute of Public Finance and Policy only three small parties declared that they have received more than 50% of their funding in above Rs.20,000 during the financial year 2009-10 and 2010-2011 ,where the names and addresses of the donors are known. whereas more than 75% of funds raised by 11 parties between 2009-10 and 2010-11 have come from unknown sources .This trend is because such donations have become a major opaque source of income for these parties. (The Hindu: 2015) On this issue while expressing his concern the former chief election commissioner S Y Qureshi said “crony capitalism led by corporate which is running the country. They get their bureaucrats...their ministers appointed.”He also said only 20% of the source of funding to any political party is known whereas we do not know the nature of 80% funding. (Qureshi:2014)

Despite of the existence of law against filing of the nomination paper by the criminals still this trend is going on. The Association for Democratic Reforms during the Delhi Legislative Assembly election revealed that out of 673 candidates, 114 have cases against them ,with 74 being serious charges.(The Hindu:2015)

Though all the eight national parties are the ‘ Public authorities’ under the RTI Act. But most of the political parties refuse to comply with the RTI Act. In one of the hearing related to the petitioner and RTI campaigner Subhash Aggarwal no political party representative was there, the congress was the only party which had sent a written submission ahead of the hearing which is not suitable for the reputation of Indian democracy.

In the context of general elections 2004 the commission had convened a meeting of political parties. The meeting was attended by representatives of all the six national parties and eighteen out of the forty five state parties. The unanimous view of all the participating members was that conducting the opinion polls and publishing results thereof, should not be allowed from the day of issue of statutory notification calling the election and till the completion of the polls. In one of the report it is stated that except BJP all major parties have supported the move to ban opinion polls.

6. CONCLUSION:

Free and fair elections are the backbone of democracy. In order to conduct free and fair elections number of reforms, proposals have been introduced by the election commission of India and by the judiciary, quasi judicial bodies. But this is not the end of the problem , still our electoral process is affected with a lot of other problems. Despite of the existence of anti –defection law, there is not the end of defection. Corruption, use of black money, distribution of liquor during the time of election , use of unfair means are still practiced. The end of the problem is not only by the efforts of election commission, or by the Supreme Court but at present the need of the time is that the members of the civil society particularly the adults should come forward .

In making the electoral process more democratic the need of the time is education. From the very beginning our educational institutions should have to make efforts to inculcate the moral education among children so that they can make a difference between right and wrong. Because the adults are the future of the country. The need of time is to make the members of civil society more aware so that only efficient contestants can win. For this purpose the election commission has to be active not during the time of election but throughout the year. In India election commission is more active during the time of election in order to impart the education about the importance of voting in elections by organizing functions and awareness programmes such as calling the celebrities, on different TV channels, newspapers etc.

If any political party is not doing the needful according to the norms of democracy, disciplinary action should be taken against that party as recently when no representative of the political party came for the hearing of the case of petitioner Subhash Aggarwal ,in response to this CIC said the commission can issue summons and even as arrest warrant if its summons are not honored.(The Hindu : 2015)

All the issues related to poll disputes should be handled in a short span of time .As in this regard recently Supreme Court told all the High Courts to set up special benches for poll disputes and those judges assigned with the

adjudication of election petitions preferably may not be burdened with any other work until the adjudication of the election petitions is completed. In order to stop the use of black money in elections there should be the funding of political parties by the government (The Times of India:2015) The most significant challenge before the election commission is the threat by Maoists in the “red corridor” of central India to conduct election. For the need to tackle with the Maoist menace, it depends upon the ability of government to find solutions to this growing problem within our polity.(The Hindu, January 13,2015) The election commission should have its own dedicated trained staff who is efficient in tackling the issue of democratic election into the disturbed areas. The election commission should take a rigorous steps so that no political party can take the help of anti state actors in order to win the election. Recently the government of India passed the Representation of the People (Amendment) Act in 2010 to introduce section 20A that enables a person who is a citizen of India, and is away from her ordinary residence in India for employment ,education or other reasons ,to be eligible to be registered as a voter in the constituency mentioned in her Indian passport. For this reason in India postal ballot route is employed. This is a move towards enabling voting from overseas is an instance of a larger global trends towards increased citizen participation (The Hindu: January 2015)

Hence all these steps by the election commission, judiciary and by civil society would make the deepening of democratic state in India in true sense. Political parties should themselves make its internal structure more democratic.

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