



A CRITICAL ANALYSIS ON ELECTORAL REFORMS IN INDIA.

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Abstract:

In democratic and multi political parties society like India, elections play a pivotal role to form federal forms of governments like Parliament and state Assemblies and Local Self-Government bodies known as Village Panchayats, Taluk Panchayats, Zilla Panchayats, and Municipalities at Urban levels. Indeed, the survival and smooth functioning of democracy are based on the success and smooth fair and impartial elections only. Indeed, to conduct elections impartially, a separate independent constitutional body known as Election Commission of India was constituted under Article 324 of the Constitution.

Method of study: The researcher has followed the doctrinal method of study.

Objectives of the Study: To find out issues, challenges and suggestions.

Key Notes: Election Commission of India, Elections, Parliament, State Assembly, Local self Governments.

1. INTRODUCTION

As compared to other forms of governments, democracy is the best form of government, because, in a democratic form of government, the government is elected by the common people of the country which allows every citizen to cast vote and choose his representative irrespective of caste, colour, creed, religion or gender. So that, after independence, India has adopted the democratic form of government with multiple political parties system, and now it is the largest democracy in the world also. In a democratic system, an election is the most important segment, which plays a crucial role to elect people's representatives. Indeed, India is a federal system of the administration having the union and state governments. To run the administration at Central as well as state level, we have parliamentary and state assembly elections for every five years once under the Representation of the People Act, 1951. Simultaneously, by the 73rd Constitutional Amendment Act, 1992, introduced Three-tier system

of Local Self-Government bodies generally known as Village Panchayats at the village level, Taluk Panchayats at the Taluk level and Zilla Panchayats at District level. Besides, 74th Constitutional Amendment Act, 1992 provides provision for the establishment of Municipalities at Urban levels separately. Hence, now it is required to conduct elections to all these bodies regularly and systematically by the Election Commission.

2. CONSTITUTIONAL STATUS TO THE ELECTION COMMISSION OF INDIA

The Election Commission of India is an independent Constitutional body constituted under Article 324 of the Constitution,¹ which provides for the appointment of an Election Commission to superintend, direct, control elections, to conduct elections to the Parliament and the Legislature of every State and elections to the offices of President under Article 55 and Vice-President under Article 66 of the Constitution.²

Accordingly, the Election Commission of India was established on 25th January 1950. Initially, it had only one Chief Election Commissioner, but at present, it consists of one Chief Election Commissioner and Two other Election Commissioners also. In T.N.Seshan v/s Union of India,³ five-judge Constitution bench of the Supreme Court comprising Justice Ahamadi CJ, J.S.Verma, N.P.Singh, S.P.Bharuch and M.K.Mukharjee upheld the validity of Act equating the status, power and authority of other two election commissioners with the Chief Election Commissioner. Ultimately, the President has the power to appoint Chief Election Commissioner and other Election Commissioners. Their tenure is six years or 65 years whichever is earlier and they have the same status and receive perks as available to Judges of the Supreme Court of India. The Election Commission of India is responsible for administering elections in India according to the rules and regulations mentioned in the Constitution of India.

3. POWER TO ENACT ELECTION LAWS

The Parliament has empowered to make laws in connection with the election to Parliament and State Legislatures.⁴ By exercising this power Parliament enacted several laws such as the Representation of the People Act, 1951, the Presidential and Vice-Presidential Elections Act, 1952, the Delimitation commission act, 1952, The Constitution (Fifty-Second Amendment) Act, 1985 (The Anti-defection law), the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991 etc. Similarly, the State Legislature also empowered to make laws to the election matters at the state level that is not made by Parliament.⁵

¹ Mahendra P. Singh, V.N.Shukla's, Constitution of India, Tenth Edition, Eastern Book Company, Luck now, published in 2001.

² Supra note 1, p. 323.

³ 1995 SCC (4) 611.

⁴ Article 327 of the Constitution of India.

⁵ Article 328 of the Constitution of India.

4. ELECTIONS TO LOCAL SELF GOVERNMENTS

Article 243-K deals with Elections to the Panchayats. Accordingly, the superintendence, direction, control, of the preparation of electoral rolls, and to conduct elections to the Panchayats⁶ and Municipalities shall be vested in a State Election Commission. The State Election Commission consists of Election Commissioner, who is to be appointed by the Governor. Besides, Article 243-ZA deals with election to the Municipalities. Accordingly, the superintendence, direction, control of the preparation of electoral rolls, and to conduct the elections for Municipalities shall be vested in the State Election Commission.

5. THE POWERS AND FUNCTIONS OF ELECTION COMMISSION OF INDIA

As an independent Constitutional body, the Election Commission of India performing the following powers and functions;

5.1. POWERS OF THE ELECTION COMMISSION

- To decide the regional areas of the electoral constituencies throughout the country based on the Delimitation Act.
- Periodically to prepare and amend electoral rolls of all qualified voters.
- To fix the dates & schedules of election and to scrutinise nomination papers.
- To grant recognition of political parties & allot election symbols to them.
- To act as an adjudicator for settling disputes relating to elections and election symbol.
- The Commission may ban on opinion polls if it deems such an action fit for the cause of democracy.
- The Commission may recommend for disqualification of members if it thinks that they have violated guidelines.

5.2. FUNCTIONS OF THE ELECTION COMMISSION

The Election Commission performs the following functions;⁷

- The Election Commission of India is considered as the guardian to conduct fair elections, the superintendence, direction and control of the preparation of electoral rolls.
- It prepares and issues model code of conduct in every election.
- It regulates and registers political parties for being eligible to contest elections.
- It publishes a ceiling limit of campaign expenditure and also monitors the same.
- It receives financial reports of political parties.
- Conducting voter awareness programmes to participate maximum number of voters in election.

⁶ P.M.Bakshi, the Constitution of India, Ninth Edition, Universal Law Publishing Co.Pvt.Ltd, Delhi, 2009.

⁷ Article 324 (1) of the Constitution of India.

6. ADJUDICATORY MECHANISM TO SETTLE ELECTION DISPUTES

Before the 19th Constitutional Amendment Act, 1966, Election Tribunals had the power to settle election disputes. Clause (b) of Art 329 provides that elections related questions can be dealt by such authority and in such manner as may be laid down by law made by the appropriate legislation.⁸ In *Ponnu swami v/s Returning Officer, Namakal*,⁹ the appellant's nomination paper for the State Assembly was rejected by the returning officer, then he moved to High Court under Article 226 to quash the order of the Returning Officer and to direct the inclusion of his name in the list of valid nominations, but the High Court dismissed the writ petition on the ground that under Article 329 (b) the Court had no jurisdiction to interfere with the order of the Returning Officer. Finally, the appellant went in appeal to the Supreme Court the Court held that the word election in Article 329 connotes the entire procedure to be gone through to return the candidate to the legislature, and bars the jurisdiction of the High Court under Article 226 and acceptance or rejection of nomination paper is included in the term election only. The Constitutional 19th Amendment Act, 1966, abolished the jurisdiction of Election Tribunals over election disputes and the Amendment has vested this power in the High Courts.

7. MAJOR ISSUES RELATING TO THE ELECTION PROCESS

There are certain serious issues relating to elections. They are as follows,

- Money power is a critical issue, which is not controlled.
- The criminalisation of politics and increasing of many criminals in politics.
- Misuse of Government Machinery by ruling political parties during the elections.
- Political poll violence and conflicts which disturbs peace and harmony.
- Increasing of communal and caste-based Politics.
- Over-expenditure: Election expenditure is being increased day by day. For instance, the total cost incurred during the 2014 Lok Sabha elections was 3, 426 crores and imagine state legislatures and local elections expenditure.
- The collapse of Administration: Since the notification of election code to until to the declaration of elections results in and no administrative works and the public will face much trouble.
- Political pressure: Misuse of power by ruling political party leaders and makes heavy pressure over election officers not to take stringent actions if they take actions unnecessary punishment transfers can be taken place.
- Difficulty in tracing out the limitation of ceiling expenditure. Lack of co-operation from election officers to implement the election code of conduct.
- Wastage of Time: Generally, elections conducting regularly and repeatedly in the name of general elections, by-elections, in the name of resignation and re-elections, resignation to one constituency in case of candidate contested multiple constituencies.

⁸ Dr.J.N Pandey, *Constitutional Law of India*, P.no. 753, Fifty Fourth Edition, Central Law Agency, Allahabad, 2017.

⁹ AIR 1962 SC 64.

8. REFORMS BROUGHT IN TO THE ELECTION PROCESS

Since independence, the election commission of India has brought several reforms and the following are the major reforms in the election process;

- Reduction of voting age from 21 to 18 years. (before 1989 the age limit was 21 years)
- Introduction and using of (EVMs) Electronic Voting Machine systems to the election for a fair election and fast declaration of results. (now no scope for rigging)
- Introduction of (NOTA) None of the above option in EVMS.
- All critical events are to be video-graphed during the election.
- Computerisation of all electoral Rolls.
- Filing online candidate's election expense account report.
- Now the ceiling limit on poll expenses for Lok Sabha constituencies the limit as recently amended is Rs. 70,00,000/- and 54 lakh in smaller states and Assemblies Rs. 28,00,000/- and Rs 20 lakh in North Eastern and hill states.

9. CRITICISM

Even though certain reforms brought into the election processes, there is a lot of criticism against the process of the elections in India. At present the election commission has failed to prepare an appropriate electoral roll (voter list) and distribution of ID cards to the voters. There is no control over the contested candidate's election expenditure limit. (Violation of minimum ceiling limits on expenditure rules and candidates are spending limitless amount). No stringent actions against candidates in case violation of election code rules and money dealing and distribution of money is common during the election time. Misuse of Government machinery by the ruling political party in the means political power and pressure over officials. One candidate is contesting in more than one constituencies, an elected M.P during his tenure re-contesting to M.L.A elections, and an elected M.L.A during his tenure re-contesting to M.P. elections. Resigning and recontesting for elections are common with public money.

10. SUGGESTIONS

Based on the issues and challenges of elections, the following suggestions have been given.

- Amendment shall be made to the Representations of People Act 1951, and strict rules shall be framed relating to contest in elections “One Person and One Constituency rule only”. It avoids contesting multiple constituencies by a single candidate at either to the state legislature or parliamentary elections. Contesting by a single person in multiple constituencies leads to unnecessary wastage of public money and time and bad effect on administration also.
- Stricts rules shall be framed to prevent the members of central or state legislators “Who Resigns and Re-contests” in elections during their tenure. In case, if he /she resigns and recontests impose fine to bear the total expenditure by the candidate to conduct reelection in that constituency.

- Instead of door to door canvassing system, only online canvas system shall be introduced for the contesting candidates to communicate with public. and distribute literature through village panchayats, which prevents money dealing and money distribution during the elections.
- Strictly implement election ceiling limit expenditure by candidates, now candidates are spending excessive ceiling limit amount.
- Conduct uniform elections for both the central as well as state legislatures to avoid wastage of public money and time.
- To provide Adhar link to electoral roll to avoid false and bogus names in the voter list.
- Apart from polling booths, introduce the online voting system to participate, maximum voters, who are not participating due to pole violence fear, and who are far away from their native places.
- Separate election tribunals shall be established at the district level for speedy disposal of cases.
- Make it compulsory to cast a vote, otherwise, disqualify them from governmental benefits and even for government employment also.
- Fix Minimum Educational Qualifications for State Legislators and Members of Parliament.
- Strengthen the Election Commission of India by providing adequate powers.
- Separate adequate Administrative Staff to be appointed without totally depending on revenue staff.
- Avoid pre-survey exit poll news after the declaration of election code until the announcement of results to avoid multiple confusions and complications.
- Suspend ruling governments immediately after the declaration of elections to avoid misuse of the governmental machinery.
- Preparation of electoral rolls by EC is to be supervised at a village.

11. CONCLUSION: Therefore, Indeed, to save the public property of democracy, we must conduct free and fair elections from top to bottom, but, at present election system is full of malpractices, which needs a lot of reforms in the electoral system to safeguard the democracy. Perhaps, as per the changing nature of society, we need to bring several effective reforms and amendments to the Representations of People Act 1951, to prevent many malpractices in elections. Finally, it is required to strengthen the Election Commission by providing adequate powers and functions. Anyhow, effective, sincere and dynamic election officers are to be needed to conduct fair elections without any bias.