



# 1. Electoral Reforms in India: Comparative Analysis with U.S.A. & U.K

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*The elections and political parties are necessary ingredients of democratic governance. Elections are a necessary condition of representative democracy. In representative democracy citizens participate in politics primarily by choosing political authorities in competitive elections. Elections, hence, are a necessary and crucial instrument to make democracy work. In India, free and fair elections are held at regular intervals as per guidelines of the constitution and the Election Commission. To make them free of flaws it is essential to reform them from time to time. Electoral reform means introducing fair electoral systems for conducting fair elections. It also rejuvenates the existing systems to enhance and increase the efficiency of the same. Following the demands of electoral reforms several committees were being set up. Some of the measures like reduction of voting age and anti-defection law are appreciable but there are other vital areas in election field completely neglected.*

*This paper will evaluate about different attempts made for electoral reforms in India. Different challenges before the Election Commission are also been discussed, also how it can be made effective as suggested by Commission in India will be presented. A comparative analysis with other democratic countries like U.S.A and U.K. is added to it.*

## **Introduction**

“An election is a moral horror, as bad as a battle expect for the blood, a mud bath for every soul concerned in it.”

- George Bernard Shaw

Electoral reforms are correctly understood to be a continuous process. It is change in electoral systems to improve how public desires are expressed in election results. No system of the election can ever be perfect. Any democratic society has to keep searching for the mechanism to



make elections free and fair to the maximum. One of the most important features of our democratic structure is elections which are held at regular intervals. Free and fair elections are indispensable for a healthy democracy. In India, the Government draws its authority from the “will of the people”. It is the citizens who have the sovereign power to elect the government and this government is responsible to the people who have elected them. But the citizens who elect the representatives have no right to “recall or reject the representative” on the ground that they are unsatisfactory for their post unlike Switzerland, pursuing a direct form of democracy. They have the right to recall a representative elected by them if they are not competent to hold their office. But no such system exists in our country.

In India, ruling party does not want to change electoral system unless they see an enormous disadvantage in the existing system. The present FPTP electoral system favors a small form of powerful caste based groups in India. FPTP is a misfit in a multicultural nation like India. Governance in India will continue to remain in the hands of a few privileged classes of people as long as FPTP continues to be the electoral system in India. Power when not widely shared is bound to ferment at bottom which may lead to social and political upheaval in the country. This may force governments to take recourse to repressive laws as it is already being done in some parts of India.

Electoral reforms in India and challenges before the Election Commission

India is the largest democracy in the world. Since 1947, free and fair elections are held at regular intervals as per guidelines of the constitution and the Election Commission. The Election Commission is composed of high ranking government officials and is constituted according to the provisions of the Indian Constitution. Election Commission has autonomous power to exercise control over the election process. Even the judiciary has no right to intervene while the electoral process is on.

Some of the electoral reforms that have occupied the election process include Electronic



Voting Machine which results in more transparency and credibility of elections, Inclusion of Universal Adult Franchise initiated by 61<sup>st</sup> amendment in 1988 and anti –defection law which curtails the criminals from taking tickets of various political parties and also bestows on them the right to extract the contesting candidate’s profile. Besides, Section 58A has been inserted in the Representative of the People’s Act by Act 1 of 1989 providing for adjournment of pole or revoking of elections because of booth capturing.

Following the demands of electoral reforms several committees were being set up but it is difficult to say at what extent they have come up with output in the electoral reforms. In 1993 the Vohra Committee Report was prepared to take stock of all available information about the activities of mafia organizations which had developed links with and were being protected by government functionaries and political personalities. The major contribution of the report, in the context of electoral reforms, is the coining of the phrase “criminalization of politics and politicalization of criminal”. It was the first time that the effect of crime, organized and unorganized, on the electoral process was officially recognized, though not made public.

One of the important documents on electoral reforms till date is 170<sup>th</sup> report of the Law Commission of India submitted in May1999. This report titled “Reforms of the Electoral Laws” was prepared by the 15<sup>th</sup> law commission which was chaired by Justice B.P Jeevan Reddy, a retired judge of the Supreme Court of India. The Commissions was requested to have a comprehensive look at the entire electoral system in the country and suggest what reforms were needed to make the electoral system in tune with the needs of the society. The Commission did it in a very comprehensive manner and studied all components of the entire electoral system in the country but nothing much has been done by way of implementation of the recommendations. This was followed by the National Commission to review the working of the Constitution (NCRWC), headed by Justice M.N.Venkatachaliah, former Chief Justice of India on February 2000. The NCRWC submitted its



report on March 31, 2002 and made 38 recommendations, but nothing significant has been done to implement these recommendations.

The Election Commission of India has been making recommendations from time to time about the various reforms in the electoral system that the Election Commission cannot make within its own authority, some of which require making some changes in the conduct of Election Rules 1961, The Representation of People Act 1951, and other similar rules and legislations. While the government has made some of these changes from time to time but any major worthwhile changes have been consistently ignored.

### **Challenges before the Election Commission**

The role of money and muscle power at elections; rapid criminalization of politics greatly encouraging the evils of booth capturing, violence; misuse of official machinery; increasing menace of participation of non-serious candidates form the core of our electoral problems.

The role of unaccounted money in elections has increased, which is taking outrageous form. Issues of politicians paying for news coverage and bribing voters were wide spread in 2009-2010 elections and even vote for note scam is one of the biggest examples of money power. As a result violence during elections has also increased. Though these activities does not take place very openly but are still in progress, there are many small towns where these activities takes place before and even after the elections and there is no one to oppose it.

“If we are going to spend a lot of money to deal with the problem of 200 million guns in the owned by 650 million gun owners, we ought to have a system which will work and catch criminals”.

- John Dingell.

Criminalization in politics has weakened our electoral system. The representatives who stand for elections are stuffed with various criminal charges against them. In 2005 elections of Bihar, out of 385 candidates 213 were found to be alleged of non- bail able and cognizable offences.

Obscuring of the facts and criminal records acts an as an impediment to the fair election process. In



order to combat the said anomaly, the Vohra Committee Report on Criminalization of Politics was constituted to spot the degree of the politician-criminal nexus and suggest conduct to combat the menace. The National Election Commission proposed that candidates alleged of serious crimes whose punishment exceeded 5 years shall be disqualified by the Court of law. And where the year of imprisonment was six years under Sec. 8 of R.P. Act, 1951 an inhibition of 6 years from contesting elections.

The issue haunting the electioneering process is Booth capturing, by which the parties patrons try to manipulate and the number votes in their votes. The tampering of electoral rolls in the elections is done on large scale. To curb such activities the election commission has laid down guidelines to ensure if any booth capturing is going on the returning officer is to notify it to the election commissioner and apt decisions would be taken to declare the polling in that area to null and void.

The question of abuse of caste and religion is of greater magnitude. The political parties tend to allow only those candidates to fight elections who can muster the minority groups and castes to their favor. Communal loyalties are used at the time of election campaigning to attract the minority voters. And it is very well observed that the electorates too cast their vote taking into consideration the case and religious prejudices.

### **Proposed Electoral Reforms by the Election Commission of India**

1. Criminalization of politics is an issue being raised by the commission from 1998 onwards. Disqualification for criminal offences is provided in Section 8 of the Representation of the People Act, 1951. As per that section, a person is disqualified from contesting election only on conviction by the court of law. The Commission had proposed that any person who is accused of an offence punishable by imprisonment for five years or more should be disqualified from contesting election even when trial is pending, provided charges have been framed against him by the competent court.



2. Various agencies conduct poll surveys prior to the poll on the likely voting pattern and publish and disseminate the results of such surveys through different media. Similarly, on the date of poll, actual result of the election is sought to be predicted on the basis of information collected from the voters. Results of such surveys, called .Exit Poll are published and disseminated after the poll is over. In many general elections, poll has to be staggered over different dates mainly for law and order and security related reasons. In such cases, publishing the result of opinion poll on the earlier phases will have the potential to influence the voting pattern in the subsequent phases. The Commission has been of the view that there should be some restriction or regulation on the publishing / dissemination of the results of opinion polls and exit polls. The Commission had issued some guidelines in this regard in 1998. This was challenged in petitions before Courts and subsequently on the observation of the Honorable Supreme Court that the Commission did not have the power to enforce the guidelines; the same were withdrawn by the Commission.

3. It has been observed that surrogate advertisements appear in print media, especially newspapers, for and against particular political parties and candidates during election period. The Commission has continuously been making efforts to regulate such advertisements. For this purpose, it proposed Section 127A of the Representation of the People Act, 1951 may be suitably amended, adding a new sub- Section (2A) to the effect that in the case of any advertisements / election matter for or against any political party or candidate in print media, during the election period, the name and address of the publisher should be given along with the matter / advertisement.

4. The Commission had also recommended that the law should be amended to specifically provide for negative / neutral voting.

5. As per the law as it stands at present (Section 33 of the Representation of the People Act, 1951), a



constituencies. There have been several cases where a person contests election from the two constituencies, and wins from both. In such a situation he/she vacates the seat in one of the two constituencies. The consequence is that bye-election is required for the vacated constituency involving expenditure and labour on the conduct of that bye-election. The Commission had proposed that law should be amended to provide that a person cannot contest from more than one constituency at a time.

6. The political parties must be required to publish their accounts (at least abridged version) annually for information and scrutiny of the general public and all concerned, for which purpose the maintenance of such accounts and their auditing to ensure their accuracy is a pre-requisite.

7. The Commission had recommended in 1998 that Section 13 CC of the Representation of the People Act, 1950, and Section 28A of the Representation of the People Act, 1951 should be amended to provide that no transfer shall be made, without the concurrence of the Commission, of any officer referred to therein, as soon as a general election/bye-election becomes due in any Parliamentary or Assembly Constituencies.

### **Comparative Analysis with U.S.A.**

Voting in the US is a two party system. Typical examples include the U.S. House of Representatives, whose members are elected by a plurality of votes in single-member districts. Proposals for electoral reform have included overturning Citizens United, public and citizen funding of elections, limits and transparency in funding, Instant Runoff Voting (IRV), public or citizen funding of news, a new national holiday called "Deliberation Day" to support voters spending a full day in structured discussions of issues and candidates, abolishing the U.S. Electoral College or nullifying its impact through the National Popular Vote Interstate Compact, and improving Ballot access for third parties, among others.



Elections represent an expression of the people's will (or the people's sovereignty) which is constitutionally conceptualized in both countries i.e. US & India as a unified foundation for the state's sovereign authority ("We, the People..."). And yet they also provide, at the very same time, a forum for the expression of the differing interests, parties and identities of the voters ("the people") who comprise the electorate.

As a result, competitive (and partisan) politics are conceptualized as essential to the operation of elections, and yet at the very same time potentially threatening to the unity of the people and the community. The ways that laws are thus deployed to both facilitate and contain competitive politics are central to comparison.

The election system that exists in U.S. is a product of late 19<sup>th</sup>/early 20<sup>th</sup> century partisan conflict, and of the ways the two major parties sought to control voting rules for mutual benefits. Reflecting law regarding ballot access varied by state and region but they generally reflected a shared vision of two party politics as the key to stable politics. This had a profound effect on the development of the system of U.S. electoral law. In contrast with India the historical question in the development of American election law has been less the issue of how the law has regulated parties, than the issue of how parties have regulated the law. The organization of India's electoral management system had developed as a key aspect of nation-building after 1947, and was thus seen as a national instrument channeling India's tremendous diversity. In the U.S., on the other hand, elections had developed as a check on centralized power, which continued to shape the framing of electoral management and control.

In India, the power of the EC derives directly from the Indian constitution, but has been strengthened in recent decades by pronouncements by the courts. Critical is its power over the bureaucracy. Though the EC's permanent bureaucracy is relatively small, it has the legal right to command staff during the tenure of an election campaign (the dates for which it sets), and it commanded a total staff of almost 11 million, seconded from state and central governments, during the 2009 general election campaign. It also enforces its "Model Code of Conduct," which limits





undue influence in elections by the government in power, and also regulates electioneering behavior during election campaigns (including the proscriptions of some forms of speech, such as appeals for votes on grounds of religion, caste, creed, community or language). The constitution prohibits the interference of the courts during this time. Once the dates for a campaign are set, the EC has sole authority to act on complaints and if necessary to countermand an election. But once the results are officially declared, the power of the EC ceases, and the courts then hear and rule on petitions charging violations of election law. Some differences with the US system are very marked. Most noteworthy is the centralized approach to election management, in sharp contrast with the decentralization of the American process. But also noteworthy is the EC's positive mandate not only to manage elections and regulate campaigns, but also to maximize voter access – it is the responsibility of the EC to prepare and maintain the electoral rolls and to make sure all eligible voters are on them. The EC does work with civil society organizations, but unlike in the US system, the EC sees as one of its official obligations the maximization of voter access and turnout (though, as emerged in discussion, there is some uncertainty in how to read the comparisons of voter turnout in recent US and Indian elections). Certain special powers of EC in India such as temporary confiscation of arms, temporary proactive arrests in presumed problem areas to maintain order or control over officials from other government might be problematic in the U.S. In some areas, such as campaign finance, the EC's success has been limited, particularly as existing campaign finance limits are almost impossible to enforce. At the same time, the projection of common standards and commitments relating to voting mark a very sharp contrast to the problematic fragmentation and politicization of electoral law in the US, and make the EC a very important model to conjure with in analyzing the problems and directions of electoral reform in the US.

### **Comparative Analysis with U.K.**

While U.K. uses the extremely disproportional FPTP majority system, India combines the British system with elements of consensus democracy. Out of 543 constituencies for Lok Sabha in



India- 79 are reserved for SC & ST. The British electoral system has fostered political concentration distinctly by its unproportional electors system. Since the end of Second World War, no party got more than 50% votes but in every case a party got the absolute majority of seats in the House of Commons. In India, elections conducted by same FPTP system as in U.K. had produced varying result concerning concentration respectively. While the British electorate is entitled to vote about persons of representatives of parties, the Indian voters elect single person or personal representatives of parties. In the U.K. personalization has always been high in sense that voters choose among individuals candidates rather than the party lists and they do so in single member districts that minimize voter-candidate distance.

The British electoral system traditionally works within the context of class-specific cleavages, but also based on economic prosperity (exception during the 1960s and 1970s) and great national consciousness. Britain, so far, is an example for societal trust as the basis of a well-working competitive democracy. This context even allows successfully operating with the extremely unproportional system FPTP. A special aspect, here left out of consideration, is the relationship between England and the other Parts of Great Britain. Indian society is much bigger und much more complex than the British. Many races, many languages, and a still influencable caste system together with stubborn forms of ethnic and religious hatreds bring about extremely complex conditions for democratic elections. Also regional conflicts and the discontent of marginalized and suppressed groups, lead to specific context conditions in India.

The U.K. electoral law contains no single set of rules either for all elections or all referendums. The increasing numbers of elections and referendums are conducted under different sets of rules that contain significant differences. The U.K. Electoral Commission does not have power to issue instructions/directions. Rather it is enabled to encourage consistency through guidance and monitoring of election officials' performance and publishing reports on the administration of



electoral events. While in India, once the dates for elections are set, Election Commission has sole authority to conduct, to manage elections and to act on the complaints till the elections are over.

The UK's central electoral body, the Electoral Commission, does not directly administer the conduct of elections. Instead the UK has a de-centralized system of administration; elections are administered by Returning Officers, with some co-ordination and over-sight.

Electoral Reforms has been a matter of debate in U.K. as some British parties, mainly the Liberal Democrats, have long proposed that the current First Past the Post system used for general elections be replaced with another system. The introduction of proportional representation has been advocated for some time by the Liberal Democrats, and some pressure groups, Unlock Democracy and the Electoral Reform Society. Many substantial changes have been made to the UK's electoral law since 1983 relating to, for example, postal voting, rolling registration, the creation of the Electoral Commission and new electoral events.

This has led to extensive amendment to the Representation of the People Act 1983, parts of which are now so complicated that they may challenge even electoral experts. It has also led to a proliferation of different electoral vehicles governing different electoral events and aspects of the electoral process. In 1998 and 2003 Independent Commissions were formed to look into electoral reform. Following the 2005 election, in which Labor was elected with the lowest share of the national vote for any single party majority government in British history, more public attention was brought to the issue. The national compact newspaper *The Independent* started a petition, to campaign for the introduction of a more proportional system immediately after the election, under the title "Campaign for Democracy". The broad-based Make Votes Count Coalition currently brings together those groups advocating reform.

After the UK 2010 general election, the new coalition government agreed to stage a referendum on voting reform, which took place on 5 May 2011, with voters given the choice of switching to the Alternative Vote system or retaining the current one. The country overwhelmingly



voted 'No', with only 10 districts out of 440 voting in favor. In 2011, the Law Commission reviewed the electoral law of U.K. and recommended that it would be including a project on electoral law in the 11<sup>th</sup> programme of law reform.

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