



Electoral reforms in India: Need of the hour

Rakesh Kumar

Assistant Professor, Department of Law, Ch. Devi Lal University, Sirsa, Haryana, India

Abstract

Election lie at the very heart of democracy. Free and fair elections are the main spring of a healthy democratic life and a barometer of its strength and vitality. Electoral Administration must therefore, be free from pressure and interference of the executive and legislature. It should be able to secure fairness to all parties and candidates, through elections that people in a democracy participate in public affairs and express their will. It is again through elections that power changes hands in a peaceful and orderly manner in a democracy and the authority of government gets clothed with legitimacy. Elections, thus not only sustain democracy but enliven it as well. Holding of free and fair election is, therefore a sine qua non of democracy.

Keywords: election, democratic life, barometer, strength, vitality, sine- qua- non etc

Introduction

India is both the largest and one of the most populous democracies in the world. This apart, in comparison to most of the developed democracies of the world, problems of illiteracy, poverty, etc. still continue in India as is the case with most of the developing countries. Its electorate is not only vast but also quite diverse reflecting the plurality of caste, religion, region, language, etc. of its social mosaic. Conducting periodic elections in the country by encouraging large-scale popular participation is a stupendous task. Going by India's record in this regard, periodic elections as a means of smooth transfer of power have been a regular and successful feature of India's democracy in the past seventy years. Not only this, Indians have time and again reposed faith in elections as the most potent means of non-violent and peaceful protest against all acts of omissions and commissions of Government. Elections have thus become integral to India's democracy as elsewhere in other successful liberal democracies, the world over. However, certain aberrations have come to the fore in the very working of the electoral system over the years. The need to address such disturbing factors have generated a debate on electoral reforms in the country. The Election Commission which is under the Constitution is vested with the actual power of superintendence, direction and control of elections in the country, has, from time to time, come up with concrete proposals/suggestions based on objective difficulties encountered in the conduct of elections. Politicians, through the platform of parties and Parliament including its various committees constituted for the purpose, have given vent to their desire for reform. Governments have also undertaken certain redemptive measures based on the recommendations of various committees. The process of reforms as well as the debate in this regard have almost been an on-going process.

Electoral Process

General Elections at a glance Among all the countries liberated from the colonial yoke, India alone has earned the singular distinction of not only being the world's longest functioning effective democracy but also of setting an example by conducting as many as seventeen free and fair general elections to the National Legislature, Lok Sabha and more than 350 elections to the State Legislatures. Successive elections have both enhanced and deepened the people's commitment to democracy. The election to the Lok Sabha being direct the territory of India is divided into territorial constituencies for the election. At present, the allocation of seats in the Lok Sabha is based on 1971 Census and will continue to be so till 2026. The term of the Lok Sabha, unless dissolved sooner is five years from the date appointed for its first meeting. The total number of seats in the Lok Sabha is 545 at present. The 28 States elect 530 members of Parliament (LS) while the remaining 13 are added from the Union territories and two are nominated by the President as per provisions of Article 331 of the Constitution from the Anglo-Indian Community which was abolished in 2019. Provision also exists for reserved seats for Scheduled Castes and Scheduled Tribes. Since 1989, the size of the Lok Sabha increased from 544 to 545. The extra seat was the result of Goa becoming a State (on May 30, 1987).

Election Commission of India

The Constitution entrusts the responsibility to supervise, direct and control the entire procedure and machinery for election and also for some other ancillary matters, on the Election Commission of India under Article 324. At present, it constitutes the CEC and two Election Commissioners. The Election Commission has the power of superintendence, direction and control of all elections to Parliament and the State Legislature and to the offices

of the President and Vice-President. There has been a marked increase in the total number of candidates contesting the elections. While in 1952, 1864 candidates contested for 489 elective seats, in 2019, 8026 candidates were in the fray for 543 seats.

A Table detailing the general election number of election seats, candidates contested, electorate etc. is given below:

Table 1

General Election	Year	Total Number of Seats	Total Number of Candidates	Total Electorate	Average No. of contestant Per seat	Percentage of voting#	Total Number of Polling Stations	Expenditure incurred (Rs. In crore)
First	1952	489	1,874	1,73,212,343	4.67	61	196,084	10.45
Second	1957	494	1,519	1,93,652,179	3.77	62	2,20,478	5.9
Third	1962	494	1,985	2,16,361,569	4.02	55	2,38,031	7.82
Fourth	1967	520	2,369	2,50,207,401	4.56	61	2,43,693	10.95
Fifth	1971	518	2,784	2,74,189,132	5.37	55	3,42,918	14.43
Sixth	1977	542	2,439	3,21,174,327	4.5	61	3,73,910	29.86
Seventh	1980	529/542**	4,629	3,56,205,329	8.75	57	4,36,813	37.07
Eighth	1984-85	541/542***	5,492	4,00,375,333	10.15	64	5,06,058	81.51
Ninth	1989	529/543****	6,160	4,98,906,129	11.64	62	5,80,798	154.22
Tenth	1991-92	534/543*****	8,749	5,11,533,598@	16.38	57	5,91,020@	359.1
Eleventh	1996	543	13,952	5,92,572,288	25.69	58	7,67,462	597.34
Twelfth	1998	543	4,750	6,05,880,192	8.75	50	7,73,494	626.41
Thirteenth	1999	543	4,648	6,19,536,847	8.56	60	7,74,651	900
Fourteenth	2004	543	5,435	6,71,487,930	10.01	58	6,87,402	1114
Fifteenth	2009	543	8,070	71,69,85,101	14.86	58.19	8,30,866	846.67
Sixteenth	2014	543	8251	834101479	15.2	66.4	919452	3426
Seventeenth	2019	543	8026	897811627	14.89	67%	1035919	50000

@: Excluding Jammu and Kashmir

Source: 1. General Election-A Reference Handbook Vol. 1(Press Information Bureau of I&B 2014)

2. General Election Statistical Report: 2019

First-Past-the-Post-System'

As far as the issue of electoral reforms in India is concerned, the overall focus has been the system that governs representation to the popular chamber in Parliament as well as to the various State Legislative Assemblies in the country. The system of representation here refers to the one commonly known as the 'First-Past-the-Post-System'. of all the candidates contesting, it is the one who wins largest number of votes as compared to all others individually gets elected.

1. Universal Adult Franchise

One of the central features of the Electoral System in India is that it is based on the Universal Adult Franchise enunciated in Article 326. While the Constitution under article 326 makes it one of the cardinal features of the electoral system, the Representation of People Act, 1950 vide its Section 23 effectuates it. There shall be one electoral roll for every territorial constituency for election to either House of Parliament or to the State Legislature and no person shall be excluded from such roll on grounds only of religion, race, caste, sex or any of them'.

2. Multiparty System

Apart from the above, other function which also paved the way for electoral reforms in India include increase in the number of regional parties from time to time as a result of multiparty system that is followed in India in comparison to by party system in many countries. Alongside, there has been a substantial increase in the number of independent candidates. This has impinged upon the stability of Government in power. Moreover, this has also helped the phenomena of political defections, coalition politics, etc. Apart from these, increasing electoral expenses over the years has been a cause of concern. As a result, elections seem to have increasingly become an affair of the affluent. This has also, in turn, contributed to the rise of political corruption. In addition to these, electoral malpractices like booth capturing or poll rigging, violence and popular apathy towards participation in the polls are some of the issues which also need to be addressed and resolved in the interest of free and fair election.

Electoral Reforms in India

The need for electoral reforms was increasingly felt towards the late 1960's in India. Till then the electoral system had functioned quite satisfactorily except for few of aberrations in the form of some malpractices like rigging or violence which are rather small in number. There was one party rule at the Centre and in most of the States. But this scenario began to change after the Fourth General elections held in 1967. Regional parties and

rule by coalition of parties began to emerge in the States. The emergence of alternative party governments in the State witnessed the accentuation of some of the negative traits and distortions in the political system which manifested themselves in a greater degree in electoral politics.

A parliamentary Committee was constituted for the first time in 1970 to suggest amendments to Election Law from all angles. But with the dissolution of Lok Sabha in December 1970, the life of this Committee also came to an end. Subsequent to the Constitution of a new Lok Sabha in 1971, Parliament formed a Joint Parliamentary Committee on Amendments to Election Law headed by Shri Jagannath Rao.

In subsequent years, a number of Committees *viz.* the Tarkunde Committee (1974), the Dinesh Goswami Committee (1990), V.K. Krishna Iyer Committee (1994) and the Indrajit Gupta Committee (1998) have been constituted to examine issues relating to electoral reforms. Apart from these, the Election Commission has also, from time to time, made proposals for reforms. Starting from 1970, the Election Commission has submitted its recommendations on electoral reforms in 1977, 1982, 1990, 1992 and 2004. This apart, political parties through the platform of all-party meetings have also suggested for electoral reforms. The Law Commission (i.e. the 15th Law Commission) was also constituted in November, 1977 for an exhaustive study of the Representation of the People Act, 1951 with a view to finding out and identifying the measures necessary in the direction of electoral reforms. The Law Commission has submitted its 170th report regarding reform of the Election System. In addition, Government has also initiated redemptive measures from time to time.

Proposals for reforms

Recommendations of Law Commission

The Supreme Court of India, in the matter of „Public Interest Foundation & Others V. Union of India & Anr. Writ Petition (Civil) No. 536 of 2011, directed the Law Commission of India to make suggestions on two specific issues, *viz.*, (i) ‘curbing criminalization of politics and needed law reforms; and (ii), impact and consequences of candidates filing false affidavits and needed law reforms to check such practice’. In the light of this judgment, the Commission worked specifically on these two areas and, after series of discussions, followed by a National Consultation held on 1st February 2014, submitted its 244th Report titled ‘Electoral Disqualification’ on 24th February 2014 to the Government of India. The law Commission of India submitted its Report No. 255 on “Electoral Reforms” to the Union Law and Justice Ministry. Justice Shri A. P. Shah, Chairman of the Law Commission of India presented the 201 page report after due consideration and deliberations with the stakeholders including of registered national and state political parties and extensive and in-depth analysis of various issues by the commission.

Following is the summary of the report on various issues discussed in the report:

1. Election Finance

The Law Commission has proposed wide ranging reforms on the issue of expenses incurred by candidate such as limits; disclosure obligations of individual candidates and political parties; and penalties imposable on political parties; as well as examining the issue of state funding of elections. The electoral bond scheme introduced in 2018 is a method of political funding. It aimed at ensuring enhanced accountability to defeat the growing menace of black money and to promote transparency in funding and donations received by the political parties. Only a political party registered of the Representation of the People Act, 1951, and which has secured more than one per cent of the votes polled in the last election to the Lok Sabha would be eligible to receive the bonds. The commission does not consider a system of complete state funding of elections or matching grants to be feasible, given the current conditions of the country.

2. Regulation of Political Parties and Inner Party Democracy

Democratic theory can be thought of to include accounts of both procedural and substantive democracy. Procedural democracy can be said to refer to the practice of universal adult franchise, periodic elections, secret ballot, while substantive democracy can be said to refer to the internal democratic functioning of the parties, which purportedly represent the people. This section deals with the internal democratic functioning of parties and the question of how parties should function and regulate themselves.

3. Proportional Representation

It is clear that both the electoral systems come with their own merits and demerits – proportional representation theoretically being more representative, while the FPTP system being more stable. It is also clear, from the experience of other countries that any changes in India’s electoral system will have to follow a hybrid pattern combining elements of both direct and indirect elections. This, in turn will necessitate an increase in the number of seats in the Lok Sabha, which raises concerns regarding its effective functioning.

4. Anti -Defection Law in India

The Law Commission recommends a suitable amendment to the Tenth Schedule of the Constitution, which shall have the effect of vesting the power to decide on questions of disqualification on the ground of defection with the President or the Governor, as the case may be, (instead of the Speaker or the Chairman) who shall act on the advice of the ECI. This would help preserve the integrity of the Speaker’s office.

The Supreme Court delivered a verdict recently that could have far-reaching consequences for legislative assemblies.

The Court made two important declarations. First, the Speakers of both the State Assemblies and the Parliament have to decide on disqualification petitions for members within three months except for the existence of an extraordinary circumstance. It also held that courts have the powers to intervene if the proceedings are delayed. Second, the court recommended to Parliament that it strongly considers removing the Speakers' disqualification powers and forming an independent tribunal to take up these petitions. The rationale for this suggestion is that Speakers invariably come from the ruling parties and act in a partisan manner.

5. Strengthening the office of the Election Commission of India

The ECI should be strengthened by first, giving equal constitutional protection to all members of the Commission in matters of removability; second, making the appointment process of the Election Commissioners and the CEC consultative; and third, creating a permanent, independent Secretariat for the ECI.

6. Paid News and Political Advertisements

Amendment in the RP Act 1951, to provide therein that publishing and abetting the publishing of „paid news“ for furthering the prospect of election of any candidate or for prejudicially affecting the prospect of election of any candidate be made an electoral offence under chapter-III of part-VII of RP Act, 1951 with punishment of a minimum of two years imprisonment. In order to curb the practice of disguised political advertisement, disclosure provisions should be made mandatory for all forms of media.

7. Opinion Polls

Under Section 126 of Representation of the People Act, 1951, which prohibits, apart from holding, convening or attending any public meeting or procession, “display to the public any election matter by means of cinematography, television or other similar apparatus”, during the period of forty-eight hours ending with the hour fixed for the conclusion of the poll. Contravention of the above prohibition is a penal offence punishable with imprisonment upto 2 years or with fine or with both.

8. Compulsory Voting

The Law Commission does not recommend the introduction of compulsory voting in India and in fact, believes it to be highly undesirable for a variety of reasons described above such as being undemocratic, illegitimate, expensive, unable to improve quality political participation and awareness, and difficult to implement.

9. Election Petitions

Wide-ranging reforms have been suggested by the Election Commission to deal with “disputes regarding elections”.

10. NOTA and the Right to Reject

The Law Commission currently rejects the extension of the NOTA principle to introduce a right to reject the candidate and invalidate the election in cases where a majority of the votes have been polled in favour of the NOTA option.

11. The Right to Recall

The Law Commission is not in favour of introducing the right to recall in any form because it can lead to an excess of democracy, undermines the independence of the elected candidates, ignores minority interests, increases instability and chaos, increases chances of misuse and abuse, is difficult and expensive to implement in practice, especially given that India follows the first past the post system.

12. Totaliser for Counting of Votes

The Commission reiterates and endorses the ECI's suggestion for introducing a totaliser for the counting of votes recorded in electronic voting machines to prevent the harassment of voters in areas where voting trends in each polling station can be determined. Prior to the introduction of EVMs, ballot papers could be mixed under Rule 59A of the Election Rules, although this was not permitted for EVMs. Using a totaliser would increase the secrecy of votes during counting, thus preventing the disclosure of voting patterns and countering fears of intimidation and victimisation.

13. Restriction on Government Sponsored Advertisements

The Commission recommends regulating and restricting government sponsored advertisements six months prior to the date of expiry of the House/Assembly to maintain the purity of elections; prevent the use of public money for partisan interests of, inter alia, highlighting the government's achievements; and ensure that the ruling party or candidate does not get an undue advantage over another in the spirit of free and fair elections.

14. Restriction on the Number of Seats from which a Candidate May Contest

The Law Commission recommends an amendment of section 33(7) of the RPA, which permits a candidate to contest any election (parliamentary, assembly, biennial council, or bye-elections) from up to two constituencies. In view of the expenditure of time and effort; election fatigue; and the harassment caused to the voters, section 33(7) should be amended to permit candidates to stand from only one constituency.

15. Independent Candidates

The Law Commission recommends that independent candidates be disbarred from contesting elections because the current regime allows a proliferation of independents, who are mostly dummy/non-serious candidates or those who stand (with the same name) only to increase the voters' confusion. Thus, sections 4 and 5 of the RPA should be amended to provide for only political parties registered with the ECI under section 11(4) to contest Lok Sabha or Vidhan Sabha elections.

Preparation and Use of Common Electoral Rolls

The Law Commission endorses the ECI's suggestions regarding the introduction of common electoral rolls for Parliamentary, Assembly and local body elections.

Conclusion

It is an accepted fact that the electoral process in the country has developed certain shortcomings over the years which need to be corrected. But this should be done through extensive debate and discussion and in a gradual and continuous manner. Successive Governments at the Centre have realized the importance of the issues relating to electoral reforms. Suggestions made either by the Election Commission or by the various committees on electoral reforms from time to time, have been regularly considered and also implemented. While considering the proposals and suggestions of reforms of the electoral process, it has also been underlined that consensus of political parties in the country is necessary. Government recognized that electoral reforms is a continuous process and it shall be the endeavor, of all the stakeholders including Government, Election Commission of India and Law commission etc. to implement such proposals on electoral reforms on which consensus emerges, from time to time.

References

1. Journal of Constitutional and Parliamentary Studies
2. General Election 2014 Vol. (Press Information Bureau)
3. Statistical Report of General Election 2019
4. Press Release 2015
5. Economic Times, 2019
6. Law Commission Report No. 255
6. <https://eci.gov.in>
7. <https://lawcommissionofindia.nic.in>