

Role of Supreme Court of India in Election Reforms

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Abstract

Supreme Court of India is the guardian of our Constitution and the highest court of law in India. Other than its routine powers, it has the power of legislative, administrative and judicial review. Elections in India are often influenced by money and muscle power of the political parties and wealthy industrialists. Election Commission and the Supreme Court of India have played an important role in trying to reduce the influence of money and muscle power in elections in order to make elections more transparent and honest. The more, the elections are free and fair, the stronger the allegiance the people will have towards democratic institutions. Contrary to this, if the elections are not free and fair, the people will not have faith in democracy. In addition to alleviating the evil consequences of the lethargy of the political leadership, its suspect actions in introducing law reforms in certain areas like election expenses have been diluted by the Supreme Court, by way of judicial activism. Some areas of election laws in which the Supreme Court has made creative efforts towards free and fair elections have been discussed in this research paper.

Introduction

India has the distinction of being the largest democracy of the world. Democracy was a founding faith of constitutional framers of the Indian Constitution and the constituent assembly debates reflect their urge, desire and unflinching trust in democratic governance of the country. It did find a proud place in the preamble of the Constitution, which resolved to constitute India into a strong democratic nation along with the other pious objects like secularism, socialism and republicanism. It was not only a democracy but as a form of it, parliamentary democracy came to be incorporated and established in India.¹ Elections, in a constitutional democracy, provide an opportunity to ascertain the popular will regarding the governance of the country. In India, governments both at the centre and in the constituent states are elected for five year terms. The electorate of so many crores of people in this sub-continent participate in the election, held on the basis of universal adult franchise, and send their representatives to both the Parliament and the state legislatures, expecting

that these representatives will safeguard their interests and work to attain the goal of progress, prosperity, unity and integrity of India as also to ensure rights and freedom of people.

Free and fair elections are important because with a vote comes a voice. In India the provisions for ensuring free and fair elections are generally incorporated in the Constitution itself. The legal provisions prescribe detailed rules regarding the system of election, delimitation of constituencies, structure, powers and functions of the authority charged with the duty to conduct elections, qualifications and disqualifications of electors and candidates, manner of preparation of the electoral rolls, procedure for the conduct of election and declaration of results and the forum and procedure for remedying election-related grievances.² In last three decades, Indian judiciary has been conscious of the issues of good governance if it means a simple, responsive and accountable governance. The keen interest of judiciary in the promotion of the principles of good governance is exhibited in the pronouncements focusing on Rule of Law and Fundamental Rights and from the directions and guidelines issued from time to time on matters ranging from police and prison reforms, electoral reforms, rights of the child and the women etc. The Supreme Court has made substantial contribution to the development of election law by giving dynamic interpretation to the provisions of law. In addition, it has resisted attempts to amend election laws that would have involved underling the democratic values.

Some initiatives of Supreme Court towards Election Reforms in India :

The concern of the Apex Court in ensuring free and fair elections is noticeable in its verdict in *Indira Gandhi Vs Raj Narain* case.³ The case came up in the form of an appeal against the decision of the Allahabad High Court setting aside the election of then Prime Minister Indira Gandhi from the Raebareli constituency. While the appeal was pending before the Supreme Court, the Parliament passed the Constitution (Thirty Ninth Amendment) Act.⁴ The Thirty Ninth Amendment said that all disputes regarding the election to Parliament of the persons holding the offices of the Prime Minister and the Speaker, shall be referred to a body to be appointed by Parliament and this was to apply even to those matters that had been pending or disposed of by the courts according to the law as it stood before the coming into force of amendment. The article 329-A inserted through the amendment with a view to preventing scrutiny of Mrs. Gandhi's election to the Lok Sabha by the court. The Supreme Court held that the impugned amendment was unconstitutional and void since it would destroy the basic structure of the Constitution. The court observed that free and fair elections and an effective machinery for adjudication of election dispute is an essential component of democracy.

In order to ensure free and fair elections, the Constitution provides for the establishment of an independent Election Commission armed with wide powers. The Supreme Court of India is in

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favour of multiple member Election Commission. In *S.S. Dhanoa Vs Union of India*⁵, it observed that there is no doubt that two heads are better than one and particularly when an institution like the Election Commission is entrusted with vital functions, and is armed with uncontrolled powers to execute them, it is both necessary and desirable that the powers are not exercised by one individual, however all wise he may be it ill-conforms the tenets of democratic rule. A single individual may sometimes prove capable of withstanding all the pulls and pressures which many may not. However, when vast powers are exercised by an institution which is accountable to none, it is politic to entrust its affairs to more hands than one. It helps to assure judiciousness and want of arbitrariness.

Provision of law relating to the corrupt practice of appeal on the ground of religion, caste, etc. is an especial feature of the election law of India. The Supreme Court in *S.R. Bommai Vs Union of India*⁶ pointed out that Sec. 123 (3) of the Representation People Act dealing with the corrupt practice of appeal on the ground of religion is not confined to appeal to the candidate's religion. After that in *Ramesh Yeshwant Prabhu Vs P.K. Kunte*⁷, the court clarified that Hindutva in the course of an election campaign does not make it communal. However the court took the view that mere reference to any religion in an election speech would not come within the purview of corrupt practice.

The Supreme Court in *Union of India Vs Association for Democratic Reforms*⁸ held that a voter has a right to know the antecedents of candidates who offered himself for election to parliament or a state legislature. The court ordered the Election Commission to seek the following information from the candidate while filing their nomination:

1. whether the candidate was convicted/acquitted of any criminal offence in the past and if so, whether he/she was punished with imprisonment or fine;
2. the assets of the candidate, spouse and dependents;
3. prior to six months of filing the nomination, whether the candidate was accused in any pending case, of any offence punishable with imprisonment for two years or more in which charge was framed or cognizance was taken by court of law if so, the details thereof;
4. liabilities, if any, particularly if there are any over dues of public financial institutions or government dues;
5. educational qualifications of the candidate.

The Supreme Court held that such information is essential for free and fair elections, which is the part of the basic structure of the Constitution. After this decision, all political parties met and strongly protested against the intrusion of the Supreme Court in matters which are, in their opinion, within the exclusion domain of the Parliament. The government decided to enact an ordinance under Article 123 of the Constitution to amend the Representation of the People Act 1951. The

ordinance by its Section 33-A provided that a candidate would be required to give the following information:

1. conviction of any offence and sentence of imprisonment of one year or more;
2. any case in which the candidate has been accused of any criminal offence punishable with imprisonment of two years or more and charge was framed by any court of law.

Section 33-B of the ordinance further said that notwithstanding anything contained in any judgment, decree or order of any court or any, direction, order or any other instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of her election, which is not required to be disclosed or furnished under this Act or the rules made there under. The ordinance meant that only the information specified in Section 33-A was required to be given by the candidate at the time of nomination.

The constitutional validity of this ordinance and latter of the Act, which Parliament has passed in place of the ordinance, was challenged before the Supreme Court. The Supreme Court struck down section 33-B of the Act in *P.U.C.L. Vs Union of India*⁹.

The court held that section 33-B does not pass the test of constitutionality. The reasons are more than one. Firstly, when the right to secure information about a contesting candidate is recognised as an integral part of fundamental right as it ought to be, it follows that its ambit, amplitude and parameters cannot be changed and circumscribed for all time to come by declaring that no information, other than that specifically laid down in the Act, should be required to be given. The right to information should be allowed to grow rather than being frozen and stagnated, but the mandate of section 33-B prefaced by the non-obstinate clause impedes the flow of such information conducive to the freedom of expression. The second reason why section 33-B should be condemned is that by blocking the ambit of disclosures only to what has been specifically provided for by the amendment, the parliament failed to give effect to one of the vital aspects of information, viz; disclosure of assets and liabilities and thus failed in substantial measure to give effect to the right to information as a part of the freedom of expression.

The Patna High Court has come down heavily on Bihar Government of Rabri Devi for making mockery of the election process, the rule of law and the courts during 2004 parliamentary elections by allowing criminals to contest elections. The court held that those behind bars cannot contest Lok Sabha election. The judges castigated the Bihar Government for allowing an absconder to cast vote and its failure to check the activities of prisoners freely running election campaign from hospitals in judicial custody. This is enough to prove the connivance of the state government. Six candidates were contesting from jail in Bihar. The court held that these persons were disenfranchised by law and they should not be permitted in the arena of elections. The elections in which they have participated have been desecrated. They directed the Election Commission to take speedy decision

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in this regard before declaration of results scheduled for May 13, 2004. The Supreme Court however stayed the order of the Patna High Court on the ground that once the process of election has begun it cannot be halted. The matter may be taken up for hearing after the election is over¹⁰.

Recently, the Supreme Court held that charge sheeted members of Parliament and MLAs, on conviction for offences, will be immediately disqualified from holding membership of the house without being given three months time for appeal, as was the case before.¹¹ A bench of Justice A.K. Patnaik and S.J. Mukhopadhaya struck down as unconstitutional Section 8(4) of the Representation of the People Act that allows convicted lawmakers a three-month period for filing appeal to the higher court and to get a stay of the conviction and sentence. The bench, however, made it clear that the ruling will be prospective and those who had already filed appeal in various high courts or the Supreme Court against their convictions would be exempt from it.

Section 8 of the Representation of the People Act deals with disqualification on conviction for certain offence;

A person convicted of any offence and sentenced to imprisonment for varying terms under Sections 8 (1) (2) and (3) shall be disqualified from the date of conviction and shall continue to be disqualified for a further period of six years since his release. But Section 8(4) of the same act gives protection to MPs and MLAs as they can continue in office even after conviction if an appeal is filed within three months. The court further added that a reading of the two provisions in Article 102 (1) (e) and 191 (1) (e) of the Constitution would make it abundantly clear that Parliament is to make one law for a person disqualified for being chosen as, and for being, a member of either house of Parliament or legislative assembly or council of the State. Parliament thus does not have the power under Articles 102(1) (e) and 191(1) (e) of the Constitution to make different laws for a person to be disqualified for being chosen as a member and for a person to be disqualified for continuing as a member of Parliament or the state legislature.

The Union Cabinet's first response to the Supreme Court verdict was to amend the Representation of the People Act, 1951 in order to save the seats of criminal legislators. It approved two amending bills to negate the recent Supreme Court verdict on disqualification of convicted legislators. The first amendment sought to add a provision to sub-section (4) of section 8 of the Representation of People Act stating that the convicted member shall continue to take part in proceeding of Parliament or legislature of a state but he shall neither be entitled to vote nor draw salary and allowances till the appeal or revision is finally decided by the court. The other amendment said that a MP or MLA would not lose his right to vote if under arrest even for a short duration and thereby would retain his right to contest a poll. However, despite the government's desperate efforts during the monsoon session of Parliament, it could not effect these changes because a key amending bill

was referred to a parliamentary standing committee. The government then decided to bring an ordinance to undo the Supreme Court's historic verdict. But the strangest development of all is the manner in which Mr. Rahul Gandhi, the congress vice-president woke up and publicly rebuked his own government for bringing an ordinance.¹² After that, in yet another electoral reform the Supreme Court directed the Election Commission to have an option of the 'None of the Above' (NOTA) on the electronic voting machines and ballot papers, which can be used by voters to reject all candidates contesting the polls. So far, people casting votes are required to enter their names in a register and cast their vote on a separate paper ballot. The Supreme Court observed that negative voting would encourage even people who are not satisfied with any of the candidates to turn up to express their opinion and reject all contestants. The bench headed by the Chief Justice of India, P. Sathasivam, said that negative voting will lead to a systematic change in polls and political parties will be forced to project clean candidates. If the right to vote is a statutory right, then the right to reject candidate is a fundamental right of speech and expression under the Constitution.¹³

The Supreme Court on 25 January, 2022 issued notices to the Centre and the Election Commission on a petition seeking the top court's intervention to put a stop to the practice of political parties either distributing or promising "irrational freebies" to the electorate in the run-up to any elections. Such freebies destroy the level playing field between parties as they act as inducements to vote and place additional pressure on the budgets of cash-strapped state governments should the political.¹⁴

Conclusion: Elections are essential for every democratic system because by the process, people form their government through their representatives. As far as the election reforms are concerned the Supreme Court of India has been trying on this issue since 1980. The Supreme Court has also held that free and fair elections are the part of the basic structure of the Constitution. The court held that the voters enjoy right to make informed choices during elections and hence directed Election Commission of India to make it mandatory for contesting candidates to declare their assets and liabilities, any criminal conviction in the court of law, any criminal case pending and the educational qualifications at the time of filing the nomination papers. However, Supreme Court struck down section 33-B as unconstitutional and void on the ground that it violated the fundamental rights of citizens to make informed choice. In another judgment, the court held that a voter could exercise the option of negative voting and reject all candidates as unworthy of being elected. The voter could press the 'None of the Above (NOTA) button in the electronic voting machine. Following the judgment, Election Commission provided NOTA button option in the recently held elections. One may expect that the Supreme Court will continue to guard Indian democracy in the coming years also.

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