

# Electoral Reforms and Legislative Resolutions in a Big Democratic

## India: An Analysis

Mohammad Masliuddin<sup>1\*</sup> Pedamalla Sreenivasa Rao<sup>2</sup>

1. Department of Public Administration & Human Resource Management, Kakatiya University, Warangal, Andhra Pradesh, India.
2. Department of Public Administration & Human Resource Management, Kakatiya University, Warangal, Andhra Pradesh, India

\* E-mail of the corresponding author: [dr.md.masliuddin@gmail.com](mailto:dr.md.masliuddin@gmail.com)

### Abstract

Elections are one of the most important features of the democratic process which constitutes the sign post of democracy. It grants people a government and the government has constitutional right to govern those who elect it. Elections provide an opportunity to the people to express their faith in the government from time to time and change it when the need arises. Elections symbolize the sovereignty of the people and provide legitimacy to the authority of the government. Thus, free and fair elections are indispensable for the success of democracy. In a democratic country like India, people have the real power and choice to elect their representatives. By this only the real welfare state will arise. Because now-a-days people all over the world want welfare state only. The present paper focuses on the importance of electoral reforms and legislative resolutions in India.

**Keywords:** Democracy, Government, Sovereignty

### 1. Introduction

India is a vast country with a population of 1.22 billions as per 2011 census. It has 28 states and 7 union territories with 545 constituencies for elections to central legislature and more than 5200 constituencies to state legislatures. So far, elections to Lok Sabha (House of People) were held 15 times, the last being held in 2009. Even in the first elections of independent India (1951-52), there were 489 voting constituencies for Lok Sabha and 5,283 constituencies of state legislatures. In the 1951-52 elections, there were 1,800 candidates contested for 489 seats of Lok Sabha and 15000 candidates for 5283 seats of states legislatures. During the first and second general elections, polls to the central and state legislatures were simultaneously held. In all later elections the elections to several state legislatures followed a time schedule different from national elections. In addition there are always some by-elections in one part of the country or other.

The above facts show the gigantic nature of Indian election process. The successful conduct of elections since 1952, in spite of very serious difficulties, is a proof that democracy has taken deep roots in India. Till a few decades ago India was considered to be a under developed country with a huge illiterates, rural oriented tradition-bound and caste-ridden population. Vast distances involved the inaccessible terrain in several constituencies, problems of mobilizing sufficient staff for election duty and providing security—all these are major obstacles for conducting free and fair elections. However, the election commission gained a wide knowledge of difficulties of conducting elections year by year after conducting several Lok Sabha and State Assembly elections.

#### 1.1 Features of Indian Electoral System

The followings are the main features of Indian Electoral System

- Voting is through secret ballot and all adults above 18 years can vote.
- There is a single electoral roll for all citizens in each constituency. There are no separate electoral rolls

on caste/religious lines.

- There is a provision for reservation of seats for Scheduled Castes and Scheduled Tribes, but election is only through the joint electorate.
- There is an independent election commission, which is responsible for free and fair elections.
- Political parties with clear-cut ideologies have to be registered with the election commission which is a link between people and government.
- All the constituencies are single member type. The elections to house of people and state legislatures are by direct election. (Elections of President and Vice-President of India and elections to Rajya Sabha and some state legislative council are by indirect election.)
- All election disputes are settled at High Courts and appeal to Supreme Court can be made.

### **1.2 The Maladies of Indian Electoral System**

Some of the maladies from which the Indian Election Process faces are as follow:

- i. Free flow of money to influence voters.
- ii. Use of muscle power to intimidate voters and election staff.
- iii. Rigging in elections and booth capturing with the help of anti-social elements.
- iv. Exploiting of the caste and religious differences by unscrupulous politician to their fullest advantage.
- v. Malpractices by the party in power (using government controlled media, machinery and establishment for the benefit of candidates of the ruling party; collection of huge funds through indirect influence of party in power).
- vi. Influencing of election process by criminal elements.

Add to these difficulties, there has been proliferation of small political parties resulting in the emergence of too many political parties having no clear-cut economic and political ideology. After remaining in the Indian National Congress (a political party which ruled at the Centre for three decades after attaining independence), some of the politicians and elected representatives, making mockery of elections, resigned from congress for their own selfish reasons. After coming out of congress party they formed many political parties without clear-cut ideologies. This has led to the unethical and unhealthy culture of defection of the candidates from one party to the other with selfish interests.

Such wide spread defections crippled the governments at both the centre and the state, stalling economic progress and social reforms. Many of the defecting politicians played on the caste factor and formed caste based parties resulting in increase of casteism in politics. The existing law was found to be inadequate to stop such defections.

Some ruling party members fell prey to the temptation of misusing government machinery to win elections. Though the election commission made several recommendations for reforms, some vested interests and powerful politicians blocked all legislation to make reforms.

Indian people were exposed to election process right from 1930s, in the elections to Municipalities, District Boards and for some seats in state legislatures under British Rule. After participating in these elections unscrupulous politicians who were thirsty for power learnt the tricks of the trade right from those days. So after the election procedure started in Free India, politicians started misusing the election process. They took advantage of two deficiencies in the Indian election process, namely, the backwardness of the illiterate and caste bound voters and the difficulties faced by the officers conducting the elections.

### **1.3 Electoral Reforms: The Legislative Attempts**

The parliament has passed several legislations from time to time to reform the election process and ensure free and fair elections. Some of such legislations include:

- Representation of People's Act 1950, 1951.
- President and Vice Presidential Election Act 1952
- Prohibition of simultaneous Membership Rules 1950
- Registration of Electoral Rules 1960
- Conduct of Election Rules 1961
- Election Symbols Order 1968
- Arms Act 1959

However, it has been found which these legislations could not succeed in ensuring fair elections and in particular followed to check and focusing evils relating to elections. These above Acts of Parliament did not contain the following specific provisions:

- Malpractices by candidates,
- Money power in elections and
- Entry of criminals in houses of legislature at central and state level.

Accordingly the Parliament has initiated vigorous action to introduce several electoral reforms and plug the loopholes in the earlier legislation. Credit for this should be given both to the reform minded elected representatives and also to the election Commission, which suggested stringent measures to prevent malpractices in elections.

### **2. Electoral Reforms: An Overview**

People observed serious malpractices in elections and there was criticism in the parliament and by the press and intelligentsia. The election commission also realized the necessity of urgent reforms. The Government has appointed committees like Justice Tarkunde Committee (1975) and Dinesh Goswami Committee (1990) recommended extensive electoral reforms. The reforms have considerably transformed the election process. Some of the important legislative resolutions pertaining to the electoral reforms. The reforms have considerably transformed the election process. Some of the important legislative resolutions pertaining to the electoral reforms are discussed below:

## **2.1 Constitution (61<sup>st</sup> amendment) Act 1988**

Voting age was reduced to 18 years with effect from 28-3-1989 by amending article 326 of the Constitution.

## **2.2 Representation of Peoples' Act (Amendment) 1996 (Amendments became effective from 1-8-1996)**

- a) Any Conviction under section 2 (Insulting Indian National Flag or Constitution of India) or Section 3 (preventing of singing National Anthem) of the "Prevention of insults to national honour Act 1971" will entail disqualification for a period of six years from contesting to parliament or state legislatures.
- b) Amount of security deposit for contesting to Parliament is enhanced from Rs. 500/- to Rs. 10,000/- (in case of S.C/S.T candidates from Rs.250/- to Rs.5, 000/- only). The security deposit for contesting to state legislatures is enhanced from Rs.250/- to Rs, 5,000/- (Incase of SC/ST candidates from Rs.125/- to Rs. 2500/- only). This is done to discourage non-serious candidates and to reduce multi-cornered contests.
- c) An independent candidate contesting for Parliament or Assembly has to be proposed by at least 10 persons of the constituency. In case of candidate of a recognized party only one proposer is sufficient.
- d) Interval between last date of withdrawal and date of poll is reduced from 20 days to 14 days.
- e) A candidate shall not contest for more than two constituencies (either parliamentary or assembly constituencies). The same restrictions apply to by-elections to House of People/State Assembly and also to biennial elections to Rajya Sabha and State Legislative Councils.
- f) Elections will not be countermanded on the death of a candidate. If the deceased candidate was put up by a recognized national or state party, an alternative candidate can be nominated within 7 days of issue of notice by the election commission about such death.
- g) Carrying fire arms (as defined in Arms act 1959) within neighborhood of the polling stations is a cognisable offence punishable with imprisonment up to 2 years or fine or both. Such fire arms will be confiscated and license will be revoked. These provisions will not apply to authorized police officers and election officers on duty.
- h) Sale or distribution of liquor with in the polling area is punishable with imprisonment for six months or with fine up to Rs. 2000/- or both.
- i) Bye elections to Parliament or state legislature will be held within 6 months of occurrence of a vacancy. However, if remainder of the term is less than 6 months or if election commission, in consultation with government, feels that it is difficult to hold elections for any other reason, then bye-election will not be held. The vacancy will be filled only in the next regular elections.

## **2.3 The Presidential and Vice-Presidential Elections (Amendment) Ordinance 1997**

It is increased number of proposers and seconderers to 50 each in place of ten for each presidential candidate. It increased proposers and seconders to 20 each in place of 5 for each vice presidential candidate. For election to both the offices the security deposit was increased to Rs. 15,000/- from Rs. 25,000/-

## **2.4 Section 60 of Representation of Peoples Act 1951**

A sub section was inserted for providing facility of postal ballot to certain sections of people in addition to existing categories like Armed forces personnel. The provision was meant to facilitate right of franchise to migrants from Kashmir Valley for general election to 12<sup>th</sup> Lok Sabha.

### **2.5 Section 61 A of Representation of Peoples Act 1951: (w.e.f. 15-3-1998)**

By this amendment use of Electronic Voting Machines (EVMs) in elections was introduced. It came into effect from March 15, 1998. EVMs were first introduced for use in certain constituencies in the states of Rajasthan, Madhya Pradesh and Delhi. Now they are used in all elections. The last election to 15<sup>th</sup> Lok Sabha was held entirely by using EVMs. It was a revolutionary step and facilitated very quick announcement of results.

### **2.6 Act I of 1989 (Amending to Section 58 of Representation of Peoples Act 1951)**

This amendment provides for adjournment of poll or countermanding in case of booth capturing. The definition of booth capturing was given in Representation of Peoples Act (RPA) 1951. It includes:

- a) forcing polling officers to surrender ballot boxes, EVMs etc.
- b) ensuring that only a certain candidate's supporter vote and others cannot vote.
- c) threatening of voters, not to go to polling stations.
- d) seizure of ballot papers, EVMs etc and seizure of the place of counting itself.
- e) convenience of officials with candidates in booth capturing in any of the above methods.
- f) section 135A provides for jail term of 6 months to 2 years along with fine. If such offence is committed by government official he is punishable with imprisonment of 1 to 3 years along with fine.

Disclosing of particulars of convictions/punishments and assets and liabilities by contesting candidates.

### **2.7 Representation of Peoples Act (III Amendment) Act 2002**

It amended Representation of Peoples Act 1951 and as a result the following changes were brought about:

- a) The candidate for Parliament or State Legislature has to disclose (1) whether he was accused of any offence punishable with conviction for 2 years or more in a case in which charges were already framed, or (2) whether he was convicted for one year or more for any offence and whether punishment has been awarded.
- b) Every candidate for Parliament and assembly elections has to declare before the presiding officer of parliament (i.e speaker) the assets and liabilities of himself and also his spouse and dependent children.
- c) He will be liable to be punished as for a criminal offence if he furnished any wrong affidavit. He would also be punished for furnishing any false information in nomination papers.

### **2.8 Representation of Peoples Act (Amendment) Act 2003**

The punishments for above irregularities are given in the amended section 8 of RPA Act 1951. They are:

- (a) Conviction plus disqualification for 6 years, or
- (b) Fine plus disqualification for 6 years.

Hereafter a person who is already serving a prison term cannot contest elections to Parliament and State Legislatures. Candidates (both for parliament and State elections) have to disclose the fact whether they have been charged with offences punishable by imprisonment of 2 years or more. If they are elected, they have to declare their assets and liabilities to presiding officers.

### **2.9 Right to know the antecedents of candidates-The judicial dicta**

In March 2003, the Supreme Court declared certain provisions in Representation of Peoples Act (III Amendment) Act 2002 (Section 33b) as null and void. The provisions which were struck down are as under:

Section 33(b) of Representation of Peoples Act, (RPA) (amendment) Act 2002 states that "Notwithstanding anything contained in any judgment of any court or any order of EC, no candidate shall be liable to disclose or furnish any

information, in respect of his election, which is not required to be disclosed or furnished under the Act or rules made there under”.

The court held that voters have a fundamental right to know the antecedents of a candidate to enable them to vote intelligently and that therefore the section 33(b) is in violation of fundamental rights of a citizen.

As a result the Election Commission issued fresh guidelines regarding section 33-b of Representation of Peoples Act, 2002: The guidelines state that:

- i) Failure of candidates to furnish in an affidavit their antecedents including any criminal record is violative of Supreme Court order of March 2003. In such circumstances the Returning officer is free to reject the nomination papers not accompanied by required affidavit.
- ii) Every candidate is to file an affidavit along with nomination papers whether any case is pending against him in courts and if so details of the case, the movable and immovable assets owned by candidate or his dependents, his/her liabilities to public financial institutions and government dues and his educational qualifications.
- iii) Such affidavit should be sworn before a Ist class Magistrate or Notary Public or Commissioner appointed by High Court.
- iv) The information furnished by each candidate will be supplied to the respective returning officer who will display a copy in his office notice board and also supply copied of such affidavits to other candidates and also representatives of media.

#### **2.10 Anti-defection law: Constitution (52<sup>nd</sup> Amendment) 1985**

The Anti-defection law passed in 1985 put a ban on political defections. In addition, the constitution (52<sup>nd</sup> Amendment) Act amended articles 101, 102, 190, 191 of Constitution and added the Tenth schedule.

By the provisions of this schedule a Member of Parliament or state legislature belonging to a political party will be disqualified, if he voluntarily resigns from his party or votes against his party directive or abstains from voting.

Constitution (91<sup>st</sup> amendment) Act 2003 further amended the Anti-defection law of 1985. The amendment deleted para 3 of tenth schedule (which allowed 1/3 party to split without attracting provision of Anti-defection law.) The effect is as follows:

- a) A Member of Parliament or State Legislature is disqualified:
  - If he voluntarily gives up membership of his party.
  - If he votes against his party or even abstains in voting.
  - If an independent member joins a political party.
- b) Disqualification results in losing his seat in parliament/assembly.
- c) The above provision does not apply if there is a split in the party with 1/3 of members coming out to form a new party or 2/3 members merge with another party. (Since amended by 91<sup>st</sup> Amendment Act 2003)
- d) The above provisions also do not apply to speaker/Dy.Speaker that is required to resign membership of his party to become nonpartisan.
- e) Even if 1/3 members defected, these members can not hold any remunerative political positions.
- f) The final decision for disqualifying a member and debarring him from holding a post rests, with speaker.
- g) The cases regarding disqualification do not fall within jurisdiction of courts. However, in a judgment in 1993, the Supreme Court ordered that speaker's action disqualifying candidate is subject to judicial appeal.

### 2.11 Ceiling on candidate's election expenditure

As per Oct 2002 order of Election Commission, ceiling at different rates was put for election expenditure of candidates for central and state legislatures as follows:

- i) For Lok Sabha elections in 22 states the ceiling is fixed as Rs. 25 lakhs. In smaller states the ceiling is from Rs. 14 lakhs to Rs. 22 lakhs (previously this ceiling for entire India was Rs. 5 lakh only.)
- ii) For Lok Sabha elections in Union Territories the ceiling is between Rs. 10 Lakhs to Rs. 25 Lakhs (In Delhi it is Rs. 25 Lakhs).
- iii) For assembly constituencies the ceiling is Rs. 5 lakhs to Rs. 10 lakhs depending on size of constituencies.
- iv) The ceiling applies to expenditure by candidates or his supporters/relatives on behalf of the candidate.
- v) Expenditure of the party for campaigning on behalf of the candidate is also included in this ceiling. But it excluded the expenditure on travel of party leaders on behalf of the candidates. It also excludes the expenditure on campaign material.
- vi) A register should be maintained showing expenditure by candidate on daily basis. The party should also maintain such a register showing expenditure on each candidate separately.

### 3. Conclusion

Despite the above reforms the large numbers of criminals are able to contest elections circumventing rules. Hence, election campaigning has to become more and more peaceful. The private companies should not be permitted to fund election expenditure of parties in a regulated or clandestine way. The government should allot funds to each candidate for election expenditure. The religious parties should be banned from contesting elections. Election expenditure of political parties for candidates should be kept strictly within limits. Political parties should follow a self imposed code of conduct and ensure that only service oriented and capable candidates are elected.

### References

- Bhaskara Rao, V., (1987), "General Elections in India", Uppal Publishing House, New Delhi.
- Tarkunde, V.M., (1978), "Money Power in Elections." Report of the Committee on Election Expense.
- Campbell Angles (1960), "American Voter for Concept of Maintaining Realignment Vote."
- Masliuddin, Md., and Sujata Kumari, TVS, (1998), "Electoral Reforms: An Overview.", Yojana.
- Dash, Siddhartha (2006): 'Need for Electoral Reforms', Orissa Review, January.
- Prashar, A.S. (2002): 'Feeling the Heat, Parties Talk of Hung House', The Tribune, February 7.



**Dr. Mohammad Masliuddin** obtained Ph.D., from Kakatiya University in 2009 in Public Administration and Human Resource Management. He did M.Phil and M.A. (Pub.Admn & HRM) from the same University. Apart from this he did M.A. (English), M.Phil. (English). He has published 20 research articles for Yojana, Telugu Academy, SDLCE, Telugu Vidyarthi, Veekshanam, Geeturai and various university journals. He is one of the content developers of New Millenium Publications for Ist standard to V th Standard for English Readers. He wrote 4 Lessons of SDLCE, Kakatiya University for PG students in Rural Development and 16 lessons for M.A. (English). He attended 3 International Seminars and 7 National Seminars. He served as the Associate Professor of Management at Mahaboobia Panjetan Post Graduate College, Warangal of Kakatiya University. He teaches Organizational Behaviour, Entrepreneur Development. He has recently visited Eritrea, North East Africa and served there as the faculty of Communication Skills. He taught at University Post Graduate College, Nirmal, Kakatiya University, University Arts & Science College, Kakatiya University, Warangal.



**Dr. Pedamalla Sreenivas Rao** obtained Ph.D., from Kakatiya University in the Dept. of Public Administration and HRM in 2006. He did Post graduation in Public Administration apart from this he did his Law Degree from the same University. He got best research scholar award and wrote 50 articles in national and international journals and attended 10 National Seminars. Presently he is an Assistant Professor at Dept. of Public Administration & HRM, Kakatiya University, Warangal. His specialization is welfare administration. He is the director of Cell for Persons with Disabilities, Kakatiya University. He did his Ph.D on “Administration of Welfare Programmes for Physically Challenged Persons in Andhra Pradesh – A Study.” His book was published in Germany, UK entitled “Administration of Welfare Programmes for Differently abled: An Indian Experience.” He has a depth experience in the problems of Physically Challenged Persons. He is the first research scholar, who did his research on Physically Challenged Persons in the country level.