



Impact of Criminalization of Politics on Free and Fair Election in India

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Abstract

“If the people who are elected are capable and men of character and integrity, then they would be able to make the best even of a defective constitution. If they are lacking in these, the Constitution cannot help the country”.

-Dr. Rajendra Prasad

The Preamble of our constitution proclaims that we are a Sovereign, Socialist, Secular, Democratic and Republic. India stands as a model for many emerging democracies around the world. Free and fair elections are the hallmark of a well functioning democracy. While we are justifiably proud of our democracy, there are a number of areas which need to be strengthened to realize the true potential of a well functioning democracy. Our election system, from the selection of candidates, to the manner in which funds are raised and spent in election campaigns, are in dire need of significant changes¹.

The problem of criminalization of politics is complex having roots and ramification in society as a whole. In its widest connotation criminalization of politics includes improper or selfish exercise of power and influence attached to a public office or to the special position one occupies in public life. In this sense, the problem would have to be viewed in relation to the entire system of moral values and socioeconomic structure of society which we could not undertake.

Meaning:criminalization of politics

The Constitution of India describes India as a Democratic Republic. Democracy apart from being a set of ideals is a political system. Generally accepted essential features of this system are:

- (1) equal right to all individuals to participate in the process;
- (2) rule by majority, and
- (3) freedom of expression

¹Electoral Reforms prepared by Legislative Department Ministry of Law and Justice, Government of India and Election Commission of India December, 2010.

Democratic government is the government by consent and consent is not assumed one but real one expressed freely by specific process periodically. This process is election. Elections have become integral part of our social and political life. We elect our President and Vice-President; we elect our legislatures; our representatives in local bodies like Municipal Councils and Panchayats, in co-operative societies, unions and associations and various other bodies.

The criminalization of politics means the participation of criminals in politics which includes that criminals can contest in the elections and get elected as members of the Parliament and the State legislature. It takes place primarily due to the nexus between politicians and criminals.

Over the past few years we have been reading about corruption in public life in which politician and officials have bled the nation filing their own coffers, diverted to personal use. Public funds have been misappropriated and have destroyed the moral and ethical environment of the nation. Criminalization of politics has become the norm in public life of the politician. Daily in the newspapers there are reports about the politician who have either directly participated in crimes or have allegedly been guilty of abetting such activity through Gangsters, musclemen, and Underworld dones. Corruption and criminalization in politics are two sides of the same coin².

Legal Aspect of Disqualification of Criminal Candidates

Indian Constitution does not specify as to what disqualifies a person from contesting elections for the Parliament, Legislative assembly or any other legislature.

The Representation of Peoples Act 1951 mentions the **criteria for disqualifying a person for contesting an election** of the legislature.

Section 8 of the act, i.e. disqualification on conviction for certain offences, according to which an individual punished with a jail term of more than two years cannot stand in an election for six years after the jail term has ended³.

The **law does not bar individuals who have criminal cases pending against them** from contesting elections therefore the disqualification of candidates with criminal cases depends on their conviction in these cases.

K Prabhakaran v. P Jayarajan⁴ where it said, Those who break the law should not make the law. Generally speaking the purpose sought to be achieved by enacting disqualification

²Dr.A.B.Kafaltiya, Democracy and elections laws

³Representation of the People Act, 1951

⁴(2005) 1 SCC 754

on conviction for certain offences is to prevent persons with criminal background from entering into politics and the house a powerful wing of governance. Persons with criminal background do pollute the process of election as they do not have many a holds barred and have no reservation from indulging into criminality to win success at an election.”

Lily Thomas vs Union Of India & Ors⁵ judgment has provided that all the elected or non-elected MPs and MLAs would be disqualified with the immediate effect if they were convicted in a criminal case by a trial court and the saving clause under section 8(4) will not be applicable, because Constitution does not allow Parliament to enact laws on a particular subject matter, Parliament does not have any right to go further with enacting such laws. Article 102(1)(e) and 191(1)(e) which talks about the conditions for the disqualification of the membership from the House of the Parliament and legislative assembly respectively does not give power to the Parliament as well as the State Legislature to enact any such laws which they please to make. And therefore the Parliament does not have the legislative competence to enact section 8(4) after considering the provisions of Article 102 and 191 of Constitution⁶. The Constitution authorizes the parliament to say only when a MP or MLA shall stand disqualified. It does authorize the parliament to pass a law that effectively stays the disqualification and allows such disqualified member to continue as a MP or MLA. such a law would be against the constitution because the provides that once a member is disqualified the seat of such member shall thereafter stand vacant.

Public Interest Foundation. v. Union of India⁷, a public interest litigation (PIL) was filed in the Supreme Court in the year 2011 praying inter alia for guidelines or framework to be laid down by the Court to deal with the menace of Criminalization of politics and debar those charged with serious offences from contesting elections. In this case, on 25th September 2018, the Court delivered its judgment in the Electoral Disqualification case. The Court had to decide if persons ought to be disqualified from membership in legislative bodies when criminal charges are framed against them. Section 8 of the Representation of Peoples Act only disqualifies persons when they are convicted of criminal charges.

⁵ AIR 2013 SC 2662.

⁶ Ibid .p 2613 “..Parliament thus does not have the power under Articles 102(1)(e) and 192(1)(e) of the Constitution to make different laws for a person to be disqualified for being chosen as a member and for a person to be disqualified for continuing as a member of Parliament or the State Legislative Assembly. To put it differently, if because of a disqualification a person cannot be chosen as a member of Parliament or the State Legislative Assembly, for the same disqualification, he cannot continue as a member of Parliament or the State Legislature..”

⁷ 25th September ,2018 supreme court .

The Five - Judge of the Constitution Bench ruled that candidates should not be excluded solely because they were convicted in a criminal case. The bench also advised the legislature to consider changing the legislation to facilitate the decriminalization of politics. The Court further held that candidate must fill out the form as given by the Election Commission and the form must contain all the information as needed. Keeping the aforesaid in view, the court issue the following directions -

(i) Each contesting candidate shall fill up the form as provided by the Election Commission and the form must contain all the particulars as required therein.

(ii) It shall state, in bold letters, with regard to the criminal cases pending against the candidate.

(iii) If a candidate is contesting an election on the ticket of a particular party, he/she is required to inform the party about the criminal cases pending against him/her.

(iv) The concerned political party shall be obligated to put up on its website the aforesaid information pertaining to candidates having criminal antecedents.

(v) The candidate as well as the concerned political party shall issue a declaration in the widely circulated newspapers in the locality about the antecedents of the candidate and also give wide publicity in the electronic media. wide publicity, mean that the same shall be done at least thrice after filing of the nomination papers.⁸

However, in India, the rate of conviction depends on the process of the court for providing the punishment, which takes a really long time. In 2019, an Association For Democratic Reform (ADR) has found that in the 2019 Lok Sabha Elections there were about 45% of the winners who have criminal cases or pending criminal cases against them. This figure surprisingly has not decreased but the number of politicians winning the elections with past criminal records has comparatively increased in the Parliament. According to the statistics given out by the Association is that in the 2009 elections, there was about thirty percent of the Politicians with past criminal records were appointed to Parliament and in 2014 there were about 34% of the MPs with past criminal records have been appointed in the Parliament. National Election Watch (NEW) and Association for Democratic Reforms (ADR) have analyzed the self-sworn latest affidavits of all 78 ministers (Including Prime Minister) from Lok Sabha 2019, current Rajya Sabha and assembly elections⁹.

⁸ Public Interest Foundation. v. Union of India.

⁹ www.adrindia.org , Association For Democratic Reform (ADR).

In a recent cabinet expansion on 7th July 2021, 43 new ministers were inducted in the cabinet. This report focuses on the criminal, financial and education background details of the ministers in the cabinet.¹⁰.

The Report further reported that ,

- Ministers with Criminal Cases: Out of the 78 Ministers analyzed, 33 (42%) Ministers have declared criminal cases against themselves, and 70(90%) Ministers are crorepati .
- Ministers with Serious Criminal Cases: 24 (31%) Ministers have declared serious criminal cases including cases related to murder, attempt to murder, Robbery etc.
- Minister with case related to Murder: Nisith Pramanik from Cooch Behar Constituency has declared case related to murder (IPC Section-302) against himself.
- Minister with case related to Attempt to Murder: 4 ministers have declared cases related to attempt to murder (IPC Section-307).

The National Election Watch and Association of Democratic Reforms (ADR) have analyzed the self-sworn affidavits of 808 out of 822 Winning Candidates in the Union territory of Puducherry and 4 states of Assam, Kerala, Tamil Nadu and West Bengal.

- 419(52%) Winning Candidates with Criminal Cases.
- 241(30%) Winning Candidates with Serious Criminal Cases.
- 535(66%) Crorepati Winning Candidates.

In *Yogendra Kumar Jaiswal and Ors. vs. State of Bihar and Ors*¹¹, the Court opined : Corruption, a ‘noun’ when assumes all the characteristics of a “Verb”, becomes self-infective and also develops resistance to antibiotics. In such a situation the disguised protagonist never puts a Hamletian question-”to be or not to be”-but marches ahead with perverted proclivity-sans concern, sans care for collective interest, and irrefragably without conscience. In a way, corruption becomes a national economic terror .

In the early days Criminals and Gunda element were by the large kept away from direct involvement in the political process but today they have acquired a political base of their own and are a law unto themselves. Since it is the reach of power and determines

¹⁰9th July ,2021 Association For Democratic Reform (ADR), Analysis of Criminal, Financial, and Other background details of Union Council of Ministers.Post Cabinet Expansion on 7th July, 2021, www.eci.nic.in , www.adrindia.org

¹¹(2016) 3 SCC 183

the degree of immunity, persons with criminal at antecedents have found way of foist themselves on the Legislature.

The Nexus between criminal gang, police, Bureaucracy, politician and Industrialist has come out openly in various parts of the country¹². The Vohra Committee report¹³ gives enough hint to come to the conclusion that criminalization of politics and corruption in high level is destroying the very system and edifice of our parliamentary democracy, political authorities, and Civil Servant and even the judiciary. The report has identified broad categories of crime and person who are involved in it and has gone to the extent of identifying the states where Mafia activities are taking place. The most condemnatory part of the report is that, it say that “the network of Mafia is virtually running or parallel government pushing the state apparatus into irrelevance” The big smuggling Syndicate having International linkage having spread into and infected the various economic and financial activities. they have acquired substantial, financial and muscles power and have successful corrupted the government machinery and all levels and yield enough influence to make the task of investigating and prosecuting Agencies extremely difficult. when different Agencies like the Intelligence Bureau CBI RAW and Directorate of revenue investigate the case relating to these Mafia syndicates there has some evidence and influence with suggested link between top politician and the operators of the crime.

Reasons for Criminalization of politics

Criminalization of politics in India includes political control of the police, state money, corruption, weak laws, lack of ethics, values, vote bank politics and loopholes in the function of the election commission. Having a weak rule of law in India is the main reason that has led to an increase in the alternative forms of dispute resolutions.

A final implication is that the selection of candidates with criminal records varies considerably in response to local incentives. In an attempt to simplify complex matters, we often paint with a broad brush when talking about a country’s political elites; most of us are guilty of doing this on a regular basis. For instance, one often hears such statements as “Italian politicians are corrupt,” “America’s representatives are self-serving,” or “India’s legislators are criminals.”¹⁴

- **Lack of Political Will:** In spite of taking appropriate measures to amend the RPA Act, there has been an unsaid understanding among the political parties which deters Parliament to make strong law curbing criminalization of politics.

¹²Dr.A.B.Kafaltiya, Democracy and election Laws

¹³ The report on criminalisation of politics N.N. Vohra committee 5 December 1993

¹⁴Milan Vaishnav, When Crime Pays: Money and Muscle in Indian Politics p.p.38.

- **Lack of Enforcement:** Several laws and court judgments have not helped much, due to the lack of enforcement of laws and judgments.
- **Narrow Self-interests:** Publishing of the entire criminal history of candidates fielded by political parties may not be very effective, as a major chunk of voters tend to vote through a narrow prism of community interests like caste or religion.
- **Use of Muscle and Money Power:** Candidates with serious records seem to do well despite their public image, largely due to their ability to finance their own elections and bring substantive resources to their respective parties.

Also, sometimes voters are left with no options, as all competing candidates have criminal records.

Effects

- **Against the Principle of Free and Fair Election:** It limits the choice of voters to elect a suitable candidate. It is against the ethos of free and fair election which is the bedrock of a democracy.
- **Affecting Good Governance:** The major problem is that the law-breakers become law-makers, this affects the efficacy of the democratic process in delivering good governance. These unhealthy tendencies in the democratic system reflect a poor image of the nature of India's state institutions and the quality of its elected representatives.
- **Affecting Integrity of Public Servants:** It also leads to increased circulation of black money during and after elections, which in turn increases corruption in society and affects the working of public servants.
- **Causes Social Disharmony:** It introduces a culture of violence in society and sets a bad precedent for the youth to follow and reduces people's faith in democracy as a system of governance.

Impact on Free and Fair Election

A lot of things can be said about the free, fair and peaceful elections but cannot be defined in few words. The concept includes even preliminary stage to elections such as delimitation of constituencies, preparation, revision or amendment of electoral rolls and many others. Mainly concept of free and fair election relates to political liberty and equality. "Free and fair" in matters of elections connotes that no one, under the electoral process is in bondage of another, having his personal rights, social and political liberty,

free thinking and choice subjected to legal discipline. while exercising his right to vote one is not under undue influence of party discipline, religion, caste, Creed, sex, language, and also one is not under the strain of corrupt practices and so on. Thus free and fair elections are the foundation of Democratic form of government¹⁵.

Free and fair elections make a democracy in true sense. However, election in India has become a game of power between political parties consisting of mere politicians rather than statesmen. Winning is the motive, by hook or crook, by lies or unfair means. "People never lie so much as after a hunt, during a war or before an election." Elections in India began to be unfair with 4th General elections and continue to be same in the present scenario. Electoral reforms have been proposed by various committees like Tarkunde Committee, Goswami Committee, Indrajit Gupta Committee, Vohra Committee and Election Commission of India, etc¹⁶.

The election of the representatives of the people to the legislative bodies is the sine qua non for a true democracy¹⁷. It ought to be free and fair from any corrupt and illegal practices. It is the foundation or the barometer of the parliamentary democracy. The Constitution of India, in order to ensure this, makes specific provisions for election, manner of election, term of office, eligibility for reelection, qualifications, conditions and time of holding election of President and Vice President of India¹⁸.

Free and fair elections strengthen the roots of democracy. They are sine-qua-non of a vibrant, living and real democracy. However conducting free and elections is a stupendous task requiring a separate and independent and powerful body to hold, supervise, direct and conduct. The success of any electoral procedure has to be tested on the sole ground that whether it enables voter to make up his mind freely and make his choice on relevant considerations and whether he is allowed to cast his vote according to that choice. In most of our elections, we have adopted procedure of secret voting. Secret voting is one of the essentials for equality in right of voting. Power has tendency to corrupt and those who want to gain it, may be tempted to corrupt the voter who gives that power. Poor sections intimidated and asked to vote for a particular candidate or party. Votes are purchased by distributing money or articles of daily use.¹⁹

¹⁵Dr.A.B.Kafaltiya, Democracy and election Laws,p.44

¹⁶Pranjali madnani, Mechanism for free and fair elections - present but still absent Published in AIR November 2013

¹⁷Report on the First General Elections of India, vol.1, (Election Commission India, 1951-52),

¹⁸Articles 54 to 68 of the Constitution of India deal with elections of President and Vice President of India.

¹⁹*Rama Shanker Kausik v. Election Commission*, AIR 1974

As stated by Dr. Rajendra Prasad in assembly Whatever the Constitution may or may not provide, the welfare of the country will depend upon the way in which the country is administered. That will depend upon the men who administer it. It is a trite saying that a country can have only the Government it deserves. Our Constitution has provisions in it which appear to some to be objectionable from one point or another. We must admit that the defects are inherent in the situation in the country and the people at large. If the people who are elected are capable and men of character and integrity, they would be able to make the best even of a defective Constitution. If they are lacking in these, the Constitution cannot help the country. After all, a Constitution like a machine is a lifeless thing²⁰. It acquires life because of the men who control it and operate it, and India needs today nothing more than a set of honest men who will have the interest of the country before them.

Doubts were, however created by some members in the constituent assembly that elaborate details about the method of election or about the administration of legs and are not necessary to be included in the constitution itself, because there was no constitution in the world where such details were found.

In the words of Dr. B.R. Ambedkar²¹“I shall not therefore enter into the merits of the Constitution. Because I feel, however good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a Constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot. The working of a Constitution does not depend wholly upon the nature of the Constitution. The Constitution can provide only the organs of State such as the Legislature, the Executive and the Judiciary. The factors on which the working of those organs of the State depend are the people and the political parties they will set up as their instruments to carry out their wishes and their politics. Who can say how the people of India and their parties will behave? Will they uphold constitutional methods of achieving their purposes or will they prefer revolutionary methods of achieving them? If they adopt the revolutionary methods, however good the Constitution may be, it requires no prophet to say that it will fail. It is, therefore, futile to pass any judgment upon the Constitution without reference to the part which the people and their parties are likely to play.”

Some speaker were are of the view that the superintendence, direction and control of election only in the hands of Central authority amounts to disturb provincial autonomy.

²⁰Constituent Assembly Debates on 26.11.1949.

²¹Constituent Assembly Debates on 25.11.1949

But ignoring the above objection, and with the object of ensuring efficient and impartial functioning of the electoral machinery, the constitution provides for an independent Election Commission a permanent body under article 324²².

According to Transparency International report 2020, India's rank is 86 out of 180 nations with a score of 40."India was ranked at 80th position out of 180 countries in 2019. The CPI (Corruption Perceptions Index) score for India is constant this year as well as the previous year's score," the index said.India is still very low on corruption Index, the report said, noting that experts feel the CPI does not reflect the actual corruption level in any country. The integrity score determines the corruption situation of a country.²³

In India, Political parties, the driving force of democracy, are perceived to be the most corrupt institution in India. The democratic pillars of society- law enforcing agencies including judiciary are viewed as the most corrupt. People believe that personal contacts and relationship help to get things done in the public sector. Powerful groups rather than the public good are judged to be driving government actions. Most of the people think that the government is largely or entirely run money and mussel power groups, who acting in their own interest rather than for the benefit of the citizens. Corruption in public life generates black money which in turns utilized in general elections to legislative bodies. Fairness is a blot?

However, whole India is under democracy and parliamentary system of India. The founding fathers of the Constitution devoted a separate part XV, containing Articles 324 to 329 relating to elections. Article 324 provides for setting up of an Independent Election Commission of India. The Election Commission has to conduct elections to the offices of President and Vice-President, and of elections to Parliament and the State Legislatures. Article 325 mandates for the preparation of one general electoral roll without discrimination on any ground like religion, caste, sex, language and culture etc.

Article 326 has adopted universal adult suffrage as the basic tenet of direct election to Lower House of Parliament and State Legislatures. Article 327 and 328 empower Parliament and State Legislatures to make laws relating to elections. Article 329 bars the interference of Courts in electoral matters when the electoral process is on. In pursuance of Article 327, Parliament has enacted the following Legislations mainly:

- (a) The Representation of People Act, 1950; deals with the preparation and revision of electoral rolls.

²² Indian constitution

²³ Hindustan times 28 Jan 2021

- (b) The Representation of People Act, 1951; this Act governs the conduct of election and settlement of election disputes by means of election petitions. Then there are Rules supplemented to the Acts;
- (c) The J & K Representation of People (supplementary) Act, 1968;
- (d) The Limitation Act, 1972
- (e) The SC/ST Orders, (Amendment) Act, 1976
- (f) The Presidential and Vice-Presidential At, 1952
- (g) Preparation of Electoral Rolls Rules, 1950' and
- (h) The Conduct of Elections and Election Petitions Rules, 1951
- (i) The Registration of Electors Rules, 1960 and the sub-delegated legislation framed by the Election Commission: The Election Symbols (Reservation and Allotment) Order, 1968

The Constitutional provisions and the laws enacted by Parliament covering the subject of elections to the legislatures are widely discussed in coming chapters of this study. Under the Constitution, the setting up of local self- government institutions at the district and lower levels panchayatraj, and elections to those institutions have been made the responsibility of the State Government²⁴.

Recent Steps taken by the supreme court to curb criminalization of politics

In February 2020²⁵ supreme court ordered the political parties to publish the entire criminal history of their candidates for Assembly and Lok Sabha elections along with the reasons that forced them to field suspected criminals.

The SC in public interest foundation v/s union of india 2018²⁶ had also directed political parties to publish online the pending criminal cases of their candidates. In the discharge of its constitutional responsibility of conducting free, fair and peaceful elections in the country, the hands of the Election Commission have been strengthened by the Supreme Court of India, by its several landmark judgements, pronouncing upon the provisions of the constitution of India, and the laws relating to the elections.

In Smt. Indira Nehru Gandhi v. Raj Narain²⁷, the Court, expanding the scope of the Basic Structure, held that there were four unamendable features which formed part of the basic structure, namely, "(i) India is a sovereign democratic republic; (ii) Equality of status and opportunity shall be secured to all its citizens; (iii) The State shall have no

²⁴Inserted by the Constitution (73rd Amendment) Act, 1992

²⁵Rambabu Singh Thakur v. Sunil Arora &Ors.

²⁶(2019) 3 SCC 224

²⁷AIR 1975 SC 2299

religion of its own and all persons shall be equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion and (iv) The nation shall be governed by a government of laws, not of men.” These, according to them, were "the pillars of our constitutional philosophy, the pillars, therefore, of the basic structure of the Constitution."

The Court also noted that the principle of free and fair elections is an essential postulate of democracy, and which, in turn, is a part of the basic structure of the Constitution. That democracy was an essential feature forming part of the basic structure. In this case the Court struck down Clause (4) of Article 329A which provided for special provision as to elections to Parliament in the case of Prime Minister and Speaker, on the ground that it damaged the democratic structure of the Constitution. That the said clause(4) had taken away the power of judicial review of the courts as it abolished the forum without providing for another forum for going into the dispute relating to the validity of election of the Prime Minister. It extinguished the right and the remedy to challenge the validity of such an election. The complaints of improprieties, malpractices and unfair means have to be dealt with as the principle of free and fair elections in a democracy is a basic feature of the Constitution, and thus, clause (4) was declared to be impermissible piece of constitutional amendment, there can be no two options that free and fair elections our legislative body alone would guarantee the growth of a healthy democracy in the country. In order to ensure the purity of election process it was thought by our constitution makers that the responsibility to hold free and fair election in the country should be entrusted to an independent body which would be insulated from political and executive interference²⁸.

In *Chief Election Commissioner v. Jan Chaukidar (People's Watch)*²⁹ the Supreme Court has held that a person who has no right to vote by virtue of provisions of Sub-section (5) of Section 62 of the Representation of People's Act, 1951 is not an "elector" and is therefore not qualified to contest the election to the House of the people or the Legislative Assembly of a State.

The widely reported intention of the Central Government to promulgate an ordinance to nullify a recent order of the Central Information Commission confirming that six national parties are subject to Right to Information Act, 2005 is condemnable on many

²⁸Ibid

²⁹*Civil Appeal No. 3040-3041 of 2004 decided on July 11, 2013 See SCCL.com*; the object of Section 62(5) of the RP Act is to promote free and fair elections, a basic feature of the Constitution- *Ankul Chandra Pradhan v. Union of India*, AIR 1997 SC 2814; (1997) 6 SCC 1

counts. Governance in India can never be accountable to the people unless political parties, who are at the core of it, are accountable to the people. The preamble to the Right to Information Act states that democracy requires an informed citizenry. It seeks to provide for setting out the practical regime to secure access to information under the control of public authorities. The political parties admit that almost all their money comes from public, some in traceable large donations, but most in untraceable small donations. The political parties argue that they receive only minimal support from the government and therefore they are not “public authority” as defined under the RTI Act³⁰.

The RTI Act cannot demand that the public authority provide information of which no record exists and also that records only be maintained which some law, regulation or rule makes mandatory. Political parties have protection under Section 8(1) (d) of the RTI Act that among other things, exempts information that would harm a party’s competitive position. But people might have a right to know whether the party has a criterion for selecting candidates? Or how much a particular party expends in general elections and from where that money came? Obviously, a political party can legally refuse to answer any of these questions on the justifiable plea that it does not maintain records or have no norms on these matters, because it is not required to. An understanding of the democratic values and functioning of political parties under those values is fundamental to a functional democracy. Political parties may be able to find out grey areas where they may escape from legal liability through the exercise of law making power. But what will happen to the moral values³¹ which are essentially required for a democratic process based on free and fair elections? How can we improve our electoral process unless we succeed to eliminate immoral trends which are prevalent in our system of governance? The above illustrations of recently decided cases are apparent in positive direction of electoral reforms; whereas political parties in India were deliberately intended to function without the required electoral reforms and against the judicial verdicts. It is a basic rule of democracy that the organs of government must themselves operate through law. Democracy is said to be a government of laws and not of men.

³⁰ Section 2(h) of the RTI Act “Public Authority”

³¹ Model Code of Conduct for Guidance of Political Parties and Candidates is a set of norms which has been evolved with the consensus of political parties who have consented to abide by the principles embodied in the said Code and also binds them to respect and observe it in its letter and spirit. The Election Commission ensures its observance by political parties including ruling parties at the Centre and in the States and contesting candidates in the discharge of its constitutional duties for conducting the free, fair and peaceful elections to the Parliament and State Legislatures under Article 324 of the Constitution of India. For detail see – Model Code of Conduct Election Commission of India (1984); Chawala’s Election Law and Practice (2009) pp 1.200-1.233

The Supreme Court in *N P Punnuswani v. Returning Officer*³² analysed the position of the election machinery governed by Article 324-329 of the Constitution as thus: Broadly speaking, before election machinery can be brought into operation, there are three requisites which require to be attended to,

(1) There should be a set of laws and rules making provisions with respect to all matters, relating to or in connection with, elections and it should be decided as to how these laws and rules are to be made,

(2) There should be an executive charged with the duty of securing the due conduct of elections, and

(3) There should be a judicial tribunal to deal with disputes arising out of or in connection with elections.

Article 327 and 328 deal with the first of these requisites; Article 324 with the second; and Article 329 with the third requisite. The other two Articles in Part XV, viz., Articles 325 and 326 deal with two matters of principle to which Constitution makers have attached much importance: They are; (a) prohibition against discrimination in the preparation of, or eligibility for inclusion in the election rolls on grounds of religion, race, caste, sex or any of them; and (b) adult suffrage.

The constitutional commitment is to secure free and fair elections³³. The parties and candidates must not induce to vote by appeal on the ground of religion, caste, language or other such conflicts of society. How to curb the money and muscle power, vulgar show of monetary power like all this, is a question which poses great challenge to our electoral system. The political awareness of common man would be a guarantee for the purity of the electoral system, since he is the purpose and the centre of the whole activity. Sir Winston Churchill rightly said: At the bottom of all tributes paid to democracy is the little man, walking into the booth, with a little pencil, making a little cross on a little bit of paper³⁴.

The will of the people shall be the basis for the authority of government; this choice (will) shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and should be held by secret vote or by equivalent free voting procedure. This principle set out in 1948 in the Universal Declaration of Human Rights was not only taken up but also adopted by the European Inter-Parliamentary Union. For the words organization of Parliaments, the key element in the exercise of democracy is clearly the holding of free and fair elections at regular intervals enabling the people's will to be expressed, but it is also essential that election must be held in such a way that all voters can choose their representative in conditions

³²AIR 1952 SC 64

³³A.B. Kafaltiya, *Democracy and Election Laws*; Ch-3 Constitutional Commitment to free and fair elections; Stone J.; *Social Dimensions of Law and Justice*, Ch-15 Stanford University Press, 1921

³⁴Narendra Chhapgaonkar, *Law of Elections*, (AIR Publication 1997) pp.5-6

of equality, openness, and transparency that stimulate political competition. Article 21 of the 1948 Universal Declaration of Human Rights lays down the basic premise for election rights. Later this was developed by Article 25 of the 1966 Covenant on Civil and Political Rights. It includes among others, the right and the opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives, to vote and to be elected at genuine periodic elections. The UN Human Rights Committee's general comment on Article 25, for example highlights the area in which guidance is still required by repeatedly invoking the standard of reasonableness as a justification for condition or restrictions on political rights, whether in the matter of voting, candidature, conflict of interest, election expenditure, or constituency delimitation³⁵.

Free and fair elections are the mainspring of a healthy democratic life and a barometer of its strength and vitality. Electoral administration must, therefore, be free from pressure and interference of the executive and legislature. It should be able to secure fairness to all parties and candidates³⁶. An awareness by the people of the significance of their vote and the need for them to exercise it responsibly and an assurance that the voter would be able to exercise the franchise untrammelled by any fear and apprehension of any adverse consequence flowing there from are the main ingredients of a truly democratic and successful electoral system³⁷. If free and fair election is the life-blood of constitutional democracy and if secrecy of ballot was ensured to achieve the larger public purpose of free and fair elections either both must be complimentary to each other and co-exist or one must yield to the other to serve the larger public interest.

In *Vipul Jain vs State Of Uttarakhand And Others*³⁸ on 17 October, 2019 Uttarakhand high court Our opinion, as elaborately detailed hereinabove, and the directions we have issued to the State Election Commission and to the officials working under its control, are summarized as under:-

(1) Among the basic features of the Constitution is the principle of free and fair elections. The obligation to hold free and fair elections for Panchayati Raj Institutions is entrusted, by the Constitution, to the State Election Commission.

(2) The purity of elections is fundamental to democracy, and the State Election Commission can and should take action to maintain its purity, and in particular to bring transparency in the process of elections.

³⁵Universal Declaration of Human Rights, 1948

³⁶Raghubir Singh Gill v/s Gurcharan Singh Tohra & ors, AIR 1980 SC 1362.

³⁷Elections in India, R. P. Bhalla.

³⁸Vipul Jain vs State Of Uttarakhand And Others

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