



ADMINISTERING FREE AND FAIR ELECTIONS: THE NEED OF GOVERNANCE REFORMS IN INDIA

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INTRODUCTION

In politics elections are ways whereby peoples' preferences are aggregated to choose a leader. Choice by elections is now almost inseparable from representative democracy (Kuper, Adam and Jessica Kuper, 2009) Elections are pillars to form a representative democracy. They are the strong roots of the Indian Political Life. The activity, election has almost become a part of the nation, not a day passes without an election either for the Parliament, a State Legislature, a Municipal Body, a Panchayat, an Employer/ Employee, Student, Trade Union or a Co-operative Society etc.

Usually, the election process provides guidelines related to public voting, frequency of elections, counting of votes, declaration of results and so on. In the twentieth Century, most States granted the vote to all, adults who crossed 18 years of age. Overtime, the suffrage has been extended from estates to individuals and in the past to large categories excluded on grounds of race, sex and property. The change has also been brought to bring equality like or one man one vote, and one value (Rokkan: 1970). In most of the countries, responsibility for registering eligible voters lies with the Government. A significant exception is the USA, where States leave registration to individuals.

In some Countries, (Belgium, Haly, Denmark and the Netherlands for example) it is not the election but the interparty bargaining following the election that determines the composition of Government. Until recently, the British two-party system was admired for providing a model party for government. A distinction may be drawn between the absolute majoritarian systems, as in France, in which the winner has to achieve at least half the votes.

Later, Proportional system was introduced early in the twentieth century in divided societies to provide guarantees to minorities which threatened by universal surface or majority rule.

One may distinguish between degrees of choice, which in turn depends on the number of effective parties and the prospects of turnover in government. The USA has two parties. Netherlands and Denmark, Italy, Sweden and Norway have had very long spells of dominant one party rule, and there has been only one change in France since 1958.

However, in India people worry about the future of not only our democracy but also the survival of our social and economic systems. The political system is mixed with loopholes the base level and not only improper but also entangled with the criminalized..Therefore, in the recent days intellectuals started discussing the problems of electoral reforms as never before. But the debate has neither picked up across the country and could not come out with some definite, specific electoral reforms. Most of the time, not knowing reasons for the chaotic system and how it can be corrected, ridiculous and feeble suggestions are made, like banning contesting candidates with FIRs or history sheeters with knowing what on FIR or in history sheet. (S. S. Gadkari: 1996)

However, election after the election common people are making hue and cry by changing their representatives in a manner that has ensured change the government in the states and also at the centre. This phenomenon was supported society groups, and the media and an active judiciary has ushered the demands for accountability of the elected. Thus, democracy has been changing drastically over the periodic elections to ameliorate the world's good governance.



SECTION - I

Election Commission; Functions; Law; and Courts

a) Chief Election of Commissioner

Article 324 of Indian Constitution provides the norms of the appointment of an Election Commission to supervise direct and conduct the elections. The EC is an independent autonomous body, ensures, the Supreme Court and the High Court functions without any interference. The EC consist of the Chief Election Commissioner and other Election Commissioners who are appointed by as the President. These are appointed by the President subject to the provisions of law made by Parliament for the purpose (Art 324 (2)). The President also appoints other officers after consulting the Election Commission. The service and tenure of office of the Election Commissioners and the Regional Commissioners will be determined by the President. The Chief Election Commissioner can be terminated from his office in the same manner and as a judge of the Supreme Court. . The EC and regional commissioner can only be removed on the recommendation of the Chief Election Commissioner and other Commissioners. Therefore, they perform their duties without fear, or pressure from the Executive or party in power. (J.N.Panday: 1995).

b) Multi-Member Commission

On October 2, 1993 the Government of India issued an ordinance and converted the one man EC into a multimember Commission by appointing two more persons as Election Commissioners. The ordinance provides that the decision of three members of EC “shall as far as possible, be unanimous”. owever, in case of difference of opinion between the Chief Election Commissioner and other Election Commissioners the matter “shall be decided according to the opinion of the majority”. The ordinance issued by the President provides that the allocation of business or work between the Chief Election Commissioner and other Election Commissioners shall be done under the Act and Rules of Business. The ordinance has amended the law and equated the two Election Commissioners with the CEC in respect of salary and other terms of service. The ordinance has become an Act now.

The Government decision to have a multi-member to EC is to curb a one man show in important function as conducting elections to parliament and State Legislatures.

The EC performs the following functions

- To supervise, direct and control the preparation of electoral rolls in India.
- To conduct elections/bye-elections for Parliament, State Assemblies and the offices of the President and Vice-President and others;
- To receive election petitions challenging the validity of elections and appoint tribunals to enquire into them
- To examine the filed returns regarding the election expenses
- To entertain and decide the applications regarding disqualifications and irregularities. (Avasthi & Avasthi: 1993)

In India, there will be one general electoral roll for every territorial constituency (Art 325). No person shall be ineligible for inclusion in any such roll on grounds on the basis of religion, race, caste, sex or any of them. The elections to the Parliament and State Legislatures are to be held on the basis of adult suffrage. Every person who is a citizen of India and is not less than 18 is not otherwise disqualified under this constitution or any law (Representation of Peoples Act 1950) made by the Legislature on the ground of non-residence, unsoundness of mind, crime, or illegal practice, has a right to be registered as a voter (Art 326). (J.N.Panday: 1995)

The Election Commission has been empowered to recognize or disaffiliate any Political Party.Thus the Representation of the People Act was amended in 1988 to authorize the registration of Political Parties. The amendment has added a new section (29-A) providing for such registration.



c) Power of Parliament and State Legislatures with regard to Election Law.

Article 327 empowers the Parliament to make provisions related to election to Parliament and State Legislature, the preparation of electoral rolls, the delimitation of constituencies etc. Further, because of the exercise of the power conferred by Art 327, Parliament has enacted the Representation of Peoples Acts, 1950 and 1951. The Presidential and Vice-Presidential Elections Act 1952; and the Delimitation Commission Act, 1952, Art 328 Confers a similar power on State Legislatures. The State Legislature can make laws relating to all the above matters referred to under Art 327.. (J.N. Pandey: 1995)

d) Courts not interfere in Election Matters.

Article 329 says that the validity of law related to the delimitation of constituencies or the allotment of seats need not be questioned in any Court. Clause (b) of Art 329 asserts that elections can only be questioned by an election petition presented to such authority made by the appropriate Legislation. In exercise of the power under clause (b) of this Article the Parliament enacted the Representation of Peoples Act, 1951. Under this Act, the decision of the EC is final. (Ibid)

The constitutional 19th Amendment, 1966 abolished the jurisdiction of Election Tribunals and election disputes. The Amendment has vested this power to the High Courts to expedite the decisions in election disputes.

SECTION – II

The Importance of Electoral Administration

The importance of elections becomes high priority phenomenon due to various considerations. Elections provide a good opportunity to the citizens of any nation to elect ethical leaders. It establishes the harmony between the governors and the governed. The elections can become a feedback on governmental performance; reflect changing moods and preferences of the nation and its people. They regulate the conduct of rulers; decide the careers of political leaders, fate of governments, future of political parties, composition of the legislature and even the direction of the economy.

The electoral administration consists of election process and the election machinery. The election machinery entrusted with the task of administering, the law and order and the monitoring mechanism for enforcing code of conduct during the electoral process.

Article 324 of the Constitution entrusts two principal tasks to this machinery; one, preparation of electoral rolls and periodic conduct of elections. The second task involves finalization and allotment of election symbols and ensuring printing and supply of ballot papers; mobilizing the services and other activities to complete strictly according to the dates laid down in the election programme.

For this, a three-tier system of administration has been established to discharge these responsibilities. At the apex of this system there will be a multi-member Election Commission headed by the Chief Election Commissioner. The second tier consists of the state level machinery headed by the Chief Electoral Officer (CEO), He ensures that the State Government fulfills its obligations in performing the above mentioned tasks. In the last phase, the District Election Officer (DEO)-cum-Returning Officer (RO) with wide range of responsibilities. The harmonious working conditions and consensus among these three levels is crucial for the smooth conduct of elections.

The law and order maintenance will be looked after by the State Government. The law and order during the elections, which includes Campaigning; polling; counting; and in the immediate aftermath of elections. The police render commendable services tirelessly to provide personal security to the candidates and to VIPs. Many a time the availability police force is inadequate and thus it becomes a herculean task to conduct the elections.

The election administration, usually under severe pressure at the time of elections. Cases of misuse of machinery and power are increasingly becoming susceptible to political pressure and many bureaucrats are buckling under such pressure. Administrative officials conduct election with public money. It is not that there are no persons left



with integrity and impartiality but their number is small and they are becoming an endangered species in the eyes of corrupt officials. Sometimes the officials who work on impartial grounds are will be mended, tamed, or silenced. There is no organized resistance from civil servants against this.

a) The Nature of Electoral Choice

The nature of electoral choice in each State generally is shaped by three sets of factors.

1. The first 'object' of election, is to choose a constituency representative or President.
2. The second is the 'Party System', or pattern of voting alignments (Lijphart: 1995), which in turn is shaped by cleavages in society, the electoral system and the maneuvers of elites.
3. The third is the 'Electoral System', particularly those provisions which aggregate votes and transform them into seats, that is, rules for counting the votes.

The electorate is the most important section of the election system. The Indian electorate is not only the biggest among the liberal democracies but also the most complex one. It is very heterogeneous, largely illiterate and highly fragmented. Sometimes, much of it is mute and passive as far as elections are concerned. Vast sections of the electorate are not free to participate in the elections. The voting is influenced due to variety of factors such as poverty, dependence, coercion, intimidation, caste and community, money: illiteracy and ignorance, their freedom of choice often colour their perceptions of candidates resulting in unfair exercise of their franchise. Political parties offer tickets on grounds like caste, creed, religion, money rather than on ability to represent party, espouse ideology or to serve the public interest. Some people are literally not free (Unoccupied) to find time to vote, as they work for their next meal.

b) The Contesting Candidates

The contesting candidates can make or mar the sanctity of elections in a big way. If the candidates are fair morally upright, imbued with a spirit of service, secular and take their candidature in a democratic spirit, elections will be largely fair. On the contrary, if they are morally degraded, self-seeking, communal and undemocratic the elections are bound to be unfair. Candidate's fairness and integrity are important in weighing one's own claims for party ticket as against others. It is also important that they scrupulously follow the model code of conduct and observe relevant laws in letter and spirit. .

Against the above ideals and norms the real conduct of candidates is generally bad. Unfortunately the situation is so adverse that the candidates who scrupulously follow them are rarely elected. Huge sums of money are expended by candidates and their parties. According to one unofficial estimate, spending one or two crores of rupees by an individual candidate is not uncommon for general elections (Lok Sabha). The expenditure is mounting year after year. Candidates with limited or poor financial source are generally eliminated in party nomination or contestant itself. This growing influence of money in elections is the result of accumulation nexus of black money, corruption of would be peoples' representatives.

Caste and lucrative appeals are not only made by the candidates for getting votes but also to impress their parties. There has been steady erosion in the candidates' character who contests election. Goondas, rowdy-sheeters, boot-leggers, gangsters, underworld dons, and other kind of criminals are growing in increasing numbers in the lists of candidates fielded by political parties. Some of these law breakers are becoming law-makers while the rest of them are acquiring legitimacy having been candidates of political parties.

c) Defects and Distortions

There are four kinds of distortions which negate the conduct of free and fair elections. They are:

1. Partisan Distortions
2. Politico-administrative Distortions
3. Structural Distortions and
4. Systemic Distortions



Partisan distortions are those caused with a view to gain one sided advantage when individuals, groups or parties engage in actions repugnant to legal, democratic or moral norms with the avowed purpose of influencing electoral outcome in one candidate's or party's favour. Appeal to vote on caste basis, religion and region, buying of votes, excessive spending money on elections are some of the examples of this kind.

Politico-administrative distortions in elections are related to those maladies that grow out of actions resulting in the misuse of governmental machinery, positions or influence for manipulating electoral outcome.

Structural distortions are related to unequal access to the resources available to members of the electorate resulting in not seeking election thus some are getting advantage over the others, not because of their inherent worth but because of the wealth at their disposal. It is also influencing the elections.

The systemic distortions led to the defects in the electoral system which affect of the peoples' will and bring unwanted un-intended consequences. Scopes for impersonation at voting, incomplete exercise of voting candidates are winning even without majority of voters support.

SECTION - III

Governance Reforms

In fact, Citizens, all over the world look up to the nation or State and its organs for high quality of performance in administration. Therefore, it is necessary that citizens are allowed to participate in elections freely, fearlessly, in the political process. Good governance is assured with accountable political leadership, enlightened policy making. The civil servants imbued with professional ethos strive for a strong civil society including free press and independent judiciary is pre conditions for good governance. In short good governance as I perceive it means securing justice, empowerment, employment and efficient delivery of services. There are several inter related aspects of securing justice including security of life and property, access to justice and rule of law. (Balmiki Prasad Singh: 2013).

The most important feature of good governance is the provision of security, especially to the life and property. Access to justice is based upon the basic principle that people should be able to rely upon the correct application of law. The concept of good governance is undoubtedly linked with the citizens' right of life, liberty and pursuit of happiness. This could be secured in a true democracy only through the rule of law.

To suit the rights and needs of the people our constitution is committed to protect two different set of principles that have a decisive bearing on equality. First, the principle of equal opportunities to all and the second, the principle of uplifting of educational and social backwardness. So, the constitution provides authorizes the states, the state has been authorized to make special provision not only for the advancement of socially and educationally backward classes of citizens, SCs and the STs but also for women and children.

a) The Uncanny Indian Voter

In this kind of typical scenario The Indian voter is posing new questions about how to make sense of the choices and patterns that are emerging and changing in electoral processes. The relation that voters share with politicians and political parties seems similar to the one between Tom and Jerry each trying to out plays the other. The repertoire of tricks that the Indian voter has performed has kept political parties on their toes, necessitating the formation of new strategies and agendas to serve the needs of the voters, irrespective of their possibilities in implementation.

b) Large voter turnout

In spite of many odds and political philosophies and gimmicks, To begin with, elections in India have witnessed a relatively a large voter turnout (well over 60 percent) in recent days. Though the voters express their inability to get substantive benefits from the ruling elites sometimes complain about rampant corruption among all the parties.



ENSURE ADMINISTRATIVE RESPONSES

The lack of transparency and secrecy that have been associated with the administrative system from colonial times, besides mounting corruption, has also led to injustice and favoritism. Therefore all organizations, public and private should be accountable not just to their stakeholders or members but to society as a whole.

a) Financing Elections

Though the picture varies from country to country, generally all expenditures by candidates or parties are subject to audit. In India, while there are limits on expenditure by candidates, which are ridiculously low, there is no limit on the expenditure by political parties or other bodies, nor there an audit of expenditure.. (S.S. Gadkari 1996).

b) Protect the Freedom of the press

A free press is essential for providing people with the information they need to make rational choices about political action. It helps to establish the right political incentives for policy makers.

c) Promote Civic Education

People need to understand how their own political system works or could work. Governments should make greater efforts to ensure that people are aware of their history, their constitution and their rights. It is possible through educating the people at large.

SECTION – IV

Major issues and Suggestions for Governance

The following are the suggestions for assuring the good governance.

a) Criminalization of Politics

The criminalization of politics is a first concern major challenge of the political process and the un holy nexus between politicians, civil servants, and business magnets are having a baneful influence on public policy formulation and governance. The alarming rise in the incidence of crime is partly due to the general lowering of standards in public and private life. The quality of our public life has reached the nadir, politics has become tattered and tainted with crime the moral standards of our politicians, policemen and criminals are indistinguishable from one another (Nani, A, Palkhivala).

The process of judicial accountability has succeeded in sending several legislators and ministers to jail. But, new methods have also been devised to fiddle away due to the loopholes of law. Criminals facing prosecution get out on bail and even got free. It is necessary to debar criminals from contesting the elections. It is imperative, therefore, to amend section 8 of the representation of the people's act 1951 to disqualify a person against whom the competent judicial authority has framed charges that relate to grave and heinous offences and corruption.

b) Corruption

Corruption is a second major challenge. The high levels of corruption in India have been widely perceived as a major obstacle in improving the quality of governance. While human greed is obviously a driving force of corruption. A conscious programme for strengthening public awareness and also to empower the existing anti-corruption agencies would be required. The statutory "Right to Information" is one of the most significant reforms in public administration.

c) Promote Political participation by all

The government must enable people's active participation at many levels of debate, dialogue and decision making. This requires tolerant government institutions to take up free and free discussions of policy and change. Such an open atmosphere assisted by freedom of speech democratic institutions, free elections



and respect for human rights and ensuring the full participation of women and minorities is likely to require affirmative action.

SUGGESTIONS FOR GOVERNANCE

Various suggestions are made to improve the electoral system related to various aspects like structural and systematic environmental etc.

Some of these are listed here under

a) Structural changes and constitutional reforms

- Setting up a constitutional council for looking into issues including appointment of constitutional authorities.
- Making Lokpal and Lokyuktas constitutional authorities and giving them independent investigating machineries.
- The appointment of CEC and other members of the EC should be objectivized and constitutionalized by involving the leader of opposition and the Chief Justice of India in the selection process.
- It will be useful to introduce a binary system of voting where in an elector casts a positive vote for election and negative vote for rejection. This will force political parties to look for wider appeal rather than do with sectional appeal.
- The powers of EC should be expanded to impose deterrent punishment for violation of election laws, norms and codes.
- Reserving some seats in the cabinets for nonpolitical experts.
- A model code of conduct for elections should be evolved on the basis of consensus of political parties and there should be effective sanctions to deter violation of this code.
- Political parties that fail to conduct periodical organizational elections should be derecognized.
- There should be state subsidization of election expenses and statutory audit of political parties accounts.

b) Systematic Environmental Suggestions

- There should be a systematic and sustained campaign for voter education to build voter awareness about the need for free and fair elections.
- The election scheduled need to be shortened to reduce scope for excessive use of money, muscle power, liquor and disturbance to civic life.
- Heavy deposits for independent candidates and banning contest of independent candidates at elections should be seriously explored to limit the size of the ballot paper and its printing.
- Candidates should not be allowed to contest from more than one constituency.
- People's right not to vote should be respected as a democratic right.
- Giving more protection to government servants.

CONCLUSION

After 60 years of independence, now it is the time for us to review and analyze it. There seems to be a false complacency, about the health of our democracy. The duty of the citizen is not merely to vote but to vote wisely. He must be guided by reason. He must vote for the best candidate, irrespective of other consideration.

The time has come to insist upon men of knowledge, vision and character as candidates for parliamentary and state elections.

There is a deep felt need for an intelligent and adequate organization of voters. There should be a citizen's council in every constituency, consisting of impartial non-party individuals who would appraise the candidates and recommend the right candidates to the voters. The voters should unmistakably insist upon the right type of candidates, instead of allowing the political parties to grease the palm.



We must shed the dividing tendencies which split the votes on the basis of caste which disturbs the unity of our nation. One Indian is an intelligent human being, two Indians are a political group; three Indians are two political groups. Therefore, our people must come out of the shackles of political feudalism.

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