

## Need of Fundamental Reforms in Constitution to Eliminate Criminalization of Politics

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### Abstract:

It is difficult to maintain a healthy democracy in a country as diverse as India. Constant threats to democracy, such as political criminalization, have made it more difficult than ever to maintain the country's government working properly. This increasingly shady collaboration of politicians and criminals is bad on multiple fronts. This means that free and fair elections are critical to the democratic system's vitality. This organisation is in charge of both planning and supervising the election. The lower chambers of parliament (Lok Sabha and Rajya Sabha), state legislative assemblies and councils, and state legislative councils are all overseen by the same body that oversees the country's high-profile presidential and vice-presidential elections. Nonetheless, the electoral process has been plagued by a number of frustrating phases and situations throughout its history. In fact, circumstances like this encourage antisocial elements to participate in electoral reforms.

Keywords: Criminalisation, Politics, Democracy, Elections, Reforms

### Introduction:

The menace of terrorism, enormous socioeconomic inequality, communal strife, large wealth differences, and the monster of poverty were all threatening Indian democracy. The criminalization of politics, on the other hand, was by far the most serious of them. The phrase "criminalization of politics" refers to the use of politics or political influence for the purpose of reaping illegal financial or other gains. When it became clear that certain people had used or were exploiting political authority to gain unfair advantages, it was sometimes referred to as the "criminalization of politics." Political criminalization is now a common occurrence. Politicians used to recruit criminals to assist them in capturing voting booths and so winning elections. At this point, the lawbreakers had begun to infiltrate federal and state legislatures.

Many politicians in India have recently grabbed headlines for all the wrong reasons. They also did not make headlines for doing groundbreaking efforts to help the needy. Consider Shibu Soren, who was imprisoned for a crime committed 30 years ago. From Laloo Prasad Yadav's effort to bribe voters before of the Bihar Assembly elections to Pappu Yadav, who has broken every rule in the jail handbook, India's elected leaders have a history of breaking the law at some time. In 1996, the country's Election Commission determined that over seventy members of parliament and over one hundred members of state legislatures had a "criminal background." A rising number of elected officials have been accused of wrongdoing, censured by the courts, or convicted of crimes in recent years. Three ministers served in the previous Bharatiya Janata Party administration while facing legal processes and charges. This explains at least six cabinet members' current situation in the impending Congress Party-led administration.

India's electoral politics are currently plagued with criminality. Voters, legislators, and the state's own police and judicial institutions are all to fault. People in India have little faith in the democratic process and its potential to create effective administration. This means accepting the inevitable criminalization of politics. The ineffectiveness of legislation barring convicts from running for public office contributes to this tendency. Persons are only barred from running for office if they have been convicted of at least two distinct offences. Because of this, the door is

wide open for criminals who have been charged, many of them have significant criminal records. It's perplexing that a person can't run for office after being convicted on two charges. The diverse conceptualizations are the essence of the problem. As a result, until and until a person is convicted of a crime, he is not a criminal. A person cannot be barred from running for office only because of charges or current processes. As a result, legislation must be amended to reflect this fact.

In *Union of India v. Association for Democratic Reforms*, the Supreme Court of India ruled that the right to information under Article 19(1)(a) of the Constitution includes the right to know the antecedents, including criminal history, or assets of candidates, and that this information is critical for the survival of democracy. The Supreme Court issued an order on May 2, 2002, requiring the Election Commission to include an affidavit from each candidate for Parliament or the State Legislature detailing whether or not they had previously been convicted, acquitted, or discharged of any criminal offence, and, if so, whether or not they were accused in any pending case of any offence punishable by imprisonment for two years or more, and in which jurisdiction the case was filed. If this is the case, specifications, as well as the candidate's assets (immovable, moveable, bank balance, etc.), liabilities (including any debts payable to a public financial institution or the government), and educational history, are necessary. The Right to Information Act of 2005 is a landmark law that penalizes government employees who take too long to reply to information requests from citizens. Many government employees live extravagantly above their means. In India, several government officials have been discovered lying on affidavits given to the Election Commission of India or the Vigilance Commission. The appropriate authorities are not doing adequate checks on these affidavits. Every day, fresh plans and scandals emerge, and politicians are continually accusing one another of collusion. Whereas such authorities keep mute, behaving as though corrupt public employees' sworn assertions are true. The dishonest public employees are so terrified of being exposed that they refuse to comply with the RTI Act and conceal information that is owed to the public.

Those in public service who are caught spending lavishly may try to avoid accountability by saying the funds originated from their political party or a well-wisher. In any event, no such information can be found in those entities' relevant ledgers. Accepting anything of value in excess of one hundred rupees (' 250) in the form of hospitality, gift, or favour is banned in India for government employees. Nonetheless, RTI can be used to enquire about these. The freedom to obtain information is a fundamental human right. The right to know is related to the right to information, with one important distinction. A government's provision of a right to information is based on the people's inherent right to know. Natural rights have no legal standing until they are accorded adequate legal attention. As a result, because the right to know is implied in the right to free speech and expression, it must be prioritised. A right to information will result in transparency in government acts and access to remedy for wrongs suffered.

Those interested in providing comments to the Parliamentary Standing Committee on Personnel, Public Grievances, Law, and Justice on Electoral Reforms can do so here. The Honorable Chairman of the Rajya Sabha has requested a thorough report on the problem of "Electoral Reforms," and has consequently assigned the matter to a committee chaired by Rajya Sabha Member of Parliament Dr. E. M. SudarsanaNatchiappan.

While investigating "Criminalization of Politics" as part of its examination of "Electoral Reforms," the Committee has decided to first consider the issue of disqualifying individuals from contesting elections based on specific charges filed against them by a competent Court for offenses punishable by imprisonment for five years or more.

To that end, the Committee must consider the Election Commission of India's proposal to amend the Representation of the People Act of 1951 to prohibit such people from holding public office. The committee discussed the following language for a new section 8B of the Representation of the People Act of 1951, as suggested by India's Law Commission in its 170th Report on "Electoral Law Reform."

"8B. Disqualification on charge framing for certain offences: - A person against whom a charge has been framed under:

- a) Sections 153A, 171E, 171F, 171G, 171H, 171-I, subsection (1) or sub-section (2) of Section 376, subsection (2) or sub-section (3) of Section 505 of the Indian Penal Code (45 of 1860);
- b) Sections 10 to 12 of the Unlawful Activities Act
- c) with the exception of Section 27, the punitive provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985);
- d) Sections 125, 135, 135A, or (2) of Section 136 of this Act;
- e) any other offence punishable by imprisonment for life or death under any law will be disqualified for a term of five years from the date of formulating the charge, provided he is not acquitted.

In India, politics has grown increasingly polarised and criminalised. When combined with other aspects, such as police politicisation, it poses a major threat to democracy. Politicians engaging the services of antisocial groups during election periods has been the most harmful technique. One of the most concerning aspects of the post-independence era is political parties' unrestrained use of muscular force to win elections. There is a close link between the two groups since criminals and mafia leaders are typically the ones that give muscle for political goals.

### **Justification of the Study**

For a democracy to work, it requires free and fair elections. The rule of law is crucial to the proper operation of democratic institutions. When people feel that elections are free and fair, they are more likely to support democratic institutions. Yet, if elections are corrupted, public faith in democracy and its institutions would erode. "The Present Election system has fostered the use of black money, casteism, misuse of administrative machinery, rigging, and even seizing of booths, thus eroding the confidence of the people toward the system as a whole," said Mohan Dharia, a former minister of state planning in India from 1971 to 1975. (Singh, 1976: p 243).

India's republican government is socialist, atheistic, and democratic. Since adopting a parliamentary democracy in the style of the British Empire, free and fair elections have become a central pillar of the political system of India. Regular state-wide and federal elections have taken place since 1952.

Indian democracy has reached a level of maturity that is the envy of the world, with all government organs, including the Election commission, operating at their highest levels of efficiency and honesty. A legislation established by parliament ensures both free and fair elections and a comprehensive electoral system. As a result of 17 General Elections, the public has a good idea of what to expect from the system. We still have several problems with the voting process. Some of these may be identified with relative ease. One issue is the rising price of holding elections, which is paid for not just by the government in the form of organisation, but also, and probably more crucially, by the parties and the candidates themselves, via expensive campaigning. Only a few individuals have enough money to run for office, and the others can't afford to do it on their own. This makes political parties and politicians increasingly reliant on corporate contributions. Most corporate contributions are either in cash or otherwise difficult to account for. Another source is the wealth generated by organised crime groups such as drug trafficking organisations, gangs, and tycoons. It is more crucial than money to have the levers of power functioning in favour of candidates from dominant castes and groups within a district. The study's primary focus is on figuring out whether or not major reforms are required to stop the criminalization of politics.

### **Research Methods**

Archival research will be used to wrap up this inquiry. Data for this study came from both primary and secondary resources. Primary sources included election candidate affidavits and reports from organisations like the Vohra Committee. Books and articles by respected scholars from scholarly journals were also consulted for this investigation.

### **History of Electoral Reforms**

Recent Electoral System Reforms in India In general, there are two viewpoints on electoral reforms in India: one that is required to better the democratisation process in society, and the other that may undermine the source of the democratic endeavour. The present paradigm for electoral reform is a managerial-bureaucratic perspective that tends to reduce the franchise.

No discussion of election developments in modern India can be accepted at face value unless it is contextualised within the larger framework of the country's continuing democratisation process. India's democratic process began in the early 1950s, due to a constitutional provision granting universal adult suffrage to anybody over the age of 21. (later lowered to 18 years). People's greater and more active involvement has resulted in a democratic revolution of sorts, particularly in the previous decade. Nonetheless, the institutions of the democratic system have not been modernised to deal with the rising strain. Overall, the strength of these institutions has been seriously weakened. Increased citizen involvement, as well as a decline in trust in the election process, both lead to stressful circumstances.

To be effective, electoral reforms must guarantee that the voting process truly represents the democratic will of the people, particularly those who have been denied their due seat at the table for far too long. Any recommendation for voting reform must be evaluated in terms of its potential to enhance democratisation.

Administrative or procedural reforms should take a second seat to resolving the underlying problems of disorganisation and malfeasance in the voting process that stifle democratic development.

The topic of electoral reforms has been taken up by various government committees as detailed below:

- 1) Goswami Committee on Electoral Reforms (1990)
- 2) Vohra Committee Report (1993)
- 3) Indrajit Gupta Committee on State Funding of Elections (1998)
- 4) Law Commission Report on Reform of the Electoral Laws (1999)
- 5) National Commission to Review the Working of the Constitution (2001)
- 6) Election Commission of India - Proposed Electoral Reforms (2004)
- 7) The Second Administrative Reforms Commission (2008)

Many election changes have been proposed throughout the years in an attempt to reestablish public faith in the democratic electoral system. It's no coincidence that the democratic revolt has coincided with a renewed emphasis on electoral reform in recent years. As we have seen, the voices of the urban middle classes are leading this new dialogue, which is suffering depoliticization and, perhaps more importantly, a disillusionment with democracy. Many non-government organisations (NGOs) have done substantial study and analysis on election changes, which has greatly expanded the public discussion. If maintaining a somewhat honest voting system is one of Indian democracy's greatest achievements, then combating election malpractices and attendant political diseases is one of the country's most important concerns today. Our recent experience underscores the importance of developing a substantive and conceptual political strategy on this problem. Such a strategy can channel the current wave of popular excitement toward democratic consolidation, if not political change. Otherwise, the widespread dissatisfaction with this subject might be utilised to further an overtly anti-political and perhaps anti-democratic agenda.

Many electoral reform research and commission proposals align with managerial-bureaucratic improvements aimed at streamlining election administration at the price of democracy. Some of these recommendations have already been implemented. Both the projected increase in the security deposit and the percentage of valid votes cast in order to maintain the deposit are steps in the right direction. Nonetheless, virtually everyone thinks that the way elections are funded, the power of the Election Commission, and the basic rules and regulations regulating elections should be changed to make them more accessible to the common person.

Committees have discussed modifying the fundamental framework of the electoral system, such as eliminating the First Past the Post (FPTP) form of representation. In this context, it's worth revisiting some of the recent modifications and ideas for voting system changes.

In 1971, the two Houses of Parliament formed a joint parliamentary committee with Jagannath Rao as chairman, marking the first attempt at what might be termed complete changes. The committee submitted its reports on January 18 and March 10, 1972, respectively. The first covered basic problems such as voting age, electoral system, and so on, while the second featured measures to amend the 1950 and 1951 Representation of the People Acts. Many of the committee's proposals for modifying the People's Representation Acts were incorporated in a bill introduced in the Lok Sabha that year (Lok Sabha Bill No.100 of 1973). Some critical provisions of the original Bill were omitted, including:

- i. Specifying four qualifying dates in a year rather than one for voter qualifications.
- ii. Prohibiting arbitrary transfers of election personnel on the eve of elections.
- iii. Persons holding contracts with the government or any public sector organisation are barred from running for office.
- iv. Election expenses are calculated from the date of notification of the election rather than the date of nomination.
- v. Increased penalties for particular offences, etc.

This bill was not passed by Lok Sabha in 1975 before dissolution and got lapsed. Thereafter, another important development took place when during the period from 1974 to 1976 some important amendments were placed in section 77 relating to election expenses which are mentioned here below-

- Election expenses to be counted from the date of nomination of the candidate and not from the date of nomination of the election (Act No. 40 of 1975);

- Election expenses by political parties or individuals other than the candidate or his agent not to be taken into account (Act No. 50 of 1974);
- Expenditure by a Government servant during his duty to be excluded (Act No. 40 of 1975). This was apparently to shield Mrs. Gandhi whose election had been declared void because of some minor assistance she got from a government department (Gadkari, 1996: pp 13-14).

Slowly and steadily many discrepancies started creeping in the election system to bring a bad name to the Election commission and also the government. Caste and communal conflicts started taking place and there was an eclipse of idealism and ideology in public life. The evil of booth capturing and rigging the elections made a mockery of free and fair elections. Problems started from Bihar and spread over to the other states (Linaye, 1987: p 194).

Reacting on the situation available at that time, S. Nihal Singh, Columnist had described Mr. T.N. Seshan as the most controversial chief election commissioner in India's electoral history.

Major election reforms started by the T.N. Seshan were;

- i. Issue of voter identification cards to all eligible voters.
- ii. Strict steps for execution election code of conduct.
- iii. Establish a spending cap for election candidates.
- iv. It is prohibited to distribute liquor or money during elections.
- v. Bribery or intimidation of voters is prohibited.
- vi. Campaigning using official apparatus. However, this practise is still prevalent.
- vii. Law enforcement during the election process.
- viii. Independence of the Indian Election Commission.
- ix. Prohibition on using loudspeakers or playing loud music without previous written permission. Candidates were prohibited from requesting votes based on caste or communal beliefs.
- x. Prohibition on using religious sites for political campaigning.

T.N. Seshan is responsible for the reforms in Indian elections. He sought to clean up Indian politics by emulating a number of major improvements from other countries, but his attempts were ultimately futile, and Indian politics remain dominated by the affluent (Election reforms by T. N. Seshan).

Elections in India have been plagued by a variety of issues, despite the fact that reform efforts have been ongoing for some time and have lately gained traction. Electoral reforms are the application of best practises for promoting democracy, cleaning up politics, holding fair elections, selecting ideal Legislative House members, and ensuring correct representation. Articles 324-329 of India's constitution deal with voting methods and modifications. Reforms to the electoral system attempt to make democracy more accessible to ordinary people by implementing universal adult suffrage, among other things.

Constitutional Articles related to electoral reforms

Article 324-329 deals with elections and electoral reforms.

- Article 324 addresses the election commission's supervision, direction, and control of elections (Sawant, 1991, SC 1745).
- Article 325 provides that no one shall be disqualified for inclusion in or claim to be included in a special electoral roll on the basis of religion, ethnicity, caste, or gender.
- Article 326 addresses elections to the House of the People and Legislative Assemblies of States as the basis for adult suffrage (Ahmadi, 1995, SCC (4) 611).
- Article 327 gives Parliament the authority to make provisions for legislative elections, while Article 328 gives the legislature of a state the authority to make provisions for legislative elections.
- Article 329 establishes a prohibition on Courts interfering in electoral matters (Ganguly, 1995, SC Pat 173).

### **Aspects of Electoral Reforms**

The Electoral Reforms contain the following aspects: -

- i. Transparency regarding the candidates' backgrounds.
- ii. Liberating the electoral process from the influence of money and muscle.
- iii. Forbidding the intersection of business and politics.
- iv. Enabling all eligible citizens to vote in a comfortable, friendly, and secure manner.
- v. Maintaining voting confidentiality
- vi. Fair registration and recognition of political parties, free of any influence.
- vii. The solution of removing illiterate voters from the voter rolls.
- viii. The media's nonpartisan role.
- ix. Effectively implementing the model code of conduct (Chakraborty, 2006, SC 3127).
- x. Streamlining electoral roll preparation.
- xi. Accelerating the electoral processes.
- xii. Making electoral processes more rational.

### Need of Electoral Reforms

The need for electoral reforms has also been felt mainly to shun the malicious people and malevolent activities they are involved in it. Their requirement can further be elaborated as follows-

- The election process should reflect current events rather than being imposed on contemporary society.
- To prohibit the criminalization of politics.
- To prevent the misuse of government machinery.
- To discourage the use of money and muscle power in election processes.
- To discourage non-serious candidates from running for office.
- Election processes should be neutral, with no bias toward any political parties.
- To increase citizens' trust in electoral processes.
- To use technology to advance election processes and stay current with modern methods.
- Some candidates run for two seats, so it is the need of the hour for candidates to pay the expenses incurred during the election of their second constituency.

### Conclusion

The election system many problems of good governance establish. This study is an attempt to analyze the role of the election commission in the electoral reforms. There are plenty of problems that are facing for making an effective state. Such as booth capturing, wrong use of government transport, corruption and so on. There are many other ways which used for enjoying authoritarian. That is why; we require the election amendment for making the trust of commoners in the election and strengthening the democracy. There are many steps has taken by the election commissioner. However, many steps are required to take. For example, a candidate participates only from one place, and not become a puppet should be natural. One candidate participates in an election from one family as well as the age of performing a job should be emitted. Moreover, it had better you perform actions in the election as a result; the lower-class individual will get the chance to participate in the election. Hence, people become more confident during democracy and election commissioners should be an unfavorable body and do not feel hesitant from anything.

It is imperative to consider these new political and electoral reforms for better, healthy, and improve democracy to remove corruption, inequalities, unemployment, and mis-governance.

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