

## ELECTORAL REFORMS ATTEMPTS TOWARDS GOOD GOVERNANCE IN INDIA: AN APPRAISAL

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Fair and free elections are the backbone of representative democracy which not only determines its success rate but also the parameter to measure its level of development. Therefore, the quality of electoral process is a precondition for the quality of governance prevailing there in. India is the largest democracy in the world (over 85 crore voters) having maximum youth population. It is more stable and successful than the government of any other developing country. India adopted Parliamentary democracy to secure its unity and stability as well as nation building and socio-economic reconstruction. Even after more than six decades of independence, the country is facing threat from factors like castism, communalism, criminalisation of politics, corruption, poverty, unemployment, decay in government institutions, decline of moral values in politics and the mal-practices prevailing in our electrol system. The expectations and aspiration of the masses are shattered by their own elected representatives. Indian constitution has provided the country, a highpowered unified authority, Election Commission (EC), autonomous in character and free from executive and political interferencce, for organising fair and free elections to the President and the the Vice-President of India and of the Parliament and the State legislatures. But, with the passage of time many distortions and evil practices such as use of money, and muscle power in elections, booth capturing; misuse of official machinery; poll violence; participation of non-serious and independent candidates; and regionalism etc. have crept in our electoral process which have not only led to the crisis of governance but have also posed threat to democratic system.

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Most of the governance related problems could be solved by carrying out electoral reforms in India. Elections in India over the years have gone from strong to stronger, largely through a series of electoral reforms. Yet, there are some areas of concern that need to be addressed urgently for good governance in the country. The present paper is an attempt to look into the issue of governance in the context of electrol reforms. The paper takes in to account the problems related to the free and fair elections which have not only created threat to the validity of Indian polity but have also become a major obstacle in the efforts of the government to establish good governance. The paper also suggests remedial measures to reform the electoral system to overcome the threat to democratic governance and to carry democratic process forward.

## Concept of Good Governance

The concept of good governance is not new one as ensuring 'goodness' in governance and raising its level has always been the considered goal of the rulers and persistent demand of the articulate sections in society. The term lacks of unanimity and is the governance generally means looking after the welfare of all in all respects. The word 'good governance' dynamic one and it keeps changing due to over all societal changes. In ancient times, the king was expected t o be the embodiment of good governance for promoting general human well being. But with the emergence of modern democracy this role automatically got transferred to the government as an instrument of the state. The term in its present form gained momentum in the post-cold war era after the collapse of the USSR in 1991 as a result of the conditions laid down by the World Bank and OECD Countries upon Third World. The World Bank document entitled *Governance And Development (1992)* defined, 'Good Governance as Sound Management'. World Bank has identified some parameters of 'Good Governance' which are as below:

- I. Legitimacy of the political system. This implies limited and democratic government.
- II. Freedom of association and participation by various social, economic, religious, culture and professional groups in the process of governance.
- III. An established legal framework based on the rule of law and independence of judiciary.

IV. Bureaucratic accountability including transparency in administration.

- V. Freedom of information and expression required for formulation of public policies, decision-making, monitoring and evaluation of government performance.
- VI. A sound administrative system leading to efficiency and effectiveness.
- VII. Co-operation between government and civil society organizations.

The OECD countries have also put forward some tenants of good governance, such as:

- I. Legitimacy of government;
- **II.** Accountability of political and official elements of government;
- III. Competence of government to make policy and deliver services; and
- **IV.** Respect for human rights and rule of law.

The parameters of 'good governance' reflect that it implies the political system and the manner in which power is exercised in utilizing country's economic and social resources for the welfare of the people. It comprises an administration in a democratic framework. It includes rule of law, independence of judiciary, freedom of association, participation by various groups in the decision making process of the country. It means an administration considered to be citizen friendly, citizen caring and responsive one. Bureaucratic accountability, transparency in administration, freedom of information and expression, a sound administrative system, public sector management, civil society involvement and controlling corruption are the important dimensions of good governance.

Whereas the term Electoral Reforms stands for bringing such changes in the existing electoral process which are positive and reformative in nature, so that the elections can be made fair and free. In other words, ensuring fair and free elections in the country is the basic objective of electoral reforms so that the intervention of extraneous factors can be ruled out. Electoral reforms pave way for Good Governance. Thus both are closely related.

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## **Good Governance and Electoral Reforms**

The very purpose of Indian democracy is to secure the unity and stability of the nation and initiating the process of nation building and socio economic reconstruction. No doubt, a number of constraints and malpractices are prevailing in Indian electoral system. The citizens look forward to better governance in all this respects. Indeed, the crisis of governance in India is deep but many of the governance related problems can be solved by carrying out electoral reforms, as health of the democracy depends on the free and fair elections. Free and fair elections is the integral part of politics in a democratic system. Elections are the principal mechanism by which citizens hold government accountable, both for their policies and the manner they govern. Elections are critical to the maintenance and development of democratic tradition, because on the one hand, these are influenced by the political cultural, in which they operate, and on the other, they also generate strong influence that can improve or distort this political culture, hence are key to the success of democracy.<sup>3</sup>

No doubt, the institutional framework, Election Commission of India (ECI), established for the conduct of elections is apparently sound which is autonomous and free from executive and political interference.<sup>4</sup> The EC has made sincere efforts to conduct the elections in a free and fair manner. Despite, with the passage of time many distortion and evil practices have crept in our electoral process which led to the sharp decline in the democratic governance in the country. The first three general elections (1952-62) in our country were by and large free from any flaws, a discernible decline in standards began with the fourth general elections in 1967 and these got multiplied in the successive elections.<sup>5</sup> The working of electoral system has witnessed several drawbacks and malpractices such as increasing trend of corruption, nepotism, castism, communalism, use of money and muscle power, and criminalization of politics, capturing of booths, violence, misuse of official machinery vote etc. Besides, the discrepancy between the votes cast for a party and the seats won in Parliament, the multiplicity of political parties, personality cult are other important drawbacks of Indian electoral system. The distortion in the working of electoral process resulted in the emergence of some of the candidates and parties who participate in the electoral process at all costs. An honest and upright person, who has public spirit and wants to serve the people, has little chance of contesting and winning the elections.

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Consequently, democratic institutions have become the dens of criminals and lost the faith of the people and to stream line the system, the need of electoral reforms was felt quite early in India.

To check the rot, several committees and commissions came up with the proposal for making reforms in the electoral process in India, including Dinesh Goswami Committee (1990), Vohra Committee Report (1993), Indrajit Gupta Committee on State Funding of Elections (1998), Law Commission Report on the Electoral Laws (1999), National Commission to Review the working of the Constitution (2001), Election Commission of India with Proposed Electoral Reforms (2004) and the second Administrative Reforms Commission (2008).<sup>6</sup> The ECI has also taken initiatives to face the challenges in the election process and has conducted a number of laudable electoral reforms to strengthen democracy and enhance the fairness of elections.

In the series of electoral reforms, some recommendations of these committees and commissions were implemented in 1988. The ECI was empowered to countermand the election in the entire constituency if booth capturing took place in a considerable number of polling stations and this would certainly influence the result of the elections. Further, the age of voting was reduced from 21 to 18 by the 62<sup>st</sup> Constitutional Amendment Act (1986). Certain path breaking changes in the context of electoral reforms were made by amending the Representation of the People's Act (1951) in 1996. These are:

- Increase in the amount of security deposit to check the multiplicity of non-serious candidates from contesting elections.
- Ban on selling and distributing liquor or other intoxicants at any shop, eateries etc. within a polling area, during 48 hours after the conclusion of campaign.
- Reducing the time of election campaign from 21 days to 14 days.
- Increase in number of proposers of a candidate.
- Strict punishment on capturing of the polling booths etc..

Election Commission is getting lessons from every election and trying to improve upon in the next elections. The Commission has taken significant steps in order to bring about reforms in electoral process:

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- (a) Registration and recognition of political parties and allotment of symbols to them;
- (b) Introduction of Electoral Photo Identity Cards (EPIC) to check impersonation and bogus voting;
- (c) Polling through Electronic voting machine (EVM);
- (d) Code of conduct evolved by the political parties and enforced scrupulously by the commission;
- (e) Computerization of electoral rolls of all constituencies;
- (f) Booth level officers system for each polling station;
- (g) Polling agents from the same polling stations;
- (h) Online communication network (COMET) to monitor events at every single polling station;
- (i) SMS based query about electoral rolls;
- (j) Web based search facility;
- (k) Making sector officers and mobile police booths;
- Deployment of paramilitary personnel and the special operation group, especially in the troubled states;
- (m)Appointment of election observer, central police force, video graphy and posting of micro observers at sensitive polling stations;
- (n) Make mandatory for every candidate to file affidavit about his/her conviction in cases under the law;
- (o) Elections will not be counter-mended because of the death of a candidate.

The courts have also strengthened the Commission through the positive interpretation of the law. The first landmark judgement given by the Supreme Court in 1952 in which it ruled that the bar in the constitution against questioning elections except through election petition, till the

election process was completed. In another judgement in 1995, Court directed that the political parties had to file their income tax return. Further, in 2003, the Supreme Court had given historical decision that the candidates have to file affidavits about their criminal antecedent, assets, liabilities and educational qualifications while filing the nomination form.<sup>7</sup>

A lot of developments in the electoral reforms took place in 2013 from the judiciary and the quasi-judicial institutions. On June 3, 2013, Central Information Commission (CIC) declared six national parties to be public authorities under the Right to Information Act (RTI) and directed them to appoint public information officers within six weeks of the decisions. Political parties, however, did not implement it and made attempt to nullify the order to make amendment in the RTI but has not succeeded. In its historical judgement (Lily Thomas and Lok Prahari case) on July 10, 2013, Supreme Court ruled that if a sitting M.P. or M.L.A. is convicted of imprisonment of two years or more in a criminal case even by lower court, his/her membership will stand terminated immediately not withstanding him/her filing an appeal in any higher court. However, the government had introduced a bill in the Parliament by getting support from almost all parties to over-rule this Supreme Court decision and then issued the ill-fated ordinance which now stands with drawn.

The Supreme Court, in another land mark judgement on September 27, 2013, directed the ECI to introduce a button for 'None of the above (NOTA) in the electronic voting machines (EVMs) to provide wider option to the Voters and to force the parties to project the candidates of clean background and make the politics clean in future. On March 10, 2014, Supreme Court, further directed all lower courts to decide criminal cases against sitting MP's and MLA's within one year. On May 5, 2014, Supreme Court had upheld the power of the ECI to scrutinize the statement and to up-seat the elected person if the statement was found incorrect.

The above facts show that a number of laudable electoral reforms to strengthen democracy and enhance the fairness of the elections have been made either by making laws or by the EC itself or by the decisions of the Supreme Court.<sup>8</sup>

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## **Emerging Concerns**

Undoubtedly, the election machinery, under the aegis of the EC, deserves credit for conducting elections in a free and fair manner. Yet, there are multitudes of problems that confront our electoral system and had posed a threat to the democratic governance of India. The main constraints in the path of fair and free elections in India are: money power, muscle power, criminalization of politics, poll violence, booth capturing, communalism, castism, non-serious and independent candidates etc. The people at large, civil society organizations, political parties, EC, Law Commission etc. have been feeling concerned and are arguing making suggestions for reforms in the electoral systems, prominent among these are as such:

#### (1) Money Power

One of the most serious and alarming problem is the excessive use of money power in elections, Electioneering tends to be an expensive exercise in India because the electoral constituencies are very large both in terms of size and population. Transport, publicity and maintaining the campaigning involve enormous amount. The size of black money in Indian economy is almost double to its white money as per the sources of Union Finance Ministry (2012-13).<sup>9</sup> The gap between expenses incurred in an election and legally permitted limit on expenses has been increasing day by day, despite the endeavor of the ECI to make check on money use. Black money in form of donations to election fund of political parties or powerful leaders has come to be an established fact. About 90 percent of all election funds comes from the big business houses in lieu of favour or patronage. This not only eliminates persons of ability and integrity from electoral contest for lack of financial support but also promotes criminalization of politics. No doubt, elections cannot be contested without money. But money cannot be allowed to dominate the electoral process so much that only the rich can contest and hijack the political system.<sup>10</sup>

To curb the misuse of money, ceiling on expenditure of the candidates during elections and to disclose their donations and contributions they have received in the year have been made. Political parties should also file their annual return of income under the Income Tax Act. But in fact, these rules are followed more in breach than in practice. Another problem regarding financial indiscipline is that there is no ceiling on the expenditure incurred by the party. All

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parties spend crores of rupees to win the elections. The question is how the parties get money? There is no transparency regarding the sources of donation and about 75 percent of all funds are shown as donation without disclosing the source. The EC is insisting for over two decades to make transparency and discipline in the finance. It is suggested that for audit, a panel given by the ECI, instead of an in house auditor, who may only do the white wash job, should be appointed. The parties must put up the audit accounts on its website. This is the only way to keep out black money from the electoral process. Another best way suggested by the ECI to control finance is that there should be state funding of political parties. Besides, to enforce financial transparency, private and corporate donations will be totally banned. For this purpose, an election trust fund could be administered by an Election Commission. Allocation of funds to the parties should be based on the actual performance of parties.<sup>11</sup>

#### (2) <u>Muscle Power</u>

The rising use of muscle power is another factor which has vitiated the Indian democracy. However, it is not new as earlier voters used to be bribed individually. But with the passage of time, it was found more convenient to buy muscleman who could ensure victory by capturing booth or intimidating voters. Violence and victimization are the products of muscle power. This has led to progressive criminalization of politics and the emergence of nexus between politicians and criminals. Gradually, the criminals themselves have started contesting elections instead of helping others. This cancerous disease is prevalent in many parts of the country like Bihar, Jharkhand, Utter Pradesh, Maharashtra etc. and is slowly spreading to the states like Andhra Pradesh. During 15<sup>th</sup> Loksabha, 199 MPs were of criminal background and the strength of such MLAs in state legislatures varied from one-third to half of their total number. By using violence, the criminals are able to achieve success at elections for their benefactors. Role of muscle power should be checked both through preventive measures and through spreading voters awareness. EC has introduced several measures such as deployment of micro-observers, polling agents from the same polling area, use of EPIC and voter lists with photographs, videography, deployment of paramilitary forces etc. to make elections free from muscle power.<sup>12</sup>

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### (3) Criminalization of Politics

At present criminalization of politics has become an all pervasive phenomenon and it has comprehended the serious repercussion on the polity and the system as the corrupt and criminals have been elected as MPs' and MLAs' and even have become ministers owing to their money and muscle power. It is a matter of fact that during the election period, newspapers are usually full of information about the number of criminals in the field sponsored by every party. Political parties tap criminals for fund and to help them during elections and in return provide them with political patronage and protection. Mafia dons and other powerful gangsters have shown that they can convert their muscle power into votes at gun point. The N.N. Vohra Committee in its Report (1993) exposed the nexus between politicians and criminals and suggested some measures. But the successive governments have not acted upon the Vohra report. It is really disappointing.<sup>13</sup> It is suggested that this problem would be tackle at the entry level. Political parties should themselves refuse to give tickets to criminals to contest elections. EC also proposed in 1998 to debar a person, facing charges for serious offences from contesting elections. However, many political parties opposed this on the ground that false cases may be filed by their opponents. For this, EC had suggested that person having criminals cases of heinous offences like murder, rape, dacoit, kidnapping or moral turpitude should be barred and the case against the person should be registered at least six months before the elections and the charges should be framed by the court. While the opponents argued that jurisprudence followed in the country is that a person is deemed to be innocent until proved guilty.<sup>14</sup>

Creditably, the Supreme Court has played an important role in tackling this menance. In the historic judgement, Supreme Court directed to the Commission to make it mandatory for candidates to provide a statement of their assets, liabilities and criminals antecedents along with their nomination papers (2002) and an MPs' and MLAs' convicted of imprisonment of two years or more in a criminal case would be barred from contesting elections.<sup>15</sup>

### (4) Simple Majority Vote System (SMVS)

Another drawback of Indian electoral system is the Simple Majority Vote System (SMVS) or The First Past the Post System (FPTP), the system in which a candidate who is polled more votes than all other candidates contesting, is declared the winner. The congress party ruled the country

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for a fairly long period with 34-41% voes. Similarly, when the opposition united against the congress either in 1977 or 1987, the former got thumping majority with a saving of 8-10% votes. Similarly, in the 16<sup>th</sup> Lok Sabha (2014) and subsequent Assembly Elections of Delhi, Haryana, Maharashtra, Bihar etc. there is wide gap between popular votes gained by the parties & actual seats won by them. This system very often results in a victory of candidates polling a minority of votes and a big disproportion between the popular votes polled and the seats won by a party. Therefore, an opponent of FPTP system advocates the introduction of Proportional System or Second Ballot System and the Alternative Vote System. No doubt, there might be practical difficulties in implementing these systems in Indian political system, where the voting is not mandatory and majority of the voters have lack of political awareness due to illiteracy. The Law Commission suggested the introduction of 'Mixed Member Proportional System; as practiced in the election to German Bunderstag (The Lower House). The 50% of the Bunderstags are elected by FPTP System and the rest of 50% on the basis of party system. This, some account, will be able to solve the problem of SMVS. In the recent elections the voting turn up has risen remarkably which is a good symbol of political development and healthy democracy. <sup>16</sup>

### (5) Paid News

The scourge of paid news is a recent phenomenon which has hiked with expansion of private TV channels and print-media. The media seems to be the mouthpiece of particular party or candidate and fails to perform its real duty of providing factual news to the readers or spectators. Thus biased view paint of the media is spoiling our electoral system and has posed a challenge to our democratic governance. The EC has proposed amendment in the Representation of People Act, 1951 that publishing and abetting the publishing of 'Paid News' for furthering the prospects of election of any candidate be made an electoral offence and should be given punishment of minimum two years imprisonment.<sup>17</sup> In the recent elections of 16<sup>th</sup> Lok Sabha, Delhi and Bihar Assemblies, the role of some of the TV Channels and print media have remained very objectionable and contrary to the media Ethics.

### (6) Strict Punishment for Electoral Offences

Despite, all add efforts by the electoral machinery to conduct fair and free elections, at present undue influence and bribery have been increasing during elections. Now, duo are

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electoral offences under section 171B and 171C, respectively of the Indian Panel Code (IPC). But, these are, non-cognizable offences, rendering the provisions virtually ineffective. Besides, under section 171-G, publishing false statement in connection with elections with intent to affect the result of an election, is punishable with fine only, and under section 171-H, incurring or authorizing expenditure for promoting the electoral prospects of a candidate is an offence but the punishment for such offience is a meager fine of Rs. 500/- which is meager in the present time. These punishments under all the four sections were provided as far back in 1920, hence, needs to be enhanced and made cognizable. So that the electoral offence can be curbed in the bud.<sup>18</sup>

#### (7) <u>Reinforce the Powers of the Election Commission</u>

No doubt, the independence of the EC is secured in India and it has been given vast powers to superintendence, direction and control of the poll in a free and fair manner. But, the harsh reality is that Election Commission is at the mercy of the Central & State Governments for performing this duty. However, one of Chief Election Commissioner, T.N. Sheshan exercised his powers and took cudgels single handed to fight the hither to unchallengeable politicians by showing them the true authority of the EC. Still political parties go astray and disobey the orders of the EC, as EC has not been given powers to penalize those, who disobey orders. For examplethe EC lays down the model code of conduct but parties never obey the code of conduct with whole heartily. There is a need to reinforce the hands of the EC and to give it more officially authorized and institutionalized powers to penalize the way word political parties and politicians who disobey the electoral laws.

These are the core problems which need to be addressed immediately to streamline our democratic process. Despite, there is also an urgent to introduce right to recall, compulsory voting and intraparty discipline to redress the crisis of governance in Indian democratic system.

### Summing up

Undoubtedly, India is the largest and one of the successful democracy in the world having wide socio-economic, political and administrative maladies posing threat to good governance. The legislative bodies are becoming the dens of criminals and millionaires. In the outgoing (15<sup>th</sup>) Loksabha 200 MPs are of criminals background and 300 MPs are millionaires.

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For the election of 49 seats of Rajya Sabha (in 2014) spread over 12 states, there were 54 candidates in fray of which 21 are of criminal background and 43 are millionaires and 38 of them reached the Rajya Sabha.<sup>19</sup> Further, According to ADR data released on the basis of Affidavits submitted by candidates 96 of the new entrant MLAs in Bihar Assembly have criminal Background and cases of murder, attempt to murder and Kidnapping are registered against them whereas 59% MLAs have been booked in serious cases (143MLAs). RJD (49 out of 80) and JDU (37 of 78 MLAs) have the highest number of criminal background MLAs. The analysis of affidavits of all 3450 candidates contesting elections (243 seats) reveals that 30% (1038 candidates) of them have criminal record of which 23% (796) are facing trail in serious offences like murder, attempt to murder, kidnapping & extortion. 95 out of 157 (61%) BJP candidates, 58 out of 101 (57%) of JDU, 61 of 101 of RJD (60%) and 23 of 41 of the Congress (56%) have given information in their respective affidavits that they are booked in criminal cases.<sup>20</sup> Health of the Parliamentary democracy depends upon free and fair elections. Undoubtedly, the election machinery, under the aegis of the EC, deserves credit for conducting the elections in a free and fair manner to a greater extent. For electoral reforms a few positive steps have been taken by amending the Representation of People's Act 1950 and by the initiative of the EC itself and the decisions of the court. But, the full and desired reforms have not been affected for want of political will and consensus. Our system is still plagued by many vices.

During the last four decades, many committees and commissions have been appointed and have given a number of suggestions to cleanse the electoral process, but most of the aforesaid reforms have been pending with the government because of lack of political will and consensus. That's way, people faith in the system has been eroding. In the recent Bihar Assembly (Nov. 2015), Most of the private TV Channels including Zee TV, NDTV etc. are projecting NDA government in Bihar. But when the result came the NDA got only 48 seats out of 243 seats. The misuse of money power and criminalization of politics are two major evils that need to be addressed seriously. State funding of elections and transparency in the funds have been suggested to eradicate these evils. To check criminalization of politics, all parties themselves should avoid giving tickets to criminals. Since the voter is the most powerful entity, he should not vote in favour of criminals, dishonest and corrupt politicians who try to purchase votes by money and muscle power. No doubt, the base of Indian democracy has widened with passage of time but it lacks of values and ethics. Restoration of ethics in politics can be a succor



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to most of the problems of the day and pared way for good governance in the country. The father of nation, Mahatma Gandhi, also insisted on value laddened politics. Besides, voters should be aware so that up right, vibrant and able person should be elected, who will contribute in improving the quality of governance. <sup>21</sup> The government must act urgently to address these problems so that the declining faith of people in democracy can be addressed. Thus electoral reforms and good governance are directly correlated and improvement in one will certainly improve the other.

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