

## Cleansing Election Process – The Ethos of Electoral Reforms

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**ABSTRACT:** A free and fair election symbolizes the functioning of a healthy democracy. In a democracy, a government usually came to be formed where the electorate masses of the country would select them through periodic elections to represent their interests. In the post-independence period, the Government of India introduces elections to all spheres of government following the constitutional mandate of equal participation in the policymaking process. This hallmark of democracy has been contaminated by some unethical practices, as result loses its image in the faith of the people. Realizing the importance of the necessity of electoral reform the Election Commission assumes a proactive role to guarantee that everybody concerned observes to the procedures laid down for the conduct of elections. It is worthwhile to mention that cleansing election from all kinds of malpractices and regain its original exclusivity is the most pleasant dream of every democracy aims to attain.

**KEYWORDS:** Election reform, Criminalization of politics, Malpractices, Democracy, Cleansing Election.

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### I. INTRODUCTION

As it is often said that a thorough cleansing process is regularly needed to cleanse out the dirt and stains which cover a garment so as to maintain its original luster. A similar analogy may be also drawn to the election process by which the electorate votes to power their chosen representatives. The notion of cleansing election is not only confined to the rules as to the qualification or disqualification of the candidate but it extends to other contaminating elements of election, namely, the conduct of the political parties, the conduct of the process, and general conduct as well. Eventually, all these conducts related to the election motivates and sensitize the electorate to cast their vote to elect their representative who would rule people's interests.<sup>1</sup> Following the British legacy, India has opted for Parliamentary Democracy where the people rule. The Constitution of India provides for a socialist, secular and democratic Republic, and the success of democracy hinges upon free and fair elections. Since 1952, the country has witnessed elections to the national and state-level legislative institutions. In the early years after independence, elections happened to be fair and peaceful by themselves largely due to the simplicity of the issues, lack of aggressive attitude of the personage involved in the electoral fray. Things became more complex with the entry of factors like rivalries of the political parties, regionalism, caste and religious sentiments, and money and muscle power. As a result, the electoral system is plagued by many problems, and it has attracted many anti-social elements to try their luck at the hustings. Some anomalies in the functioning of our electoral system appeared for the first time in the fifth general election (1971) and successive elections witnessed of multiplication such incidences.<sup>2</sup>

Cleansing election is a long-standing demand in a healthy democracy. Considering the genuineness of the demand Election Commission has made numerous recommendations and repeatedly reminded the government of the necessity to change existing electoral laws with a view to curb the electoral misconducts. It is of utmost importance in a democracy to keep alive the faith of the people over the ruling government because over and again it is the common people who elected them to govern. Very often, unfettered use of political power by elected representatives for personal interest disappoints the electorates. The growing tendency among the peoples' representatives towards the corrupt practice compels the electorate to boycott their voting rights in certain elections. To meet with a similar situation the Supreme Court of India in the case of PUCI v. Union of India,<sup>3</sup> mandated the Election Commission to insert one new option as "None Of The Above" in short "NOTA" in ballot paper along with other option. NOTA entitles an electorate to exercise their voting rights, and at the same time to exert their dissatisfaction over the candidates. The Court allows the people to exercise the 'Right to Reject' as a basic right to negate their vote if the candidate is unworthy. Through this paper, the researcher highlights the different factors that pollute the election process and the necessity of cleansing the process in order to bring about the long-awaited election reform in a real sense.

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<sup>1</sup> Chauhan Dr. K.S.(2013). *Parliament, Powers, Functions & Privilege*. 1<sup>st</sup> Edition, Lexis Nexis.

<sup>2</sup> Basu Dr. D.D.(2013) *Introduction to the Constitution of India*. 21<sup>st</sup> Edition, Lexis Nexis.

<sup>3</sup> (2013) 10 SCC 1

**Factors That Tainted The Purity Of The Election:** One of the major anomalies affecting the fair election is the serious criminal background of the candidates. The increase in the number of parliamentarians with criminal charges in recent times will cause a strong impact on the faith of citizens of India and the functioning mechanism of the democracy. This can cause disastrous effects among the democratic spirit of the people and the faith they put up in the prevailing structure. After the 2019 Lok Sabha elections, it was concluded in a survey by the association of democratic reforms that nearly 43% of the newly elected members of the lower house have criminal cases against them. In the 2004 national election, the percentage of candidates with pending criminal cases was 24% which rose to 33% in 2009, 34% in 2014, and 43% in 2019.

There can be different causes of the criminalization of politics in India. In India, in most cases, there is a nexus between the criminals and the politicians. This connection can be due to the muscle power of the criminals in their areas and their influence over the people which can indeed prove to be a bliss upon the politicians when they go for the election campaigning to win and in return, the criminals get immunity from prosecution and support from the administration to run their illegal works. This nexus can prove to be a ticket for the criminals to contest the election. The criminalization of politics is raising its head due to the lack of awareness of the people to choose their representatives and the lack of knowledge about the representatives due to which criminals are very often elected as MLAs and MPs. The use of caste and religion is very common in a country like India and political parties take this as an advantage to gain support.

Election-related violence is another element that tarnished the image of election in India since the recent past. Election violence is a strategic policy used by the political parties to threaten the candidates as well as the voters. Most of the time election violence has occurred in order to mould the opinions of the voter towards a particular candidate or to influence the process as well as the outcome. Violence related to an election is caused not only by the political parties, sometimes by the government or electorates as well. Studies reveal that in India probability of election violence is high in areas where candidates of regional parties contest in an election. Often the regional parties suffer from identity crisis and situation become complicated when the national party got privilege over regional parties or when the regional party lost in the election or win in narrow difference. In the 17<sup>th</sup> general election, the Election Commission of India identified some of the polling stations as vulnerable to electoral violence, namely, Jammu and Kashmir, Naxalite affected areas, such as Chhattisgarh, Jharkhand, Bihar, Odisha, West Bengal, and Uttar Pradesh. The malpractice of vote-buying is very common during the election in India. Political parties offer bribes to the voter to influence their vote. Commonly, marginalized people, illiterate masses, village people, etc., who do not have any opinion of their own about the candidates, are easily targeted by the political parties. Even at the time of the secret ballot, vote-buying can change the scenario by manipulating the vote in many cases, especially in remote or backward areas.

Use of money during and after the election is widespread in India. Money power is also used to buy candidates from the opposite party as well as an independent party. Many independent candidates withdraw their nomination on the last day without justified ground and many nominations got canceled due to faulty documentation are some of the incidences occurred often under the influence of money. In the present time, under the ruling of the coalition government, political horse-trading is often practiced by the parties to obtain the majority in Houses or sometimes for snatching the power of the ruling government. This type of unethical practice shaken the base of functional democracy and poses a huge threat to its future. Election India has been prejudiced by many factors which lower down the moral values of democracy. The above-mentioned aspects depict a handful of examples of election-related malpractice, there many more unrepresented unethical practices still going on. In the given situation, effective reform of the electoral process draws utmost significance to obtain the sovereignty of the people.

**Electoral Reform – A Step Towards Healthy Democracy :** The electoral reforms envisage the upholding of the sovereignty of the people which is the embodiment of democracy. As such, it is necessary to remove the destructive elements and their destabilizing activities from the electoral process. The need for electoral reforms is entailed by the view that the election process should reflect the situation of the day and should not be imposed on contemporary society; to prohibit the criminalization of politics; to stop the misuse of government machinery; to discourage money and muscle power to contribute to election processes; to dismay non-serious candidates to contest in the election; election processes should be neutral, free from any bias for any political parties; to enhance the trust in the eyes of citizens towards electoral processes; to employ the use of technology to further the election processes and be in synch with modern days methods, and to prevent the candidates to contest elections from two constituencies and compensate them in case of such faulty practices.<sup>4</sup>

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<sup>4</sup> Supra note 2.

The need for electoral reforms finds its echoes in the Constitutional provisions, particularly in Articles 324-329.<sup>5</sup> These provisions in dealing with the elections and electoral reforms comprise the power and function of Election Commission,<sup>6</sup> eligibility for inclusion in the electoral roll,<sup>7</sup> adult suffrage,<sup>8</sup> power of the Parliament to make a rule for election to State Legislature,<sup>9</sup> power of the State Legislature with regard to election<sup>10</sup> and bar on the court to interfere,<sup>11</sup> etc. A bare reading of the pertinent Constitutional provisions reflects the need for electing candidates with transparent background; excising the election processes from muscle and money power; embargoing the nexus between business and politics; ensuring that all the eligible citizens can vote in an amicable environment shorn of any pull or pressure, to provide assured facilitation of vote casting; upholding the secrecy of voters; to endow fair registration and recognition of the political parties and without any kind of influence; ensuing a non-partisan role of media; applying the model code of conduct efficiently; streamlining the entire process of preparation of electoral rolls; expediting the election processes, and rationalizing electoral expenditure.<sup>12</sup>

**Measures Taken For The Electoral Reform :** The Government of India constituted several Committees to find out the lacuna in the electoral process and to develop appropriate measures to ensure electoral reforms from time to time. In 1974 constituted the Tarkunde Committee which had observed that the Election Commission must be given independent authority so that it can manifestly exercise its powers in organizing and conducting elections. The Committee suggested for the constitution of impartial and self-sufficient Election Commission and hence, required to form a committee consisting of the Prime Minister, the Leader of the Opposition (or a Member of Parliament selected by the Opposition) in the Lok Sabha, and the Chief Justice of India to advise the President in this regard.<sup>13</sup> It was followed by the Dinesh Goswami Committee in 1990 which again made certain recommendations as to the appointing authority of the CEC, its strength, tenure of the office, etc. The amended Representation of the People Act amplifies the original section 159 which now enabled the Election Commission of India to deploy employees of public sector undertakings and autonomous bodies wholly or partially funded by the Government, for election.<sup>14</sup> Thereafter in 1993 constituted the Vohra Committee which shows much concern for the entry of criminals into politics and made an extensive report on the nexus between crime syndicates and political personalities and bureaucrats. The Committee quoted that in many states the Mafia network is virtually running a parallel government, making the State apparatus irrelevant. The report also speaks about the privilege enjoys by the criminal gangs under the patronage of the local politicians as a return gift for their support to get themselves elected to local bodies, state assemblies, and the national parliament. The Committee recommended protecting politics from these criminals.<sup>15</sup>

The Indrajit Gupta Committee was constituted in 1998 to explore the feasibility of and suggest viable measures for providing State funding to recognized political parties. It had considered the aspect of maintenance of accounts by political parties and their audit, ban on donations by companies to political parties, prohibiting inclusion of expenses of political parties in the election expenses of candidates, and empowering of Election Commission of India to fix a ceiling on election expenses before every General Election.<sup>16</sup> Acting upon the above recommendations, the Election Commission of India had adopted a few best practices aimed at ensuring a vibrant democracy, cleaner politics, fairer elections, ideal members of legislative houses, true representation, and so on. In other words, the entire gamut of electoral reforms concentrates primarily on widening the ethos of democracy and making it citizen-centric.

**Some Of The Landmark Judgment Ensuring Fair Election :** The following are some of the vital judgments delivered by the Supreme Court which have immensely contributed to the reduction of malpractices in the election

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#### **Union of India v. Association of Democratic Reforms<sup>17</sup>**

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<sup>5</sup> Bakshi P.M.. (2010).*The Constitution of India*. 10<sup>th</sup> Edition Universal Law Publishing Co. Pvt. Ltd.

<sup>6</sup> Article 324 deals with the Superintendence, direction, and control of elections

<sup>7</sup> Article 325 of the Constitution

<sup>8</sup> Article 326 of the Constitution

<sup>9</sup> Article 327 of the Constitution

<sup>10</sup> Article 328 of the Constitution

<sup>11</sup> Article 329 of the Constitution

<sup>12</sup> Supra note 1.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> (2002) 5 SCC 294

The landmark judgment, in this case, marked the beginning of a new era in the field of Indian politics. In this case, an NGO named association of democratic reform filed a petition in the Court to compel the implementation of certain recommendations to make the electoral process in India more fair, transparent, and equitable. The Court called upon the Election Commission to direct to secure affidavits by the candidates relating to their criminal charges in the exercise of its powers under Article 324 of the Constitution. It was also directed by the Hon'ble Supreme Court to the candidate to furnish all the details relating to the assets of the candidate including those of his/her spouse and the educational qualification of the candidate so that the details of the election candidate come out in the public and no one gets to stay in the dark. This judgment led the parliament to amend the Representation of Peoples Act.

**Peoples Union for Civil Liberties (PUCL) v Union of India & Ors.<sup>18</sup>** : In this case, a writ petition was filed before the Hon'ble Supreme Court challenging Section 33-B of Representation of Peoples Act, 1951 and questioned the legality of the said provision. Section 33-B protects the candidate from disclosing any additional information and it was added through amendment in the Act after the Supreme Court verdict in Union of India v Association of Democratic Reforms. It was held by the court in its judgment that a democratic government was established over the will of the people. A voter expresses his choice through his right to freedom of voting which further entitles him to secure information about the candidate. Article 19(1)(a) of the Constitution while assuring freedom of expression grants the right to know as an auxiliary right under it. Hence, stagnating right to information which is constitutionally given rights to the voter held Section 33-B as unconstitutional.

**Lily Thomas v. Union of India judgment<sup>19</sup>** : This case pertains to the disqualification of MPs and MLAs from the Parliament. Two petitions were filed in the Supreme Court, one by advocate Lily Thomas and the other by an NGO "Lok Prahari" questioning constitutionality of the provision 8(4) of the Representation of Peoples Act. Section 8(4) of the Act removes disqualification of elected candidates if he appeals against conviction of the criminal charges within 3 months. The Apex Court had declared Section 8(4) of the Representation of Peoples Act as ultra vires to the Constitution considering Art 101(3)(a) and Article 190 (3)(a) and hence removed.

**Public Interest Foundation v Union of India<sup>20</sup>** : The petitioners in this ask the Court to go beyond what is provided by Article 102(a) to (d) and the law made by the Parliament under Article 102(e) and further to direct the Election Commission to restrict political parties from granting tickets to or accepting support from independent candidates having criminal backgrounds. The constitutional bench of the Supreme Court in denying to abide by the suggestion of the petitioner held that if the Court do so it would be in violation of the basic principle of the Constitution, i.e., separation of power. However, the Supreme Court issued directions to the Election Commission by exercising its powers under Articles 129 and 142 of the Constitution to fill up a form containing all the necessary particulars including pending criminal cases. The candidate is also required to inform about his pending cases to the party to which he belongs and the same should be published on the official website of the party as well as issue a declaration in the most widely circulated newspaper in the locality about such antecedents of the candidate.

**Lok Prahari v. Union of India<sup>21</sup>** : The petition was filed seeking the disclosure of the sources of income at the time of filing the nomination of the contesting candidates. The petition was filed in the context of the report of the Central Board of Direct Tax on the alleged substantial increase in the assets of candidates. The Court in rendering the judgment held that if there is no rationality between the assets and the sources of income, then one can reasonably infer that there is some sort of abuse of the constitutional office of the Legislator.

**Rambabu Singh Thakur v Sunil Arora<sup>22</sup>** : In this case, a contempt petition was filed before the SC showing the continued pace of the criminalization of politics and bringing attention to the complete disregard of the Apex Court's directions in Public Interest Foundation v. Union of India. The Court over and again uphold its previous guidelines and directed for strict implementation of the same.

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<sup>18</sup> AIR 2003 SC 2363

<sup>19</sup> (2013) 7 SCC 653

<sup>20</sup> Decided on 25 September, 2018

<sup>21</sup> WP (C) 784/2015

<sup>22</sup> CONTEMPT PET. (C) NO. 2192 OF 2018 decided on 13 February 2020

**Institutional Approach to Cleansing the Election in India :** The Election Commission of India issues a Model Code of Conduct for political parties and candidates in every election to ensure free and fair elections. The Commission circulated its first Code of Conduct in 1971 during the fifth general elections and the same has been revised on various occasions. The Code of Conduct lays down guidelines for political parties and candidates on their conduct during the elections. Under the Code A provision was made that from the time the election was announced by the Commission, Ministers and other Authorities would be prohibited to do any act which may have the effect of influencing the voters, namely, announcement of any financial grants, make promises for the construction of roads and appointments related promises, etc. In June 2002, following the direction of the Supreme Court the Election Commission issued an order under Articles 324 to the candidates to intimate about his/her criminal records; assets (both movable and immovable) of oneself, spouses, and the dependents through an affidavit. These were mandatory qualifications of candidate for filing his/her nomination papers for election to the Houses and the State Legislative Assemblies. The order made it clear that failing to furnish the relevant affidavit would be considered as a violation of the Supreme Court's order and the nomination papers would be liable to be rejected by the Returning Officer. Furnishing of wrong or incomplete information necessarily leads to the rejection of nomination papers, apart from inviting penal consequences under the Indian Penal Code. The 2004 General Elections were conducted under these rules. The above order was an effective step to make democracy healthy and free from corruption. Citizens have every right to know about the persons whom they would elect as their representatives. The Election Commission directed all Returning Officers to display the copies of nomination papers and affidavits filed by candidates to the general public and print and electronic media, free of cost.<sup>23</sup>

## II. CONCLUSION

Holding a periodic election is the signpost of a well-functioning democracy. Through the election, people exercise their freedom of opinion by cast their vote. It provides legitimacy to the government. Due to mushrooming growth of political parties and the increasing complexity of the prevailing situation the impression of a free and fair election is no longer persists in India. The role of the Election Commission of India in conducting free and fair elections has become more crucial for the consolidation of India's democracy. Agreeing with the initiative taken and development made towards reforming the electoral process, it is realized that somewhere still the link is missing between what is done and what yet to be done.

Hence, the researcher recommended the following measures are to be adopted to achieve the reform as well as cleansing the election –

- i. The Representation of Peoples Act, 1951 should be amended and there should be stricter laws against serious offenders,
- ii. Separate audit committees should be required to be set up as a prerequisite by the parties in order to create transparency as to the funding of the parties,
- iii. Fast track courts should be established for dealing with criminal cases of candidates,
- iv. Anti-Defection laws should be made stricter,
- v. More autonomy should be provided to the Election Commission of India and powers to impose punitive sanctions should be granted as the courts alone cannot carve out and impose the provisions.
- vi. The bureaucracy should act more proactively in shattering the political-corporate nexus.
- vii. The party heads should ensure transparency between the people and the party and should improve the inner-party democracy.

Finally, the election process will reform in true sense if the electoral machinery works in systematic manner and adhered to the electoral principles at all levels. Press and public opinion can play a substantial role in pushing through reforms. Last but not the least, in view of the above discussions, it would not be altogether incorrect to say that if we strictly adhered to these principles a clean electoral process will no longer be a daydream, but become a fast-attaining reality.

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