
ELECTORAL REFORMS IN INDIA: AN ANALYTICAL STUDY OF CONSTITUTIONAL, LEGAL AND INSTITUTIONAL CHALLENGES

Dr. Jyoti Dharm, Dean and Vice Principal, Bharati Vidyapeeth (Deemed to be) University,
New Law College, Pune, Maharashtra.

Ratan Deep Singh, LLM, Bharati Vidyapeeth (Deemed to be) University, New Law
College, Pune, Maharashtra.

ABSTRACT

In India, the electoral system is ingrained in our constitutional ideals of democracy and equality for every citizen. It has gone through many reforms for the betterment of electoral system but despite these reforms there are still issues that are causing harm to the electoral system such as criminalization in the politics, excessive campaign financing, exploitation of state machinery and declining trust of public has caused harm to the integrity of the electoral system. This article critically analyses the electoral reforms in India through constitutional perspective, such as Election commission of India, role of judiciary and legislature. It analyses key legislative measures, judicial intervention and recommendations provided by the expert committees, including reports provided by Law commission and Election commission of India. This article argues that while the procedural reforms have improved the transparency and efficiency of the elections, there still lies structural issues which remain unaddressed. The article also further explores the emerging concerns for electoral system such as electoral bonds, digital campaigning and voter data privacy. The article concludes itself by proposing comprehensive electoral reforms, including proper state funding of the elections, stricter disqualification norms, and enhanced autonomy of electoral institutes, to strengthen the democratic governance in India.

Keywords: Electoral Reforms, Democracy, Election Commission, Criminalization of Politics, Electoral Bonds, Constitutional Law.

INTRODUCTION

The concept of free and fair election is the foundation of any democratic polity. In our country India, democracy get its validity through regular elections that reflects the will of the people. Indian Constitution provides a solid framework for the regulation of the electoral system which are given from Article 324 to Article 329, entrusting an independent constitutional authority for the superintendence, direction and control of the elections which is (ECI) Election Commission of India.

Despite having such a constitutional vision, the electoral system in India still faces my persistent challenges. The increasing involvement of money and muscle power, lack of transparency in the political fundings and declining voters trust has caused harm to the idea of free and fair election which are the cornerstone of the democracy. While many reforms from time to time has taken place, they have been largely incremental and procedural in nature.

This paper seeks to answer two fundamental question-

1. Whether existing electoral reforms are enough to solve the core problems, challenges in the electoral system of India.
2. Necessary electoral reforms which are required to strengthen the democratic governance.

Constitutional Framework of Elections in India.

Our Constitutional framework is extensive and in detailed for the electoral system in India. Article 324 gives the Election commission of India wide range of powers to make sure that the free and fair election are being conducted. These powers given by the constitution has been interpreted heavily by the judiciary to appoint residuary powers to areas explicitly covered by Legislation.¹

With Article 326 we get Universal adult suffrage which allows citizens who are 18 or above right to vote in the elections, subject to reasonable restrictions. The principles of equality and non-discrimination further reinforce the democratic character of elections.

¹ M.P Jain, Indian Constitutional Law.

The Judiciary has helped a lot in promoting and strengthening democratic elections. In *Union of India v/s Association for Democratic Reforms*, the supreme court held that the voters have the right to know the past of the candidates which is considered as a fundamental right and freedom of speech.² This judgement marked a significant step towards transparency and accountability.

Similarly, in the case of *People's Union for Civil liberties v/s Union of India*, the supreme court upheld the introduction of the (NOTA), there by enhancing voter's choice and participation.³

Thus, the constitutional framework provides a strong foundation for electoral governance. However, the effectiveness of this framework depends on its implementation and the ability of institutions to address emerging challenges.

Evolution of Electoral Reforms in India.

Electoral Reforms have changed a lot in India according to changing political and social activities. These reforms can broadly be categorized into pre-1990 and post-1990 developments.

Pre-1990 Reforms

The early phase of electoral reforms focused on stabilizing the democratic system in electoral system. The 52nd Amendment Act of 1985, brought the anti defection laws to deal with defections in the political environment and bring stability to it.⁴

The 61st Constitutional Amendment Act, 1988 reduced the voting age from 21 to 18 years, which allowed increase in significant proportion of citizens specially the youths to participate in voting for the elections.⁵

While these reforms addressed certain structural/basic issues, they did not tackle larger concerns such as electoral funding and criminalization in elections.

² UNION OF INDIA v/s AS&SOACNIOATTHIEORN FOR DEMOCRATIC REFORMS (2002) SSC 294.

³ People's Union of Civil Liberties (P.U.C.L.) & Anr. v/s Union of India (2003) SSC 399.

⁴ D.D Basu, Introduction to the Constitution of India.

⁵ Legislative Department.

Post-1990 Reforms

This era witnessed more progressive form of reforms designed to uphold and improve the integrity of the election. The introduction of Electronic Voting Machines (EVM) was huge step comparing to the old school ballot-paper voting, which brought enhanced efficiency and reduced electoral fraud which were consistent in the past. The following addition of the Voter Verifiable Paper Audit Trail (VVPAT), helped in transparency and fairness of the elections.

The Model Code of Conduct (MCC), which is not legally enforceable but it has also played a huge role in keeping the behaviour of the political parties in-check during the elections.

The Judicial intervention has also played huge part in the election reforms around that time. In the case of *Lily Thomson v/s Union of India*, the supreme court of India held that the legislators who are convicted will be barred immediately, which helped in strengthening the accountability for wrong doings.⁶

Despite having these developments for the betterment of elections, there are still several systematic issues remain unchecked and unresolved, which tells us we need more better and deeper forms of reforms in the elections.

Key issues in the Electoral System of India.

Crime and Politics.

The increase in the number of candidates with a criminal history participating in the election has become one of the most persistent issues in the elections. Studies has shown that a large proportion of elected representatives face criminal charges, including serious offences, which tells a lot about the moral obligation of these people for participating in elections.

The Supreme Court of India has provided guidelines to the candidates for disclosing any criminal records of the past. However, this heavily rely on the voter's awareness about the candidates and have limited restraint effect.

The absence of a legal bar on the contesting elections for individuals with pending criminal

⁶ Lily Thomas v/s Union of India (2013) 7 SCC 653.

cases (except in cases of conviction) allows the problem to persist.

Money Power and Electoral Funding.

The influence of the money in the elections have grown largely over the years. Political campaigns require financial resources to keep them sustain for running in the elections, which leads to dependence on large donors and, in many cases, unaccounted funds which causes several issues.

Electoral Bonds Scheme was introduced to promote transparency in the elections. But it has been widely criticized by people for allowing anonymous donations, which has reducing accountability which causes unfair play of money in the elections.⁷

The absence of clarity in the funding of political parties causes harm to the equality in the elections, causing some parties to have more advantage from the others.

Misuse of the State Machinery.

The Incumbent government often uses state resources to gain unfair advantages in the elections. The (MCC) tries to point out this situation, but being non-enforceable in nature causes limited effectiveness from it.

Solid legal mechanisms are required to stop the abuse of the state power to make sure that fair elections are being held.

Media Influence and Paid News.

Media's role in shaping the outcomes of the elections have increased significantly over the years. The phrase 'Paid News' is often used when favourable news is bought through money, which has been reported a lot in recent times.

This practice misleads the voter's mentality about the elections and causes significant harm to the integrity of the elections. Election Commission of India has tried to resolve this situation but there is a requirement for a solid regulatory mechanism for the elections.

⁷ Jagdeep S. Chhokar, "Money Power in Elections" (2018) 53 *Economic and Political Weekly* 23.

Weak Internal Democracy in Political Parties

In the elections the central role is played by the political parties. But in these parties the decisions are made by few individuals who holds the most power in the parties, this happens because the parties lack internal democracy within.

The absence of transparent procedures for the candidate's selection and leadership positions in the parties weakens the democratic norms and limits the accountability for the actions.

Role of the Judiciary in Electoral Reforms

The judiciary has played a huge role in the advancement of election reforms. Through many landmark judgements, the scope and advancement of electoral rights and accountability for free and fair elections have been increased significantly because of supreme court of India.

In the case of *Association for Democratic Reforms*, the supreme court of India ordered for a full discloser on the candidate's information, which enhanced the transparency in the elections.²

In the case of *PUCL v/s Union of India*, the introduction of NOTA (None of the above) allowed the voters to express there unsatisfaction with election candidates.³

In the case of *Lily Thomas v/s Union of India*, the supreme court removed the protection which was available for the convicted legislators, which allowed the betterment of integrity in the public office.⁶

These decisions show the importance of the judiciary in improving electoral system, the judiciary fills the gap between legal framework. However, judicial intervention alone is not enough without solid legislative reforms in the matter of elections.

Electoral Funding and Transparency

Political funding remains one of the most problematic aspects of electoral reforms. The need for transparency in funding must be balanced with the doner's privacy.

The Electoral bond scheme has faced criticism for tilting this balance in the favour of anonymous entities. The critics have argued that this has allowed large number of donors to

influence political parties without any accountability and public scrutiny.

The recommendations have been provided by the Law commission of India for greater transparency in funding of political parties, including mandatory disclosure of the donations and stricter auditing requirements.⁸

To reduce the influence of private money, state funding of elections has also been proposed to make sure that there is no unfair practice related to money in the elections. While this approach has its merits, its workability and implementation require careful consideration by the state.

Emerging Challenges in the Elections: Digital Campaigning and Data Privacy

The rise of digital technology in India has transformed electoral campaigning drastically. Social media platforms enabled targeted advertisement and rapid propagation of information to the voters.

However, these developments also pose new number of challenges. The spread of misinformation on social media, the use of data analytics for the voter profiling in elections, and lack of regulation machinery for online political advertising raises concerns about the integrity of elections.

Because there is no solid legal framework for the data protection of the people, it worsened these issues. For ensuring people's trust in electoral system there must be transparency and accountability for the digital campaigning in the elections.

Recommendations for Election Reforms

Here are the proposed reforms for the problems in electoral system which are mentioned above:

Funding of State in Elections.

Partial funding by the state to the political parties will reduce the dependence on private donors and will enhance the free and fair elections.

⁸ Law Commission of India, *170th Report on Electoral Reforms* (1999).

Strengthening the Election Commission

Empowering the autonomy of the (ECI) Election Commission of India through financial independence, transparency in the process of appointments will play crucial role in keeping elections free and fair.

Exclusion of Candidates with serious criminal records.

Removal of the candidates with serious criminal charges through solid legal framework will provide opportunities for the worthy candidates in the elections.

Proper Disclosure for Political Funding.

There should be a mandatory disclosure for the donations in political parties, also strict reform for prohibition on the non-transparent funding is required through solid legal framework.

Regulation of Political Parties.

There should be legal provisions to make sure that there is transparency and internal democracy in the political parties which will ensure accountability and integrity of the elections.

Regulation of Digital Campaigning.

Comprehensive legal guidelines are necessary for political advertisements, data protection and spreading of misinformation to the public. There should be strict reforms regarding these issues specially in the current times.

Conclusion

We have seen that electoral reforms in India have made a significant progress from time to time in improving the procedural aspects of the Electoral system. But at the same time the structural problems have made people question the integrity of the electoral system.

The limitations of the existing electoral reforms can be seen through criminalization in elections, non-transparent funding and misuse of state resources for unfair advantages in the elections. While (ECI) Election Commission of India and Judiciary performed important role for the Election reforms, there is still need for solid legal framework to address the issues

effectively.

For the bright future of Indian democracy there should be proper implementation of robust reforms that strengthen transparency, accountability and inclusiveness in the electoral system. A comprehensive legal framework is required for maintaining digital technology, institutions and administrative authorities to make sure that elections reflect the will of the people as any democratic nation should.

REFERENCES

1. M.P. Jain, Indian Constitutional Law.
2. Union of India v. Association for Democratic Reforms, (2002) 5 SCC 294.
3. People's Union for Civil Liberties v. Union of India, (2003) 4 SCC 399.
4. D.D. Basu, Introduction to the Constitution of India
5. Legistalive Department.
6. Lily Thomas v. Union of India, (2013) 7 SCC 653.
7. Jagdeep S. Chhokar, "Money Power in Elections" (2018) 53 Economic and Political Weekly 23.
8. Law Commission of India, 170th Report on Electoral Reforms (1999).