

# Electoral Reforms for Strengthening Democratic Processes: Challenges and Practices

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## ABSTRACT

India is the largest democracy in the world. Elections are the most essential and significant part of politics in a democratic organization of governance. Electoral reforms formulate the democratic development more comprehensive by bringing more people under the electoral process, reduce bribery, corruption, malpractice, which is enveloping, and make India a stronger democracy. This paper focuses the election commission and electoral reforms in India. This paper also covers the make stronger democracy by guaranteed fair political funding, limitation electoral malpractices, corruption and encouraging voter participation.

**Keywords:** democracy, democratic, institutions, participation, election, commission and reforms

## INTRODUCTION

Free and fair elections are essential in a healthy democracy; it is an essential condition for the success of democracy that people maintain their allegiance towards the democratic institutions based on the rule of law. If the elections are held free and fair, the stronger the allegiance the people will have towards democratic institutions. Contrary to this, if the elections are not free and fair, the people will not have faith in democracy. It has rightly been observed: "Present election system, which has encouraged use of black money casteism, abuse of administrative machinery, rigging, and even capturing of booths in some areas, has been fast eroding the faith of the people in free and fair elections".

The following are the few points which elaborate why the electoral reforms are needed in the present scenario:

- 1) The mounting expenditure on elections, incurred both by the Government on organizing them and, more particularly, by the parties and candidates on contesting them. Barring a few rich individuals nobody can fight an election from his own resources. The political parties and their candidates have, there-fore, come increasingly to rely on big business and other sources. The business contributions are mostly in cash and from unaccounted money. Another source is the wealth amassed by such anti-social elements as smugglers, dacoits, and industrial mafias.
- 2) Even more than money power, the factor which vitiates the elections is the muscle power, acting in support of the candidates belonging to dominant castes and communities in a constituency. Often the administrative machinery is hand in glove with these elements. With the aggravation of caste and communal conflict, the eclipse of idealism and ideology in public life, the evil of booth capturing and rigging has virtually made a mockery of free and fair elections. The evil practice, which started in Bihar, has gradually spread to others States also.
- 3) It has also been observed that due to large number of candidates, the winner candidate very often wins by minority votes. The percentage of votes polled by political parties also does not correspond to their percentage of seats. The majority party generally wins with minority votes.
- 4) The abject dependence of the Election Commission (EC) on the Central and State Governments for the conduct of the polls is another serious defect in the existing electoral system. Many Presiding Officers at the polling booths have been caught stamping the ballot papers and putting them inside the ballot boxes during the night before the poll.
- 5) Candidates with criminal records are contesting elections and getting elected by using strong arms. For example, a record 435 candidates with criminal back-ground stood for the 11th Lok Sabha elections in 1996, and 27 of these actually made it to Parliament. A similar trend was observed in subsequent elections.

Indeed, the battles of ballots have been turned into battles of bullets. On the election days booths are captured, polling agents attacked; and bombs thrown to prevent weaker sections from exercising their franchise. "Speed money: Gets things

done quickly and creates a “tendency to subvert integrity in the public services instead of being isolated and aberrative is growing into an organized, well-planned racket”( Santhanam Committee Report 1964: 5 ).

Steps Taken:

The following electoral reforms have been introduced in our electoral system in the last few years.

(a) Lowering of Voting Age: The Constitution (Sixty-first Amendment) Act, 1988 amended Article 326 by substituting the words '18 years' for '21 years'. This came into force on March 28, 1989. Thus, Parliament through a constitutional amendment in 1989 reduced the minimum voting age from 21 to 18. For the first time, as many as 35.7 million voters in this age group exercised their right to elect their representatives in the 1989 elections.

(b) Deputation to Election Commission:

Under the Representation of the Peoples (Amendment) Act, 1988, a new section 130 was inserted, which provides that officers or staff engaged in preparation, revision and correction of electoral rolls for elections shall be deemed to be on deputation on Election Commission for the period of such employment and such personnel shall during that period, be subject to control, superintendence and discipline of the Election Commission.

(c) Increase in Number of Proposers:

The number of electors who are required to sign as proposers in nomination papers for elections to Council of States and State Legislative Council has been increased to ten per cent of the electors to prevent frivolous candidates.

(d) Electronic Voting Machine: The Representation of the Peoples Act, 1951, was amended to facilitate use of Electronic Voting Machines (EVMS) in elections.

(e) Booth Capturing: Section 58A has been inserted in the Representation of the Peoples Act, 1951 by Act 1 of 1989 providing for adjournment of poll or countermanding of elections because of booth capturing, Booth capturing has been defined in section 135A of the Representation of the Peoples Act, 1951.

(f) Poll Law Ordinance: A notable hurdle in holding elections in Punjab in the eventuality of the death of an independent candidate was effectively removed on Jan. 4, 1992 with the promulgation of an ordinance under which the Parliamentary and State Assembly elections will not be countermanded in such cases. The Ordinance amends the Representation of the Peoples Act(g) May 2, 2002 Judgment: In its May 2, 2002 judgment in Association of Democratic Reforms vs Union of India, the Supreme Court had concluded that for the survival of democracy, the right of the voter to know the antecedents of an electoral candidate would be part and parcel of the Fundamental Right to Freedom of Speech and Expression.

It would be the basis for a free and fair election process, which is part of the basic structure of the Constitution, the court had said. It then issued specific directions to the Election Commission to make information with regard to any criminal background, wealth and education of candidates available to voters before elections.

Freedom of Speech and Expression is one of the key Fundamental Rights guaranteed to all citizens by the Constitution under Article 19(1)(a). The test of the validity of any legislative measure restricting this right is whether it is justified under any of the legitimate grounds mentioned in Article 19(2). These grounds include the protection of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or matters relating to contempt of court, defamation of incitement to an officer.

After the EC complied with this directive by issuing the necessary notification on June 28, 2002, the political class discovered certain flaws in the disclosure norms as dictated by the Supreme Court. "Free and fair elections are essential in a healthy democracy. It is an essential condition for the success of democracy that people maintain their allegiance towards the democratic institutions based on the rule of law."

It was felt that it would be more appropriate to seek details of the wealth of a candidate and his/her spouse and dependents, after he/she has won the election, rather than before as directed by the Supreme Court. Seeking details of the educational qualifications of candidates was considered not only unnecessary but against the spirit of the debates, in the Constituent Assembly which rejected a proposal to prescribe minimum educational qualifications for candidates.

“Finally and most importantly, should ensure the rigorous implementation of existing laws to prosecute and disqualify politicians breaking the law, in a timely fashion. For instance, the ECI re-ported that during the Lok Sabha 2014 elections, around Rs. 300 crores of unaccounted cash, more than 17,000 kg of drugs and huge amount of liquor, arms, and other materials were seized” (Samddar S, Sriram LB )

During its winter session in 2002, Parliament passed the necessary legislation to replace that ordinance. The People's Union for Civil Liberties (PUCL), Lok Satta, the Association for Democratic Reforms and other civil society initiatives filed a public interest petition in the Supreme Court challenging first the validity of the ordinance, and later the RPA (Amendment) Act on the grounds that Section 33B, as Introduced by the Act, sought to nullify the court's May 2 judgment and, therefore, was violative of Article 19(1)(a).

**Supreme Court Verdict:** On March 13, 2003, a Supreme Court Bench comprising Justices M.B. Shah, P. Venkataraman Reddi and D.M. Dharmadhikari, after hearing the petitioners, and the respondent, the Union of India, and the intervener, the Bharatiya Janata Party, declared Section 33B to be null and void. The Bench found Section 33B vulnerable on several counts. This section required the candidate to furnish information only under the Act and the Rules, and not otherwise. Under Section 33A every candidate is required to furnish information as to whether he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court; and whether he has been convicted of an offence other than that referred to in Section 8(1) (2) or (3), and sentenced to imprisonment for one year or more. Section 33B made it clear that no candidate shall be liable to furnish any information in respect of his election, which is not required to be disclosed under the Act or the Rules made there under, notwithstanding anything contained in any judgment, decree or order of any court or any direction or instruction issued by the EC. "Over a span of 2 years, The RTI documents went on to reveals serious problems with the Electoral Bonds Scheme and its implementation. In July 2022, the amount of donations through electoral bonds crossed Rs 10,000-Crore mark as per government data" (Bhatnagar, Gaurav Vivek. 2022 )

**Election Commission:** The effect of the court's order is that part of the EC's directive, issued on June 28, 2002, requiring candidates to furnish information on assets and liabilities and their educational qualifications stands revived. The Election Commission argued in court that "the scheme "legalizes anonymity" but the right to vote means making an informed choice - knowing the candidate was only "half of the exercise" and citizens must know the parties which are funding the candidates"( Live Mint, 2019 ) The same directive re-quires candidates to furnish information about any pending case against him for any offence punishable with imprisonment for two years or more, and about which charges have been taken cognizance of by a court of law, and acquittals or discharges in any criminal case have been made. The amended Act did not include these aspects of a candidate's criminal antecedents because political parties maintained that such details had no relevance to the voting decision. "After the CIC ruling, all the political parties banded together and backed "The Right to Information (Amendment) Bill, 2013" which was introduced in the Lok Sabha on August 12, 2013, amending the original act (RTI 2005). The Amendment removes political parties from the scope of the definition of "public authorities". Thus political parties in India no longer fall under the dimensions of RTI" (PRS India, 2013).

**New EC Guidelines:** The guidelines Issued by the EC on March 31, 2003 for candidates make it clear that the "non-furnishing of the affidavit by any candidate shall be considered to be violation of the Supreme Court order and the nomination shall be liable to rejection by the Returning Officer at the time of scrutiny of nominations". Every candidate while filing the nomination paper for any election to the Council of States, House of the People, State Legislative Assembly or the Legislative Council, should furnish full and complete information in an affidavit. The candidate's affidavit shall be duly sworn before a magistrate of the first class or a notary public or a commissioner of oaths appointed by the High Court of the State. "It introduces "Electoral Bonds" as a means to make anonymous contributions to political parties. These bonds will be issued by the State Bank of India" (PRS India, 2017)

### **Suggestions:**

To remove drawbacks and loopholes, the following are the few recommendations for the electoral reforms:

- (1) Reorganizations of the EC like appointment of the Chief Election Commissioner (CEC) by authority free from political bias.
- (2) Independent election machinery at State level to ensure free and fair voting.
- (3) State funding of electoral campaigns will reduce the role of muscle power in elections.
- (4) Electronic Voting Machines (EVMS) in all polling stations.
- (5) Fast disposal of election cases by courts will make election fairer..
- (6) Rotation of reserved seats for SC/ST. It will give better opportunity to some committed people to develop their constituency

The March 13, 2003 verdict of the Supreme Court is a welcome step. It may go a long way in bringing down malpractices in elections. However, the verdict has created an apprehension among the political class whether the judiciary has overstepped its limits, and upset the doctrine of separation of powers between the judiciary and the legislature. In a letter to Law Ministry written in May 2017, Election Commission stated "In a situation where the contribution received through electoral bonds are not reported, on perusal of the contribution report of political parties, it cannot be ascertained whether

the political party has taken any donation in violation of provision under Section 29(b) of the RP Act which prohibits the political parties from taking donations from government companies and foreign sources”( Indian Express, 2020 ).

## **CONCLUSION**

India's electoral reforms are highly developed democracy through realistic organization and participation, yet challenges and confrontation in political finance, criminalization, and representation people involvement in election. India's electoral reforms is among the world's most widespread and trustworthy and determined challenges like money power, malpractice, criminalization, digital exploitation, and poor condition of internal party democracy, threaten the democratic culture.

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