

Elections in India Introduction

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I. INTRODUCTION

Today's world considers democracy as the best type of government a nation could have. Everyone believes that a fair and square electoral process is the best way to extract the entire nation's opinion. Democracy simply means a 'government by consent'. If democracy is to be considered the ultimate end, fair and free elections is the only means to achieve it. An utmost faith in democratic election is thus, the basis of any successful democracy. A common man's basic right to justice makes democracy possible; but his slow lurking towards unjust and corrupt means, makes democracy an impossible dream.

Democracy is a form of Government in which the ultimate power rests in the hands of the people. Thus it is called a Government - 'by the people, of the people, for the people'. This power is used by them either directly or indirectly through their representatives.

Election has a different meaning and plays different roles in various political systems. But in every political system, elections are the epitome of democracy. They lie at centre of a democratic system and provides a platform for popular opinion. The transparency of an electoral process has an important role to play for the smooth functioning of a government. Conducting free and fair election is, therefore, the sine qua non of democracy.

When India became independent in 1947, and opted for parliamentary democracy, it chose an electoral system as the one, with which it had become familiar under the British rule- the Anglo- American majority system. The statute drawn up to govern Indian Elections derived its consent as well as its name from its British counterpart, the Representation of the People Act, 1951 is the principal statute which contains provisions for ensuring the authenticity of the electoral process. It is a self-contained code and extensively deals with the procedure, method and the various corrupt practices which may be resorted to by the candidates or voters during elections. The foundation of a democratic system depends in the fairness of electoral process. If elections are conducted by violence, intimidation, booth capturing and other unfair practices, the choice of people is not properly reflective and democracy becomes a travesty. So, it is of utmost importance for the survival of democracy to ensure that elections are free and fair. Owing to this, the elections conducted are governed by a set of laws.

Democracy is of two types:

- Direct: People express their will directly, all by themselves on public affairs.
- Indirect or Representative: Indirect democracy, the will of the state is prepared and conveyed not directly by the people themselves, but by their chosen representatives to whom they handover the power of consideration and decision making.

The Representation of the People Act, 1951 is the most important legislation which lays down cardinal principles of elections : detailed provisions regarding qualifications and disqualification for candidates; time schedule for elections; administrative machinery for conducting election; power to requisition premises, vehicles, etc. by a government for the elections; role and function of candidates and their agents; manner of voting counting or votes and declaration of results; disposal of election offences; suspension of poll or rescind of election registration of political parties; deposits for contesting elections prevention of impersonation and limits on election expenditure, etc.

Article 326 of the Indian Constitution - Right to Vote

The right to vote is neither a fundamental nor a constitutional right but is simply a statutory or legal right. This right came into existence due to our constitution and accordingly, is enshrined in it but the right has been tailored by a statute called the Representation of People Act, 1951.

Governmental Structure of India

Indian constitution follows federal system . There are two types of government in the federal system:

- 1) Central Government
- 2) State government

Parliament of India is the supreme legislative body of Republic of India . Parliament Of India is made of two houses: 1) Rajya Sabha(Upper House) which has maximum 250 members .

2) Lok Sabha(Lower House) which has 552 members .

With the help of these two, the Parliament of India makes the laws, when passed by Parliament of India and with the permission of President of India which are thereafter applied in India . These meetings are presided by President Of India .

3 Types of Elections in India :

1) General Election (Lok Sabha Election) 2) Rajya Sabha Elections

3) State Assembly Elections (Vidhan Sabha Elections)

1) Lok Sabha elections are conducted every five years. Members Of the Lok Sabha are directly elected . Out of total number of seats 2 seats are reserved for Anglo Indian community which are to be nominated by President of India. The remaining seats are allotted to each state as per their population. The party who has won more than 50% of seats is considered to be winner through which they form a government. But if any party fails to have more than 50% of seats they can have an alliance with the other party and form the government . Winning party or an alliance chooses one member as their leader as Prime Minister.

2) Members of the Rajya Sabha are indirectly elected. 12 members of the Rajya Sabha are elected by the President of India having special knowledge in different sectors. Their term is for 6 years. Out of total number of the seats 1/3rd of the seats election is done every two years . Rajya Sabha members are elected through Single Transferable Vote System (STV)

There are local government . They fall under two categories . 1) Panchayat Raj

2) Municipalities

1) The duty of the local government is to solve the issues of the people residing in that area. Their duty is to implement central and state policies. They can also be called as Grass Root level government . Local government is mentioned in the 7th schedule of list three of state list in entry no. 5, which also says that, state government can make laws related to local government. Municipalities are constituted in urban areas depending upon the population.

2) Rules relating to Panchayat Raj are mentioned in Article 40 of the Indian Constitution. 73rd amendment of 1992 of the Constitution of India states that every state has an obligation to form panchayat in every village. Panchayat Raj are native to rural areas.

Panchayat raj has two bodies:

1) Legislative : Gram Sabha falls under legislative body. People who have attained the seniority age in that pertaining village are the members of Gram Sabha.

2) Executive : Gram Panchayat falls under the executive body. The members of the Gram Panchayat are known as Panch . The head of all the Panch is known as Sarpanch . The number of Panch in every village varies according to the population of the village. Generally the number of Panch can be between 5-20.

3) In every Gram Panchayat a secretary is appointed by state government. His work is to observe Panchayat activities and keep the official record.

4) Working of Gram Panchayat : Subjects on which Gram Panchayat can take decision is mentioned in the 11th schedule of the Constitution of India. There are total 29 subjects on which Gram Panchayat has the right to take the decisions .

To deal with the work above their powers there are two more systems. Panchayat system has two more levels:

1) Panchayat Samiti : Certain number of villages come together and form a block and that is known as Panchayat Samiti. Members of it include Sarpanch , BDO officer, farmer representative, corporate society representatives etc. Members elect between themselves as Block Pramukh .

2) Zila Parishad : the CEO of the Zila Parishad is non elected person who generally is IAS officer or District magistrate or State public service officer . Work of Zila Parishad is to connect central or state government to rural areas . To plan and implement the schemes made for the people.

Structure of Panchayat Raj Institution District level : Zila Parishad

Block level: Panchayat Samiti Village Level :

Gram Panchayat

2) MUNICIPALITIES : In the year 1992 , 74th amendment of constitution of India, it was mandatory for every state to form a municipality . There are three types of municipalities:

- 1) Nagar panchayat
- 2) Municipal council(Nagar palika/Nagar parishad)3)Municipal Corporation

CRIMINALIZATION, CORRUPTION AND ELECTORAL OFFENCES IN INDIA:

Criminalization of Politics:

The increasing network between criminals and politics is a threat to true democracy in India. It has been said that the criminalization of politics is progressing at such a rate that the law breakers have now become law makers. This information was brought to light by the Law Commission in their 179th report which also suggested an amendment of the Representation of the People Act, 1951 by providing that framing of charges for offence punishable with death or life imprisonment, should disqualify a candidate for five years or until acquittal, whichever event happens earlier. It is also recommended that a candidate who wants to contest an election must come clean with details regarding any pending criminal case, including a copy of the FIR/Complaint and also furnish details of all assets possessed whether by the candidate's spouse or dependent relation. But unfortunately no action was taken on this suggestion by the Government because of a lack of co-operation of the political parties.

The arrangement of popular government is currently changing into the fascism of a few. Since the majority rules of the system in India are currently under control of the criminals, who aren't qualified enough to even hold a post of governing body albeit make decisions for it. The duty of the top leaders at the state and national level of all political parties is to set the trend for giving the needed information to the electorate by adopting desirable standards so that it seeps down to the lower levels and thus provides an appropriate atmosphere for a free and fair poll. On the contrary, a trend of speeches by the top leaders tends to degrade the election campaign as it descends to the lower levels and at times promotes even violence leading to criminalization of politics.

The Election Commission has expressed its serious concern over the entry of anti-social and criminal persons into the electoral arena. From time to time, it has set down rules and gave guidance to the Government to curb the risk of Criminalization of Politics. The Commission has appealed to all political parties to reach an unanimity that no person with a criminal background will be given the party ticket.

The candidates to an election are also bind to submit a sworn statement in a prescribed form and to reveal their criminal records, including convictions, charges pending and cases initiated against them. The information so furnished by the candidates shall be disseminated to the public and to the print and electronic media.

Political Control over Police:

The image of the police in this country has always been considered bad. With the passage of time, it has only become worse. Citizens are not satisfied with the quality of the work carried out by our police force. There are many reasons for the poor quality of policing, but a major reason identified is the type of control that has been exercised over the police. The state government controls the police. Unfortunately, the manner in which the control is exercised has led to gross abuses, almost all the State Police Commission, the National Police Commission and other expert bodies, which have examined police problems, have found overwhelming evidence of misuse and abuse of police system by politicians and bureaucrats for their own selfish needs.

The situation resulting from wrong control over the police has become worse during the last few decades because of increasing criminalization of politics. The fact that the rule of law is gradually being replaced by the rule of politics is a cause of concern to all who are interested in establishing good governance in India.

Reasons of Criminalization:-

(1) **Vote Bank:** The political parties and independent candidates are accused of vote buying and using taxpayers money for other illegitimate purposes through these criminals or politician's link with their constituency, which provides a consistent climate for political crime. Majority of the population of our nation do not know the difference their single vote can bring around. Therefore majority of the voters are purchasable. Most of them are individually fearful and collectively coward. To gain their support is easier for the unscrupulous than the conscientious. Elections are won and lost on swings of just 1% of the vote, so parties irreverently flatter every possible vote bank, including those headed by accused burglars and killer. Lawful delays make sure that the accused will pass away of old age before being convicted, so parties virtuously insist that these chaps must be regarded as innocent till proven guilty.

(2) **Corruption:-** Despite the dejection expressed by many, political parties make sure that they select a candidate with criminal background. The whining of the general public regarding such decisions generally falls on deaf ears, and the candidate is elected to the office. By turning a blind eye, we fail to realize the power vested in us to vote out the incompetent candidates out of the system. The process of Independence has been taken through a two-stage process. The first stage was the corrupting of the institutions and the second stage was the

institutionalization of corruption. As we look at the corruption scene today, we find that we have reached this stage because the corrupting of the institutions in turn has finally led to the institutionalization of corruption. The failure to deal with corruption has promoted to contempt of the law.

(3) **Loop Holes In The Functioning Of Elections Commission:-** The Election Commission must take adequate measures to break the nexus between the criminals and the politicians. The forms prescribed by the Election Commission of India for candidates disclosing their convictions, and revealing the cases pending in courts and so on in their nomination papers is a step in the right direction if it is seen through judiciously. Not so much should be expected, however, from these disclosures. Appropriate Authority would only inform people of the candidate's history and qualifications, but they cannot prohibit them from casting their votes, regardless, in favor of a criminal. For the past several general elections there has existed a huge gap between the Election Commission and the voter as many are not known to realize the laws framed by the Election Commission. Very few people hardly are aware of the rules. Bridging this gap is essential not only for uprooting our undesirable elements from politics but also for the survival of our democracy. The rate of success of this endeavour is directly proportional to the increase in literacy rate in India. Certain wrong choices have been made by the Electorate in the past, but in the future national interest should guide them to make the right choices.

(4) **Denial of Justice and Rule of Law:-** Criminalization is a deep rooted fact of Indian electoral politics today. The voters, political parties and the law and order machinery of the state are all equally responsible for this. In India there is a very little faith in the efficacy of the democratic process in actually delivering good governance. As a result it leads people to accepting criminalization of politics. The people who have been convicted at least on two counts be debarred from becoming candidates under the current law. This leaves the field open for charge sheeted criminals, many of whom are habitual offenders or history- sheeters. Why a person should be convicted on two counts to be disqualified from fighting elections it is indeed mystifying. The real problem lies in the definitions. Thus, unless a person has been convicted, he is not a criminal. Mere charge-sheets and pending cases do not suffice as bars to being debarred from fighting an election. So the law has to be changed accordingly. It is well known fact that all most all political parties take the help of criminal elements to dominate the election scene in India. But this process is influencing the mind and the will of the people both to gain the majority to rule the country according to their will. The system of democracy is now changing into the dictatorship of some, because the Democracy of India are now in hands of the criminals who are not capable any way to hold the post of legislature.

II. CONCLUSION:

The principle of free and fair elections is an essential element of democracy, which in its turn is a part of the basic structure of the Constitution of India. To ensure the purity of electoral process, it becomes essential that the law should extend full protection to the electorates against any fear, injury, misrepresentation, fraud and other undesirable practices which may be indulged in by or on behalf of candidates at an election. In order to protect the voters as well as the rival candidates against such intimidation or malpractices, law has declared certain activities as corrupt practices.

When India attained independence in 1947 and we framed our own Constitution which came into force on January 26, 1950, the democratic set up of Government was envisioned. To ensure free and fair elections to the Parliament and State Legislative Assemblies, the Representation of the People Act 1951 was enacted. There were various committees to find out loopholes and gave us various suggestions to conduct free and fair elections, but various government that were elected have failed to do so over the past few decades.