

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 4

2021

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Electoral Reforms in India: An Analysis

SUNIL YADAV¹

ABSTRACT

Free and fair elections is the integral part of every democratic system but due to some reason the very essence of the democracy is said to be not properly functioning.

In India, the role of election has always been considered as a vital element of politics but due to the involvement of corrupt practices, massive corruption, violence in the electoral system, there is requirement to make changes in the old method of electoral system.

The Reforms in the Electoral system of India have always been considered as a topic of debate in India, since independence. The recent growth in the increase of electoral malpractices and moreover the issue that none of the proposals suggested by the various committees established have been considered by the Government spark the ongoing debate. It is well said that the Indian democracy is just like the ship which is floating in the choppy waters without being steered by anyone having grave risk which are lurking all around it. If the ship of democracy is not steered with appropriate directions, it might get hit with a rock and might get sink. Through this Article, the researcher had attempted to highlight the various proposals and various directions made by the committees which are set up by the government of India for ensuring free and fair election. Also, the measures taken by the Election Commission of India to curb the evil practice of Election. This Article also talked about the electoral reforms which law commission had insisted related to electoral process most prominently in its report in the year 1999, 2014, 2015.

Keywords: *Election, Electoral Reforms, Election Commission of India, Law Commission of India, Democracy.*

I. INTRODUCTION

India being a socialist, Secular, Democratic and Republic nation earned its Democracy through a long struggle of freedom. For maintaining the spirit of this Democracy, it is necessary that people should have a faith on the democratic institution and this faith shall only be maintained when the political institution are free from any criminal influence and there are free and fair election

Since 1952, India has been contesting the election both at national and international level. The Distortion in organizing the elections have occurred since then and these distortions have been

¹ Author is a LLM student at Law College Dehradun, Uttarakhand University, India.

increasing continuously in the successive election. The Election Commission of India, a constitutional body with power to conduct all election have been frequently expressing its concern over the increase of destruction in maintaining the spirit of Democracy viz. free and fair election. The Commission has made number of recommendations for amending the existing laws in order to check and eradicate the malpractices being performed in the elections. But nothing much have achieved since then.

Dr. B.R. Ambedkar in its speech in Constituent Assembly debate while introducing Draft Article 289 in the Constitution states that: *in the interest of purity and freedom of elections to the legislative bodies, it was of utmost importance that they should be freed from any kind of interference from the executive of the day....the whole of the election machinery should be in the hands of a Central Election Commission.....so that no injustice may be done to any citizen in India...*²

Irrespective of the fact that the Election Commission has served the Indian Democracy better than many other institutions but the fact of involvement of Election Commission in partisanship also cannot be denied.³

From long time, the need for reforms in electoral laws have been a center of discussion for the Parliament, the Government and the Press. With various committee from Dinesh Goswami Committee to Indrajit Committee, various reforms have been submitted to strengthen the electoral process. The Law Commission of India and the Election Commission of India has also taken initiative towards suggesting wide ranging reforms in the election process. The present paper discusses the recommendation proposed by the different committees made by Government of India and also by the Election Commission of India and the Law Commission of India in order to ensure the free and fair election.

II. RECOMMENDATION PROPOSED BY LAW COMMISSION OF INDIA

The Law Commission of India came forward with three reports proposing several changes in the electoral system in the year of 1999, 2014 and 2015. Following are the recommendation made by law commission in their reports:

(A) Reforms of the Electoral law (1999)

The Law Commission in its 170th Report suggest various amendments in the RPA and in the Constitution of India. The Commission was of the view that to ensure the internal democracy

² **Constituent Assembly Debates, Volume-VIII, available at:** <https://indiankanoon.org/doc/1336469/> (Visited on June 20, 2021)

³ B. Venkatesh Kumar, "Critical issues in Electoral Reforms", 63 *TIJPS* 73-88 (2002)

in the functioning of the political parties and to make them effective in achieving the constitutional goals, it is necessary to regulate their formation and functioning by law. The Commission suggested for amending the Tenth schedule of the Indian Constitution. It was suggested that if any member of any party decided to switch a party, he should resign from the membership of the House and must seek a fresh election.⁴

The Law Commission further proposed to amend the Representation of People Act, 1951 by suggesting that when a charge is framed by the criminal court for any of the specified offence, the candidate against whom such charge is framed should remain disqualified till S/he is acquitted.⁵

(B) Electoral Disqualification (2014)

The Law Commission in its 244th Report made a proposal to disqualify a candidate at the time of framing of charges by adopting such legal safeguards in order to curb the misuse. The Commission further suggest to include only those offence punishable with an imprisonment of five years and above. Such provision shall operate till the trial court acquit the candidate or for a period of six year whichever is earlier. On a question, if a charge is framed against a sitting MPs/MLAs, the Commission suggest that the trial must be concluded with in a year.⁶

The Commission also recommended to include conviction under section 125-A of RPA i.e. filling false affidavit as a ground of disqualification and also to enhanced the sentence of filing false affidavit to minimum two years.⁷

(C) Electoral reforms (2015)

The Law Commission, a year later submitted its another report on electoral reforms. The Commission in its 255th Report suggested that the expenses made in the election must be counted from the date of notification of the election and not just from the date of nomination.⁸ The further suggested some measures to strengthen the Election Commission of India. The Commission reject to invalidate the election on the basis of NOTA. The Commission is also not in favor of introducing right to recall as it can undermines the independence of the elected candidates. The Commission also submitted amendments related to compulsory voting, totalizer for counting votes.⁹

⁴ Law Commission of India, *170th Report on Reform of the Electoral laws* (1999).

⁵ *Ibid.*

⁶ Law Commission of India, *244th Report on Electoral Disqualification*, (2014).

⁷ *Ibid.*

⁸ Law Commission of India, *255th Report on Electoral Reforms* (2015).

⁹ *Ibid.*

III. DINESH GOSWAMI COMMITTEE'S RECOMMENDATIONS (1990)

In 1990, a Committee was constituted by Prime Minister Mr. V.P. Singh under the Chairmanship of the Law Minister, Mr. Dinesh Goswami to suggest measures to eradicate the flaws from the electoral system.¹⁰ The recommendation made by the Committee regarding the Commission are as follows:

- a) The Chief Election Commissioner should be appointed by the President after consulting with the Chief Justice of India and the Leader of Opposition.¹¹
- b) The other Election Commissioner should be appointed after the consultation with the Chief Election Commissioner.
- c) When the tenure of the Chief Election Commissioner and other Election Commissioner is over, they should be made ineligible for any further appointment under the Government.¹²

The other Recommendation made by the Committee are:

- a) Legislative measure to get rid of the problem of booth capturing, rigging, intimidation. Further giving power to Election Commission to appoint investigation agencies.
- b) Amendment in Anti Defection law to restrict the disqualification of only those members who give up their membership of the political party and further recommend to empower the President to decide the disqualification instead to Speaker and such power should be exercised on the recommendation of the Election Commission.
- c) Banning the candidate from contesting the election from more than two constituencies.
- d) Submission of false accounts by the candidate should also be made an offence.
- e) There should be a complete ban on mechanically propelled vehicles on polling day and on the sale and distribution of liquor on the polling day and also on carrying arms on polling day.¹³

The recommendation made by the Dinesh Committee led to the enactment of the Chief Election Commissioner and other Election Commissioner (conditions of services) Act, 1961 and the Representation of the People (Amendment) Act, 1996 and the Representation of the People Act, 1998.¹⁴ The amendment enables the Election Commission to deploy the employees of the

¹⁰ Government of India, *Report on Committee on Electoral Reforms* (Ministry of Law and Justice, 1990).

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ R. Ramesh, "Historical Perspective of the Electoral Reforms in India", 72 *PIHC* 1325-1336 (2011).

autonomous bodies whether fully or partially funded by the Government.¹⁵

There are numerous other proposals which remained unimplemented. The united Front Government in the years between 1996 and 1997 considered to implement these proposals and strengthen the Representation of People Act, 1951. But after so many meetings, these proposals remain unimplemented.

IV. VOHRA COMMITTEE REPORT (1993)

The Vohra Committee which was appointed by Government of India under the chairmanship of Home secretary, N.N. Vohra stated that the entry of criminals in politics has come out clearly in various parts of the country and the nexus between criminals, politicians, police, bureaucracy is of great concern. The Report submitted by Central Bureau of investigation to the Vohra Committee clearly states that the crime syndicates have become a part of the politics. Hiring assassins by the politicians from the smaller urbans and rural areas is prevailing.¹⁶ The Reports further states that the hiring of local gangs by the politicians of the states like Bihar, Haryana and Uttar Pradesh had enabled these gangs to enjoy the patronage from these politicians.¹⁷ Some of these gangs have become the hands of these politicians to gain power in election and to get elected in state assemblies and parliament. In order to curb these types of practices, the Committee recommend to protect politics form merely being a place of protection to criminals.

V. TARKUNDE COMMITTEE (J.P. COMMITTEE) REPORT ON ELECTION EXPENSES (1974)

In 1974, Jayaprakash Narayan, on behalf of Citizen for Democracy constituted a Committee under the Chairmanship of Justice V.M. Tarkunde, to review the present electoral system and to suggest suitable electoral reforms.¹⁸ Justice Tarkunde in his report while comparing the independence of Election Commission with the Judiciary noted that: the independence of Election Commission must not only be theoretically independent but it should be manifestly appeared to be independent while exercising its power of conducting election. The Committee further noted that the practice of Government for reserving the post for the retire Government officials and not selecting the Chief Election Commissioner on the basis of criteria seems to be a primary factor in diminishing the independency of the Election Commission.¹⁹

¹⁵ *Ibid*

¹⁶ Government of India, *Vohra Committee Report* (Ministry of Home Affairs, 1995).

¹⁷ *Ibid*.

¹⁸ Anjali Bansal, *Criminalization of Politics in India: a Critique* (2013) (Unpublished Ph.D. Thesis, Panjab University).

¹⁹ *Ibid*.

The Committee made the following recommendation:

- a) The Election Commission should be appointed by the President on the advice of a Committee consisting of the PM, the leader of the opposition in the Lok Sabha and the Chief Justice of India.²⁰
- b) The Committee recommended the formation of Voter's Council in as many constituencies as possible, which can help in free and fair election.²¹
- c) The Election Commission should be a three-member body.²²
- d) The minimum age for voting should be 18 years.²³

VI. INDRAJIT GUPTA COMMITTEE REPORT ON STATE FUNDING OF ELECTION (1998)

The National agenda of the then elected Union Government was to make the necessary electoral reforms which were proposed by the Dinesh Goswami Committee. Accordingly, the Union Government which was led by BJP took the initiative to discuss the implementation of those proposal which remains unimplemented. In order to adhere on its national agenda, a Parliamentary Committee was constituted by then Home Minister L.K. Advani under the Chairmanship of Indrajit Gupta to suggest measures on State funding of election.²⁴

The Recommendation made by the Committee are as follows:

- a) The State funding of election should only be given in kind in the form of certain facilities i.e. there should not be any financial support. The Committee Further suggest to limit the funding to political parties which are recognized at the National level or state level having a symbol allotted by the Election Commission and not to the independent candidates.²⁵
- b) The Committee also proposes that the political parties should maintain their accounts and their audits and should be regularly submitted to Income-Tax authorities. The Committee further recommended that if the party fails to submit their annual report of the previous assessment year, state funding should not be provided to them.²⁶

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

²⁴ Government of India, *Report on Committee on State Funding of Elections* (Ministry of Law, Justice and Company Affairs, 1998).

²⁵ *Ibid.*

²⁶ *Ibid.*

- c) The Committee further proposed to ban the donations from the Companies. There should be a prohibition on the inclusion of expenses of political parties in the election expenses of the candidates.²⁷
- d) The Committee also recommends to empower the Election Commission of India with the Power of fixing the ceiling limits on the election expenses.²⁸

VII. NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION OF INDIA (2001)

A Commission was set up by then Union Government under the Chairmanship of Justice M.N. Venkatachaliah to review the working of the Constitution and suggesting possible recommendation to amend the Constitution.²⁹ The Committee make a total of 248 recommendation, out of which 58 were related to the amendment in the Constitution, 86 were related to legislative measures and the rest of the amendment require executive action.³⁰ Some of the recommendation proposed by the NCRWC related to electoral reforms are as follows:

- a) The Commission proposed to disqualify the candidate permanently if s/he is convicted for any heinous crime. The Commission proposed a law named as Political Parties (Registration and Regulation) Act, under which party violating the provision of the Act must be deregistered.³¹
- b) The Commission also recommends to increase the ceiling limits on election expenses and the expense should include both the expense of the candidate, his friend, well-wisher and the political party.³² As under the present law, there can not be any violation of the expense limit because the expenses made by person other than the candidate shall not be counted as election expenses.
- c) The Commission also recommends for the use of common electoral rolls for all election. This recommendation was also accepted by the Election Commission of India.³³

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ Government of India, *Report on National Commission to Review the Working of the Constitution* (Ministry of Law, Justice and Company Affairs, 2001).

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

- d) The Commission also recommends that under section 58-A, the Election Commission should be vested with the power to order a fresh election, void the election results, or order a re-poll.³⁴
- e) The Commission also suggest the procedure to appoint Chief Election Commissioner and other Election Commissioner. They should be appointed on the recommendation of a body consisting of the Prime Minister, Leader of the Opposition in the Lok Sabha, Leader of the Opposition in the Rajya Sabha, the Speaker of the Lok Sabha and the Deputy Chairman of the Rajya Sabha.³⁵
- f) The Commission has also made proposal related to regulating the political parties, making it compulsory for the parties to maintain the accounts, setting up of Special Election Tribunals, the power of registration and de-registration of the political party should be in hand of the Election Commission.³⁶

The recommendation made by the NCRWC were remain merely as recommendation because these recommendations were not accepted by the consecutive Government.

VIII. SECOND ADMINISTRATIVE REFORMS COMMISSION (2008)

Under the Chairmanship of Shri M. Veerappa Moily, Second Administrative Reforms Commission was constituted to suggest measures and remodel the public administrative system which is responsive, accountable and efficient.³⁷ The Commission in its fourth report titled “Ethics in Governance” suggest reforms regarding electoral process. The Commission had made similar recommendation which are also proposed by NCRCW related to appointment of Election Commissioner, their power also to amend section 8 of RPA. The Commission also made similar recommendation related to maintaining and auditing of accounts of political parties which was also proposed by Indrajit Committee.

IX. ELECTION REFORMS PROPOSED BY ELECTION COMMISSION OF INDIA (2016)

In order to clean the politics form criminals and to cleanse the political funding. The Commission have been regularly suggesting reforms on different subjects to the Government. Some of the proposal sent by Election Commission of India have been examined by the Law Commission were sent to parliament for endorsement and some are still the proposed suggestions. Some of the measures which were suggested are as follows:

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ Government of India, *Reports of the Administrative Reforms Commission* (Ministry of Personnel, Public Grievances and Pensions, 2008)

(A) Criminalization of Politics

Criminalization of politics has always been one of the most debatable issue for parliament to tackle. The Election Commission has always been expressing its concern over the influence of criminals on politics. The Commission both in the year of 1998 and 2004 had proposed to amend section 8 of the RPA. This recommendation was again given in the year 2016. The Commission suggested that the candidates should be obliged to disclose their criminal records on an affidavit so that the voter will be informed and will also be able to exercised their right to vote freely.³⁸ This similar observation was also made by the Supreme Court in the recent case of *Krishnamoorthy v. Sivakumar & Ors.*³⁹ The Commission also recommends to de-barred the candidate from contesting the election against whom the charges are framed. The Commission also recommended that the political parties should file a declaration that they would not give tickets to the convicted criminals even those who are convicted for less than 5 years.⁴⁰

(B) Registration and De-registration of Political Parties

The Commission was of the view that, there are numerous political parties which did not contest election but are registered as political parties in order to get relief in income tax. The Commission also recommends that the power to register or de-register a political party should be vested in the Election Commission in order to eliminate these parties and also if any political party violate any provision of the law.

(C) Election Financing

In spite of the recommendation made by different Committees to curb the role of money power in politics, the position remains the same. The Election Commission in its recent report, while referring to *Common Cause A Registered Society v. Union of India and others*⁴¹, recommends that the political party should be mandated to maintain the details of all the donors in order to maintain the transparency. The Commission also recommends to make amendment in section 77 of the RPA, 1951 in order to ensure the accountability of the political parties and candidates and also to place a check on their election expenditure.⁴²

The Commission had also made such other recommendation which were related to introduction of common electoral rolls, enhancing the sentence under section 125A RPA, amendment in

³⁸ Election Commission of India, *Report on Proposed Electoral Reforms* (December, 2016)

³⁹ AIR 2015 SC 1478

⁴⁰ *Supra* note 38

⁴¹ (1996) 2 SCC 752

⁴² *Supra* note 38

section 8 of RPA, use of Totalizer for counting the votes which are also suggested by the law Commission and also by other Committees.

X. CONCLUSION

Elections are considered as the representation of the sovereign will of the people of a country. So, they need to be free from any interference from any mal practice. Any election which is manipulated or managed by any external force is nothing more than a fraud to people. During the early years of Independence, the free and fair election used to happen by themselves without any distortion. However, the things become more complex with the passage of time, the role of Election Commission also increased. Although the ECI has been performing its role of activism which was started by T.N. Seshan but after considering the Nath, Mishra and various other pending case have clearly suggest that the ECI needs some reforms related to the appointment of election Commissioners and to enhance its power.

This paper is an attempt to analyze the various reforms suggested by different Committee to make the political institution more effective and free form any criminal interference. These reforms are pre-requisite over all other reforms.

Finally, after analyzing all the proposed reforms by different committee, it can be said that these reforms can only be successful when all the parts of electoral machinery- the political parties, the candidates and the voter adhere to them. The role of independent media also cannot be denied.
