



Electoral Reforms In India: Strengthening Democracy

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Abstract:

The Indian electoral system, a cornerstone of the nation's democracy, has seen substantial evolution since independence. Despite ongoing changes by the Election Commission and the insights from various committees, critical issues persist, demanding legislative action. Particularly, the prevalence of criminality within politics remains a pressing concern. Proposed reforms include stringent disclosure of candidate criminal antecedents and eligibility restrictions for those facing charges. These efforts, rooted in the historical contributions of visionaries like Dr. B.R. Ambedkar, reflect the ongoing endeavour to fortify the electoral framework.

Keywords: Elected representatives, Indian Constitution, Political accountability, Corruption, Democratic values, Electoral malpractices, Criminalization, Election reforms, software, voting machine.

Introduction:

Following India's independence in 1947, the architects of the Indian Constitution, notably Dr. B.R. Ambedkar, laid the foundations for a robust democratic electoral system. The journey began in the 1930s during the Round Table Conferences, where discussions on self-governance for native Indians took centre stage. Notably, Dr. Ambedkar championed separate electorates for the Untouchables, akin to provisions for other minorities. This period saw conflicts such as Gandhi's protest against communal awards¹, marking critical milestones in shaping India's democratic structure.

India's democracy stands as a global model, characterized by free and fair elections. While a source of pride, critical aspects of the electoral process necessitate strengthening for the nation to realize its full democratic potential. From candidate selection to fundraising and expenditure during election campaigns, significant reforms are imperative to ensure a more robust, transparent, and fair electoral system. The narrative of India's electoral reforms is an ongoing saga, weaving the legacy of visionary leaders with contemporary imperatives, shaping the nation's democratic framework.

Learning from History for Future Electoral Reforms in India

¹ B. N. Ghosh *Gandhian Political Economy Principles Practice and Policy* Ashgate P.46. 2007

Machiavelli's timeless wisdom rings true in the context of India's ongoing journey with electoral reforms. As the largest democracy globally, India's electoral landscape has been shaped by historical events and continues to evolve in the present. The enduring essence of human passions guiding political events has mirrored patterns through time, leading to analogous outcomes.

India's electoral reforms, crucial to the democratic process, draw profound insights from the past. The quote's relevance lies in the understanding that the challenges and solutions in today's electoral system echo those witnessed in preceding eras. From the inception of free and fair elections in 1947, guided by the Constitution and the Election Commission, to the continual evolution seen in legislative frameworks like the Representation of the People Act, the past serves as an instructive guide for the future. The quest for electoral reform, driven by historical analysis and contemporary challenges, mirrors a continuous cycle of human passions influencing political events. By heeding the lessons of the past, India endeavors to navigate toward a more robust, transparent, and participatory electoral system, echoing the vision of a vibrant democracy for the future.

Free and Fair Elections in India

India revered as the world's largest democracy, has diligently upheld the practice of free and fair elections since its independence in 1947. These elections, conducted at regular intervals, adhere strictly to the guidelines established by the Constitution and overseen by the Election Commission of India. The constitutional authority bestowed upon the Election Commission grants it the pivotal responsibility of superintendence, direction, and control over the entire electoral process², encompassing parliamentary, state legislature, as well as the elections for the esteemed offices of the President and Vice-President of India. The cornerstone of these elections lies in their alignment with the constitutional provisions and the legislation established by the Parliament. Notably, the Representation of the People Act, of 1950, stands as a critical legislative framework governing the preparation and revision of electoral rolls, along with the comprehensive regulation of all facets of election conduct and the resolution of post-election disputes³.

Criminalization In Electoral System

Criminalization within the political realm has continued to cast a shadow over the electoral system, raising concerns about the integrity of representatives and the impact on governance. It's a glaring reality that many politicians facing criminal charges often leverage criminal elements to further their positions, undermining the trust of the citizens who vote for them. While the Law Commission of India's reports provide crucial insights into the backgrounds of politicians, including any charges against them, the lack of public awareness hampers the effective use of this information⁴.

²Dr. J.N. Pandey *Constitution of India* Article 324 Central Law Agency P 376.

³ THE REPRESENTATION OF THE PEOPLE ACT, 1950.

⁴Milan Vaishnav *When Crime Pays Money and Muscle in Indian Politics* Yale University Press, 2017 P.352

The People's Representation Act of 1951, under Section 8, outlines the disqualification of candidates upon conviction by a court of law, preventing them from contesting elections for an additional six years post-conviction. However, the effectiveness of this regulation is questionable due to lax implementation. The pervasive influence of money in politics exacerbates this issue, compromising the rigorous scrutiny meant to evaluate candidates' backgrounds and criminal involvements.

The quote by Ayn Rand reflects the reality of creating a multitude of laws, potentially turning ordinary actions into criminal offenses. In response to these challenges, the Election Commission of India mandated, in a 2003 order following a Supreme Court judgment, that electoral candidates must submit affidavits disclosing their assets and liabilities. However, the 2004 report "Proposed Electoral Reforms" by the Election Commission highlighted instances where candidates allegedly provided undervalued information about their assets, indicating discrepancies and possible deceit in the disclosure process. As of the latest cases involving criminal elements in politics, the fundamental concerns regarding the criminalization of politics persist, impacting the integrity of the electoral process and the governance led by these representatives.

According to a recent report by ADR, nearly 45 percent of candidates representing major political parties like Congress, BJP, and JD(S) in the recent Karnataka elections had criminal cases filed against them. More concerning is that almost 30 percent of these candidates faced serious charges, including rape and murder. Professor Sastry emphasizes that India is unique in allowing individuals with criminal records to actively participate in elections and even secure victories.

"Consider the United States as an example. Individuals with murder or rape cases would never be considered for a political ticket; they would be disqualified from contesting elections. However, in India, this is not the norm. This poses a significant threat to our democratic process. A democracy that accommodates individuals with criminal backgrounds is not robust and healthy".

Supreme Court Gives Voters the Right to Reject Candidates

The pivotal case in which the Supreme Court of India granted voters the right to reject all candidates through the "None of the Above" (NOTA) option was the *People's Union for Civil Liberties v. Union of India* case in 2013. In a historic judgment, the Supreme Court ruled that voters have the right to reject all candidates contesting in an election, acknowledging the significance of the 'right to dissent' as a fundamental part of the electoral process. The court directed the Election Commission to implement a NOTA button on Electronic Voting Machines (EVMs) and ballot papers, providing voters with the explicit choice to reject all candidates if they find none of them suitable⁵.

⁵ *People's Union for Civil Liberties & Anr., v/s Union of India & Anr.* NO. 161 of SC 2004

The case emerged from a petition filed by the People's Union for Civil Liberties (PUCL) challenging the validity of the electoral process and seeking the inclusion of a 'Negative Voting' option. The Supreme Court, in its verdict, recognized the right of voters to express dissent and reject all candidates, asserting that this would compel political parties to field candidates with a cleaner image and stronger credibility. This verdict marked a significant milestone in Indian democracy, empowering voters with a tool to manifest their dissatisfaction with the presented candidates, and promoting transparency and accountability in the electoral system⁶.

Right to Recall:

The concept of "Right to Recall" refers to a proposed mechanism allowing constituents to recall or remove an elected official from office before their term ends. This provision, although envisioned during the framing of the constitution⁷, was not explicitly incorporated into the Indian electoral system. The Right to Recall, as suggested by Dr. B.R. Ambedkar and other framers of the Indian Constitution, aimed to provide a mechanism for citizens to address concerns regarding their elected representatives' performance. The idea was to empower the electorate to recall a sitting MLA (Member of Legislative Assembly) or MP (Member of Parliament) should they be dissatisfied with their performance or conduct. The proposed Right to Recall law would have enabled citizens to file complaints with the election commission, initiating a process that could lead to the recall of an elected official, prompting fresh elections in that constituency.

However, despite its conception during the constitution's framing, the implementation of the Right to Recall law faced several challenges and debates, ultimately not finding its way into the electoral system. Concerns over the potential misuse, logistical complexities, and the delicate balance between representative democracy and direct participation of citizens played significant roles in its exclusion. The practical application of the Right to Recall involves intricate procedural frameworks and checks to prevent its abuse as a tool for political vendettas or non-substantive reasons. The absence of this provision in the electoral system stems from these complexities and the need for a comprehensive and foolproof mechanism to ensure fair and judicious use. While the idea of enabling citizens to recall elected officials remains an intriguing concept for enhancing democratic accountability, its realization within the existing Indian electoral system has yet to materialize due to the challenges and complexities involved in its effective and equitable execution.

Double vote rights:

The proposition of a "Double Vote Right" advocated by Dr. B.R. Ambedkar to provide Scheduled Caste (SC) and deprived classes with an additional voting right faced opposition, notably from Mahatma Gandhi. The concept aimed to empower these

⁶Ibid.

⁷ Representation of Peoples Act (RPA) 1951.

marginalized sections by granting them two votes, distinguishing their representation within the electoral system. Ambedkar's support for this concept stemmed from the idea of ensuring a more robust and direct representation for these communities in governance. He believed that through a dual voting mechanism, the SC and deprived classes could elect representatives dedicated specifically to safeguarding their rights and interests⁸.

However, Gandhi and others were skeptical about the practical implications and potential divisive consequences of such a system. They believed that it might perpetuate social divisions and hinder the unity and cohesion of the nation. The current challenge within the societal structure is that while SC representatives, whether at the MLA (Member of Legislative Assembly) or PM (Prime Minister) level, are elected by the entire constituency, they might encounter limitations in exclusively advocating for the rights of SC and deprived communities. This limitation arises from their broader responsibility to represent and address the concerns of the entire electorate, not just their specific communities. The perceived lacuna in the electoral system, as highlighted, reflects the complexity of representation. Advocates of the double vote right argue that separate representation could more effectively champion the specific needs of these marginalized groups. However, opponents fear potential social division and believe in the importance of a unified electorate. The issue remains a matter of debate, as it touches upon the balance between fostering dedicated representation for marginalized communities and preserving the unity and inclusivity of the electoral process. The complexities of implementing such a system, balancing fair representation and preventing societal divisions, continue to be at the center of this discourse.

State Funding of Elections

The high cost of elections is a significant concern, posing barriers to candidates and parties with limited financial means, potentially impeding their competitiveness in the electoral process. Additionally, the reliance on diverse sources for campaign funds raises apprehensions about elected representatives' policy decisions, which might tilt in favor of the entities or groups that financially supported their campaigns.

To mitigate these challenges, state funding of elections has emerged as a proposed solution. This approach involves various forms of financial support from the government to political parties or candidates to alleviate the financial burdens associated with election campaigning.

State funding of elections typically includes mechanisms like direct monetary support to candidates or parties, provision of resources for campaigning purposes, or even reimbursement of campaign expenses incurred during the electoral process. The objective of state funding in elections is to foster a more level playing field, enabling

⁸ Poona Pact 1932 (B.R Ambedkar and M.K Gandhi) P. 3

<https://www.constitutionofindia.net/historical-constitution/poona-pact-1932-b-r-ambedkar-and-m-k-gandhi/>
14/11/2020.

candidates with diverse socio-economic backgrounds to participate more equitably in the electoral process. By lessening the dependence on private or vested interests for funding, there's an aim to curtail the potential bias or influence exerted by donors on elected officials' policy decisions.

The Indrajit Gupta Committee, in 1998, proposed state funding of elections to ensure a fair playing field for political parties with limited resources. The committee recommended two key restrictions on state funding. Firstly, only national and state parties with a symbol were deemed eligible for state funding, excluding independent candidates. Secondly, recognized political parties and their candidates were suggested to receive short-term state funding in the form of specific infrastructure. The committee acknowledged that, at the time of the report, the economic conditions in the nation were only conducive to partial, not complete, public funding of elections. The emphasis was on providing support to established parties and candidates while maintaining a cautious approach due to economic constraints⁹.

state funding of elections as "desirable" under the condition that political parties refrain from accepting money from other sources. The report strongly emphasized the necessity of establishing an appropriate regulatory framework. Aligning with the Indrajit Gupta Committee's stance, the Law Commission acknowledged that, given the economic situation of the nation at the time, only partial public assistance for election funding was practical.

Contrarily, the National Commission to Review the Working of the Constitution in 2001 did not endorse state funding of elections. However, it concurred with the 1999 Law Commission report in recognizing the need for a regulatory framework for political parties. This framework was deemed a prerequisite before considering the implementation of state funding.

In 2008, the Second Administrative Reforms Commission's "Ethics in Governance" report advocated for partial state funding of elections. The objective was to curb "illegitimate and excessive funding" of election costs.

However, the implementation of state funding of elections necessitates careful considerations. Determining the criteria for allocation, ensuring transparency in the distribution of funds, and preventing misuse or inefficiency in resource utilization are critical challenges. Moreover, debates arise regarding the utilization of taxpayer money for political purposes and the potential impact of state funding on the overall financial accountability and transparency of the electoral process. The idea of state funding of elections remains a subject of ongoing debate, balancing the objective of reducing the

⁹ The Indrajit Gupta Committee on State Election Funding (1998).

influence of money in politics with the need for a transparent, accountable, and fair electoral system.

In 2010, the Election Commission introduced a provision allowing every Indian citizen residing outside the country to register their name in the parliamentary or assembly constituency corresponding to their passport's place of residence, ensuring their voting rights. Subsequent reforms unfolded in 2013, as the Election Commission facilitated online applications for inclusion in the electoral roll. The Supreme Court directed the inclusion of the "NOTA" (None of the Above) option in Electronic Voting Machines (EVMs), offering voters the choice to reject all candidates¹⁰.

Additionally, in 2013, the Election Commission implemented the Voter Verifiable Paper Audit Trail (VVPAT), a mechanism that verifies voters' choices. The Apex Court upheld a judgment by the Patna High Court, asserting that individuals in jail or police custody could contest elections. Another significant development in 2013 was the Supreme Court ruling that convicted Members of Parliament (MPs) and Members of Legislative Assembly (MLAs) would face immediate disqualification¹¹.

In 2014, the government raised the maximum expenditure limit for Lok Sabha elections from Rs. 40,00,000 to Rs. 70,00,000. For assembly seats in larger states, the expenditure ceiling increased from Rs. 16,00,000 to Rs. 28,00,000¹².

The year 2015 saw the Election Commission mandating the inclusion of candidate photos, names, and party symbols on EVMs to prevent confusion among voters. In 2017, changes were made to political party donations in the financial bill introduced in the Lok Sabha. Previously, companies contributing to political parties were required to disclose the amount of contributions, with a cap of 7.5% of the company's average net profits in the last three years. However, after the amendment, this cap was removed, and the obligation to disclose the name of the political party was also eliminated.

Rigging Through Muscle Power and Intimidation

The manipulation of elections goes beyond tampering with ballots or electoral rolls. Muscle power and intimidation wielded during the electoral process present significant threats to the fairness and integrity of elections.

Muscle power refers to the use of physical force, influence, or intimidation by certain groups or individuals to coerce or dissuade voters from freely exercising their democratic

¹⁰Id, 6.

¹¹ Manual on Electronic Voting Machine and VVPAT January 2017 Document 2 - Edition 2, Election Commission of India Nirvachan Sadan, Ashoka Road, New Delhi-110001 P.81

¹²GOVERNMENT OF INDIA LAW COMMISSION OF INDIA Report No.255 Electoral Reforms March 2015, P.12

<https://eci.gov.in/files/file/13928-limits-of-candidate%E2%80%99s-expenses-enhanced/?do=download> visited on 15/11/2021 dt. 12:20.

right. This can include the deployment of armed individuals, threats, or acts of violence in and around polling stations to influence the voting process.

Intimidation tactics can range from subtle coercion to overt threats aimed at voters, poll workers, or even opposition candidates. Such intimidation not only undermines the principle of free and fair elections but also instills fear among voters, limiting their ability to make independent choices. These tactics not only compromise the sanctity of the electoral process but also undermine the democratic values of freedom and choice. Addressing these challenges requires robust measures to ensure the safety and security of voters, strict enforcement of laws against intimidation, and the creation of an environment where citizens can exercise their voting rights without fear or duress¹³.

Restrictions on Opinion Polls

the regulation of opinion polls in the run-up to elections has been a subject of debate within electoral law committees. The concern primarily revolves around the potential misuse of opinion polls as a tool to sway or manipulate voter sentiments in the crucial period leading up to elections. Opinion polls, when released close to the election date, can influence voter behavior. There are concerns that these polls if publicized just before elections, might not only shape public opinion but also potentially impact voters' decisions. The fear is that voters might be swayed to vote strategically, following perceived trends rather than their analysis of political agendas or candidates¹⁴.

The regulation or restriction of opinion polls in the immediate lead-up to elections has been a point of contention. Some argue that limiting the release of polls during a certain period before elections could prevent potential manipulation or undue influence on voters. However, others argue for the freedom of speech and information, advocating for minimal interference with the dissemination of such data. The discussion around regulations often delves into finding a balance between safeguarding the democratic process, ensuring a free and fair election, and upholding the principles of freedom of expression and access to information. Striking this balance is crucial to prevent any undue influence while also respecting the right to information and expression.

Victimization of Officers Drafted for Election Duties

The victimization of government officers involved in election duties has been a concerning issue. These officers play crucial roles in ensuring the smooth conduct of elections, from preparing electoral rolls to overseeing the electoral process. However, it has been observed that many of these officers face humiliation and, at times, punitive disciplinary actions from the government following their involvement in election duties. The Election Commission has highlighted instances where officers, post their

¹³Background Paper On Electoral Reforms (Prepared by The Core-Committee on Electoral Reforms) Legislative Department Ministry of Law And Justice Government Of India Co-Sponsored by The Election Commission Of India, December 2010.

¹⁴id. P. 21.

election duties, have been subjected to retaliatory measures or undue repercussions from government authorities. This victimization could take various forms, including reprimands, transfers, or even disciplinary actions, which might be perceived as punitive or vindictive.

Addressing this issue requires a concerted effort to safeguard these officers from such potential repercussions. There's a need for regulations and safeguards to protect officers from arbitrary or retaliatory actions post their election-related responsibilities. Ensuring their security and shielding them from undue pressures or repercussions is essential to maintain the integrity and independence of the electoral process. This might involve creating specific provisions or guidelines to shield these officers from unwarranted consequences following their election duties¹⁵.

Issues and Challenges Before the Election Commission

The Indian electoral system, while appreciated for its overall functioning, grapples with significant weaknesses. The Election Commission faces several challenges in ensuring free and fair elections due to various issues ingrained in the system. The presence of unaccounted money in elections poses a serious problem. Political parties often collect funds from businesses and companies, utilizing these untraceable finances to influence voters. This practice, typically involving cash contributions, remains largely unaccounted for, enabling corrupt practices such as bribing, voter intimidation, and other illegal tactics during elections.

Instances of distributing liquor in economically challenged areas and politicians paying for news coverage or bribing voters were prevalent in past elections, exemplifying the pervasive influence of money in politics. The "vote for note" scandal is a stark example of this undue financial power¹⁶, portraying politics as a transactional market, exchanging notes for votes. Furthermore, violence during elections has shown an upward trend, although these activities might not occur openly but persist, particularly in smaller towns, where there's little opposition against such malpractices. Another critical issue is the selection of candidates by political parties, often based on their ability to gather support from larger castes or communities and their financial resources. This perpetuates a trend where voters align their choices along caste and communal lines, and these loyalties are exploited during propaganda campaigns.

In light of these challenges, there's a pressing need for new regulations and amendments within the electoral system. This might include stricter measures to monitor and control the flow of unaccounted money, enforce transparency in campaign funding, and prevent the manipulation of voters through illegal means. It's crucial to address these issues

¹⁵ibid.

¹⁶Dr. Shruti Singh, Dr. Rani Abha, Arnasha Singh, Dr. Sanjay Kumar Dwivedi, Dr. A.A.Faruqi, S N Abbas (Kaify), Meer Bakir Meeraz, Fakhir Abrar, Dr. Pragya Singh, Shreya Singh, Zunnoorain Haider Alavi SOCRATES: Vol 1, No 1 (2013): ISSUE – P4.

comprehensively, ensuring that elections are conducted fairly, devoid of undue influence and corruption.

The election infrastructure:

Ensuring the integrity of India's electoral process, the Election Commission (EC) has implemented various measures to safeguard the technical infrastructure, encompassing Electronic Voting Machines (EVMs), the voter database, voting software, and IT systems.

Reliability of EVMs:

The credibility of EVMs, despite being successfully employed, has faced unwarranted skepticism from some political quarters. Produced by Bharat Electronics Limited and the Electronics Corporation of India Limited, both public sector units known for manufacturing sensitive equipment in defense and space sectors, the machines are stand-alone and devoid of any network connectivity such as electronic warfare and radar systems¹⁷. A committee comprising technical experts and defense scientists has certified the software¹⁸, enhancing the EVMs' resilience against hacking. While isolated instances of potential tampering exist in theory, there is no concrete evidence supporting this claim. With the mandatory implementation of Voter Verifiable Paper Audit Trail machines, doubts about tampering are further addressed.

Specialized Initiatives on Cyber Security:

In 2017, the EC established the position of Chief Information Security Officer, tasked with overseeing various measures, including regular cyber security drills and ensuring compliance with cyber security protocols across EC offices. Conducting workshops in six cities, the EC has trained its staff in cyber hygiene practices¹⁹, emphasizing the importance of avoiding responses to phishing emails that could compromise the EC's computer network²⁰.

Making Election Infrastructure 'Critical Infrastructure:

As a progressive step, the EC aims to redesignate its election infrastructure as 'critical infrastructure' under the Information Technology Act 2000. This strategic move will institutionalize regular coordination with the national security establishment, allowing the EC to benefit from cyber security advisories issued by the National Critical

¹⁷Bharat Electronics limited, 'about us', <<http://www.bel-india.in/ContentPage.aspx?MId=5&CIId=1226&LIId=1&link=1226>>

¹⁸ Election Commission of India, 'Manual on Risk Management', 20 September 2018, <<https://eci.gov.in/files/file/6929-manual-on-risk-management/>>

¹⁹Election Commission of India, 'Cyber Security Newsletter', May 2018, <<https://eci.gov.in/files/file/5685-cyber-security-newsletter-may2018/>>

²⁰Election Commission of India, 'ECI Cyber Bulletin', November 2018 <<https://eci.gov.in/files/file/9089-eci-cyber-bulletin/>>

Information Infrastructure Protection Centre, a unit of the National Technical Research Organisation²¹.

Conclusion:

In conclusion, the evolution of electoral reforms in India showcases a dynamic journey, influenced by historical underpinnings and contemporary imperatives. The quest for an unbiased, fair, and transparent electoral system continues to encounter challenges and demands innovative solutions. To fortify the democratic framework, critical areas necessitate immediate attention and reform. One pivotal aspect revolves around addressing the pervasive influence of unaccounted money in elections. Implementing stringent measures to monitor and control the flow of untraceable funds, enforcing transparency in campaign finances, and ensuring robust scrutiny of candidates' backgrounds are imperative steps. Furthermore, the reform agenda needs to tackle the prevailing criminalization within the political spectrum. Empowering voters with comprehensive information about the criminal antecedents of candidates and fortifying regulations to disqualify those facing charges are critical to upholding the integrity of the electoral process.

The introduction of mechanisms like the 'None of the Above' (NOTA) option is a significant stride towards enhancing voter empowerment and ensuring accountability. Efforts to broaden transparency, foster accountability, and mitigate undue influence, as evident in NOTA, should be expanded to encompass broader electoral reforms. Crucially, electoral reforms must strive for a level playing field by lessening the reliance on private or vested interests through state funding mechanisms. Balancing the need for financial support with stringent checks to prevent misuse and ensure equitable distribution is essential for an unbiased electoral setup.

The protection of election officers from victimization and the regulation of muscle power and intimidation tactics are equally pivotal for upholding the sanctity of the electoral process. Safeguarding these officers and creating an environment that ensures voters can exercise their rights freely and without coercion is fundamental. Ultimately, comprehensive and robust electoral reforms are imperative for fostering a truly unbiased, fair, and transparent electoral landscape. Striking a balance between enabling citizen empowerment, upholding democratic values, and ensuring a level playing field for all participants is the cornerstone of a thriving democracy. By addressing these challenges through rigorous legislative action, transparent enforcement, and robust oversight, India can move closer to the ideal of conducting elections that reflect the true will of its people.

²¹https://www.gatewayhouse.in/cyber-security-india-election/#_ftnref7 visited on 15/11/2021 at 2:36 Pm