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ROLE OF THE SUPREME COURT IN ELECTORAL REFORMS

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Abstract

The Electoral system and the laws have to evolve over the period of time to accommodate the changes in the political culture of any country. The process of electoral reforms is successful only when there is a coordination among the electoral machinery, the political parties, the candidates and electorate at all levels. Over the years the Election Commission of India kept pace with changing needs, aspirations, and technology. Throughout these years of innovation and development the Supreme Court of India has stood like a rock behind the commission. In many instances such as introducing the Moral Code of Conduct, NOTA, in curbing the criminalization of politics, the Election Commission has heavily depended upon the direction of the Supreme Court. Against this backdrop, this paper is going to focus on the contribution of the Supreme Court of India in reforming the electoral laws and enriching the democratic space in the country through its directions in various cases.

Keywords: *Election, Election Commission, Electoral reforms, Democracy, Supreme Court*

Introduction

Elections are nothing but democracy in practice. The consent of the governed is expressed through the election in any democracy. In other words, election process provides legitimacy to the authority of the government. Representative government has become the best attainable method in establishing democracy in the modern world, periodic elections become necessary for this purpose. The adult franchise, impartial elections, independent judiciary, multiparty system are substance of democracy. Each citizen should have the right to vote on attaining the certain age and nobody should be disqualified on grounds of caste, creed, sex, language, religion etc. The most important feature of a democratic polity is elections at regular intervals. The right to vote has emerged not only as a fundamental right, but as an instrument of political awakening. It is true that the principle of universal adult

franchise was introduced in modern democracies only gradually, but today it is regarded as a necessary condition of democracy.

The main focus of this article is to highlight the role of the in bringing electoral reforms in India for democratic sustenance and better functioning. This article is divided into two parts. The first part focuses on functions of elections in democracy and various aspects of electoral reforms; second part highlights the role of the Supreme Court of India in bringing electoral reforms in India with main focus on expanding the scope of Election Commission of India, addressing the issues of paid news, opinion polls/exit polls, criminalization of politics and introducing NOTA.

Democracy and Electoral Reforms

In modern politics representation is invariably linked with elections. As Harrop and Miller Explained, there are two contrasting views of the function of competitive elections. The conventional view is that elections are a mechanism through which politicians can be called to account and forced to introduce policies that somehow reflect public opinion. This emphasizes the bottom-up functions of elections: political recruitment, representation, making government, influencing policy and so on. On the other hand, a radical view of elections, developed by theorists such as Ginsberg portrays them as a means through which governments and political elites can exercise control over their populations and making them more governable. This view emphasizes top-down functions: building legitimacy, shaping public opinion and strengthening the elite.

The process of reform in governance has to start with reform of the electoral system, which serves as the entry point for the politicians to enter the governance system. Electoral reform is a change in the electoral systems that include

- Change in the voting systems
- Change in the vote counting procedures
- Rules about political parties
- Changes to election laws
- Eligibility to vote
- Ballot design and voting equipment
- Election monitoring
- Safety of voters and election workers
- Measures against bribery, coercion, and conflicts of interest
- Financial controls

India, being the largest democracy in the world, has to evolve a free and fair system to conduct elections. Reform is not a single time effort but a continuous process. The accomplishment of the modification would depend upon the operational compliance of the coordination of electoral machinery, the political parties, the candidates and electorate at all levels. There is a continuous attempts to reform the electoral system in India. The Joint Parliamentary Committee on Amendments to Election Law (1971-72), the Tarkunde Committee Report of 1975, the Goswami Committee Report of 1990, the Election Commission's Recommendations in 1998 and Indrajit Gupta Committee Report of 1998 etc. produced comprehensive set of recommendations regarding electoral reforms.

Supreme Court of India and Electoral Reforms

Over the years, the election commission of India has handled a number of issues and introduced many electoral reforms to strengthen democracy. Throughout these years of innovation and development the Supreme Court of India has stood like a rock behind the commission and helping in its endeavor to conduct elections as clean as possible. The Supreme Court of India has unbridled the powers of the Election Commission by interpreting the Articles 324 and 325. In many instances such as introducing the Moral Code of Conduct, NOTA, in curbing the criminalisation of politics, the

Election Commission has heavily depended upon the direction of the Supreme Court.

1. Expanding the powers of the Election Commission

The scope of powers and functions of the Election commission under Art 324 of the constitution of India came under the consideration of Supreme Court in ***Mohinder Singh Gill Case*** **(1978).** In this case, the Election Commission had declared the poll taken in Firozepur parliamentary constituency in 1977 general elections as void, on the basis of certain complaints. The petitioners contended that the Election Commission could only direct fresh poll at the polling stations where the poll was allegedly vitiated, and not in the entire parliamentary constituency. But the Supreme Court rejected the contention of the petitioners and held that art 324 is a plenary provision vesting the whole responsibility for national and State elections in the Election Commission and the words 'superintendence, direction and control' used in Art 324 are the broadest terms.

In another case, the validity of the Election Symbols (Reservation and Allotment) order 1968 was called in question in *Kanhiya Lal Omar vs. R.K. Trivedi and others* (1985). It was contended that the symbols order was legislative in character and could not have been promulgated by the Commission, as the Commission is not empowered by law to issue such a legislative order. The Supreme Court rejected the above contention and stated that the power to issue the Symbols Order is vested in the commission under Art 324. Art 324(1) which empowers the commission to issue all directions necessary for the purpose of conducting smooth, free and fair elections in the country, is a reservoir of powers and any provision could not be traced to the Representation of the Peoples Act 1951 or the Conduct of Elections Rules 1961, it could be traced to Art 324(1).

In another famous *Common Cause case* (1996) the Supreme Court held that the expression Conduct of elections in Art. 324 of the constitution is wide enough to include the powers of the Election Commission to issue directions to the effect that the political parties shall submit to the commission for its scrutiny, the details of the expenditure incurred or authorized by the political parties in connection with the election of their respective candidates.

In *Union of India vs. Association for Democratic Reforms and others* case(2002), the Supreme Court, stated that a citizen has right to get relevant information about prospective candidates and directed the Election Commission that each candidate for election to Parliament or a State Legislature should submit a duly sworn affidavit, along with his nomination paper, which consists of the information about his past criminal conviction, pending criminal cases carrying a conviction of more than two years, assets, liabilities and educational qualifications.

2. Advisory Jurisdiction of the Election Commission

The Constitution of India vested the powers in the President in the case of a member of Parliament (under Art. 103) and the Governor in the case of a member of State legislature (under Art.192) in the matters of disqualification of sitting members of Parliament and of state legislatures, on all grounds other than the ground of defection. But before deciding such matters the President or the governor, as the case may be, has to refer the matter to the Election Commission for its opinion and act according to such opinion.

While deciding the matters on the advisory role of the Election Commission in ***Brundaben Nayak vs. ECI*** **(1965)** the Supreme Court has made it clear that the President and the Governors are bound by the opinion of the Election Commission in such matters and not required even to consult their Council of Ministers. The apex court observed in *Shamsher Singh vs.*

State of Punjab (1975) that the actual adjudication has to be made by the Election Commission and the president and governors merely append their signatures to the order.

3. Paid News

Paid news is a phenomenon in Indian media, in which many of the mainstream media outlets were found to be systematically engaged in publishing favorable articles in exchange for payments. The Election Commission of India has issued directions in 2008 and 2012 to deal with the issue of paid news. In this issue also the Election Commission heavily depended on the orders or directions of the Supreme Court.

The Cable Television Network (Regulation) Rules, 1994 prohibit advertisements of a political nature. This issue as raised before the Andhra Pradesh High Court, which suspended the operation of Rule 7(3) of the above said rules, relating to the prohibition of political advertisements. The matter went to the Supreme Court in *Ministry of Information & Broadcasting vs. M/s Gemini TV and others* (2004) and the Supreme Court directed the Election Commission to monitor such advertisements on television and cable networks during 2004 general elections. In accordance with the order of the Supreme Court, the Election Commission of India issued guidelines in 2012 to set up State and District Level Media Certification and Monitoring Committee (MCMC) to identify the suspected cases of paid news, for monitoring of political advertisements in electronic media and print media. MCMCs are also entrusted with the responsibility of monitoring political advertisements in other media, in relation to candidates, either overt or covert, from Expenditure monitoring angle.

4. Opinion polls / Exit polls

In pursuance of the order passed by the hon'ble Supreme Court in 2009, the Election Commission has issued guidelines to be followed in the matter of publication/dissemination of results of opinion polls and exit polls in connection with elections to the Lok Sabha and State Legislative Assemblies. No result of any opinion poll or exit poll conducted at any time shall be published in any manner by print, electronic or any other media, at any time –

(a) during the period of 48 hours ending with the hour fixed for closing of poll in an election held in a single phase; and

(b) In a multi phased election, and in the case of elections in different States announced simultaneously, at any time during the period starting from 48 hours before the hour fixed for closing of poll in the first phase of the election and till the poll is concluded in all the phases in all States**.**

5. Issue of criminalization of politics

Section 8(4) of Representation of Peoples Act, 1951 states that if a sitting Member of Parliament or state legislature is convicted and sentenced to not less than two years of imprisonment shall be disqualified from being member of house. However, if the member goes on appeal against his conviction within 3months, he shall not be subjected to disqualification. This provision facilitated that they could not be disqualified until the appeals or revisions were exhausted. The Supreme Court in its landmark judgment in *Lilly Thomas vs. Union of India* (2013) has struck down section 8 (4) and held it as unconstitutional and void. In *Resurgence India vs. Election Commission of India* judgement (2013), the Supreme Court said that returning officers should reject nomination papers of candidates who do not provide all relevant information about their assets, liabilities, and criminal cases, if any.

6. Introducing of NOTA

In *People's Union for Civil Liberties vs. Union of India and others* (2013), the Supreme Court ruled that the voters should have the option to reject all the candidates who were standing for

election in their constituency. It directed the Election Commission to include the option 'None of the Above'(NOTA) in the Electronic Voting Machines(EVMs) to ensure privacy for those who don't find any candidates suitable. The Supreme Court felt that it would contribute to cleansing of politics that the political leadership would formally know that there are people unhappy with the parties' choice of candidate and this would build moral pressure on political parties to rethink on their choice of candidates with criminal background or dark image. Thus the introducing NOTA in the ballot units of EVMs is an offshoot of the Supreme Court's verdict.

Conclusion

In India as the democratic process is deepening, institutions such as Election Commission assumed crucial importance to formulate a conscious policy towards rule enforcement in order to establish a fair and vibrant representative democracy. Despite the criticism on Indian Judiciary's proactive decisions as judicial activism or judicial overreach by the critics, the Indian judiciary is extending its relentless support to the electoral reform process in India. As we have seen in the above mentioned cases, the apex court through its judgements enabled the Election Commission of India to introduce some reforms and expanded the scope of the Commission within which it functions. India's ongoing good governance reforms process will be successful only if the core issues like electoral reform are addressed.

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