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Editor
J.N. Roy

Associate Editor
Pranav Kumar

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Working Office:

3/801 East End Apartments,
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Phone : 91-11-22712454

e-mail : asthabharati1@gmail.com

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Editorial Perspective

Electoral Reforms

The volume on Electoral Reforms (ER) in India was overdue. It contains articles from experts and equally knowledgeable and concerned activists from the ADR and Common Cause. These bring out the centrality of the Electoral Reforms in strengthening the electoral processes and representative character of our elections. These positively impact the quality and functioning of the democratic system itself. It is also clear that the ER is not a one time exercise but a continuing process responding to emerging issues including the current technological challenges.

We never tire of applauding the functioning of the ‘largest’ democracy of the world and orderly changes through the process of elections. The articles in the volume, however, sadly bring out serious chinks in our “flawed democracy” which all pertain to ER, the life blood of a functioning democratic system. The need for ER since 1967, is implicit in large number of committees and commissions, recommending important and fundamental changes in how the political parties, an essential part of the democratic and electoral process, should function with transparency and responsibility and, most importantly, how these need to be financed and made accountable. It is well known that the electoral financial corruption is the root cause of overall corruption in the country. It is said to have links even with the NPA’s (11.5 lakh crores) of the public sector banks.

The Election Commission of India, constitutionally responsible for holding fair elections in the country, itself has been in the forefront of waging ER, approaching both the government and even the courts. In 2004 and 2016, it has made to the government 22 and 47 such recommendations respectively, but to no avail. Financial transparency; decriminalisation of political parties and democratisation of the political parties are the nub of this campaign for ER. Besides the number of committees and commissions, laudable efforts have been made by public spirited citizens and NGO’s like the ADR and Common Cause and the judiciary itself. All these have resulted in small gains like the Anti-

Defection Act (1985); reduction in voting age and the affidavits declaring financial assets/criminal records of candidates. But these only skim the surface and serious reforms get no traction. Power at any cost and by any means is at the root of political resistance to reforms.

The necessity for ER in the interest of our democracy is not making any progress because of determined resistance from the political class, which across parties, have vested interest in the existing non-democratic norms. They resist transparency in financial functioning. CIC's efforts to have political parties declared 'public offices' have been thwarted. Party's income tax returns only reflect 20 to 25 per cent of income. Governments 2016/17 Financial Acts creating Bonds, have led to making financial contributions more opaque and 95 per cent of Bond-led contribution has gone (2018) to the ruling party at the Centre. The Election Commission has strongly opposed the Bond system of financing political parties in an affidavit before the Supreme Court on March 25, 2019. Even the State financing (part or full) of elections is contingent upon the political parties carrying out internal democratisation and decriminalisation, as almost all of them have democratic facade concealing internal dictatorships. The Supreme Court's Constitutional Bench's decision (2018) not to intervene and only recommending reforms is rather disappointing, knowing fully well that the political class is not interested in real reforms. No wonder, the number of under trials in Lok Sabha has been going up 121 in 2004; 162 in 2009 and 182 in 2014.

However, those who stand by our Constitution and democracy should not lose hope. Our high minded framers of the Constitution did not frame provisions for running political parties, thinking their successors will be as high minded as they. Well meaning citizen's now must carryout this unfinished task of keep showing the mirror to the political class. People's pressure for ER is an important factor. The campaign to convince that the journey from "flawed democracy" to "tainted democracy" is short, if we do not wake up in time. Kudos to the Election Commission and public spirited NGO's who are championing a worthy cause.

Verdict 2019: BJP has Upperhand

The expectations of a contested 2019 Parliamentary Elections have dissipated to a large extent with the BJP in ascendance. These

expectations were fuelled by the results of Karnataka Assembly Elections in mid-2018; Mahagathbandhan in UP followed by defeat of BJP in two key bye-elections and BJP's loss in three Hindi speaking States of M.P., Rajasthan and Chhattisgarh in October 2018. Signs of an opposition unity, at the national level, always questionable, evaporated over the mutual suspicions of the regional and State-level leaders and growing false sense of importance by the Congress, undermining meaningful alliances at the State levels.

Opposition once again displayed a limited vision and the Congress its old malady of entitlement rooted in a family. The emerging favourable formulae of an understanding at the national level and alliances at the State-level against the BJP as common foe did not come about due to mutual suspicions and inability to accommodate local aspirations and groups in an overall concept. self-interest trumped the common interest.

BJP always in lead, though shaken and defensive by the losses in the three hindi-speaking States, staged a grand comeback, helped by a clueless Congress and opposition; and Pulwama-Balakote episodes. It converted a feared State-level contests into a national one over the issues of national security and Nationalism. While the significance of Pulwama-Balakote should not be over stated, but it boosted Modi's image as a decisive leader, particularly in UP and Bihar. Pulwama's important contribution was enabling the BJP/Modi to shift the discourse away from the bread and butter issues. The adverse issues like the demonetisation, farmer's distress and jobs for the youth were cleverly pushed to the background. Use of media by the BJP to change the agenda of electoral discourse was commendable.

The Congress had the prime responsibility to keep these issues alive at the national level and the State level parties at State levels. The Congress invested too much on Rafale issue which went nowhere except pleasing the interested left and liberals. It in fact diverted attention from the real economic issues. Exploitation of Pulwama and 'Chowkidar' symbols and cribbing about misuse of names of armed forces etc. cut no ice, as given a chance Congress and others would have done the same. Voters understand it.

At the State level the caste, communal and regional issues got the upperhand over meaningful alliances. While the BJP compromised with LJP (Bihar), Shiv Sena (Maharashtra) AIADMK (Tamilnadu), and other small non-descript groups, the Congress and others in UP, Jharkhand, Bihar, Rajasthan, Delhi etc. kept quibbling and fighting each other till

the last minute. Most of the State-level parties are either caste or family based. A few are personality based like West Bengal and Odisha. Glue like the BJP had to be provided by national level parties. Congress itself being a family-centric Party, failed to rise above itself and let the opposition down. It was too busy safeguarding its own interests and turf and let go of the common interest. Meanwhile, the credibility and popularity graph of Modi as a leader kept rising. Young and new voters connected better with him due to his oratorical skills. Besides, effective extension of the PMAY (Awas Yojana) and toilet subsidy in eastern U.P. may once again help BJP in getting backward class and S.C. votes. One may question PM's idioms and personalized attacks not behaving a Prime Minister. But then the electoral rhetoric on both sides have touched a new low, in name calling and bending facts and issues. The only difference is that the BJP and Modi have a better press and media presence and put across their assertions more effectively.

Normally in an election, it is the ruling party which is questioned and defends its record in the office. The 2019 polls are strange in that the past record of the opposition of the last 70 years, including the six years of Bajpai government, is being held responsible for all the ills of the country including corruption, lack of development. Mudslinging and patriotism of opposition and its leaders is being questioned. It is the ruling party which is entitled to ask all the questions and not being responsible for any answers to anyone on their record, except in the form of general claims on every front. To an outsider, it would appear that this election is a war between two enemies, not political contestants and it is the opposition which is in the dock and has to defend itself and its record of the past and "questionable patriotism." This kind of situation to a large extent has been helped by a cozy and manageable media and social media. In brief, electoral politics has been turned on its head with the opposition scrambling to defend itself against all kinds of issues and allegations. One can say without the fear of contradiction that the truth is the main casualty and the whole exercise is turning into a theatre of farce.

—J.N. Roy

North-East Scan

National Security Cannot be Politicised

Patricia Mukhim*

It is a sad precedence in India that every defence deal is embroiled in a controversy beginning with Bofors. Somehow, we never get to the root of the matter because such deals become the subject of electoral gains or losses. This time it is the Rafale aircraft deal which occupies the mindscape of the elite, urban voters have been a subject of intense debate and the talking point for the Congress Party for a while. It is unfortunate that the Rafale has even entered the recent controversy vis-à-vis the air strike at Balakot.

And now that the elections are announced the Election Commission of India (ECI) has tightened its grip around the behaviour of political parties and their camp followers. Two days ago, the Facebook was asked to remove the picture of Wg. Cdr. Abhinandan Vartaman from the Facebook post of a BJP MLA. Post-Pulwama and the Balakot air strikes, there were hoardings with the military on one side and the Prime Minister on the other. This is a great disservice to the men in uniform who put their lives on the line to secure this country from external forces and sometimes from internal dissensions manifested by events in Kashmir, triggered by terror outfits based in Pakistan. Thankfully, these days all is quiet in the Eastern front and insurgency has taken a dip although it is not fully uprooted.

The Pulwama incident took the nation by storm. We were angry, distraught and wanted to avenge the bloody attack on our jawans by a suicide bomber. The reactions have ranged from the mature to the radical. Across India candlelight vigils and solemn tributes were paid to the martyrs whose lives were blown apart due to a 'major intelligence failure,' considering that there was enough intelligence inputs about the possibility of such an attack. A dispassionate analysis of the incident by

*The writer is Editor, The Shillong Times.

security experts suggests careful planning, infiltration of an IED doctor (a technical person capable of fabricating IEDs) and a module fully functional at work with a network of overground workers.

Democracy has its downside. It is noisy and cacophonous and every subject is intensely debated over social media by experts and by those with little understanding of security doctrines. As stated above, the acquisition of defence equipments is always a subject of intense debate. The country's defence capabilities are laid bare before the world. This was brought to the fore at the time when Wing Commander Abhinandan was a captive in Pakistan. While he in perfect military discipline refused to divulge anything to the Pakistani interrogators, including his native place, our own TV channels parked right outside his home were giving a running commentary. That's democracy's soft underbelly. True democracy gives us the space to dissent and argue out our ideas often to the highest decibels in TV studios but this should on no account be at the expense of national interests. After Pulwama, the nation's pride was hurt. The nation wanted retribution for the 40 or more lives lost in the suicide bomb attack. A cloud of despair hung over the country and people wondered how long India would allow this 'sense of defeat at the hands of the enemy' to continue.

For too long India has been playing softball with Pakistan in the hope that that country would end its noteworthy ambition of "bleeding India with a thousand cuts." Pakistan obviously does not know how to respond because the *raison d'être* of its army is built around the narrative of India as the enemy. On India's part, every terrorist attack from the Pakistan-backed jihadist is followed by knee-jerk reactions but we have not been able to come up with a comprehensive and well thought-out policy to contain Pakistan and the terror modules that are bred in that country. The abrogation of the Most Favoured Nation (MFN) status by India in its trade relations with Pakistan is just one small step and will not make much impact considering that the balance of trade is in India's favour. Trying to isolate Pakistan in the international community is also a futile effort considering China's presence as the bulwark for Pakistan, due to its own geo-political and strategic interests in the region. These are the pitfalls of international diplomacy and strong nations tend to break all the rules of the game. They are interested in pushing their own dominant agenda of conquest and control even in this day and age of peace-building overtures based on economic cooperation. Every nation seeks to be the most powerful military and economic power and

every other attempt to build a violence-free world fails at the altar of self interest.

This time India decided to retaliate and how! On February 26, India launched air attacks aimed with clinical precision to hit the Jaish-e-Mohammed training camps cum madrassas at Balakot in the Pakhtunkhwa area in the wee hours. The next day, Pakistan sent its F16 supersonic combat aircrafts to hit at Indian installations inside the LOC. This was thwarted by the Indian Air Force. One MIG-Bison aircraft was shot at by Pakistan and the fighter pilot, Wing Commander Abhinandan Vartaman, now a national hero ejected and was taken into Pakistan's custody. He was released two days later and continues to remain under treatment for his injuries.

After this incident, there was sort of code across political parties that none should use the surgical strike at Balakot as a political scoring board. This lasted until Wing Commander Abhinandan was safely handed back to India by the Pakistani Government. After that Wing Commander Abhinandan's picture has been used by BJP candidates and Prime Minister Modi's picture was juxtaposed to that of the Indian army in hoardings across the country. This is like using the military to boost political fortunes for the ruling party. There is no doubt at all that the NDA Government under PM Modi took a decisive step to hit the terror camps inside Pakistan. This also calls out the lies of Pakistan which unconvincingly denies that such factories inside its territory exist and that they are being nurtured by the Inter-Services Intelligence (ISI) which reports directly to the Army Chief and the Prime Minister. This grievous plan to weaken India has been unleashed time and again by preaching the language of jihad in Kashmir and indoctrinating hundreds of its youth. Now that the terror camps in Afghanistan are being demolished, courtesy the US, intent to pull out of that country, those terror outfits will return to Pakistan and infiltrate across the Indian border to cause havoc here. This is where the Indian Government requires a futuristic, strategic security document to handle the aftermath.

So, initially the attempt to politicise the Pulwama issue and the Balakot air strike was largely muted due to the fear that such stratagem might backfire and alienate even the non-partisan voter. But very soon statesmanship gave way to blatant use of the air strikes to win points for the BJP and to turn this into electoral dividends. This should not be allowed to happen at any cost, least of all by the Party currently running the government and looking for a triumphant return.

The military belongs to the nation and is dear to every Indian, irrespective of political affiliations. We grieve as a country when they are killed in action and rest secure in the thought that our borders are well guarded by women and men dedicated to serving the nation. I, therefore, find it extremely distasteful when retired generals whose views are politically slanted, frothing away on Prime Time television. It's almost as if the TV anchors allow these retired army personnel to vent some unexplained venom against those who hold views different from theirs as far as India's policy towards Pakistan is concerned. India is a diverse country and there are the doves who believe that wars extract a high cost from any country and that peace is the way forward. But the hawks, most of whom will not be donning the uniform or fly a fighter aircraft or fire a gun that raise shrill war cries inside the TV studios.

And there are TV channels whose anchors are not even apologetic about their compassion for the BJP. How such channels can still claim to be fair and independent is a question the media fraternity should be answering right now.

The elections are at hand and attempts to use those war scenes in the backdrop of TV studios ostensibly to discuss Balakot again and again on the plea that there are sceptics asking for evidence is actually an insidious attempt of politicising the recent air strikes. The ECI should not allow this cheap propaganda by the media.

From Industrialization to De-industrialization of Assam: The Prospect of Industrial Resurgence

M.P. Bezbaruah*

The rich natural resource base of Assam attracted substantial colonial investment in the nineteenth century. The second half of the nineteenth

* Professor M.P. Bezbaruah, is Head, Department of Economics, Gauhati University. Email: bezbaruah.mp@gmail.com

century saw spectacular growth of industries in Assam led by tea plantation and manufacturing which had already had its roots in several parts of upper Assam. The demand for coal in tea factory encouraged coal mining and the plywood industry appeared to supply chests for transporting tea. Waterway down the Brahmaputra was not adequate for transporting products and hence, a railway network was also laid across the Brahmaputra Valley with a line branching down to the Barak Valley across the North Cachar Hills. Discovery of oil and subsequent exploration and establishment of the Digboi Oil Refinery in the early twentieth century gave further fillip to the growth of modern industries in Assam. With such growth of major industry it was natural for the economy of Assam to record a high rate of growth. A result of this was that Assam at the time of independence was one of the high per capita income States of India.

However, there are many critiques of the industrialization of the economy of Assam in the colonial period. First of all, all these industries were extractive in nature leading to depletion of valuable natural resources. Moreover, the colonial industrial pattern created an enclave economy which had very little interaction with the rest of the economy of the State. The labour force to work in tea plantation was mostly brought from outside the State. People who found employment in the industries were also mostly immigrants from other parts of eastern India. Participation of local indigenous people in trade and commerce that grew with the industrialization process was also practically non-existent. As high skilled engineering and technical personnel engaged in setting up and operating industries mostly came from Europe, the gain of the local economy in terms of useful skill formation was far from significant. It, however, cannot be denied that railways and industries had added a significant modern component to the otherwise traditional agricultural economy of Assam. Yet, despite the relatively high per capita income of the State at the time of independence, it is questionable if the economic condition of common people in Assam was any better than that of those in other parts of India.

In the post-independence period, as partition inflicted geographical isolation and security concerns arising from wars with China and Pakistan reduced attractiveness of the State as a destination of investment of phase of de-industrialization¹ set in. Moreover, as India adopted a public sector led industrialization programme, the location of major industrial units started to be influenced by political considerations.

After about two decades of doldrum on the industrial front, public sector units started coming up in Assam and the other Northeastern States of India. But most of these industrial units – be it the refineries in Guwahati, Bongaigaon or Numaligarh, or the Gas Cracker Unit near Dibrugarh – came up as a result of pressure from regional political forces.

Many of these industries that came up during the colonial period, are now facing sunset. The world famous tea industry of Assam has been losing out in terms of productivity and market competitiveness to newly emerging centres of world tea production such as Sri Lanka and Kenya. The industry, however, has had a lease of life with the emergence of small tea growers who are organized more as peasant farms than as traditional estates. The small tea growers now account for more than one-third of leaf production in the State. The plywood industry has already folded up and the tea packaging is now done more in polythene/plastic sacks. Given the worldwide concerns for climate change, coal and oil are now globally treated as dirty fuels, and hence the mining, refining and use of these fossil fuels may not continue for very long. The paper units which came up after independence have also been closing down one after the other due to a variety of reasons. As of now the cement factories seem to be doing well. However, due to the polluting nature of the cement industry, it has often faced the ire of the environmentalists and the general public. Around the Assam Plains, especially in Arunachal Pradesh, the potential for hydropower generation was assessed to be very substantial. Though a few hydropower projects came up and have been functioning in Arunachal Pradesh and also in Bhutan, there has been great public resistance in Assam to such dam-based projects. The concerns about such projects are founded on the perception that most of the risks associated with these projects fall on the land and people downstream who are also vulnerable to the annual flooding of the Brahmaputra and its tributaries. Given such oppositions to these projects, the environmental and political feasibility of harnessing the large hydropower potential of the northeast region has come under the cloud of uncertainty.

In view of the above discussed problems and uncertainties associated with the existing large industries of Assam and the Northeast Region of India, the re-industrialization of the State and the region could have come from a robust expansion of the Micro-Small-Medium Enterprise (MSME) sector. Indeed with the massive support for start-

ups from the government side, it is time for entrepreneurs to make the best use of the support system and stand up to mark their presence as industrialists. For Assam and the Northeast, however, there is an incentive issue preventing the local entrepreneurial talent being able to take advantage of the situation. The entire northeast region has, in fact, been a fertile ground for breeding of political enterprises. These political entrepreneurs, who fattened their bellies by extracting rents from general public, business enterprises and industrial units, generally use public sentiments and identity issues as their prime capital. Till such enterprises turn into insurgent outfits, their operation is practically riskless. When fortunes can be made without risk and uncertainty bearing, it is quite possible that potential entrepreneurial talents get diverted to rent-seeking pursuits of cronies and/or political enterprises. Flourishing of such enterprises not only denudes the economy of entrepreneurial talent but also crowds out the genuine enterprises which are not spared from extractions of the rent seekers.

For the present situation to change and a more conducive climate to emerge for genuine business enterprises to flourish in Assam and the rest of Northeast India, more than the governments, the civil societies need to play a firm, positive and constructive role. But the civil society space in the Northeast is often occupied by endless discourses on ethnicity and identity related issues, relegating the real development issues to the background.

Notes

- ¹ The share of manufacturing in State Domestic Product of Assam slipped sharply through the two decades of 1950s and 1960s. The share has not recovered much ever since.

Electoral Reforms in India

Dr. Noor Mohammad*

Free and fair elections are the backbone of democracy. Huntington's three waves of democratisation account for 123 of the 192 countries of the world to be democracies. It was expected that the Arab Spring will cause the fourth wave which could not materialise. The basic premise of democracies is enshrined in Article 21(3) of the Universal Declaration of Human Rights (1948).¹ Other international instruments that further elaborate the Universal Declaration include International Covenant on Civil and Political Rights (1966), Convention on the Elimination of All Form of Discrimination Against Women (1979), UN Convention on the Rights of Persons with Disabilities (2006) etc.

If a nation conducts free and fair elections to form a representative government where in political parties and groups representing various interests in the society participate, it qualifies to be a democracy. After becoming a democratic republic, India has successfully conducted 14 general elections which resulted in peaceful transfer of power. The Election Commission of India has a reputation of conducting free, fair, credible and acceptable elections and Indian elections have been recognised as world gold standard.

Spread of democratisation led to surge in interest on assessment of democracy. The Economist Intelligence Unit (EIU) has released the Democracy Index 2019 which ranks 167 countries by 60 indicators across five broad categories. The categories considered for the index are electoral process and pluralism, the functioning of government, political participation, democratic political participation, democratic political culture and civil liberties. Deepening of democracy is the main concern democracies have to address today. According to the Democracy Index 2019, only 4.5 per cent of the world's people live in

* Dr. Noor Mohammad IAS (Retd.) is Electoral Expert in India International Institute of Democracy and Election Management, Election Commission of India.

a full democracy which underlines the need for reforms in the way democracies are run. It is worth a mention here that according to these criteria, India and USA are categorised as flawed democracy.

Why Electoral Reforms?

India conducts elections that are world gold standard but it is categorised as flawed democracy – Much of this can be understood in India's shortcomings in addressing issues as substantive democracy. However, it cannot be inferred that the procedural aspect of democracy in India are fully addressed. India stands quite high in terms of Perception of Electoral Integrity Index, yet a number of areas remain to be addressed. Political participation by all citizens and accountability of the representatives elected by the electoral process – where huge gaps remain – provide the main criteria for estimating this index. A good election can deepen civic engagement, promote informed public debate, stimulate competition among the contestants, and allow the peaceful resolution of political conflict. However, too often elections in India fail to achieve these objectives. There are concerns about low or falling turnout, public disaffection, party polarization, and the failure of elections to ensure legitimate outcomes. Electoral malpractices continue to undermine contests around the world, from overt cases of violence and intimidation to disinformation campaigns, voting on religious, caste and regional lines, barriers to voting, vote buying, lack of level playing field among contestants and the under-representation of women and minority candidates. On review of the ground realities, it is revealed that India does need to reform its electoral processes to further improve even on its electoral processes.

Broad Categories of Electoral Reforms

Electoral Reforms are categorised into categories – legal, administrative and political.² The **Legal reforms** involve amendments of the constitution, the electoral law, or related regulations and rules to enhance the integrity, relevance, and adequacy of the legal framework within which the Election Commission delivers its services. This may include institutional reform of the Commission itself. The **Administrative reforms** pertain to introduction within the Commission of new strategies, structures, policies, procedures, and technical innovations that enable it to implement its legal responsibilities and deliver its services more

efficiently, effectively, and sustainably. These could include: policies and practices on issues such as procurement, financial integrity, or employment (such as gender balance in the recruitment of staff); making informed voting accessible to groups such as women, remote residents, and the physically impaired; or introducing new technology for services such as voting, voter registration, or electoral logistics. And, the **Political reform** introduce changes in the political environment within which the Commission operates, such as giving it more autonomy or creating a more effective and transparent framework for its funding and accountability.

Electoral Reform Initiatives in India

Election Commission of India is an institution created under Article 324 of the Constitution of India. It is an independent Election Management Body (EMB) and has been given responsibility of superintendence, direction and control of preparation of electoral rolls and conduct of elections to offices of the President, Vice President, and election to both the houses of the Parliament, and house(s) in the Provincial Assemblies. Later State Election Commissions have been established through amendments to the Constitution to conduct elections of the urban local bodies and the Panchayat Raj institutions. This paper will discuss issues related to the Election Commission of India only.

The Election Commission functions within the legal framework defined by Article 324 of the Constitution of India; Representation of the People Act 1950 and Registration of the Elector's Rules 1960 that govern preparation for elections; and Representation of the People Act 1951 and Conduct of the Elections Rules 1961 for conduct of elections. There have been situations to be handled for conducting free and fair poll for which no specific legal provisions existed. In some cases the Commission has used its plenary powers to deliver the mandate given by Article 324 – Supreme Court of India has liberally supported its actions. However, there are serious gaps in laws which need to be bridged and for doing so reform in legal framework is the only recourse.

Article 329 makes it the sole authority to redress grievances during the election period and the commission exercises powers for summary trial for redressal of all grievances till the election process is ended – After the conclusion of the electoral process, the aggrieved can take recourse to election petition to challenge the election. This provision is unique and helps the Commission to complete the electoral process

as planned while the aggrieved have the recourse to election petitions through which election results can be challenged.

Sources of Reform

Post-election evaluations conducted by the Commission bring out difficulties and challenges faced during the electoral process. Election Commission formulates reform proposals to meet these challenges and sends them to the Ministry of Law and Justice for amendment in the relevant laws.

1. Dinesh Goswami Committee on Electoral Reforms (1990),
<http://lawmin.nic.in/ld/erreports/Dinesh%20Goswami%20Report%20on%20Electoral%20Reforms.pdf>
2. Vohra Committee on Criminalisation of Politics (1993)
https://adrindia.org/sites/default/files/VOHRA%20COMMITTEE%20REPORT_0.pdf
3. Indrajit Gupta Committee on State Funding of Elections (1998)
<http://lawmin.nic.in/ld/erreports/Indrajit%20Gupta%20Committee%20Report.pdf>
4. The recommendation of the Second Administrative Reforms Commission (2007)
<http://arc.gov.in/4threport.pdf>
5. Core Committee on Electoral Reforms (2010)
lawmin.nic.in/legislative/ereforms/bgp.doc
6. Justice Verma Committee on Amendments to Criminal Law, 2013.
<http://www.prsindia.org/uploads/media/Justice%20Verma%20committee/js%20verma%20committee%20report.pdf>
7. Law Commission Report on Electoral Reforms, 2015
<http://lawcommissionofindia.nic.in/reports/Report255.pdf>
8. Recommendation of Election Commission of India (2016)
http://eci.nic.in/eci_main/ElectoralLaws/HandBooks/PROPOSED_ELECTORAL_REFORMS_01052017.pdf
9. Initiatives from the civil society/ Advocacy groups
<http://www.adrindia.org/sites/default/files/ADR-NEW%20Recommendations-April%20202011-Final.pdf>

In addition, many Committees and Commissions set up by the Government of India from time to time also gave their recommendations. The civil society advocacy groups also came up with important recommendations for reforms. Some of these sources are mentioned in the Text Box though fewer of these reform proposals were accepted and many are still pending.

Progress so far...

Legal reforms

Reforms in the Constitution and the electoral laws come under this category. Some of such reforms already implemented are listed below:

1. Lowering of age for enrolment as elector from 21 to 18.
2. Open ballot voting at elections to the Rajya Sabha to avoid cross voting and corruption.
3. Voting through proxy for voters belonging to armed forces and para-military forces were introduced by amendment of the Act in 2003.
4. Provisions for enrolment of overseas Indians in the electoral roll was made in a recent amendment in 2011.
5. In the absence of Political Party Law, the Commission, using its plenary powers under Article 324 of the Constitution, issued Election Symbol (Reservation and Allotment Order 1968 to streamline allotment of election symbols to political parties – The Order was challenged in the court but was upheld by the Supreme Court of India. This is a case when an initiative taken by the ECI actually resulted in amendment of electoral law.

Court led reforms

A number of reforms emanated from judgements of the Supreme Court of India and those of the High Courts. Some important court led reforms are as follows:

1. In NP Punnuswamy vs Returning Officer, Nammakkal(1952) and Mohinder Singh Gill vs. Chief Election Commissioner and others (1978) prescribed a blanket ban on jurisdiction of the courts before the electoral process is completed.
2. In 1986, the Supreme Court upheld the constitutional validity of the Symbols Order, 1968 and in compliance Sub-Sections

29A, 29B and 29C were added in the Representation of the People Act, 1951.

3. The Commission was made a three member Commission in 1993 and all the Commissioners were treated at par – The decision making in the Commission thereafter has been guided by this ruling. However, the Constitutional amendment to make their removal through impeachment is yet to be done.
4. A consultative mechanism was set up in 1993 for placing central police forces for deployment by the Commission during elections.
5. In *Common Cause vs. Union of India and others* (1995), the Apex Court directed that the political parties have to file their income tax returns, and that the Election Commission could ask, under Article 324, the Parties to submit their statements of election expenses to it for scrutiny.
6. In 2003, the Supreme Court prescribed that the contesting candidates must file an affidavit on their background so that the voters can make an informed choice at the time of voting.
7. Persons in custody were debarred from contesting elections (*Jan Chaukidar vs. Union of India*) – The Patna High Court Judgement upheld by the Supreme Court in 2013 was nullified by an amendment in the RP Act 1951.
8. MPs and MLAs were disqualified from the date of conviction (*Lily Thomas vs. the Union of India*).
9. Voters got right to negative vote (NOTA case),
10. VVPAT was introduced (*Subramanian Swamy vs. Election Commission of India*)
11. Ruling on manifestoes (*S. Subramaniam Balaji vs. Election Commission of India*).
12. Media Certification and Monitoring Committees to vet campaign materials during elections were introduced in compliance of an SC judgement.

ECI led reforms

Election Commission of India formulates its office procedures and interprets relevant laws and rules so that the field staff can have more clarity and understanding. ECI has introduced many administrative reforms that did not require amendment of laws and rules – all such

reforms have aimed to increase transparency in the electoral process. Such reform proposals are first discussed with the stakeholders to seek their suggestions, and genuine concerns expressed by them are incorporated in the final reform decisions. This consultative mechanism helps create ownership of the decision among the stakeholders and leads to better compliance.

Some of these initiatives are given below for illustration:

1. Model Code of Conduct, which started as an initiative by political parties, was codified, augmented and implemented by the Commission from the 1990s. This turned out to be a potent alternative grievance redressal mechanism.
2. In 1982, the Commission experimented with the voting machines in a part of an assembly constituency in Kerala and now the machine is used in the entire country. VVPAT has been added as transparency mechanism recently after the SC order for the paper trail.
3. During the 1990s, the Commission computerized the electoral rolls of all constituencies. Now eligible citizens can register as electors online and those already on the list can check their names in the list from anywhere in the world.
4. Institution of Booth Level Officers (BLOs) for each polling station in the country was created by innovatively using the provisions of 13B(2) of the Representation of the People Act 1950. The provision allows Electoral Registration Officer to appoint any one to help in registration of electors and the Commission directed the EROs to appoint BLOs under this provision. Now these BLOs help even in other election related works.
5. Provision of Booth Level Agents (BLAs) for each polling station to be appointed by political parties was made through ECI instructions as a measure of transparency and with a view to elicit cooperation of the political parties in the electoral process.
6. In 1993, the Commission introduced elector's photo identity card to address the issue of impersonation.
7. Election Observers first introduced in 1990s to add transparency and provide for closer supervision of the electoral process on the ground.
8. Large-scale deployment of central police forces was introduced by the Commission in 1990s. A consultative mechanism among

the security agencies and the poll officials has been set up at various levels that helps need based deployment for delivering secure elections.

9. Videography of major electoral events was introduced as a transparency measure.
10. Micro observers are posted at sensitive polling stations for closer monitoring of elections.
11. Preparation of voting machines, storage of machines and counting of votes are done in a transparent manner, wherein the stakeholders are taken on board.
12. Webcast of the polling process in remote and sensitive polling stations is done for better supervision.
13. Deployment of poll staff to polling stations is done using randomization technique to remove possible personal biases in forming polling parties.
14. Vulnerability mapping has been introduced to ensure better preventive measures and scientific deployment of security forces during elections.

Political reforms

Political reforms to create better working environment for the Commission adds to the perception of electoral integrity. India's effort in this regard has been at best half hearted. Some instances are given below:

1. Election Commission has been created as an independent Constitutional body but appointment of the Chief Election Commissioner and Election Commissioners is opaque and needs to be made transparent. This puts serious limitations on the Commission being perceived as an independent body and not the one sympathetic to the party in power that appointed them.
2. Supreme Court ruled in 1993 that Chief Election Commissioner and the Election Commissioners have equal powers but the needed constitutional amendments to make their removal process the same, is yet to be realised.
3. Political party reform is the most needed reform in India. Election Commission has no power to regulate working of political parties. The Commission issued Symbol Order using

its plenary powers under Article 324 of the Constitution; and when the order was challenged, the Supreme Court upheld it and directed the government to make legal provisions in this regard. In response to Section 29A, 29B and 29C were added to the RP Act, 1951. These provisions are highly inadequate in regulating the working of the political parties. Reform proposal to bring a comprehensive political party law has not been realised yet.

4. There have been concerns for switching from the First-Past-The-Past (FPTP) System to the Proportional Representation (PR) System – FPTP has proved highly inadequate in translating votes into seats. As both the systems have their shortcomings, a mixed system that minimises the shortcomings and enhances their capacity to bring votes share closer to the number of seats won could easily be considered.
5. Representation of women has been ensured in the urban local bodies and the Panchayat Raj institutions but the same is yet to be realised in the Parliament and State Assemblies in spite of concerns raised at the national level and in Beijing Declaration in 1995.

The Unfinished Agenda...

There are several areas where reforms are urgently needed but the desired amendment of laws is pending. The Law Commission Report on Electoral Reforms, 2015 and reforms proposed by the ECI include these needed reforms in detail. Some of the urgently needed reforms are given below:

1. Electoral System

An electoral system translated votes into seats. In India, FPTP is used in the Lok Sabha and Vidha Sabha elections while Proportional Representation with Single Transferable Vote is used in elections to the office of President, Vice President and Members of Rajya Sabha and Vidhan Parishads. There have been cases where political parties getting even 20 per cent votes did not get any member elected. In essence, FPTP is divisive too because the candidate has to get votes more than other candidates and consolidation of a few communities can get the

desired result for them. As a result, a number of caste and religion based parties flourish – They divide the society leading to unrest which at the end of the day hurts the very existence of democracy. There have been discussions to adopt Proportional Representation or a Mixed System but the proposals yet to get a serious consideration. If the candidate has to poll majority of votes polled i.e. at least 50 per cent of the total votes polled, political parties will reach out to all communities and a more cohesive society will emerge.

2. Independence of the Election Commission

Chief Election Commissioner and the Election Commissioners are appointed by the President on advice of the Cabinet. Such appointees are perceived to be sympathetic to the government that appoints them. There is no qualification prescribed under the Constitution or any law for the Chief Election Commissioner and the Election Commissioners. The appointment process needs to be made more transparent and merit based.³

The Constitution provides for constitutional protection against removal from office and the Chief Election Commissioner can be removed only through impeachment, while the Election Commissioners can be removed on recommendation of the Chief Election Commissioner. While Supreme Court in 1993 has granted equal status to the Chief Election Commissioner and the Election Commissioners, the proposal to amend the Constitution to make the process uniform for all is still pending.

3. Criminalization of Politics

A large number of candidates with criminal backgrounds succeed in winning elections in spite of provisions of disqualification to contest in Section 8 of the 1951 Act – In case of social crimes, mere conviction even without imprisonment invites disqualification for contesting elections and in other cases conviction with sentence of imprisonment of two years or more invites disqualification. However, delays in disposal of criminal cases make these provisions ineffective.

Supreme Court in 2002 laid down that the candidates have to give details of criminal cases against them – past as well as ongoing – and the same is publicized among voters so that voters can make an informed choice but the desired result is yet to be realized.

Election Commission sent a proposal to the government in 1998 for debarring a person facing charges for serious offences from contesting election. After a number of political parties expressed apprehensions that the ruling establishment may falsely implicate leaders in opposition, the Commission suggested that the ban may be limited to cases filed six months before elections in heinous and social crimes and only in cases the courts have framed the charges.

In addition, the Law Commission Report 2015, also recommended disqualification for certain period on framing of charges for serious offences. The National Commission for Review of the Working of the Constitution, too, in its report submitted in 2002, recommended disqualification on framing of charges, with the rider that disqualification may commence after one year of framing charges. It went even further to recommend that conviction for any heinous crime such as murder, rape, smuggling etc., should attract lifelong disqualification for contesting for political office.

The proposal is still pending for consideration.

4. Law for Regulating Political Parties

The existing law on political parties needs a complete overhaul. Political parties in India don't practice internal democracy and their functioning is far from democratic. They acquire power through democracy but their internal functioning is undemocratic – Selection of candidates depends on whims and fancies of few leaders and a common member of the party finds it impossible to reach the top on his/her merits. There is no transparency in their working, particularly in raising resources and nomination of candidates. And, there is no effort by them to improve their outreach to all sections of the society – FPTP allows them to work with just a few communities and win elections, as a result, caste or religion based parties flourish. Though these parties give declaration in their party constitutions to abide by their party constitution as well as the Constitution of India that bars religion or caste based parties but in practice they get away with objectionable conduct in the name of culture or social norms etc.

The Commission issued Symbol Order to streamline registration of political parties, reserving election symbols and allotment of symbols during elections. The Supreme Court has repeatedly upheld the constitutional validity of this Order. However, in an appeal before it on the issue of cancellation of registration of political parties in cases of

violation of constitutional provisions the Court held that the decision of registration of a political party by the Election Commission is a quasi-judicial decision, and in the absence of express provisions in law for de-registration, the Election Commission cannot de-register a party on complaints of violation of its own undertaking. The result is that India has nearly 2000 political parties at present but the Commission cannot de-register even those parties who never contested an election.

The Commission recommended for amendment empowering it to regulate registration as well as de-registration of political parties and their internal functioning as per their own constitutions.

5. Transparency in Political Donations

Political donation is the fountainhead of corruption in a democracy. Many democracies provide public funding of elections with a view to remove corruption by the political parties. The present law fixes expenditure limit for individual candidates and not for the political parties. There is no regulation on their raising funds and spending them. Political donations are opaque and this opacity has been further increased by the electoral bonds. Indrajit Gupta Committee recommended for limited State funding of elections. Election Commission also proposed for making provisions to audit accounts of political parties by a Chartered Account empanelled by the Commission. Both these recommendations are not yet implemented.

6. Misuse of Religion

A Bill was introduced in the Lok Sabha in 1994 whereby an amendment was proposed making a provision to question before a High Court all acts of misuse of religion by political parties. The Bill lapsed on the dissolution of the Lok Sabha in 1996. The Commission has proposed to pass a law on misuse of religion, as appeal to religious sensitivities during campaigns is illegal. Appeals to religious or caste sensitivities pose serious threat to fair elections and needs to be handled with tough hands.

7. Paid News

The scourge of paid news is a recent phenomenon in Indian elections. The Commission has proposed amendment in the Representation of

People Act, 1951, to make publishing and abetting the publishing of 'paid news' for furthering the prospect of election of any candidate an electoral offence under Chapter-III of Part-VII of Representation of People Act, 1951 with punishment of a minimum of two years imprisonment.

8. Punishment for Electoral Offences to be Enhanced

Undue influence and bribery at elections are electoral offences under Sections 171B and 171C of IPC respectively. These offences are non-cognizable offences and hence virtually ineffective. Similarly, Section 171-G for publishing false statement in connection with election with intent to affect the result of an election is punishable with fine only. Likewise, Section 171 H provides that incurring or authorizing expenditure for promoting the election prospects of a candidate is an offence. However, punishment for an offence under this Section is a meagre fine of Rs.500/-. This amount may have been a deterrent then but now it is laughable.

These punishments were provided as far back as in 1920. Considering the gravity of the offences under the aforesaid Sections in the context of free and fair elections, the punishments under all the four sections need to be enhanced and made cognizable, if they are to serve the intended objects.

9. Freebies by Political Parties

A recent trend is noticed in which political parties announced freebies without any regard to the sources of funding. Ornaments, laptops, bicycles, pressure cookers, and cash transfer of Rs. 6000/ to the small farmers with upto 2 hectares of land in the interim Budget FY2019-2020 and the first instalment of Rs. 2000/ to be released in the last quarter of FY2018-2019. Supreme Court in its judgment dated 5th July 2013 in SLP(C) No. 21455 of 2008 (S. Subramaniam Balaji vs. Govt. of Tamil Nadu and Others) directed the Election Commission to frame guidelines with regard to the contents of election manifestos in consultation with all the recognized political parties. As a result, "Part VIII – Guidelines on Election Manifestoes" has been added. However, the real impact of this exercise is not visible on the ground.

Conclusion

It is evident from the above that electoral reforms have not got the priority they deserve. In the run up to the General Elections 2019, political parties can be seen in election mode with election rallies being organised all over the country. Expenditure of these rallies will not be included in the poll expenses of the candidates – Poll expenses are counted from the day of nomination as a candidate till the close of poll. Prime Minister/ Chief Ministers/ Cabinet Ministers are in election mode and all the expenditure for these rallies is on the public exchequer. This disturbs the level playing field as those in opposition cannot misuse the public resources that the political parties are using at the moment. It is a different issue that the opposition parties today will do the same when they become ruling parties tomorrow.

One can see government sponsored advertisements in the run up to election. There have been demands to ban advertisements on achievements of the Government for six months prior to the date of expiry of the term of the House. Essential advertisements/dissemination of information on useful announcements for the public good could be exempted from the ban. The list is long.

In brief, there is a long list of needed reforms and a holistic consideration on the pending proposals is long overdue. It is unlikely that the law makers will accept reforms that put restrictions on what they have been doing till now. The civil society and advocacy groups are the only hope who can create an environment that forces the law makers to act.

Notes

- ¹ "The 'will' of the people shall be the basis of the authority of government; this 'will' shall be expressed in periodic and genuine elections which shall be held by universal and equal suffrage and shall be held by secret ballot or by equivalent free voting procedures."
- ² ACE Project resources
- ³ Dinesh Goswami Committee Report (1990) recommended that these appointments be made by the President in consultation with the Chief Justice of India and the leader of the opposition in the Lok Sabha.

Electoral Reforms in India

S.Y. Quraishi*

As the electorate, the political parties and the Election Commission of India pull up their socks for the biggest electoral show on earth in 2019, it is helpful to revisit a plethora of electoral reforms that have been suggested time and again by the Election Commission, the civil society and the various committees set up by successive governments in the last three decades.

Today, robust democracies in the world realise the changing nature of times as disruptive technologies and new methods of campaigning are changing the political paradigm. Hence, to keep up with the changing world, reforms in the electoral process are an urgent requirement for fulfilling the crucial constitutional mandate of free, fair and transparent elections. A transformation in this arena will result in truly representative governments as it will not only ensure a fair process but will also result in outcomes which enhance popular welfare.

Towards Proportional Representation

Since independence, we have adopted the Westminster model of parliamentary democracy. India and UK follow the same system called the First Past the Post system for electing candidates to the House of the People.

FPTP is a fairly straightforward system in which electors vote for only one candidate per constituency. Even in the absence of an absolute majority of votes, the candidate with the most votes is declared the winner. Hence, irrespective of the margin or the percentage of votes polled, the *winner takes all*.

But both countries are now questioning the merits of the system. In 2011, a referendum was also conducted in the UK on whether the

* S.Y. Quraishi is former Chief Election Commissioner of India and the author of *An Undocumented Wonder: The Making of the Great Indian Election*.

FPTP system should be retained, and 68 per cent voted in favour of the status quo. But the catch is that only 41 per cent of the electorate actually voted in that referendum. How representative was the referendum itself in that case?

FPTP was adopted in India due to certain advantages. Firstly, it is a fairly simple system in which a clear choice presented to the voters. In a country where 84 per cent of the citizens were illiterate at independence, it is understandable why the constitution makers chose it. Secondly, the system leads to one representative for every constituency, who is accountable to the voters. This means the voters know exactly who made promises and who broke or fulfilled them. Thirdly, people vote for a representative and not for the political party as a whole. At the local level, the accountability lies with the candidate, not the party she represents. Hence, in a country of continental proportions and unfathomable diversity, it is only fitting that FPTP was adopted at independence.

But the 2014 General Elections changed my mind about FPTP. I was compelled to reconsider my position looking at the results – the Bahujan Samaj Party, the third largest party in terms of national vote share at 4.2 per cent and 20 per cent of the vote share in Uttar Pradesh, got zero seats! On the other hand, other parties who won lower share of votes got seats such as the Trinamool Congress with 3.9 per cent of the national vote, getting 34 seats. Did the FPTP really help to represent the diversity of various groups?

At the national level, despite the so called “Modi Wave”, only 37 per cent of the elected candidates or 201 MPs obtained a majority of votes in the 2014 election. Similarly at the State level, an average of only 44.5 per cent of the elected representatives managed to obtain a majority of votes.

Such unrepresentative results are possible in the FPTP system only because of *winner takes all*. Hence, a system where the proportion of votes will match the proportion of seats in the legislature for various political groups needs to be debated urgently in the country. It is time we debate proportional representation (PR).

The PR system has many variants, such as the open list and the closed list systems. In a list PR system (both closed and open), the voters are asked for voting for a political party based on a submitted

list of candidates. Each party is then given seats in proportion to the votes acquired based on that list. It follows logically that all constituencies are to be multi member in the case of list system i.e. multiple members will be elected from the same constituency, with the number of seats per constituency allotted according to its demographic composition or other suitable characteristics.

This has one obvious shortcoming – there is no scope for independent candidates because the list system requires candidates contesting under the banner of a political party as part of its list.

The difference between an open list and a closed list PR variety is that whereas in open list, voters can choose to not only vote for a party but are also to rank candidates within that party's declared list, in closed list the voters opt for the entire party based on a set list rather than specific candidates.

The PR system also has some shortcomings. Firstly, the system might frequently result in a hung parliament as it might be difficult to have a clear majority of any party. The dominant party in that case will have to build consensus and form coalitions as a norm. But this is already the case since the past two and a half decades under the present system.

As a matter of fact, deliberative democracy is a celebrated tradition in Indian history. It is also a cushion against majoritarianism and authoritarianism.

Secondly, this might further encourage favouritism within the party while the list is being formulated. The candidates would prefer to woo the party leadership instead of the voters. Thus, it runs the risk of elite capture and appeasement of a particular personality, dynasty, community, religion or caste.

Aristotle's "golden mean" might provide answers in this case. Owing to the flaws of both PR and FPTP systems, some variant of a mixed model has been adopted by countries such as Germany and Nepal.

Germany uses the mixed member proportional system of voting. In Germany, the voters cast two votes – one for a candidate in a constituency and second for a political party. The aim is that the voters choose their representative and also vote for a party. Thus, out of the 299 constituencies and 598 seats, the seats are filled by voters by

directly electing representatives and the second vote determines the power of parties in the German Bundestag.

This kind of a system can only be adopted in India if the number of constituencies is halved, or the size of Parliament is doubled. The former suggestion is ill advised considering the ratio of constituencies to voters is already vastly disproportionate in comparison to other countries. For instance, an Indian MP represents an average of 1.5 million electors as compared to 72,000 in the UK.

But the second suggestion is tenable, and even advisable. Indeed it has been mooted in the past by the learned former President of India Dr. Pranab Mukherjee in 2017. A great advantage of this Parliamentary expansion will be the long overdue cause of women's reservation, as the quota won't eat into the existing seats. This would demolish the single biggest argument against women's reservations given by critics.

Another variant of the mixed system is in use in Nepal. It is called a parallel system in which voters effectively participate in two separate elections for a single chamber but through two different systems. There are two different ballot papers, one each for FPTP and PR. Of the 275 members in Nepal's House of Representatives, 165 are elected through FPTP and 110 through PR. But unlike the MMP system discussed earlier for Germany, the results of the PR seats are allotted only in proportion to those very seats and not the entire 275 seats.

For making this model a success in India, the strength of the Parliament will again have to be altered or the demarcation of the constituencies will have to be changed.

As a result of its clearly demonstrable advantages, the PR system is massively popular throughout the world. More than 83 countries are following it in some form. A 2017 report by International IDEA mentioned that 34 countries in Europe have adopted it. The FPTP system comes second with 61 countries using it. Third comes the mixed system, followed in 21 countries.

This debate needs to be reinvigorated with urgency as it can be the panacea to the problem of meaningful representation. Proportional Representation can make the world's largest democracy adequately representative of the diverse will of its people.

Who Gets to Vote?

Another question is the question of franchise itself.

The issue of NRI voting is being fiercely debated across all sections of the media. The RPA Act, 1950 was amended and came into effect in 2011 with a new Section 20A. The *Committee for Exploring the Feasibility of Alternative Options for Voting by Overseas Electors* was set up in 2014 to further study the pros and cons of proxy franchise.

The RPA (Amendment) Bill, 2017 was passed in August, 2018 in order to facilitate proxy voting for over 3 crore NRIs throughout the globe. But it is not clear as to what arrangements are in place to facilitate the system for the 2019 elections. Additionally, there are pitfalls in the idea itself.

Firstly, analysts point out that it violates the provision of “secret ballot” which is at the very heart of the voting process.

Secondly, it discriminates against the intra country migrants who are many more in number and directly affected by domestic policies. Why not have the same facilities for them to be able to appoint proxies to cast votes? This stands in direct contravention to the fundamental Right to Equality for all citizens.

Another issue is that the Model Code of Conduct cannot be implemented abroad. It follows that transgressions during campaigning will become commonplace and the EC will be helpless in that case. Due to these and other practical issues, NRI voting is problematic.

When it comes to the discussion on the expansion of franchise, prisoner voting doesn't get the much needed attention. Article 326 lays down the provision for Universal Adult Suffrage subject to certain conditions, but Section 62(5) of the RPA, 1951 lays down that prisoners i.e. both convicted felons as well as undertrials, should not be allowed to cast their vote. It does allow for voting under preventive detention.

The SC has upheld the validity of 62(5) in *Anukul Chandra Pradhan vs. Union of India* stating that it does not affect Article 14. A 2013 judgment of the SC also reinforced this position. In a nutshell, it follows from the assertion that if you can't follow the law, you shouldn't be allowed to choose who makes them.

But then why should you be allowed to contest as a candidate if you have broken the law, as is the case at present?

Felony disenfranchisement would be totally justified but for the condition of criminal justice system in India. Despite the SC repeatedly stating that Article 21 requires speedy justice be meted out to the accused, more than two thirds of the prison population are undertrials according to the NCRB data released in 2015. An overwhelming majority belongs to the marginalised sections of the society with 53 per cent being Muslims, Dalits and Adivasis according to a 2017 report by Amnesty International.

Unequal access to legal aid, poor prison conditions, poor understanding of the law by authorities and cruel treatment leads to an outrageous violation of their rights and denial of human dignity.

Many countries around the world are already moving away from felony disenfranchisement. Switzerland, Finland, Norway, Denmark, Ireland, Baltic States and Spain already allow for prisoner voting. Some countries such as Armenia and Austria are considering proposals.

If persons did not lose their citizenship as an undertrial in prison, should they lose their right to vote? Shouldn't there be a differentiation between those charged with heinous crimes and those languishing in jails for minor offences? Shouldn't there be a differentiation in the political rights of the undertrials and the convicts? Shouldn't "innocent until proven guilty" be the central tenet of a rights based approach to justice? These are some of the crucial questions which must be debated before the law is settled on a blanket ban and disenfranchisement of approximately 4 lakh prisoners.

Expanding franchise is a basic priority of a rights based constitutional democracy. But is the system providing sufficient alternatives to choose from?

Cleaning the System

Even though India is one of the most electorally active countries on the planet, it has continued to be a flawed democracy as characterised by the 2018 report of Economist Intelligence Unit World Democracy Index. The reason is a poor track record of equity, social fragmentation and high levels of corruption.

The EC has repeatedly sought the help of the Hon'ble Supreme Court of India in stemming the increasing tide of criminalisation of politics. That is why the much awaited verdict of September 2018 was

so disappointing. Pronouncing its verdict on a batch of petitions, the five judge bench headed by the former CJI Dipak Misra said that the court cannot play the role of the Parliament. The former CJI expressed his concern and also acknowledged the helplessness of the society in stemming the phenomena, but then proceeded to throw the ball back in the EC's court.

But where do people go when the Parliament refuses to play its role? Even though the Parliament is obliged to legislate on the matter under Article 102(1) of the Constitution, the idea that they will legislate against their self interest is somewhat counterintuitive. After all, candidates are selected based on their *winnability*.

The Court recommended a slew of measures to discourage the entry of tainted legislators. Firstly, the candidates must declare such cases while filing nominations. Secondly, the political parties should display information on their candidates on their websites. Thirdly, the Parliament must legislate on the matter. Fourthly, while filling nominations, the candidates should declare their background in bold letters and lastly, the political parties should publicise about the candidates via electronic media.

Even though the recommendations are welcome, the judgement left much to be desired. Voters hardly go to the websites of political parties to read information. Further, why will the parties go against their own self interest and spend money to publicise about the criminal backgrounds of their candidates?

Instead, the parties show rare unity in opposition to any law which debars perpetrators of heinous crimes i.e. rape, murder, dacoity and kidnapping. They seem to actually compete with each other in fielding candidates with such charges. The past three Lok Sabhas have seen an increasing number of legislators with such pending cases – 124 in 2004, 162 in 2009 and 182 in 2014.

It defies all logic that while undertrials can't vote in elections, tainted candidates get elected left and right even though contesting elections is a statutory right and not a constitutional one like the right to vote.

The EC's proposals are sound in this regard and also have safeguards against politically motivated convictions. Firstly, all criminal cases will not be inviting a ban, only those involving heinous offences

listed earlier. Secondly, the case should be registered at least six months before an election. Thirdly, the court should have framed the charges.

It remains to be seen whether our parliamentarians possess the political will to heed the apex court's advice and legislate in the national interest. It also begs the question – are the political parties willing to practice within their party ranks what they preach when they send democratically elected representatives to the Parliament?

Reform of Political Parties

It is a cause of concern that the central actors in the political marketplace of the world's largest democracy pay little heed to how democratic their inner organisation is? What is more concerning is that the EC with its massive mandate in the constitutional scheme of things has little teeth at present to do anything about it.

With the passage of the Anti Defection Act in 1985, political parties were formally recognised as part of the parliamentary process for discouraging the "*Aaya Ram Gaya Ram*" politics. But the Commission got the authority to register political parties only in 1989, after Section 29 (A) was inserted in the Representation of People Act, 1951. Even though EC can now register political parties, it cannot de-register them. There are many who argue that reform is needed in this regard to enable the EC to also de-register them as a means of deterrent. There are also those who object to this idea.

The critics say that this would amount to politicisation of the Commission as de-registering political parties would amount to taking a political stand. So at present, parties are only de-recognised (not de-registered) at the state and national levels based on their poll performance and percentage of seats secured in each election.

Unfortunately, political parties have become a hotbed of stagnation, nepotism and incompetence in recent times. There is an opaque wall between the citizens and members of these political parties as their internal functioning is far from transparent. Their organisation is extremely top down and dynasticism and personality politics has infected the high command.

The voters who vote in the internal party elections are themselves nominated by the people within the party ranks. This is a bizarre and fundamentally undemocratic way of choosing representatives who are

then fielded in a democratic election. As a result, the same candidates keep rotating and the chances of new candidates from modest backgrounds breaking the mould remain few.

Inner party democracy is so important that it is a heavily weighted indicator now in almost all acclaimed international indexes measuring the depth of democracy. Hence, it is unfortunate that the EC at present has no sanction to actually probe into the robustness of inner party democracy within the political parties in India.

A number of committees have highlighted a need for reform on this matter. Justice V.R. Krishna Iyer Committee in 1994 called for legislation on inner party democracy and also the legal sanction for auditing political parties independently. The 170th Report of the Law Commission of India titled “Reform of Electoral Laws” stated categorically that political parties cannot be left on their own to act as “dictatorships internally and democratic in its functioning outside.” The Report also called for a separate Commissioner to rein in the communalism and unconstitutional political conduct of party members.

All political parties remain surprisingly united on being as financially opaque as possible. A good example of the attitude of parties towards the cause of transparency is that in 2006, the Association for Democratic Reforms filed an appeal to the Central Information Commission to request that the income tax returns of political parties be made public.

A two year struggle was waged for the cause of transparency until the CIC decided to make them public in 2008. In 2013, there was stiff resistance from all sections of the political establishment against declaring six national parties as “public authorities,” hence bringing them under the ambit of Section 2(H) of the RTI. The plan was later dropped after there were threats that the RTI will itself be amended under Article 123(1).

The Case for State Funding of Political Parties

It is because of glaring flaws in the way political parties raise funds and decide candidature that the case for State funding becomes even more persuasive and urgent.

Indeed no discussion on electoral reforms is complete without a case for transparent funding of political parties and open public scrutiny

of their accounts in order to keep interested money out of politics. This is a fundamental issue for democracy. Only this can ensure that representatives work for the people and not for special interests. This will also end the problem of influential people buying their candidature and will raise the bar for candidature.

While countries such as the US are now looking to candidates who take no PAC (Political Action Committee) money and contemplating legislation on the matter, we have taken two steps back with the introduction of electoral bonds, making a mockery of transparency.

Electoral bonds threaten democracy. They are a regressive reform which further serves to weaken the capacity for public scrutiny and encourage crony capitalism. Crores of rupees can now be legally paid by companies and no one can ever get to know who is giving money to whom. Earlier, corporate were allowed to donate 7.5 per cent of profits from the last three years. But now a 100 per cent of profits can now be donated anonymously to one political party.

The chances are thin that any special interest will ever risk alienating the party in power. As a result, it is no wonder that as of the latest reports, 95 per cent of the money from the electoral bonds has gone to the ruling party at the Centre.

How is this congruent with the promise of electoral transparency by the Finance Minister in his 2018 budget speech? Should donor anonymity take precedence over political accountability?

As a solution to getting interested money out of politics, I have time and again called for State funding of political parties. This would ensure reclamation of democracy from the hands of donor interests. We can never accurately predict how much money is going into indirectly bribing voters, paid news, fake news and other transgressions, even though EC has made progress on those fronts in recent years. Instead, monitoring of political parties is much easier.

The Dinesh Goswami Committee in 1990 had suggested limited State funding of political parties as one of the most crucial electoral reforms. In 1998, the Indrajeet Gupta Committee on State Funding of Elections reiterated the need for partial State funding of recognised state and national level parties for levelling the playing field. Also, it suggested that the parties should be funded in kind.

It did acknowledge a shortcoming too – independent candidates cannot be funded in this way.

A practical suggestion is a common pool system of funding for political parties from where the funds can be allotted to them based on the votes polled in their favour in the last election. This system is successfully working in many European nations. Corporate donations are totally banned under such a system and the parties get a fixed sum paid in cheque from the common pool to which every citizen or organisation can contribute tax free. We could, for example, allocate Rs. 100 for every vote cast in a party's favour. In the last election, 55 crore votes were cast, so this amounts to a common pool of 5500 crores.

Is this sufficient? This amount is roughly the same as that raised by all political parties in five years! So, unless their financial disclosures are inaccurate, this should not be an issue for political parties. This is in their own economic and practical self interest. After all, the drudgery of fund raising overwhelms them and forces them to make compromises on economic policies based on the interest of big donors.

It is great contradiction that we are a poor country with unfathomable levels of campaign expenditure. In such circumstances, there is another upside to State funding of political parties. The Indrajeet Gupta Committee based on their calculations pointed out that the State funding will reduce the overall election costs and elections will become a more economical exercise.

A 2012 International IDEA study highlighted that as many as 71 out of 180 nations surveyed now use State funds based on votes cast. The system is a tried and tested one. All that is required is political will, courage and consideration of national interest.

NOTA and the Right to Recall

What if in the absence of reforms, the voters feel disenfranchised with politics and candidates, but still wish to exercise their right to vote as a democratic duty?

In 2009, the Commission had asked SC to offer the None of the Above (NOTA) option on electoral ballots, but the government opposed the move. The Apex Court later upheld non-voting to the status of a Fundamental Right under Article 21(Right to Liberty). As a result, the NOTA button was introduced as the right to register an abstention opinion in 2013.

In 2013, around 50,000 voters opted for NOTA in Delhi; 3.56 lakh in Chhattisgarh; 5.9 lakh in Madhya Pradesh and 5.67 lakh in Rajasthan. It was introduced for the first time for parliamentary elections in the 2014 General Elections. Approximately 60 lakh voters (1.1 per cent) voted NOTA, more than the votes polled for more than 20 parties. But it had no effect on the results.

In 2017 Himachal Pradesh elections, 33,000 voters opted for NOTA, 0.9 per cent of the voters. Gujarat elections followed in December, with approximately 5.5 lakh people opting for NOTA in Gujarat (1.8 per cent of the electorate).

Statistics aside, NOTA is at present a blank vote and not the same as the right to reject. This is because it cannot force a re-election. Even if all the votes polled are NOTA and one vote is polled for a candidate, that candidate stands elected. Nevertheless, it does have advantages. The EC had the original intention of checking impersonation when they introduced NOTA. This is to make sure people go to the booths.

Another upside was highlighted by a 2013 bench headed by then Chief Justice of India, P. Sathasivam:

“Negative voting will lead to a systemic change in polls and political parties will be forced to project clean candidates. If the right to vote is a statutory right, then the right to reject a candidate is a fundamental right of speech and expression under the Constitution,”

Proposals have been put forward by activists such as Anna Hazare for the right to reject all candidates. This can have two interpretations – one can be a neutral vote which will effectively amount to a no vote and the second can be a reject vote to reject the entire pool of candidates, forcing a re-election.

The Right to Reject is not without its shortcomings. Firstly, it is not clear whether all candidates will be disqualified. Why should good candidates bear the brunt of blanket disqualification? Secondly, what if the new list of candidates is even worse? Election fatigue would ensue in such a case, considering the scale of elections in India. Such frequent elections will be a heavy burden on the public exchequer.

Political instability and voter apathy in the successive elections are other reasons why the right to reject is no panacea in itself. Comprehensive electoral reforms concerning political funding and decriminalisation of candidatures offers a more sustainable solution.

Depoliticising EC Appointments

A democracy is only as effective as its institutions, and the Election Commission of India is the guardian of electoral democracy. It is in this context that strengthening the EC strengthens democracy. The ruling parties refuse to let go of their power to appoint the Chief Election Commissioner and other ECs. Even though the Parliament brought in a Bill in 1991 to specify the terms of service, it fell short of making a law for the appointment of Commissioners.

Over the years, the Commissioners have occasionally been accused of being stooges of the government that appointed them, even though no misconduct has ever been proven. This is a source of anguish and annoyance for people doing their constitutional duty. It is time that a collegium system is brought in to get rid of the flaws in the present system.

The demand for appointment of ECs through a collegium has received massive support from all sides. In 2006, CEC B.B. Tandon wrote to the President A.P.J. Abdul Kalam, proposing that the appointments of ECs be made through a committee, consisting of the Speaker of the Lok Sabha along with Leader of Opposition etc. After all, similar provisions exist for the NHRC and the Central Vigilance Commission. CEC Gopaldaswamy in 2009 also wrote to the President. I have also voiced the same concern publicly over and over again since 2010.

The Law Commission recommended de-politicisation of constitutional appointments in its 2015 report, stating that “it is of paramount importance to ensure that the ECI, entrusted with the task of conducting elections throughout the country, be fully insulated from political pressure or executive interference to maintain the purity of elections, inherent in a democratic process.”

The LCI also gave recommendations regarding the composition of such an appointment body, specifying that the President should appoint the ECs based on a broad based collegium, consisting of the Leader of Opposition and the CJI, apart from the PM as the Chairperson.

Along with the CEC, the system of removal of Election Commissioners also needs review. The present system discriminates against the two commissioners. While they have equal powers/vote in the functioning of the Commission, they feel as if they are on probation as the government can remove them on the CEC's recommendation.

The protection given to the CEC from removal must extend to all three commissioners, as together they constitute the Commission and protection from removal is meant to protect the institution, not an individual.

The credibility of the ECI must be protected at all costs. It remains to be seen whether the judicial bench appointed in November, 2018 comes to the aid of the Commission and the controversy is buried permanently.

Conclusion

It is unfortunate that even after seven decades of independence that we continue to be a flawed democracy despite our elections being a “gold standard.” Even though the judiciary has shown the way in empowering the Election Commission in fulfilling its constitutional mandate, much more needs to be done by way of comprehensive electoral reforms to make Indian democracy the envy of the world.

Political consensus is an essential prerequisite for the same. The Prime Minister has kept electoral reforms as a high political priority and repeatedly drawn attention to it all throughout his term. It is time to clinch it.

Electoral Reforms: Past, Present, and Future

Jagdeep S. Chhokar*

We have just been through five State assembly elections. The supporters and sympathisers of one of the political parties are happy that their party has formed the government in three States. Similarly, the supporters and sympathisers of another political party are happy because their party made a credible showing in these elections though it may have missed the chance of winning and that the winning margins were very small. It indeed is a great tribute to the voters that they continue to turn out in such large numbers — much better than some of the so-called developed countries and mature democracies. But are the voters happy at what they go through and do they participate in this celebration of democracy enthusiastically and happily? The following part of a letter written to the editor of one of the newspapers in one of the States soon after the polling, seems to capture the feelings of the voters rather succinctly:

“Thank God! The vulgar cacophony, throwing of abuses and trading of charges by political parties at each other is over.

All political parties have made narrow-minded, extremely bigoted ... statements against each other as if they were in the race to prove who was more conservative and backward and who would be the first to destroy this nation by such ideologies, as Taliban has done for Afghanistan!

No wonder people showed fatigue and displayed lack of enthusiasm in the type of democratic exercise now repeatedly held to elect the begging candidates, so that on being elected

* Jagdeep S. Chhokar is a former Professor, Dean, and Director In-charge of the Indian Institute of Management, Ahmedabad, and a founder-member of Association for Democratic Reforms. Views expressed in this article are his personal.

they can sit in power and loot us, and amass wealth and power for their dynasties.

Their slogan seems to be, ‘Cast your vote in favour of one whom you want should amass wealth!’

Are our aspirations being fulfilled, even minimum security of life and basic services like food, water, shelter being met by the system created?

...

What democratic values these bunch of self-appointed leaders will propagate with such narrow-minded approaches? Our democracy ends the day we cast our vote.”

The writer seems to be concerned, and so should all citizens be, at the quality of people that are in the electoral process. Election is the *process* that brings such people into our legislatures. And the letter reproduced above highlights concerns about this process—the Electoral Process.

A Brief History of Electoral Reforms

Consider the following observations:

“Leaving now our laurels alone, it become imperative to take stock of the present state of affairs which causes concern and anxiety because of the existence of the looming danger threatening to cut at the very roots of free and fair elections.

The role of money and muscle powers at elections deflecting seriously the well accepted democratic values and ethos and corrupting the process; rapid criminalisation of politics greatly encouraging evils of booth capturing, rigging, violence etc.; misuse of official machinery, i.e. official media and ministerial; increasing menace of participation of non-serious candidates; form the core of our electoral problems. Urgent corrective measures are the need of the hour lest the system itself should collapse.

Electoral reforms are correctly understood to be a continuous process. But attempts so far made in this area did not touch even the fringe of the problem. They appeared to be abortive.

Some of the recent measures like reduction of voting age and anti-defection law are no doubt laudable and the basic principles underlying those measures should be appreciated.

But there are other vital and important areas in election field completely neglected and left high and dry.”

Does the above sound familiar, contemporary? It was written in May of 1990 in what has come to be known as the Goswami Committee Report, officially called the Committee on Electoral Reforms. It went on to say, “All these four decades, especially after 1967, the demand for electoral reforms has been mounting up.”

Following the “demand of electoral reforms” over four decades, the then Prime Minister, V.P. Singh called an all-party meeting on January 09, 1990, as a result of which a committee was set up under the Chairmanship of Shri Dinesh Goswami, the then Law Minister with nine illustrious parliamentarians and two very well-regarded bureaucrats as members. The Goswami Committee made 107 recommendations. There is no exact count of how many of the 107 recommendations have been implemented, and to what extent, but this much is clear that a very large proportion of these have not been implemented, or even considered seriously or even considered at all.

If we go strictly by the limited descriptor “electoral reforms,” the next important event was in 1998, but before that, there was a development in 1993 which has a very strong bearing on this issue. This is a report prepared by Shri N.N. Vohra, then Home Secretary to the Government of India. The Committee actually consisted of five key officials of the government, involved in critical internal security functions. It was set up “to take stock of all available information about the activities of crime Syndicates/Mafia organisations which had developed links with and were being protected by Government functionaries and political personalities.”

The report, though not made public officially, is known to have made a large number of startling observations. For example, the Chairman writes: “I perceived that some of the Members appeared to have some hesitation in openly expressing their views and also seemed unconvinced that Government actually intended to pursue such matters... I decided to personally dictate this Report... I have prepared only three copies of this Report. One copy each is being submitted to MOS (IS) and HM, the third copy being retained by me.”

Though the report has not been made public but it is freely available on the Internet, and its contents have not been denied. The major contribution of the report, in the context of electoral reforms, is the coining of, or at least popularizing, the phrase “criminalisation of politics

and politicization of crime.” It was the first time that the effect of crime, organized and unorganized, on the electoral process was officially recognized, though not made public.

The next formal attempt at electoral reforms was in 1990 and is the Indrajit Gupta Committee Report. This Committee, officially called the ”Committee on State Funding of Elections” was set up in 1998, again with illustrious members two of whom ended up becoming the Speaker of the Lok Sabha and the Prime Minister of India.

The Indrajit Gupta Committee report is about the most often quoted report on electoral reforms and it is always quoted to support State funding of elections but it is worth sharing the opening paragraph of the “Conclusion” of the report which says: “Before concluding, the Committee cannot help expressing its considered view that *its recommendations* being limited in nature and confined to only one of the aspects of the electoral reforms *may bring about only some cosmetic changes in the electoral sphere*. What is needed, however, is an immediate overhauling of the electoral process whereby elections are freed from evil influence of all vitiating factors, particularly, criminalisation of politics. It goes without saying that money power and muscle power go together to vitiate the electoral process and it is their combined effect which is sullyng the purity of electoral contests and effecting free and fair elections. Meaningful electoral reforms in other spheres of electoral activity are also urgently needed” (Emphasis added).

The next, and arguably the most important, document on electoral reforms till date is the 170th report of the Law Commission of India submitted in May 1999. This report, titled “Reform of the Electoral Laws” was prepared by the 15th Law Commission which was chaired by Justice B.P. Jeevan Reddy, a retired judge of the Supreme Court of India. Given that piecemeal attempts had not yielded anything worthwhile, as we have seen, and given the complexity of our electoral system the Law Commission was requested to take a comprehensive look at the entire electoral system in the country and suggest what reforms were needed to make the electoral system in tune with the needs of the society. The Commission did exactly that and in a very comprehensive manner studied all components of the entire electoral system before making their recommendations with detailed rationale and justification. Nothing much has been done by way of implementation of the recommendations.

This was followed by the National Commission to Review the Working of the Constitution (NCRWC), headed by Justice M.N. Venkatchaliah, former Chief Justice of India, set up by the government headed by Atal Behari Vajpayee on February 23, 2000.

The NCRWC, as it came to be called, submitted its report on March 31, 2002. The report had a separate chapter (Chapter 4) which it chose to title as “Electoral Processes and Political Parties”, and made 38 recommendations. Sadly, nothing significant has been done to implement any of the recommendations.

The Election Commission of India has been making recommendations to the Government of India from time to time about various reforms in the electoral system that the Election Commission cannot make within its own authority, some of which require making some changes in the Conduct of Election Rules 1961, the Representation of People Act, 1951, and other similar rules and legislations. While the government has made some of these changes from time to time, but any major worthwhile changes have been consistently ignored. The Election Commission compiled 22 of these ignored recommendations and the then Chief Election Commissioner wrote to the Prime Minister, giving details of these recommendations on July 05, 2004, and published these on July 30, 2004 to put these in the public domain. There has been no specific reaction from the government to these recommendations. The Election Commission submitted another set of consolidated recommendations to the government in December 2016. The number of recommendations had increased to 47 by this time.

Then came the report of the Second Administrative Reforms Commission in 2008 which also contained some significant observations on the electoral system, and made some serious recommendations for electoral reforms. Sadly, those recommendations have also not found favour of the government for implementation.

On December 09, 2010, the then Law Minister, M. Veerappa Moily, and the then Chief Election Commissioner, S.Y. Quraishi, announced in a joint press conference that seven regional and one national, consultations will be conducted to evolve a national consensus on electoral reforms, and that will be followed by a comprehensive new legislation on electoral reforms. The seven regional consultations were indeed conducted in 2011, in association with the ECI, the last one being held in Guwahati on June 05, 2011. These were to be followed by a national consultation for which time was never found. There were

also reports that a draft bill on electoral reforms had been prepared and had been discussed by the Law Minister with the Prime Minister on more than one occasion. Subsequently, the Law Minister changed and there has been no known progress on electoral reforms.

Another important episode in this continuing saga was a letter that the then, and outgoing, Chief Election Commissioner, Dr. S.Y. Quraishi, wrote to the Prime Minister on April 13, 2012, before demitting office on June 10, 2012. Dr. Quraishi was personally involved in extensive and repeated discussions with the then Law Minister, Veerappa Moily, before the latter was replaced by Salman Khurshid. Some excerpts from the letter, accessed by filing an RTI application, given below exemplify the frustration of those trying to improve the electoral system in the country:

“Hence allow me Sir, to place before you the *Commission’s deep disappointment* over the fact that a necessary legislation in this regard is yet to be materialised despite an assurance given to us by the Hon’ble Minister of Law and Justice.”

“However, the quality of our elections often gets questioned on account of certain *weaknesses in our electoral process*. Commission’s reform proposals have always aimed at addressing this predicament. Though certain minor reforms have been adopted by Government and Parliament, the substantial ones have been actually left out allowing the allegations that *politicians are not keen about the reforms because of their vested interest*.”

“I would like to bring to your kind notice that some proposals which are of technical nature and require only amendment of Rules within the competence of the Ministry of Law and Justice, have also been pending for a long time. This raises questions about the *lack of political will, which causes us deep distress*” (Italics added).

The Law Commission of India submitted two other reports, “Electoral Disqualifications,” its Report No. 244 in February, 2014, and another one, Report No. 255, in March 2015 titled “Electoral Reforms.” However, no serious action has been taken on any of these recommendations.

This is the brief history of electoral reforms in the country for the last 51 years, since 1967. Now we turn to the *content* of the electoral reforms...what needs to be done and what can be done.

Content of Electoral Reforms

Given the complexity of the electoral system and its intimate linkages with several other systems of the country, it is not possible to go into complete details of electoral reforms in this piece due to the limitation of space. This essay will therefore, be limited to three issues that are considered to be the *most* important. These are internal functioning of political parties, political and electoral financing, and de-criminalisation of politics.

Functioning of Political Parties

It is obvious and does not need any discussion that political parties are absolutely necessary for the functioning of a representative democracy such as ours. The Law Commission has also said that a democracy and particularly a parliamentary democracy without political parties is inconceivable. Even the Supreme Court has held that political parties are integral to the governance of a democratic society. They perform the critical function of mobilising and organising public opinion and will, and function as a link between the public at large and the government, particularly its political wing.

While they are a necessary mechanism for the functioning of a democracy, it is interesting to note that our Constitution is silent on the issue of functioning of political parties.

Some readers may wonder why did the Constituent Assembly not deem it necessary to mention anything about political parties in the Constitution. One possible reason for this is that it was a group of principled and high-minded people who drafted the Constitution. In their deliberations for the future of the nation, they were perhaps influenced by their idealism, particularly in the immediate after-glow of independence. It is quite likely that they must have thought that people similar to them will lead the country even in the years to come. The Indian genius has certainly evolved over the last more than 70 years and the socio-political milieu of India seems to have changed almost beyond recognition. Some of the assumptions and expectations of members of the Constituent Assembly are, therefore and unfortunately, not valid today.

This issue of lack of internal democracy in the functioning of political parties has also engaged the attention of the Law Commission.

In its 170th report, the Commission concluded that “if democracy and accountability constitute the core of our constitutional system, the same concepts must also apply to and bind the political parties which are integral to parliamentary democracy. It is the political parties that form the government, man the Parliament and run the governance of the country. It is therefore necessary to introduce internal democracy, financial transparency and accountability in the working of the political parties. A political party which does not respect democratic principles in its internal working cannot be expected to respect those principles in the governance of the country. It cannot be dictatorship internally and democratic in its functioning outside”.

After combing the above conclusion, the Commission proposed that a new part titled “Organization of Political Parties and matters incidental thereto” be added to the Representation of People Act. This was to specify things such as regular holding of elections, transparency of financial affairs. Non-observance of these provisions would attract de-recognition as a political party. It will mean that the party will cease to exist legally as a political party and consequently will neither be able to put up candidates for elections nor be entitled to facilities and benefits that would be available to registered political parties. These recommendations suggesting legal provisions for the functioning of political parties are possibly the most significant part of the Law Commission’s entire report, and this arguably is the most significant and urgent reform needed to correct our electoral system.

Political and Electoral Financing

Financing is often thought of in terms of financing of elections and that is where the Indrajit Gupta Committee Report is most often, and very widely, quoted. However, there are two issues involved here: one of financing of elections and the other of the financing of political activity in general, and financing of political parties in particular.

It is claimed very often, if not universally, that the Indrajit Gupta Committee *recommended* State funding of elections. This is not entirely true. The Indrajit Gupta Committee recommended only *partial* funding of elections by the State, and that too only in kind and not in cash.

All those who quote the Indrajit Gupta Committee report in support of State funding of elections seem to overlook the opening paragraph of the “Conclusion” of the report, which I have already mentioned, but

which is worth repeating: “Before concluding, the Committee cannot help expressing its considered view that *its recommendations* being limited in nature and confined to only one of the aspects of the electoral reforms *may bring about only some cosmetic changes in the electoral sphere*. What is needed, however, is an immediate overhauling of the electoral process whereby elections are freed from evil influence of all vitiating factors, particularly, criminalisation of politics. It goes without saying that money power and muscle power go together to vitiate the electoral process and it is their combined effect of which is sully the purity of electoral contests and effecting free and fair elections. Meaningful electoral reforms in other spheres of electoral activity are also urgently needed” (Emphasis added).

The issue of State funding also attracted the attention of the Law Commission of India who devoted one full part (Part IV) of their 208-page 170th report to “Control of Election Expenses.” This part (Part IV) of the Law Commission’s report contains an 11-page chapter on “State Funding.” The entire chapter should be read to get a proper understanding of the complexity of State funding, but here mentioning only the concluding paragraph (4.3.4) would suffice. It says:

“Conclusions – After considering views expressed by the participants in the seminars and by various persons and organizations in their responses and after perusing relevant literature on the subject, the Law Commission is of the opinion that in the present circumstances only partial State funding could be contemplated more as a first step towards total State funding *but it is absolutely essential that before the idea of State funding (whether partial or total) is resorted to, the provisions suggested in this report relating to political parties (including the provisions ensuring internal democracy, internal structures) and maintenance of accounts, their auditing and submission to the Election Commission are implemented*. In other words, the implementation of the provisions recommended in Chapter one Part three should be *pre-conditioned to the implementation of the provisions relating to partial State funding* set out in the working paper in the Law Commission (partial funding, as already stated, has also been recommended by the Indrajit Gupta Committee). *If without such pre-conditions, State funding, even if partial is resorted to, it would not serve the purpose underlying the*

idea of State funding. The idea of State funding is to eliminate the influence of money power and also to eliminate corporate funding, black money support and raising of funds in the name of elections by the parties and their leaders. The State funding, without the aforesaid pre-conditions, would merely become another source of funds for the political parties and candidates at the cost of public exchequer. We are, therefore, of the opinion that the proposals relating to State funding contained in the Inderjit Gupta Committee Report should be implemented only after or simultaneously with the implementation of the provisions contained in this Report relating to political parties viz., deletion of Explanation 1 to section 77, maintenance of accounts and their submission etc. and the provisions governing the functioning of political parties contained in chapters I and II of Part IV and Chapter I of Part III. The State funding, even if partial, should never be resorted to unless the other provisions mentioned aforesaid are implemented lest the very idea may prove counter-productive and may defeat the very object underlying the idea of State funding of elections” (Emphasis added).

The National Commission to Review the Working of the Constitution, 2001, refrained from specifically commenting on the desirability or otherwise of State funding of elections but reiterated the point of the Law Commission that the appropriate framework for regulation of political parties would need to be implemented before proposals for State funding are considered. The actual wording of the NCRWC’s report is, “Any system of State funding of elections bears a close nexus to the regulation of working of political parties by law and to the creation of a foolproof mechanism under law with a view to implementing the financial limits strictly. Therefore, proposal for State funding should be deferred till these regulator mechanisms are firmly in position” (Emphasis added) (Para 4.14.5).

There is no reliable data available for the expenditure during elections. An analysis of expenditure affidavits of 5743 candidates after the 2009 Lok Sabha elections showed that only 4 candidates had declared expenditure above the then limit of Rs.16 Lakhs. Thirty candidates had declared that they had spent between 90 to 95 per cent of the limit. The remaining (5743-4-30=) 5,719 or 99.58 per cent said that they had spent between 45 to 55 per cent of the limit. At the same

time there is widespread clamour that the ceiling on expenditure is too low and it should be increased. There is obviously a mismatch somewhere, and all estimates of election expenditure are far above the limit.

In addition to funding of elections, a very crucial issue is the funding of political activity in the country in general, and that of the funding of political parties in particular. The financing of political parties remains one of the most closely guarded secrets in the country despite the almost chilling observations contained in the Vohra Committee Report.

When a civil society organization applied for copies of Income Tax Returns of political parties under the Right to Information Act, it was opposed, and strongly felt by pretty much all political parties. The application had to go all the way up to the Central Information Commission who decided, despite arguments by senior advocates on behalf of political parties to deny the information, that the Income Tax Returns should be accessible to citizens.

Information gleaned from the thus disclosed Income Tax Returns combined with the statement of donations that political parties are required to file with the Election Commission of India under the Representation of People Act to avail of 100 per cent exemption from income tax, reveal that explanations are available for only 20 to 25 per cent of the total income of political parties. Seventy-five to eighty per cent of the income is unexplained. In the 20-25 per cent that were disclosed, there were also some cases of large-scale corporate funding, some of which appeared, at least on lifting the corporate veil, to be possibly of foreign origin.

Requests to political parties under the Right to Information Act (RTI) to provide information on their financial affairs have been denied on the pretext that they are not “public authorities” under the provisions of the RTI Act. The Central Information Commission (CIC) was approached with hard data to prove that six national political parties fulfilled all conditions specified in the RTI Act. A full bench of the CIC decided in June 2013 that six national political parties were indeed public authorities under the RTI Act and directed the six parties to appoint Public Information Officers and respond to requests for information filed under the RTI Act. All the six parties (BJP, Congress,

NCP, BSP, CPI, and CPM) blatantly refused to follow the directions of the CIC. When a complaint was filed with the CIC for non-compliance of its decision, the CIC sent several notices to the six parties, including show-cause notices, but none of the six parties even responded to these notices. The CIC then declared in March 2015 that it was not able to get its own, lawful order implemented. A PIL was then filed in the Supreme Court to get the order of the CIC implemented. This petition is pending in the Supreme Court.

The above situation, combined with the Law Commission's observation that "people are generally likely to enter politics or contest election for getting rich overnight," raises certain uncomfortable issues. Taking in to consideration the recommendations of the Indrajit Gupta Committee, the Law Commission of India, and the NCRWC, the following conclusion seems inescapable.

No worthwhile measures concerning financing of elections can even be contemplated till there is reliable data about the cost of elections. The largest proportion of election expenditure is presumably done by political parties. As of now, there is no reliable data about the financial affairs of political parties. The foremost requirement for getting a clear and comprehensible picture of financing of elections is to get financial transparency in the financial affairs of political parties.

The latest development in this context is the introduction of *electoral bonds* by the government. These bonds which, in the words of the Finance Minister: "will be in the nature of bearer bonds. The identity of the donor will be anonymous," have removed whatever iota of transparency that existed in political financing and made it totally opaque. There are many issues with electoral bonds, but two need highlighting. One, the removal of the limit of 7.5 per cent on the profits that a company could donate to political parties, has now made it possible for completely uncontrolled and unknown money, including money from dubious and foreign sources, to flow to political parties. This has extremely serious implications, including for the security of the country. The other problem with electoral bonds is that the provisions created for electoral bonds have the potential of choking the flow of funds to opposition parties, irrespective of the party in power. This apprehension has been proved correct by the actual data on electoral bonds which shows that 95 per cent of the electoral bonds purchased were donated to the party currently in power.

De-criminalisation of Politics

As has been mentioned earlier, the Vohra Committee Report brought the issue of criminalisation of politics to attention. However, since the Report has never been made public officially, no action seems to have been taken on its recommendations and criminalisation of politics has continued unabated. This makes elimination or reduction of the impact of criminalisation on the electoral process, extremely important.

Information about criminal cases against candidates contesting elections to Parliament and State Assemblies, is now available in the public domain because of the sworn affidavits disclosing their criminal, financial, and educational antecedents, that such candidates have to file as an essential part of their nomination forms. This came about through Public Interest Litigations (PILs) filed and pursued in the Delhi High Court and the Supreme Court by a civil society organization. The entire political establishment (22 political parties) opposed this tooth and nail, first by the government issuing an Ordinance and then by the Parliament unanimously amending the Representation of the People Act to prevent the orders of the Supreme Court from being implemented. While some progress has been made in this direction but the work of removing criminal elements from the political arena is far from complete, and efforts are continuing in that direction too.

Can Electoral Reforms Happen, if so, How?

The initiation, formulation, and implementation of electoral reforms rest with the government of the day, under the overall guidance and direction of the Parliament. We are therefore in the quagmire where politicians are the ultimate authority to decide whether reforms which disturb their existing, familiar, and comfortable arrangement should be implemented or not. Given the current political milieu of the country, it is extremely unlikely that any significant recommendations will be implemented. This is shown by history of electoral reforms mentioned in the beginning of this essay.

Politics is not, and does not have to be an undesirable activity. Dictionary meanings of politics are “the science or art of government,” or “the affairs or activities of those engaged in controlling or seeking control of a government.” As has already been said, political activity and political parties are an essential requirement for the functioning of

a democratic society because they provide the necessary link between people at large and the government. In a broad sense, politicians serve the function of mobilising and crystallising public opinion and translating it into executive action. If done conscientiously and with due diligence, this should result in the good of the public. It is, in fact, the very highest form of public service. Notwithstanding this, politicians tend to attract derisive comments from their public the world over. The situation in India seems to be particularly acute. In the words of the Law Commission: “there has been a steady deterioration in the standards, practices and pronouncements of the political class, which fights the elections. Money-power, muscle-power, corrupt practices and unfair means are being freely employed to win the elections.”

The events of the last couple of years have not helped in improving the public image of the political class but improve this, we must.

So, what can “We, the People” do? It seems to be clear that unless pressure is created from the public at large, neither the electoral system nor the political class is going to be reformed. What is needed to generate this pressure from the public at large is sensitisation of the public, and mobilisation and organization of public opinion. Unfortunately, this is a task in which the political class specialises. Progress in this can be possible if civil society, media, and the judiciary work in tandem. This is what “We, the People,” owe it to the country and its future.

Funding of Political Parties: Reality of Transparency Measures

Kamal Kant Jaswal*

It is indisputable that the political parties, which are central to the functioning of a democratic polity, require substantial resources to finance their processes and operations. It is imperative for them to remain in constant touch with their constituents, address their concerns and help redress their grievances. At election time, they need to project their ideologies and manifestoes in a bid to secure the popular mandate that would give them an opportunity to govern for a specified term and implement their policies and programmes.

While the idea of direct State funding through budgetary allocations has not found much traction in India, indirect State support to the political parties through tax reliefs, assignment of public lands and buildings, and free time on State controlled media has taken care of some of their financial needs. The bulk of the resources needed by the political parties, however, has to be raised from the contributions of individuals and businesses favourably inclined towards them. It is generally believed, and not without justification, that big donors of the political parties in power are in a position to exert an undue influence over their governments and extract a hefty price for their support. Most reforms of the funding of political parties have, therefore, sought to bring about a certain measure of transparency and public accountability in respect of their financial transactions.

The political system in India has traditionally been hostile to the idea of transparency in electoral financing. The factors contributing to this mindset are not hard to fathom. The 'winner take all' First Past the Post system copied from the Westminster model of parliamentary democracy turns the electoral exercise into a 'do or die' affair. The requirement of financial resources rises to stratospheric levels in a

* Kamal Kant Jaswal IAS (Retd.) former Secretary to the Government of India, is President of Common Cause, a public interest organisation of long standing.

political environment characterised by oversized constituencies and multi-cornered contests, recourse to state of the art technologies of brand building and mass communication, monetisation of media coverage, frequency of elections to legislative bodies at the three tiers of government, and the competitive wooing of multiple vote banks with cash handouts and freebies.

An insatiable demand for electoral funding willy-nilly pushes the party syndicates and apparatchiks into unholy arrangements of quid pro quo with Big Business and criminal networks, with or without the help of a complicit bureaucracy. Of late, political parties of varied hues have been showing a marked preference for candidates with deep pockets who can finance their own election campaign. Such candidates look forward to recovering their election expenditure with interest by peddling their influence and abusing their authority. Having regard to the cascading effect of corrupt electoral practices, perceptive observers of the political process have posited the financing of elections in India as the Gangotri, or the fountainhead of corruption.

Preference for Opacity in Election Funding

The political establishment, in an otherwise fractured polity, has displayed a rare solidarity in opposing the tentative attempts made by the Election Commission of India, and the initiatives of civil society organisations, to direct the searchlight of public scrutiny on the income and election expenses of political parties and their candidates.

The Union Government has on its part demonstrated a singular lack of intent to meet the challenge of curbing the rampant recourse to illicit funds in the electoral process. The purported reforms introduced by different dispensations from time to time have been marred by egregious design flaws and/or lackadaisical implementation.

It is proposed briefly to review here the record of the Government in this regard before we subject the latest 'reform' sought to be effected through the instrumentality of Electoral Bonds to a critical scrutiny. We will also examine the roles played by some of the key institutions of governance in the campaign for enforcing the accountability of the political parties.

Accountability of Political Parties

In order to incentivise voluntary donations to meet the legitimate needs for political funding, the Indian Income Tax regime has accorded a

double benefit in respect of contributions made to recognised political parties. Such contributions, including those made by Indian Companies as per Section 293A of the Companies Act, are deductible from the taxable income of the donors, while being tax exempt in the hands of the recipients. The tax exemption extended to political parties in 1979 under Section 13A of the Income Tax Act, read with Section 77 of the Representation of the People Act, is, however, subject to three conditions, viz. maintenance of regular books of accounts, filing returns of contributions exceeding the prescribed limit along with the names and addresses of donors, and getting the party accounts audited by an accountant.

The legislative intent underlying these interrelated statutory provisions was to bring about a measure of transparency in the funding of political parties. In practice, however, no attempt was made by the government to enforce the conditions attached to the tax exemption. The political parties availed themselves of the exemption as a matter of course, without bothering to maintain regular accounts and report the contributions above the prescribed limit.

Against this backdrop, Common Cause filed a public interest litigation in the Supreme Court [WP (C) 24/1995], seeking enforcement of the statutory provisions. The petition contended that the mandatory provisions of law were being violated by the political parties with impunity. The Union of India admitted in its reply that most political parties, including the Indian National Congress, the Bhartiya Janta Party and the Janta Dal, had not been filing their Income Tax returns and donation reports.

Deploring the total inaction on the part of the Government to enforce the provisions of the Income Tax Act relating to the filing of returns of income by a political party, the Court noted in its judgment [AIR 1996 SC-3081] that the objective of the legislative scheme was to ensure transparency in the process of fund collecting and incurring expenditure by the political parties. The requirement of maintaining audited accounts was mandatory and had to be strictly enforced by the Income Tax authorities, which had been wholly remiss in the performance of their statutory duties.

The Court held that the expression “conduct of elections” in Article 324 of the Constitution was wide enough to include in its sweep the power of the Election Commission to issue directions to the political parties to submit the details of the expenditure incurred or authorised

by them in connection with the election of their candidates. The Court also directed the Union Revenue Secretary to appoint a body to inquire into the dereliction of duties by the tax authorities and to proceed against the defaulting political parties in accordance with the penal provisions of the Income Tax Act.

This landmark judgment brought about a modicum of accountability in the hitherto obscure finances of the political parties, but the returns and reports filed by them were not yet in the public domain. This information only became accessible after the fundamental right to information was operationalised with the enactment of the Right to Information Act. The Central Information Commission by its order dated April 29, 2008 in *Ms. Anumeha, C/O Association for Democratic Reforms* rejected the contention that all Income Tax Returns furnished to Income Tax authorities were inherently barred from disclosure and ordered the Commissioners of Income Tax concerned to furnish the requisite returns to the applicant. The Commission ruled that Section 138(1) (b) of the Income Tax Act empowers the Commissioner of Income Tax to disclose in public interest any information which comes into the hands of the public authority and that the criterion of public interest was satisfied in respect of the class of information constituted by the Income Tax Returns of the political parties.

The information disclosed by the political parties in their Income Tax Returns, however, falls far short of presenting a true and fair picture of their finances. Most of their cash inflows and outflows remain outside the regular books of accounts. Even in respect of the portion of their income that the political parties choose to show in their accounts as voluntary contributions, they avoid disclosure of the particulars of donors by claiming that the bulk of the collection is made of contributions below the threshold of disclosure, which until recently was fixed at Rs. 20,000.

ADR's analysis of the returns of income filed by the political parties during an 11 year period from AY 2004-05 to AY 2014-15 shows that the share of income from unknown sources was 83 per cent of the total income in case of the Indian National Congress and 65 per cent for the Bhartiya Janta Party. The Bahujan Samaj Party did not acknowledge any donation above the limit for cash contributions and consistently filed Nil returns during the period under review.

The premise that the public interest is best served by placing the Income Tax Returns of the political parties in the public domain should logically lead to their recognition as public authorities within the purview

of the Right to Information Act. And indeed, a full bench of the Central Information Commission in a ruling given on June 3, 2013 held that six national parties, in respect of which information had been sought in an RTI application, were public authorities within the ambit of the Act. The Commission reiterated this position in 2015.

The national parties in question did not contest the decision of the Commission, which remains in force. They have simply chosen to ignore it in praxis, refusing to entertain the RTI applications addressed to them. The UPA Government, on its part, floated an amendment to the RTI Act, specifically to exclude the political parties from its remit, but the move encountered stiff opposition from civil society and had to be dropped.

Institutionalised Ambivalence

Eventually, a complaint was filed before the Commission for non-compliance of its order and the matter was referred to a three member bench in 2016. One of the members later recused himself on the ground of overwork. In August 2017, R. K. Mathur, the then Chief Information Commissioner, reconstituted the bench, exercising the powers of Master of the Roster, which were shortly to occupy centre stage in the public discourse. M. Sridhar Acharyulu, who had been on the bench that had been hearing the matter, lodged a strong protest against its disbanding. In a letter addressed to Mathur, he questioned the functioning of the transparency watchdog, and wondered if it had forfeited the very reason for its existence.

It needs to be flagged here that the Information Commission, not having been vested with the power to secure compliance of its orders, only enjoys a moral authority. Be that as it may, this highly sensitive case has stayed on the backburner of the statutory body established to ensure transparency in the public sphere. The complaint against non-implementation of the June 2013 order has not come up for hearing before the new bench. In the meantime, two of its members have demitted office on retirement. The Commission has stonewalled the attempts to ascertain the reasons for lack of progress in the matter. That shows the extent of the top transparency watchdog's commitment to transparency!

Meanwhile, the Election Commission of India, which professes to champion the cause of accountability of the political parties, has chosen

to ignore the 2013 decision of the Central Information Commission, and declared that “political parties are out of purview of the RTI,” appropriating in the process the authority vested in the latter. The decision of the Central Public Information Officer refusing to provide information about the amounts collected by the six national parties through electoral bonds has been upheld by the designated appellate authority in the Election Commission.

The issue of non-implementation of the decision of the Central Information Commission has been brought to the Supreme Court. In June 2015, a public interest litigation in this regard was filed by ADR and Subhash Agarwal [CP (C) 333/2015]. Underlining the cardinal role accorded to the political parties in the Indian polity and the pernicious consequences of the rampant use of illicit funds in the elections, the petition made a forceful case for transparency in the financial transactions of the political parties. After the issuance of notice and a questionnaire to the respondents, the case has not been listed for hearing since September 2017.

Fear of Political Reprisal and Preference for Cash Contributions

The Union of India on its part has strongly opposed the prayers made in the petition. The main contention in the Government’s counter affidavit is that if political parties are held to be public authorities, “it will hamper the smooth internal working,” the apprehension being that “political rivals might file RTI applications with malicious intention to the central public information officer of political parties thereby adversely affecting their political functioning.”

It is hardly surprising that the national parties involved have, setting aside their ideological differences, closed ranks and echoed the views articulated by the government. The main argument advanced by the political parties against full disclosure of the details of the donations received by them is that it would expose their donors to the risk of victimisation by their political rivals. This apprehension is also shared by businessmen of all descriptions, who, in their personal capacity or through their businesses, contribute the bulk of the funds entering the coffers of the political parties. They also claim off the record that the fear of political vendetta drives them to keep most of their contributions out of their account books.

The frequency of interception of vehicles bearing loads of cash during the run up to the elections in different part of the country lends credence to this contention. In May 2016, the Election Commission was forced to cancel the election notification in two constituencies of Tamil Nadu due to a rampant distribution of cash and freebies by the political parties. Subsequently, the by-election in R. K. Nagar constituency had to be cancelled in the face of allegations of massive cash handouts by a member of the Tamil Nadu government.

The controversy surrounding the contents of the famous Birla – Sahara “Diaries,” which led to some extraordinary developments in the Supreme Court, has served to bring home the sobering realization that two of the country’s leading business conglomerates thought it fit to keep huge stashes of ready cash on their premises, apparently with a view to managing the political and administrative environment to the advantage of their businesses. It will be pertinent to recall here that the CBI/Income Tax raids on the offices of the Aditya Birla group in October 2013 and on the premises of the Sahara group in November 2014 had led to the recovery of unaccounted for cash amounting to Rs. 25 crore and Rs. 137.58 crore, respectively, along with loose leaves of “kutchra accounts,” electronic documents and call records, suggesting payoffs to well-known political personalities.

Electoral Trusts Cast a Veil over Election Funding

Successive governments have devised innovative measures in a bid to address the longstanding apprehension of the corporates that their business interests would be compromised if their political contributions were made public. In 2013-14, the United Progressive Alliance government introduced the scheme of electoral trusts to create a smoke screen between corporate donations and their intended beneficiaries. Registered as Not for Profit companies under Section 25 of the Companies Act, these trusts are authorised to receive contributions from corporate donors and channel them to the political parties, without having to disclose the linkages between specific contributions and the disbursements made to the political parties. This creates the impression of an arm’s length transaction for the donors, who seem to be extending support to the institutions of democracy without favouring one political party over the others.

In a period of three years since their inception, electoral trusts have accounted for nearly a third of the political contributions disclosed

by the companies. Most of the corporate contributors to these entities operate in highly regulated sectors where the State wields enormous discretionary powers and a little tweaking of the regulatory framework can have a significant impact on the donor's bottom line.

As is to be expected, the party in power has been the main beneficiary of these fund flows, its share amounting to 86 per cent during 2017-18. A close scrutiny of the financial transactions of the electoral trusts, in tandem with an analysis of the contribution reports filed by the political parties with the Election Commission, could throw further light on the provenance of the disbursements made by the trusts.

For all its optics, the smoke screen actually does not hide much!

Foreign Money is Deemed Kosher!

Like most democracies, India has been wary of foreign interference in its democratic processes. Section 29B of the Representation of the People Act specifically bars the political parties from accepting contributions from any foreign source as defined in the Foreign Contributions (Regulation) Act (FCRA) of 1976. Companies incorporated outside India, as well as the Indian subsidiaries of foreign companies, come within the mischief of this provision.

It was found that despite this prohibition both INC and BJP had during the period from 2004 to 2012 accepted donations from Sterlite and Sesa Goa, which are Indian subsidiaries of the U.K. based Vedanta Resources. The Delhi High Court, which considered the matter in a PIL filed by ADR, held that the impugned contributions were contributions from foreign sources. The fact that a majority of the shares of Vedanta Resources was held by Anil Agarwal, an Indian national, was not considered as germane to the issue.

The High Court ordered a thorough scrutiny of the receipts of all political parties to identify the contributions received in contravention of the statutory provisions and fixed a time limit of six months for consequential action under the law. This decision, pronounced a few weeks before the general elections of 2014, put the country's two main political parties at the risk of disqualification.

Instead of proceeding against the defaulting political parties as directed, the new National Democratic Alliance government chose to negate the Court's judgment through legislation and amended the problematic definition of foreign source through the Finance Act,

2016. The amendment added a proviso under Section 2 of the Foreign Contribution (Regulation) Act, 2010, to the effect that a company that has less than 50 per cent of its share capital vested in foreign entities will not be a foreign source anymore.

The passage of this amendment, effected ostensibly to enable Indian subsidiaries of foreign companies to discharge their corporate social responsibility, was rushed through Lok Sabha, brushing aside the objection that a law falling in the Home Ministry's domain could not be amended through the Finance Bill. The device of amending the FCRA through a Money Bill had already ousted the jurisdiction of Rajya Sabha. The Government failed to explain why the amendment was being given retrospective effect from September 26, 2010, the date when the Foreign Contribution (Regulation) Act, 2010 came into force.

Heaving a sigh of relief, the concerned national parties, which had challenged the Delhi High Court verdict in the Supreme Court, withdrew their Special Leave Petitions as infructuous. They did not realize that they were still liable in respect of the donations received from companies like Sterlite and Sesa Goa during the period preceding the promulgation of the Foreign Contribution (Regulation) Act of 2010. The predecessor Act of 1976 also contained a corresponding definition of foreign source.

Once again, the Government, solicitous as ever, came to the rescue of the ruling party and its main rival. The Finance Act of 2018 amended the relevant provision of the Finance Act of 2016, giving effect to the revised definition of foreign source from August 5, 1976, the date of promulgation of the repealed Foreign Contribution (Regulation) Act of 1976.

Not to be outsmarted by these machinations, Jagdeep Chhokar of ADR and E. A. S. Sarma have challenged the *vires* of the amendments made to the FCRA of 2010 and its predecessor Act of 1976 that was no longer on the statute book. Their petition highlights the danger inherent in opening the floodgates of foreign funds and influence, a development that could alter the functioning of the nation's polity and compromise its sovereignty. The Supreme Court has issued notice to the respondents and clubbed this PIL with other PILs in which cognate issues have been raised.

Electoral Bonds: Instruments of Transparency or Opacity?

The Finance Act of 2017 has brought about transformative changes in the transparency regime applicable to the political parties. The

Memorandum to the Finance Bill of 2017 sets out the context and the objective of these measures in the following terms:

F. Transparency n Electoral Funding

The existing provisions of section 13A of the (Income Tax) Act, inter-alia provides that political parties that are registered with the Election Commission of India, are exempt from paying income-tax. To avail the exemption, the political parties are required to submit a report to the Election Commission of India as mandated under sub-section (3) of Section 29C of the Representation of the People Act,1951 furnishing the details of contributions received by a political party in excess of Rs.20,000 from any person. However, under existing provisions of the Act, there is no restriction of receipt of any amount of donation in cash by a political party.

Secondly, a political party is also required to file its return of income under Section 139(4B) of the Act, if its income exceeds the maximum amount not chargeable to tax (without considering the exemption under Section 13A). However, filing of the return is not a condition precedent for availing exemption under the said section.

In order to discourage the cash transactions and to bring transparency in the source of funding to political parties, it is proposed to amend the provisions of Section 13A to provide for additional conditions for availing the benefit of the said Section which are as under:

- (i) No donations of Rs.2,000 or more is received otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account or through electoral bonds,
- (ii) Political party furnishes a return of income for the previous year in accordance with the provisions of sub-section (4B) of Section 139 on or before the due date under Section 139.

Further, in order to address the concern of anonymity of the donors, it is proposed to amend the said section to provide that the political parties shall not be required to furnish the name and address of the donors who contribute by way of electoral bond.

This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to assessment year 2018-19 and subsequent years.

The introduction of the instrument of electoral bonds entailed the amendment of multiple statutes for which the Finance Minister used the parliamentary legerdemain of incorporating the various amendment clauses in the Finance Bill, so as to dispense with the approval of Rajya Sabha.

Consequent to the enactment, Section 13A of the Income Tax Act was amended in two important aspects. First, voluntary donations to political parties exceeding Rs.2,000 could only be made through cheque, demand draft, electronic transfer, or the new instrument of electoral bond. Secondly, donations received through electoral bonds were exempted from the requirement of disclosure in the annual return to be filed by a political party to avail itself of the benefit of tax exemption.

Likewise, Section 29C of the Representation of People Act was amended to exclude the contributions received through electoral bonds from the report of contributions exceeding Rs. 20,000 that every political party has to submit to the Election Commission.

A corresponding amendment was made in Section 31 of the Reserve Bank of India Act relating to issue of demand bills and notes to provide that the Central government may authorise any scheduled bank to issue the electoral bonds referred to in the amended Section 13A of the Income Tax Act.

The Finance Act also amended Section 182 of the Companies Act to do away with the cap on political contributions of 7.5 per cent of the average net profits of a company in the preceding three years. Further, the companies were no longer required to disclose the details of contributions made to different political parties in their profit and loss accounts.

The Finance Minister accepted in his post Budget press conference that the instrument of electoral bonds was designed to obscure the identity of the corporate donors of political parties. He stated, "*The use of Electoral Bonds will ensure that the identities of donors making large donations are not revealed. ... These bonds will be bearer in character because if the names are disclosed and identities are revealed then it is the same as payment through cheques or the present status quo. Because of the present status quo, donors have preferred cash payment rather than disclosure of their names and identities.*"

It is difficult to reconcile this admission with the a vowed objective of transparency put forth in the Finance Act. While its true that the instrument of electoral bonds enables a corporate entity to make a

legitimate contribution to a particular political party without attracting public attention and incurring the wrath of the beneficiary party's political rivals, a much greater detriment will be caused by denying the public at large the opportunity of assessing whether the political parties in power have shown any undue favours to their major corporate donors. Moreover, the new instrument will not impact the generation of illicit funds in businesses, or the rampant use of such funds in the clandestine operations of political parties.

Likewise, the drastic lowering of the ceiling of cash contributions from Rs. 20,000 to Rs. 2,000 is not likely to reduce the share of unattributed donations in the income statements furnished by the political parties, which are known for a liberal use of creative accounting practices. All that the party accountants have to do is to multiply the number of donations by a factor of ten.

The changes wrought in the Companies Act are fraught with serious consequences. It has now become permissible for companies, irrespective of their financial health, to make unlimited political donations with a view to buying favours. They are free to dip into their capital and reserves. The shareholders of a company will not have any information on the donations made by the management to political parties. The amendment has also incentivised the creation of shell companies by business conglomerates to channel their contributions to political parties for furthering the interests of the group companies and the promoters.

The amendment to the Representation of the People Act has impeded the oversight exercised by the Election Commission of India in order to discharge its Constitutional mandate to conduct free and fair elections. Nasim Zaidi, who was the Chief Election Commissioner when the electoral bonds were introduced, was forthright in his opposition to the move, which he felt, would vitiate transparency rather than improving it. Zaidi also made it clear that the Central government had not deemed it necessary to consult the Election Commission before effecting such radical changes in the legislative framework governing the funding of political parties.

Speaking to the media, Zaidi said: *“The recent amendments to Representation of the People’s Act have affected transparency in political funding. Contribution reports of political parties need not mention names and addresses of those contributing by way of electoral bonds. We have written to the government that this way parties will*

never file contributions received through electoral bonds. And if commission will never get to know of the contributions — and EC regularly displays such information on its website — people will also not get to know.”

He also observed: *“The recent amendment to the Companies Act has done away with profit-making clause for companies to make donations. They also no longer need to disclose the break-up of contributions made to different parties. Of course, corporate funding will increase as there is no limit to how much they can donate. Loss-making companies will also qualify to make payments. People want to know details of corporate donors to check for quid pro quo and if any benefits are passed on to such companies by the elected government.”*

The introduction of electoral bonds has also been critiqued by Zaidi’s predecessors and successors in office, such as S. Y. Qureshi and O. P. Rawat. The latter, who demitted office in December 2018, described it as a retrograde measure.

Zaidi’s apprehensions of a spurt in corporate funding of political parties have come true. Electoral bonds have been selling like hot cakes since the notification of the Electoral Bond Scheme in January 2018. In the first tranche of March 2018, the sales amounted to Rs 222 crore, out of which Rs 210 crore went to BJP and Rs. 5 crore to INC. During the current financial year, electoral bonds worth Rs. 834 crore have been sold in five tranches until November 2018. The sale figures of the last tranche issued in January 2019 are not yet in the public domain.

It may safely be assumed that there would be a sharp spike in the sales during the run up to the forthcoming Lok Sabha elections. One may also wager that the corporate sector would account for the quasi totality of bond sales, and that the principal beneficiaries would be the parties in a position to guarantee handsome returns on the investments. The ruling party at the Centre is, however, assured of the lion’s share of the proceeds, being the only one having access to information on the identity of the purchasers of electoral bonds sold exclusively by the State Bank of India.

Challenge to the Instrument’s Constitutionality

ADR and Common Cause, civil society organisations that have been in the vanguard of the campaign for transparency in political funding,

have filed a PIL in the Supreme Court [WP(C) 880/2017], challenging the constitutionality of the provisions of the Finance Act of 2016 whereby amendments were made in the legislative framework to pave the way for the introduction of electoral bonds. The petition has also challenged the *vires* of the amendment to the Foreign Contributions (Regulation) Act, 2010, effected through the Finance Act of 2016.

The petition has highlighted the menace of corruption and subversion of democracy through illicit and foreign funding of political parties and opacity in the accounts of all political parties. The petitioners have affirmed that the amendments in question posed a serious danger to the autonomy of the country, militated against electoral transparency, encouraged corrupt practices in politics and rendered the unholy nexus between politics and corporate houses more opaque and treacherous. The instrument of electoral bonds, it is contended, could be used by special interest groups, corporate lobbyist and foreign entities to acquire a stranglehold on the electoral process and governance at the expense of the common citizens. The petitioners have also pointed out that such sweeping changes in various statutes were brought in illegally as Money Bills, in order to circumvent the requirement of approval by Rajya Sabha.

It is unfortunate that a petition that raises issues of such fundamental public interest has not been listed for hearing since October 2017.

The Way Forward

There is no dearth of recommendations of expert bodies and scholarly prescriptions for bringing about a measure of transparency in the funding of the political parties. The moot point is whether those who are involved in the process of decision making have the requisite will and courage of conviction.

Evidently, the political establishment, which helms the executive and legislature branches, will do nothing but pay lip service to the idea. There is some hope from the judiciary, which is largely responsible for whatever progress that has been made in the direction of transparency; but the adjudicatory process is notorious for its delays and uncertainty of outcome. The agency of institutional stakeholders has systematically been undermined, while their longstanding demands for the powers and resources necessary for meeting their foundational objectives have been ignored.

In this context, civil society has to shoulder the onerous responsibility of leading the offensive to bring about the desired changes in the transparency regime. Acting disparately and collectively, civil society organisations have to sensitise the public opinion, multiply the pressure points, intensify their engagement with the structures of governance, and create an enduring constituency for reforms. The campaign should not relent until the political leadership realizes that there is an electoral dividend in reforming the transparency framework of political funding.

Electoral Reforms in India

Trilochan Sastry*

Introduction

Electoral reforms in India have once again become important with the national elections in 2019. Some questions we need to address are: do we need reforms? If so, why do we need them? What are the motivations for different stakeholders in society, including the common voter, the Election Commission, the political parties, the candidates, the Courts, the media, the civil society and intellectuals regarding reforms? Such an analysis of different stakeholders will be useful in finding a way forward. Without that, status quo or incremental change will prevail because those in power, maybe indifferent or actually against sweeping reforms. We also need to examine what kind of reforms are needed and how we can go about them.

Why do we need reforms? We can look at this at various levels. There is misuse of money, and candidates with criminal records are given tickets by all political parties. Campaigns are becoming increasingly shrill with personal attacks on political leaders by rival parties. There are reports of voter lists not being accurate, of direct and indirect intimidation of voters, of using public funds to woo voters by various freebies from free food to laptops, motorcycles, direct money transfer, gas cylinder connections, loan waivers and so on. There is the bribing of voters during elections with money, gifts and liquor. The situation it seems has steadily deteriorated over the last couple of decades. The only silver lining has been the elimination of violence during elections by the Election Commission. Also recently we see some increase in voting percentages, which is a welcome sign. Criminalization of politics is high with over 33 per cent of sitting MPs having a criminal record, cutting across party lines. The role of black

* Professor Trilochan Sastry is the Founder Chairman ADR and Professor, IIM, Bangalore.

money is well known, and data shows clearly that those with greater wealth are far more likely to win elections. Voting percentages, though going up are still low, particularly among the well to do and in urban areas.

Are these sufficient grounds for asking for reforms? There are at least three views on this. The first is that all this reflects the reality of our society, and we cannot expect elected representatives to be any better. A related view is that politicians are unfairly targeted. Many of the cases against them are politically motivated and are slapped on them when they are agitating for some worthy cause. The political system also says that no one can be condemned merely on being charged with crime in a Court of law. They can only be stopped from contesting if they are convicted. The second view is that these kinds of elections cannot bring any good to the voters or the country and we need electoral reforms to ensure that honest, capable people are elected, who have a strong motivation for public service. There seems to be a third segment of voters who are indifferent to the whole issue.

As a brief digression, how do we compare with other democracies? Surprisingly, India is the only country where information on the criminal cases of candidates is publicly available. In many so called advanced countries, anyone with a criminal record would either be voted out or be expelled by their political party. The role of money however is equally big in other countries. However, there is far greater transparency on money in other countries, while we still have a long way to go.

While there are obviously different views on the need for reforms, the government itself has appointed several commissions to give recommendations. These include the Vohra Committee on Criminalization of Politics, the Indrajit Gupta Committee, two law Commissions, an Administrative Reforms Commission, and the Working Committee to Review the Constitution. So, in a formal sense, the government has on various occasions acknowledged the need for reforms. The Election Commission, which is not part of the government, but an independent Constitutional Body has also suggested various reforms. The Supreme Court has again and again reiterated the need for reforms. Civil society has always maintained that reforms are needed. The resistance to change is mainly from the political parties.

Crime and Money in Politics

Beyond the first level of analysis, throwing up the twin issues of crime and money in politics, we need to dig a little deeper. Why are they important? Any one who spends a lot of money, often running into several crores of rupees for his or her elections, will focus on recouping that investment, and not focus on good governance. Political parties that raise money from various sources, including the corporates, will be more answerable to the interests of those who fund them and not to the common voter. We can see that agitations by various groups, most prominently the farmers, have increased of late. The governments are more answerable to those who funded them, than to common voters, and their policies, decisions and actions often reflect that. The common voter comes into prominence only before elections and that too as a recipient of various election promises and freebies and is then usually forgotten till the next election. Many ‘pragmatists’ say that bribing of voters has been neutralized and people take money from all parties and vote according to their choice. This may be true and may not affect the outcome, provided there is a level playing field and all parties are equally endowed with extra money. However, that is not the case, and usually the ruling party has much more money than the opposition. But more than that, when so much illegal money is spent in elections (illegal on two counts – first, exceeding the official spending limit, and second, use of black money), how can we expect good governance later? Without removing corrupt practices, we cannot get good governance.

Quality of Representation

But there are other issues which affect the quality of democracy. The issue of identity based politics has not gone away. Political parties play this up invoking the interests of one religion or caste against another. So, a basic question is: whom does a representative represent? Does he represent the entire constituency or only voters of one religion or group of castes? Identity based politics is now raising its head in other countries. The Presidential elections in the US and the Brexit vote are examples of that. History shows that during economic crises and unemployment, nationalism, xenophobia and identity based politics becomes prominent. Since the average Indian voters are economically weak, they also may respond to identity based politics to some extent.

There are two major issues we need to examine on the issue of quality of representation. Firstly, in India we have over 2000 registered political parties. In the 2014 Lok Sabha elections, over 450 contested the elections and 34 political parties were represented in the Lok Sabha. This is a record and far exceeds the number in any other country. This no doubt reflects the diversity in India. At the same time it creates fierce competition in every constituency. There were on an average over 15 candidates per constituency. Contrast this with the US where there are usually only 2 candidates. As a result, we have over 40 per cent of MPs who won with less than 50 per cent of the votes cast. Some 25 per cent won with less than 35 per cent of the votes polled. If you factor in the 66.4 per cent voting percentage, the winners actually get less than 25 per cent of the votes of the electorate. The ruling party which won with a handsome majority got only 31 per cent of the votes polled or about 20 per cent of the total registered voters. Some countries like France say that you cannot be a people's representative unless you get more than 50 per cent of the votes cast. There are some ways we can correct this. Requiring a political party to get 50 per cent of the vote may not be practical, but we will discuss this later.

Another way India differs significantly from other democracies is the number of voters that an MP represents. We have one MP for about 15 lakh voters. Since our electoral system has been taken from the British, we see that each MP in Britain represents only 71,000 voters. Our MPs represent 17 times more voters. In contrast, the US has one representative or Congressman for every 5 lakh voters. Can an MP effectively represent or be accessible to over 15 lakh voters in a constituency? Our population has gone up by 5 times since Independence, but we have the same number of MPs in Parliament. We need to rethink the issue of number of MPs in Parliament.

A Diagnosis

So then, why are we in this situation? There are reasons based on our socio-economic situation and other reasons based on the judicial and legal framework. The legal situation is very clear on crime in politics. Only those convicted will be disqualified, not those who are merely under trial. The Supreme Court has recently clarified that conviction in a lower Court is sufficient to debar a candidate, even if he is out on bail and has filed an appeal in a higher Court. Since cases drag on for decades, and rates of conviction in India are very low, people with

several criminal cases continue to stand for elections and win. The Supreme Court has reiterated twice that cases against MPs and MLAs should be on fast track and that special courts need to be set up. Only a little progress has been made. If the law cannot be changed, we need to change the rules so that only clean politicians can take the oath of office. With serious cases, such people should not be allowed to enter the Parliament. The list of corrupt practices says clearly that bribing of voters is an electoral offense. But not one candidate has been booked for that. Meanwhile the whole nation knows that there is rampant distribution of money, gifts and liquor during elections. The apparent reason is that it is very difficult to prove it in Court. Given the power structure, it is unlikely that an ordinary voter will stand up in Court and give evidence of distribution of money. The EC perhaps needs to be empowered to tackle this issue.

Over time, muscle power has been replaced by money power. Stuffing of ballot boxes and intimidation of voters has been a worldwide phenomenon. Musclemen were employed in the 1970s and 1980s by politicians to help them win elections. Later many of these musclemen themselves became politicians. One simple observation shows the importance of the socio-economic background in determining the kind of candidates and elections. In well to do urban areas, and States like Kerala with 100 per cent literacy, there is hardly any criminalization and distribution of gifts during elections. However, distribution is rampant in the neighbouring State of Tamil Nadu as well as in many other States across India. This shows that voters who are disempowered can be manipulated much more easily. The caste and religious divisions are further deepened during elections. Again this is easier to do in economically weak regions of the country, or regions where some segments of the population have faced injustice. There is an element of competitive politics as well. When one set of parties appeal to voters based on caste and minority status, the other group perhaps have no choice but to appeal to voters based on religion. Divisive politics is used by all parties. This is much easier to do in a diverse society such as ours. The divisions are largely based on identity and not on economic status.

Cutting across political ideologies and nations, big money plays a role in elections. Its role seems to be increasing of late and the amount of money spent in elections is rising alarmingly. The spending by the government, though rising fast is only a miniscule fraction of the total amount spent. The Government of India spent Rs.10 crores in the

first national elections in 1952 and spent Rs. 3870 crores in 2014, according to one estimate. Other estimates put the figure nearer to Rs.8,000 crores. However, this is dwarfed by the amount spent by candidates and political parties. In 2014, estimates vary between Rs. 30,000 crores and Rs. 50,000 crores. This is comparable to the US Presidential Elections when about \$6.5 billion were spent in 2016. Other countries have caps on spending, caps on donations to candidates and political parties, as well as far greater transparency. In India, the recent electoral bonds nullify all the steps taken over the years. Voters will no longer know who are funding candidates and political parties. But the government in power will know. It has removed all caps on donations, and also done away with a cap on the fraction of profits that can be donated to political parties. Shell companies can be set up, that raise large share capital, not only helping to launder black money to white, but also to fund the entire proceeds to political parties. Donations to political parties are 100 per cent tax exempt. Political parties in turn also enjoy 100 per cent tax exemption on funds received.

There is a shift of late from blue collar crimes of violence to white collar scams. An ambitious and enterprising industrialist finds it far easier to use political and government connections to build his industrial empire than to compete in the market. “Give me a large business opening, and I will fund your elections” is the short summary of this approach. One scenario is to get large tracts of land allotted at cheap rates for bringing in investment and jobs. Then use the political connections to raise large loans typically from public sector banks using the land as collateral. Mining is another rich source of private wealth from public resources – whether legalized or illegal. With tens of thousands of crores pouring in, funding political parties becomes easy. This can even be done legally through electoral bonds. There are several reports of round-tripping of funds from India to tax havens abroad and then coming back. Meanwhile the NPAs in PSUs has reached a record Rs.11.5 lakh crores – more than 50 per cent of the Central budget. Several banks are facing criminal investigation. We must remember that the money in banks is public money, whether private sector or public sector. The broad modus operandi is the same. Get cheap access to public resources using political connections and pass on a part of it back to political parties.

In addition to spending by candidates and political parties, there is spending from the public exchequer. The populist measures announced

by the government will cost an estimated Rs.1.8 lakh crores. State governments will spend in addition to this amount. Some economists argue that this may lead to further slowdown in economic growth.

Why do we see this steep rise in money spent? One reason is the increasing competition among political parties. As some people say, spending huge amounts does not guarantee victory, but not spending guarantees defeat. Compared to other countries, we have many more candidates per constituency. So, anything goes in the quest for victory. From bribes to voters, to large rallies, social media and electronic media spending, three D holograms, and populist measures using tax payer's money, everything is fair game in elections. Not to speak of backroom politics to get rival party MPs to switch parties, doctor voter lists, pay people not to vote, pay people to deposit their voter IDs so that others can vote on their behalf and so on. Very sophisticated targeted social media campaigns, along with lots of fake news is very much part of the game.

In this confusion, we sometimes miss one important issue. Who frames the campaign issues? Do they reflect the issues of concern to voters? Given the competition, political parties face one key question: how do they win? Will addressing voter concerns help them, will populist measures help them, or will abusing rival leaders help them? They would rather frame the campaign issues to defeat the opposition than address head-on the issues that voters are concerned about. For instance, several polls have shown that employment and health care are major concerns as repeated voter surveys show, but no party talks about it. It is very difficult to do and results may come several years later, perhaps after the next elections. Sometimes, political parties have vested interests with many politicians in the education, health care, drinking water and other services business. The recent Vyapam scam with several murders related to the education sector is a case in point. The leadership would rather not touch such issues.

A Great Danger to Democracy

Behind the corrupt practices, we sometimes miss the real danger to democracy. Who really governs India? In theory, it is the people who vote in or vote out a political party. So, they are the ultimate custodians of democracy. The purpose of this democracy is to put in place a government that works in public interest. With the huge rise in spending,

big money plays a key role in elections. No matter which party wins, the government has to take care of the interests of big money, and only then worry about the people. That too is now being done through populist measures. In short the very basis of democracy is in some danger. There is the possibility of the capture of a great nation by big money.

Progress Made

A series of small but significant improvements have been made over the years. Candidates have to declare their financial and criminal records in affidavits to the Election Commission and this information is publicly available from the EC website and from civil society websites. Social media, and the print and electronic media also carry a lot of information, though some of it is fake. The parties and candidates have now been asked by the Supreme Court to publish the details of criminal cases at least three times during the campaign, through prominent media outlets. Candidates are now required to fill out all details in an affidavit and incomplete ones can be rejected. The EC has recently asked candidates to give information on their Income Tax Returns for five years, along with their assets.

Political Party Income Tax Returns are now available in public from the IT Department. However, the introduction of electoral bonds does not allow voters to know the source of funding. Those convicted are not allowed to contest, even if they have an appeal pending in a higher Court. The Election Commission has put up an app on its website where voters can upload video and audio evidence of electoral malpractices, while keeping the voter's identity confidential.

In addition, there are several Public Interest Litigations (PILs) in the Supreme Court on the issue of foreign funding of political parties, paid news, bringing political parties under RTI and getting 100 per cent financial transparency by rolling back the electoral bonds scheme.

Possible Remedies

We are in a situation where voters are increasingly seen as a means of winning elections, and not as the real reason for democracy to exist. Crime, money, identity politics of caste and religion, fierce competition, a long list of electoral malpractices which our judicial system cannot

address have led to this. To add to this, there are manipulations of voter lists, and populist measures to win votes at the cost of the tax payer's money.

One key goal is to reduce the role of money. Other countries have also wrestled with the issue of money and campaign finance reforms is an ongoing subject of public debate there. Sharp divisive politics feeding on the most diverse society in the world, and very high levels of competition among political parties is unique to India. Behind the myriad problems we see during elections, unhealthy competition among political parties, divisive politics, and the illegal use of money, lie at the very root.

Political parties in India are internally undemocratic. A small ruling clique decides who gets tickets to stand for elections, who becomes the Chief Minister in a particular State, and who gets to occupy important party posts. How can an organization that is not democratic be expected to rule a State or a country democratically? There is a need for political party reforms to make the parties financially transparent, internally, democratic and accountable to the law. This system of distributing tickets is unique to India and is not there in Britain from where we copied it. Local party workers largely decide who their candidate is, not the party bosses. In the US, there are primaries to decide who the official candidate from a party is. In Germany, candidates are elected by secret ballot of party workers,

To reduce the role of money, merely putting stricter penalties will not be sufficient. We need to recognize that money is required for elections. At the same time, big money vitiates democracy and is a big entry barrier to ordinary citizens, who are interested in public service through politics. We need a combination of incentives and penalties. At the root of this is the notion that if voters want good democracy, they should be willing to contribute to it. Instead of receiving bribes, they should in fact support their favourite candidate or party with small donations. This can be matched by other grants, either through public funding or by other large donors. The use of KYC norms, digital technology and online payment systems can ensure that such donations are genuinely from small ordinary voters. Barack Obama and Bernie Sanders were in fact able to raise many such small donations, as was one Indian political party in its early days. The advantage of this method is that the elected representatives become answerable to people and not to big money interests. Local experiments in India have shown that candidates who are able to raise local funds can win with a fraction of

the amount spent by other candidates. This happened recently in 340 Panchayat seats in Raichur, Karnataka where people spent Rs.1000 or less, whereas other candidates spent nearly a crore. Such a method combined with public funding can open the doors to fresh blood in politics. At the same time, we need to come down heavily on electoral malpractices and those who exceed spending limits by huge margins. We need far greater transparency in election funding and the electoral bond scheme needs to be scrapped. The matter is anyway before the Supreme Court.

Along with operational remedies, we need to consider structural changes as well. A quick comparison of the major systems of the world is given below with key advantages and disadvantages.

One system is the Indian and British system of “first past the post” where the winner is the one with maximum votes. The Chief Minister and Prime Minister are indirectly elected. The advantage is that everyone in India understands the system and we have a lot of experience with it. The disadvantage is that it leads to representatives with less than 25 per cent votes of the electorate in a constituency. This raises questions about whom does an MP represent. In a fiercely contested election, targeting swing voters can help win elections using appeals to caste, religion, language and so on, as well as by bribing voters in various ways.

The second system is the direct election of the President and the Governor of a State in the United States. Various Indian Law Commissions have gone into this and none has recommended this. The major reason is that with such a diverse country, a one man rule can lead to greater social conflict. However, there is need to think if Union Territories and urban elections can follow this system. This system, no doubt leads to political stability, but leaves a very large number of people unrepresented. For instance in the US, no President even reaches 55 per cent of the votes cast. That means more than 45 per cent voters are not represented. No doubt, there are checks and balances in the US through the Congress and the Senate. At the same time, the level of diversity in the US is far less than that in India. Here many voters may feel far more disenfranchised with such a system. There may be several candidates and the winner, who is either CM or PM, may get far less than 50 per cent of the votes.

A third more popular system is that of proportional representation (PR). Many civil society groups have argued in its favour. This allots

seats to a political party based on the number of votes obtained. For instance, the BSP got 4.1 per cent of votes in 2014, and was the third largest party but got zero seats. Under proportional representation it would have got anywhere up to 21 seats out of the 543 Lok Sabha seats. There are complex formulae used to allot seats based on the winner in the local election, as well as the total votes obtained. More than 20 European countries follow this system. The main argument in its favour is that it allows for a much fairer representation based on votes obtained. A European country is fairly homogenous. In a diverse society like India, every community wants such a system. The minorities favour it, the Dalits favour it, the urban educated elite favour it. Each can win seats in Parliament, using the PR system. They will represent their own interest group. Who then represents India?

A fourth system is the French system. If no one gets more than 50 per cent of the votes polled, there is a run off election between the top two candidates. The Working Committee to Review the Constitution has favoured this. To get 50 per cent of the votes, hate speeches and divisive politics will not work. Even if they win one of the first two places, bribing voters a second time in the run off elections and getting 50 per cent+1 votes is more difficult for those playing divisive politics.

The very framework of elections is western and is based on fierce competition with winner take all. India and perhaps other Asian countries are more community based, rather than competition based. Traditionally, village elders were designated leaders by consensus, rather than elections. Later it perhaps deteriorated into hereditary positions. Japan has evolved a system of multi-member constituencies where two people are elected from each constituency. We can consider such a system in India. A serious contender who feels confident of getting at least 34 per cent of the votes cast, will feel less inclined to resort to huge spending and divisive politics. (Only two candidates can get more than 34 per cent of the votes in a constituency). This may help bring down the role of black money, corrupt electoral malpractices and divisive politics. It can also improve the quality of representation of voters in a constituency as there would be two MPs.

There is a need for a lot more discussion on the kind of system we require. Maybe things have to get worse before they get better with some crises triggering a positive change. The hope of course is that we correct ourselves before any such crisis. The lead will surely have to be taken by citizens, as the political system is far too comfortable with the current system.

Electoral Reforms in India: Principles, Perspective and Practice

Prof. Dr. Bhagbanprakash*

Abstract

This Article addresses the need for and status of electoral reforms in India. It tries to inform about the role of the key players and the various steps initiated towards electoral reforms since the Election Commission of India was established on 25th Jan. 1950, a day before the country became a Democratic Republic. Although the focus of discussion remains on Law Commission of India Report number 244, 255 and 170 on electoral reforms, the article also provides the context behind these developments including Election Commission's own reports on the issue and the facilitating role played by the Judiciary and the other stake holders like civil society, political parties, legislatures and the electorate. A brief summary of reports on various important aspects of electoral reform has been provided for the readers to further explore the issues and related recommendations. These are: proportionate representation system, decriminalization of politics, State funding of elections, regulation of Electoral Trusts, Inner-party democracy, power of deregistration, anti-defection laws, election finance, paid news and opinion polls, compulsory voting and use of common electoral rolls etc.

The Context

In the midst of social activist Anna Hazare's India Against Corruption movement, on 23rd Feb' 2012, Anna and his team had called on the Election Commission of India with an agenda for electoral reforms. Its

* Prof. Dr. Bhagbanprakash, Senior Adviser, India International Institute of Democracy and Election Management, ECI, New Delhi.

focus was on barring tainted politicians from entering Parliament and Legislatures. He was simply articulating the mood of the masses for the first time through a social movement. Since then, Electoral reforms has become an integral part of public consciousness and a major talking point in the contemporary discourse on democracy. Electoral reforms has been defined variously and one of these says, it aims at introducing changes in electoral systems in order to ensure that people's desires are expressed in election results. It can include a wide range of reform issues in the areas of: Voting systems, such as proportional representation, FPTP, negative voting, citizen initiatives, referendums and recall elections, vote-counting and result declaration procedures, rules about political parties, inner party democracy, changes to existing election laws, eligibility to vote and contest and how candidates and political parties are enabled to get their names onto ballots or ballot access. It also includes issues like delimitations of electoral constituencies, ballot design and voting equipment, registration and scrutiny, election monitoring by candidates, political parties, safety of voters and election workers, risks and disputes, campaign finance, paid news, measures against bribery, coercion, hate speech and conflicts of interest and a host of related issues.

Fair elections need fair electoral systems which in turn could be achieved through fair and far-sighted electoral reforms. General F. Lieberman, famous for his earthy wisdom on political practices, had once said: "Elections are held to delude the populace into believing that, they are participating in Government." Therefore, imaginative and innovative Electoral Reforms are needed to disprove such perceptions. Thanks to the long debates in the Constituent Assembly, a day before the birth of India as a democratic republic, the Election Commission was born on 25th January 1950, with a constitutional mandate to superintend, direct and control the electoral process and conduct free and fair elections by creating a level playing field. As soon as these principles were put in practice, deficiencies were detected in the system from time to time. Key stakeholders including the Election Commission, the Supreme Court of India, mass media and civil society organizations including Election Watchdog bodies and PIL petitioners, started expressing concerns about the need for reforming the system.

Historical Factors

Thus, the issue of electoral reforms has a long history, spanning over five decades. In India, it has been taken up by Parliament, the Government, the Judiciary, the Media, the NGO's and the Election Commission itself on numerous occasions. In fact, the debate had started soon after the general elections to the first Lok Sabha were held in between 25 October 1951 and 21 February 1952. Predictably, the Indian National Congress (INC) stormed into power, winning 364 of the 489 seats. Jawaharlal Nehru became the first democratically elected Prime Minister of the country. After his demise and departure from the scene in 1964, Indian politics became more turbulent and the elections more volatile and noisy.

Similarly, elections in the 1970s and 1980s were increasingly factional and violent. The voters in the electorate with multiple ethnic identities, split along lines of caste, religion, language and locality. Politicians with vested interests spread discord to seek and win votes. Campaigns became increasingly expensive with entry of corporates, money and muscle power. Floor crossing became more frequent. In response to these, a major electoral reform was the anti-defection law piloted by the then Prime Minister Rajiv Gandhi. In 1990, it was realized that more corrective steps had to be taken to prevent the steady decline of healthy electoral practices and democratic values.

In 1977, the then Chief Election Commissioner, S. L. Shakhder had for the first time proposed to introduce the proportional representation system to Lok Sabha elections and suggested that a hybrid system be adopted, whereby half the seats in the Lok Sabha would be filled by direct elections under the FPTP system and the other half be filled by political parties in proportion to their vote share. However, this proposal did not outline the method of determination of seats which would not be represented through direct elections and how the disparity between the two types of seats would be addressed.

Another major reform oriented decision was to revive the Model Code of Conduct, a voluntary electoral code that had been largely ignored since its adoption in 1962, on the eve of the general elections to the Legislative Assembly of Kerala. Soon after discussions were held with political parties who agreed to follow this voluntary code. In 1979, the Election Commission expanded the scope of the Code further and consolidated these in 1991, during the 10th general election to the

Lok Sabha. The desire for reform intensified after the assassination of Rajiv Gandhi in 1991. So, the ECI spent the next decade persuading politicians to observe the Code's guidelines and cooperate in conduct of peaceful and orderly election campaigns following the rule of the game. The years afterwards saw the formation of a number of committees and commissions to study the issues further who reported and recommended a series of measures on electoral reforms.

Response

To some of these, the Government responded positively particularly in case of reducing the minimum voting age from 21 to 18 by amending the Constitution-RPA 1951 in 1988, considered as a landmark reform which changed the nature of election and profile of legislatures, transforming millions of young Indians from passive subjects to active citizens. Open ballot voting for elections to Rajya Sabha and proxy voting for armed and para military forces, introducing Electronic Voting Machines, photo identity cards, VVPAT, expanding disciplinary jurisdiction are some vital steps that have improved the electoral scenario in the country.

The first serious step towards the reform was initiated when the then National Front Government set up a Committee on Electoral Reforms under the Minister of Law and Justice, Dinesh Goswami, to report and make recommendations on how to proceed in this matter. Among other recommendations, the Report endorsed the disqualification of candidates who campaigned on caste or religious lines, or instigated communal animosities during elections, and the investigation, special trial or prosecution of candidates who intimidated or coerced voters. It also called for amendment of the anti-defection law to restrict disqualification. In addition, the report also recommended that the Election Commission of India (ECI) should void results and arrange fresh elections in cases where misconduct reported by electoral officers turned out to be true. [1]The Goswami Committee was of the opinion that "statutory backing should be given to some of the more important provisions of the Model Code" [2], such as the use of government funds for party/political advertising. This aspect of the recommendations was ignored, and it was implemented as a voluntary code.

Three years after, it was followed by Vohra Committee Report (1993), and five years after by Indrajit Gupta, Chairman of the

Parliamentary Committee on State funding of elections (1998) which recommended State funding in kind, not cash. He had also suggested that initially the State can meet part of the cost by setting up a joint corpus with the Centre providing 600 crore and all the States together contributing another 600 crore. The idea failed to take off. The following year came the Law Commission Report on Reform of the Electoral laws (1999). Two years after, in 2001, the National Law Commission was assigned the task of reviewing the working of the Constitution, which was followed up by the Second Administrative Reforms Commission (2008).

Simultaneously, the Election Commission of India also has been proposing–Electoral reforms from time to time and compiled these in 2004 and 2012. and submitted an elaborate proposal once again in 2016-17. Among ECI's reform proposals, there were three that needed Amendments to the Constitution of India. These were: (1) Providing Constitutional protection for all Members of the Commission (2) ECI's budget to be considered as 'Charged' as in case of other Constitutional Bodies like Supreme Court and UPSC and (3) Independent Secretariat for the Commission. The Law Commission in its 255th Report has already endorsed these.

Recommendations

The following are a gist of important recommendations on electoral reforms recommended by different Committees and Commissions: In 1999, the Law Commission submitted the 170th Report on Reform of the Electoral Laws. The Commission held four National Seminars to elicit informed opinion and views on various aspects of Electoral Reforms.

PR System and FPTP

After S.L. Shaktidar, this issue was once again discussed at length in the Law Commission's 170th Report on the Reform of Electoral Laws (May 1999). It considered the list system of proportional representation, as prevalent in Germany, as a possible alternative to the FPTP system. The conclusion that it reached was that while the FPTP system could not be abandoned outright, it could be combined with a proportional representation system. Specifically, the 170th Report recommended that

while the existing 543 seats of the Lok Sabha continue to be filled through direct elections, the number of seats in the Lok Sabha be increased by an additional 25 per cent, or 136 seats, which are filled by proportional representation following the list system. A similar expansion should take place in the State Assemblies as well.

Law Commission Report-244, on Electoral Reforms, 2014 Criminalisation of Politics

It was a burning issue among the citizens in the early years of 21st century India. In this context a number of petitions had been placed before the Supreme Court which had ruled that the Parliament must enact appropriate laws to force and prevent the political parties from sponsoring/nominating such tainted persons as candidates/contestants. The Court focused on the need for an “immaculate Parliament.” The law Commission’s comments and recommendations included a number of safeguards. It said: Disqualification upon conviction has proved to be incapable of curbing the growing criminalisation of politics, owing to long delays in trials and rare convictions. The law needs to evolve to work as an effective deterrence, and to prevent subversion of the process of justice. It suggested a few safeguards and measures: must be incorporated into the disqualification for framing of charges owing to potential for misuse and the sanctity of criminal jurisprudence:

1. Only offences which have a maximum punishment of five years or above ought to be included within the remit of this provision.
2. Charges filed up to one year before the date of scrutiny of nominations for an election will not lead to disqualification.
3. The disqualification will operate till an acquittal by the trial court, or for a period of six years, whichever is earlier.
4. For charges framed against sitting MPs/MLAs, the trials must be expedited so that they are conducted on a day-to-day basis and concluded within a one-year period. If trial not concluded within a one year period then one of the following consequences ought to ensue: The MP/MLA may be disqualified at the end of one year, The MP/MLA’s right to vote in the House as a member, remuneration and other perquisites attaching to their office shall be suspended at the expiry of the one-year period.

Amendments on False Disclosures

The Law Commission recommends that the following changes be made to the law on false disclosure in affidavits .Section 125A of the Representation of the People Act, 1951 should be amended by substituting the words “may extend to six months, or with fine, or with both” with the words “shall not be less than two years, and shall also be liable to fine.”

Corrupt Practices

The Commission has recommended that the following shall be deemed to be corrupt practices for the purposes of this Act: failure by a candidate to furnish information relating to sub-section (1) of section 33A, or giving of false information which he knows or has reason to believe to be false, or concealment of any information in the nomination paper delivered under subsection (1) of section 33 or in the affidavit delivered under sub-section (2) of section 33A.”

Report 255 on Electoral Reform Highlights

In March 2015, the Law Commission of India, chaired by Justice A.P. Shah, submitted its report No.255, titled ‘Electoral Reforms’ with focus on opacity of political funding, including related issues like State funding of elections to the Union Law and Justice Ministry. On State funding, the report says: A quick perusal of the recommendations of various committees on State funding of elections and comparative provisions makes it clear that complete public funding of elections or political parties in India is not a practical option. Instead, indirect State subsidy is a better alternative for various reasons.

On the basis of the above, the following explanation and recommendations have been made: Currently, a system of complete State funding of elections or of matching grants, wherein the government matches the private funding (by donors or corporates) raised by political parties, are not feasible given the economic conditions and developmental problems of the country. Given the high cost of elections and the improbability of being able to replace the actual demand for money, the existing system of giving indirect in-kind subsidies instead

of giving money via a National Election Fund, should continue. Any reform in State funding should be preceded by reforms such as the decriminalisation of politics, the introduction of inner party democracy, electoral finance reform, transparency and audit mechanisms, and stricter implementation of anti-corruption laws so as to reduce the incentive to raise money and abuse power.

Recommendations on Expenses and Contribution: On this issue, the Commission has recommended that Section 182(1) of the Companies Act, 2013 should be amended to require the passing of the resolution authorising the contribution of the company's funds at the company's Annual General Meeting (AGM) instead of its Board of Directors. Thus, the words "a meeting of the Board of Directors" in sub-clause of section 182 should be deleted and in its place, the words "the Annual General Meeting" should be inserted.

Disclosure relating to individual candidates: The Commission recommends that a new section 77A of the RPA has to be inserted requiring the candidates, or their election agents to maintain an account of the contributions received by them from their political party (not in cash) or any other permissible donor. The new section 77A reads as follows:

Maintenance, Audit, Publication of Accounts by Political Parties

As per the recommendations of the Commission, each recognised political party shall maintain accounts clearly and fully disclosing all the amounts received by it and clearly and fully disclosing the expenditure incurred by it. The account shall be maintained according to the financial year. Within six months of the close of each financial year, each recognised political party shall submit to the Election Commission, its accounts, duly audited by a qualified and practicing chartered accountant from a panel of such accountants maintained for the purpose by the Comptroller and Auditor General. The Election Commission shall make publicly available, on its website, the audited accounts submitted by all political parties. The payment of any election expenditure over twenty thousand rupees should be made by the political parties via cheque or draft, and not by cash, unless there are no banking facilities or the payment is made to a party functionary in lieu of salary or reimbursement."

Regulation of Electoral Trusts

Relatively new in India, Electoral Trust is a non-profit company basically meant for orderly receipt of voluntary contribution. These have emerged as major source of funding for political parties and hence the need for their regulation.

The Electoral Trusts are, entitled to accept contribution. (1) Subject to the provision of the Companies Act, 2013 and the Income Tax Act, 1961, an Electoral Trust approved by the Central Board of Direct Taxes under the Electoral Trusts Scheme, 2013, may accept any amount of contribution voluntarily offered to it by any person or company other than a Government Company:

Provided that no Electoral Trust shall be eligible to accept any contribution from any foreign source defined under clause (e) of section (2) of Foreign Contribution (Regulation) Act, 1976. Provided further that all words and phrases used in this Part, shall have the same meaning as assigned to them in section 29B. Each Electoral Trust shall maintain accounts clearly and fully disclosing all the amounts received by it and clearly and fully disclosing the expenditure incurred by it.

Internal Democracy in Political Parties – Recommendations

Introducing internal democracy and transparency within political parties is important to promote financial and electoral accountability, reduce corruption, and improve democratic functioning of the country as a whole. As the Law Commission in its 170th Report recognised, “*whether by design or by omission, our Constitution does not provide for working of the political parties, though they are at the heart of a parliamentary democracy.*” While the RP Act does not permit the regulation of the functioning or ideology of the parties, the ECI’s Guidelines and Application Format for the Registration of Political Parties under Section 29A only prescribe provisions for internal accountability and not candidate selection.

Power of Deregistration

The Supreme Court in *Indian National Congress (I) vs. Institute of Social Welfare* has clarified that the ECI currently lacks the power to de-register a party under Section 29A of the RP Act. Thus, any changes need to be introduced legislatively. The power of de-registration should

also extend to cases where registered parties avail the benefits of income tax exemption under section 13A, IT Act, but have not contested any Parliamentary or State elections in ten consecutive years. As a result the electoral system is now burdened with more than 2500 registered political parties.

Formation of Political Parties

Political parties can be freely formed by the citizens of this country. Each political party shall frame its constitution defining its aims and objects and providing for matters specified in this Part. The aims and objects of a political party shall not be inconsistent with any of the provisions of the Constitution of India. A political party shall strive towards, and utilize its funds exclusively for, the fulfilment of its aims and objects and the goals and ideals set out in the Constitution of India. The Commission has also given its recommendations about the Constitution of a Political Party.

The Commission has also spelt out in detail about the voting procedures, Candidate selection, regular elections, penalties for non-compliance, penalty for failure to contest elections for ten years consecutively. Specifically, the 170th Report recommended that while the existing 543 seats of the Lok Sabha continue to be filled through direct elections, the number of seats in the Lok Sabha be increased by an additional 25 per cent or 136 seats, which are filled by proportional representation following the list system. A similar expansion should take place in the State Assemblies as well.

Election Finance

The Law Commission has proposed a wide range of reforms on the issue of candidate expenditure limits; disclosure obligations of individual candidates and political parties; and penalties imposable on political parties; as well as examining the issue of State funding of elections. Disclosure provisions governing political parties has been substantially recast, with the existing 29C being deleted and replaced by a new section 29D requiring all parties to mandatorily disclose all contributions in excess of Rs.20,000; include aggregate contributions from a single donor amounting to Rs. 20,000 within its scope;

Anti-defection Law in India

The Law Commission recommends a suitable amendment to the Tenth Schedule of the Constitution, which shall have the effect of vesting the power to decide on questions of disqualification on the ground of defection with the President or the Governor, as the case may be, (instead of the Speaker or the Chairman), who shall act on the advice of the ECI. This would help preserve the integrity of the Speaker's office.

Paid News and Political Advertisements

According to the Commission, the issue of paid news and political advertisements should be regulated in the RPA in the following manner:

The definitions of "paying for news," "receiving payment for news" and "political advertisement" should be inserted in Section 2 of the RPA. In order to curb the practice of disguised political advertisement, disclosure provisions should be made mandatory for all forms of media. The purpose of disclosure is two fold; *first*, to help the public identify the nature of the content (paid content or editorial content); and *second*, to keep the track of transactions between the candidates and the media. Thus, a new Section 127C should be inserted in the RPA to deal with the non-disclosure of interests in political advertising. The ECI can regulate the specifics of the disclosure required. Recommendations of Past Reports.

Regulation of Opinion Polls

In view of the Commission, regulation of opinion polls is necessary to ensure that *first*, the credentials of the organisations conducting the poll is made known to the public; *second*, the public has a chance to assess the validity of the methods used in conducting the opinion polls; and *third*, the public is made adequately aware that opinion polls are in the nature of forecasts or predictions, and as such are liable to error. Consequently, new Sections 126C and 126D should be inserted in the RPA.

Compulsory Voting

The Law Commission does not recommend the introduction of compulsory voting in India and in fact, believes it to be highly

undesirable for a variety of reasons described above such as being undemocratic, illegitimate, expensive, unable to improve quality political participation and awareness, and difficult to implement.

Restriction on the number of seats from which a candidate may contest. The Commission recommends an amendment of Section 33(7) of the RPA, which permits a candidate to contest any election (parliamentary, assembly, biennial council, or bye-elections) from up to two constituencies. In view of the expenditure of time and effort; election fatigue; and the harassment caused to the voters, Section 33(7) should be amended to permit candidates to stand from only one constituency.

Independent Candidates

The Law Commission recommends that independent candidates be disbarred from contesting elections because the current regime allows a proliferation of independents, who are mostly dummy/non-serious candidates or those who stand (with the same name) only to increase the voters' confusion. Thus, Sections 4 and 5 of the RPA should be amended to provide for only political parties registered with the ECI under Section 11(4) to contest Lok Sabha or Vidhan Sabha elections.

Preparation and Use of Common Electoral Rolls

The Law Commission endorses the ECI's suggestions regarding the introduction of common electoral rolls for Parliamentary, Assembly and local body elections. However, given that introducing common electoral rolls will require an amendment in the State laws pertaining to the conduct of local body elections, the Central government should write to the various States in this regard. We hope that the States will consider amending their laws based on the suggestions of the ECI and the Law Commission.

Judicial Support for Electoral Reforms

One of the key drivers towards electoral reforms is the Judiciary led by the Supreme Court of India.

The following Supreme Court judgments would give an idea about its supportive role:

Persons in Custody to be Debarred from Contesting Elections:

As per the 2004 judgment of the Patna High Court in Jan Chaukidari vs. Union of India — upheld by the Supreme Court on 10 July 2013 — all those in lawful police or judicial custody, other than those held in preventive detention, will forfeit their right to stand for election.

MPs, MLAs to be Disqualified on Date of Criminal Conviction:

In Lily Thomas vs. the Union of India, the Supreme Court declared Section 8 (4) of the Representation of the People Act, 1951, (RPA) which allowed legislators a three-month window to appeal against their conviction — effectively delaying their disqualification until such appeals were exhausted — as unconstitutional.

Voter's Right to Cast Negative Vote: With a view to bringing about purity in elections, the Supreme Court held that a voter could exercise the option of negative voting and reject all candidates as unworthy of being elected.

The voter could press the '**None of the above**' (NOTA) button in the electronic voting machine. The court directed the Election Commission to provide the NOTA button in the EVM which has been done.

The VVPAT Ruling: Supreme Court (SC), in the case of Subramanian Swamy vs. Election Commission of India (ECI), has held that VVPAT (Vote Verifiable Paper Audit Trial) is “**indispensable for free and fair elections.**”

Ruling on Election Manifesto: On a petition filed by an advocate S. Subramaniam Balaji, challenging the State's decision to distribute freebies, the Supreme Court has said that freebies promised by political parties in their election manifestos shake the roots of free and fair polls, and directed the Election Commission to frame appropriate guidelines for regulating contents of manifestos.

Stay on Caste-based Rallies: The Allahabad High Court has stayed caste-based rallies in Uttar Pradesh, a timely move that is expected to block off a key avenue that many political parties use to expand their influence and support base, just before elections.

Use of Totalizer: According to the existing provisions in Conduct of Elections Rules, 1961, votes in the EVMs are to be counted polling

stationwise, which could lead to situations where voting pattern in various localities/pockets become known to everyone. It is apprehended that this could result in victimization and/or discrimination and intimidation of electors in particular localities. This issue can be addressed by use of totalizer. that can be used for taking out the results of voting in a group of 14 EVMs without revealing the votes in individual EVMs. Amendment could be made in the Conduct of Elections Rules, 1961, and Form 20 appended to the said Rules should be suitably amended, so as to suit the requirements of counting using Totalizer.

ECI's Own Recommendations on Electoral Reforms

In March, 2016, the ECI compiled and submitted a total of 47 proposals on Electoral reforms which it has been submitting from time to time for law making which have been examined by the Law Commission and many proposals have been endorsed for legislation. Among ECI's reform proposals, three needed Amendments to the Constitution of India. These were: (1) Providing Constitutional protection for all Members of the Commission (2) ECI's budget to be considered as 'Charged' as in case of other Constitutional bodies like the Supreme Court and UPSC and (3) Independent Secretariat for the Commission. The Law Commission in its 255th Report has already endorsed these.

The ECI has listed out the important ones pertaining to decriminalisation of politics, prevention of abuse of money, transparency in funding of political parties, making bribery a cognisable offence, criminalising paid news, empowering ECI to countermand election in cases of bribery and abuse on the lines of countermanding in event of booth capturing etc. While submitting the proposals, the then CEC, Dr. Zaidi had said: "We feel that there should be well defined electoral laws rather than using residuary powers under Article 324 frequently although ECI will not hesitate to invoke Article 324 in the interest of purity of election." Drawing from the experience of Tamil Nadu elections, he added that "If law had been amended in time, enabling EC to countermand elections, on account of the abuse of money or bribery, it would have served as a deterrence in the recently held elections."

One of India's celebrated CECs, Dr. S.Y. Quraishi, known for his untiring zeal for voter education, says: "There is much to celebrate

about Indian democracy but many electoral reforms are pending for long, due to lack of political will or plain lethargy.” Recently, the Indian news media has reported that Prime Minister Narendra Modi is trying to build a consensus for a campaign finance overhaul, one of the major electoral finance proposals pending with the government for years. The government has also introduced some changes in the area of political funding. Not satisfied, the Association of Democratic Reforms, a civil society election watchdog, says political parties can now receive foreign funds, any company can donate any amount of money to any political party, and any individual, group of people or company can donate money anonymously to any party through electoral bonds. There are now multiple petitions challenging the changes in the law, that permits ‘unlimited, anonymous funding of elections by way of electoral bonds.’

Conclusion

However, one positive fact is that now the government has yielded to the long-standing proposal of the Election Commission of India (ECI) to lower the limit for anonymous cash donations from Rs. 20,000 to Rs. 2,000. Several amendments in the Companies Act, Income Tax Act, Representation of Peoples Act, Reserve Bank of India Act, Foreign Contribution Regulations Act, have been made through Finance Act 2016 and 2017. Yet some say, it will be meaningless without a cap on the amount of money that can be collected anonymously. The government has also changed Form 26 to ensure that those filing nominations declare the sources of their income, including their spouses and dependent children. Not satisfied and taking a strong stand against the delay, the Bench has dubbed the government’s failure in implementing some of the Court’s orders relating to electoral reforms as defiance. Recently, the Supreme Court has sought urgent answers from the government as to why it hadn’t implemented some key Court mandated steps to cleanse the electoral process. One of these was to create a permanent mechanism to monitor and scrutinise disproportionate assets amassed by elected law makers, a corrupt practice to unduly influence voters. There are many such unresolved issues and ambiguities that need to be revisited and sorted out. So the journey towards genuine electoral reforms appears to be long and winding. In addition, there are certain reforms which have failed to deliver and need to be reformed

again. So, elections being a dynamic process, there are many more miles to go before the reformists could sleep!

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Electoral Reforms in India - Issues and Reforms

Nilesh Ekka*

Abstract

One of the most important features of a democratic polity is elections at regular intervals. Elections constitute the signpost of democracy. The attitudes, values and beliefs of the people towards their political environment are reflected through these medium. Elections grant people a government and the government has constitutional right to govern those who elect it. Elections are the central democratic procedure for selecting and controlling leaders. 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. Free and Fair Election is a mandate given by our Constitution for a Parliamentary Democracy. The word 'Democracy' coined in the preamble can be realized if we have the content of free, fair and effective election process in our system. Only free and fair elections to the various legislative bodies in the country can guarantee the growth of a democratic polity.¹

Key Words : Elections, Reforms, Issues, Democracy, Criminalization of Politics, Money Power.

Introduction

India has the distinction of being the largest democracy in the world. The size of Indian elections is overwhelming. Around 23.1 million or 2.7 per cent of the total eligible voters were first time voters (18-19 years) in 2014. A total of 8251 candidates contested for the 543 Lok

* Nilesh Ekka is Senior Researcher with Association for Democratic Reforms.

Sabha seats. It was conducted in 9 phases and the voter turnout 66.38 per cent was the highest ever recorded in the history of Indian General Elections. The nation spent Rs. 3426 crores to conduct the Lok Sabha polls. 81.45 crores of Indians were on the eligible voters list. 55.1 crore voters exercised their franchise. About 9,30,000 polling stations were set up all over the country. The ballot boxes were sealed on May 12, 2014 for the last time and the results were declared on May 16, 2014. Ten million officials (including police security) were deployed to conduct the elections. The sheer size of the work force involved in the elections is greater than the population of most countries in the globe. It is to the credit of India that it has successfully conducted 16 elections to the Lok Sabha and several to the States since independence.

Elections are the most important and integral part of politics in a democratic system of governance. While politics is the art and practice of dealing with political power, election is a process of legitimization of such power. Democracy can indeed function only upon this faith that elections are free and fair and not rigged and manipulated, that they are effective instruments of ascertaining popular will, both in reality and in form and are not mere rituals calculated to generate illusion of difference to mass opinion, it cannot survive without free and fair elections. The election at present is not being held in ideal conditions, because of the enormous amount of money required to be spent and large muscle power needed for winning the elections. While the first three general elections (1952-62) in our country were by and large free and fair, a discernible decline in standards began with the fourth general election in 1967. No such events were reported till the fourth general election. Over the years, Indian electoral system suffers from serious infirmities. The election process in our country is the progenitor of political corruption. The distortion in its working appeared for the first time in the fifth general elections, 1971 and multiplied in the successive elections, especially those held in eighties and thereafter. Some of the candidates and parties participate in the process of elections to win them at all costs, irrespective of moral values. The ideal conditions require that an honest, and upright person who is public spirited and wants to serve the people, should be able to contest and get elected as people's representatives. However, in fact, such a person as previously mentioned has no chance of either contesting or in any case winning the election.

Issues and Recommendations:

1. Criminalization of Politics

The preamble of our Constitution aims to provide ‘political justice’ to the people. When the criminal elements are becoming a part of the legislature, then securing any form of justice, be it social, economic or political, is a hollow promise. The sovereign of India is crippled by these criminal elements who use threat, intimidation, violence and even sexual assault to win the election.

Over the last two decades, the influence of criminals in the political arena has shown a tremendous increase. Earlier these criminal elements used to influence the elections from outside but now they have become a part of the political system by contesting the elections themselves. Once an accused is elected during the trial, he uses his position and power to dilute the case or pressurizes the government to withdraw the prosecution against him or her.

All recent committees on politics and electoral reform have observed the criminalization of our political system almost unanimously. Criminalization of politics has many forms, but perhaps the most alarming among them is the significant number of elected representatives with criminal charges pending against them. The topic of electoral reforms has been taken up by numerous government committees in the recent past, including but not limited to:

Goswami Committee on Electoral Reforms (1990)

Vohra Committee Report (1993)

Gupta Committee on State Funding of Elections (1998)

Law Commission Report on Reform of the Electoral Laws (1999)

National Commission to Review the Working of the Constitution (2001)

Election Commission of India – Proposed Electoral Reforms (2004)

The Second Administrative Reforms Commission (2008)

The Vohra Committee Report on Criminalization of Politics was constituted to identify the extent of the politician-criminal nexus and recommend ways in which the menace can be combated. The report of the National Commission to Review the Working of the Constitution, cites the Vohra report as follows: “The nexus between the criminal

gangs, police, bureaucracy and politicians has come out clearly in various parts of the country” and that “some political leaders become the leaders of these gangs/armed senas and over the years get themselves elected to local bodies, State assemblies, and national parliament.” This point becomes self-evident when one looks at the number of elected representatives with pending criminal cases against them at all levels in our federal system. According to an analysis by the Association for Democratic Reforms, more than 30 per cent of current Lok Sabha MPs have declared criminal charges, including serious criminal charges like murder, kidnapping etc.

Disclosure of criminal antecedents of candidates started with the Supreme Court judgment in Writ Petition (Civil) No. 515 of 2002 (Association for Democratic Reforms vs Union of India and another) (AIR 2003 SC 2363), following which Election Commission of India issued order no. 3/ER/2003/JS-II, dated 27th March, 2003, requiring candidates contesting elections to the Parliament and State Assemblies to file affidavits in the specified format as essential parts of their nomination forms. The Election Commission has since revised the format of the affidavit vide their order no. 3/ER/2011/SDR dated 25th February, 2011. This revision has been done based on the experience from 2003 to 2010. ADR recommendation is that this format should continue.

In addition, ADR support the Election Commission of India’s recommendation, in its report on Proposed Election Reforms, 2004, that (a) an amendment should be made to Section 125A of the R.P. Act, 1951 to provide for more stringent punishment for concealing or providing wrong information on Form 26 of Conduct of Election Rules, 1961 to minimum two years imprisonment and removing the alternative punishment of assessing a fine upon the candidate, and (b) Form 26 be amended to include all items from the additional affidavit prescribed by the Election Commission, add a column requiring candidates to disclose their annual declared income for tax purpose as well as their profession.

Since an overwhelming majority of candidates are put up by political parties, and political parties also campaign for candidates including spending money on their campaigns, it is logical that the parties take responsibility and vouch for the candidates’ antecedents.

ADR therefore, recommend that the information submitted in the affidavits by the candidates should be certified by political parties.

Information given by candidates in their affidavits will be cease to have any useful effect if its correctness and accuracy are not ensured. It is therefore recommended that the information given in the affidavits of the candidates on criminal charges, assets etc. should be verified by an independent central authority in a time bound manner.

The issue of eligibility of candidates with criminal cases pending against them has been discussed for a long time. The Election Commission of India recommended, as far back as 1998, that candidates with pending criminal cases against them not be allowed to contest elections. It reiterated that recommendation in 2004.

The Law Commission of India, in their 170th report in 1999, proposed enactment of Section 8B of the Representation of the People Act, 1951, by which framing of charges by court in respect of any offence, electoral or others, would be a ground for disqualifying the candidate from contesting election. The National Commission to Review the Working of the Constitution (NCRWC) said, in Para 4.12.3 of their report in 2001, that – Any person convicted for any heinous crime like murder, rape, smuggling, dacoity, etc. should be permanently debarred from contesting any political office.”

The Second Administrative Reforms Commission (2008) has also recommended the amendment of Section 8 of the Representation of the People Act, 1951. It states: “Section 8 of the Representation of the People Act, 1951 needs to be amended to disqualify all persons facing charges related to grave and heinous offences and corruption, with the modification suggested by the Election Commission [Para 2.1.3.3.2].

As seen from the above, there is near-unanimity in all the recommendations about keeping people who have criminal cases pending against them out of the legislatures. The Election Commission has stated this elegantly in their recommendation of 2004, “The Commission reiterates that such a step would go a long way in cleansing the political establishment from the influence of criminal elements and protecting the sanctity of the Legislative Houses. The counter view to this proposal is based on the doctrine that a person is presumed to be innocent until he is proved guilty. The Commission is of the view that keeping a person, who is accused of serious criminal charges and where the Court is prima facie satisfied about his involvement in the crime and consequently framed charges, out of electoral arena would be a reasonable restriction in greater public interests.”

ADR, therefore, recommend that (a) any person against whom a charge has been framed by a court of law, in a criminal case for which the punishment is imprisonment of two years or more, not be allowed to contest elections, and (b) any political party that gives a ticket to such an individual be “deregistered and derecognized forthwith.”

2. Money Power in Elections

It is widely believed that in many cases successfully contesting an election costs a significant amount of money that is often much greater than the prescribed limits. While this comment is indeed true, the complexity of the issue can be appreciated by the fact that, (a) there has been, and continues to be, a general clamour, particularly by political leaders, that election expenditure limits are too low, and that these should be increased (these have since been increased), and (b) majority of the candidates contesting elections, declared in their election expenditure statements submitted to the Election Commission, that they had spent between 45 per cent to 55 per cent of the limit. Only a few candidates declared having spent between 90 and 95 per cent of the limit.

A large number of candidates and political parties often complain about the limits being unrealistically low, and seek a revision. The Election Commission of India is often blamed for keeping the limits too low. The fact however is that these limits are fixed by the Ministry of Law and Justice, Legislative Department, under Rule 90 of Conduct of Elections Rules, 1961. Only the government has the power to amend these rules. The Election Commission only makes recommendations for what the limits should be; the final decision is taken by the government of the day.

There is a widespread belief, often accepted by politicians, that the actual expenditures far exceed the limits. It has often been suggested by many people including politicians, and also former Chief Election Commissioners, that the limits really do not seem to serve any purpose and should be abolished. There are however legitimate concerns about the excessive use of “money power” in the electoral process, causing severe distortions in the basic functioning of democracy in the country.

The high cost of elections creates a high degree of compulsion for corruption in the public arena, that the sources of some of the election funds are believed to be unaccounted criminal money in return for protection, unaccounted funds from business groups who expect a high

return on this investment, kickbacks or commissions on contracts, etc., and that Electoral compulsions for funds become the foundation of the whole super structure of corruption.

The pernicious influence of big money in derailing the democratic process was noticed and documented as early as 1993 in what has come to be called the Vohra Committee Report. Mr. N.N. Vohra, then Union Home Secretary, quoted reports from the Central Bureau of Investigation (CBI): “An organized crime Syndicate/Mafia generally commences its activities by indulging in petty crime at the local level, mostly relating to illicit distillation/gambling/organized satta and prostitution in the larger towns. In port towns, their activities involve smuggling and sale of imported goods and progressively graduate to narcotics and drug trafficking. In the bigger cities, the main source of income relates to real estate – forcibly occupying lands/buildings, procuring such properties at cheap rates by forcing out the existing occupants/tenants etc. Overtime, the money power thus acquired is used for building up contacts with bureaucrats, politicians, and expansion of activities with impunity. The money power is used to develop a network of muscle-power, which is also used by the politicians during elections.... The nexus between the criminal gangs, police, bureaucracy and politicians has come out clearly in various parts of the country” (Para 3.2).

In view of the increasing cost of the election campaigns, it is desirable that the existing ceiling on election expenses for the various legislative bodies be suitably raised to a reasonable level reflecting the increasing costs. However, this ceiling should also apply to the political parties. As of now, there is no limit on how much a political party can spend on elections.

There is also a need to curb the high cost of campaigning to provide a level playing field for anyone who wants to contest elections. While the reasons for high cost of campaigning may be many and varied, one of the contributory factors could well be that political parties do not pay much attention to their traditional role, that of mobilizing public opinion and acting as a mediator between the public at large and the government, but have decided that they are in the business of winning elections at any cost. One outcome of this is the selection of candidates solely on the basis of an all-inclusive

characteristic called “winnability.” Given the widely known and widespread use of money and muscle power in the electoral process, candidates who are able to spend more money seem to have higher “winnability.” This is also proved by the data from several elections, collected and analyzed by ADR. For example, in the 2014 Lok Sabha election, 33 per cent of the candidates who declared assets of Rs. 5 crore and above were elected, whereas less than 1 per cent of candidates with declared assets of less than 10 lakhs were elected.

Another recommendation that has been suggested by the previous committees to reduce the cost of elections is State funding of elections. The idea is to establish such conditions where even the parties with modest financial resources may be able to compete with those who have superior financial resources. However, ADR feels that prior to State funding of elections, an immediate overhauling of the electoral process is needed. Elections need to be freed from the influence of all vitiating factors, particularly, criminalization of politics. It is understood that money power and muscle power go together to vitiate the electoral process and it is their combined effect, which is sullyng the purity of electoral contests and effecting free and fair elections. Meaningful electoral reforms in other spheres of electoral activity are also urgently needed. Additionally, it is strongly recommended that the appropriate regulatory framework be put in place with regard to political parties (provisions ensuring internal democracy, internal structures and maintenance of accounts, their auditing and submission to Election Commission) before State funding of elections is attempted.

In view of the foregoing and the experience of watching the electoral process unfold over the last fifteen years, ADR recommend as follows:

- No worthwhile measures concerning financing of elections can even be contemplated until there is reliable data about the cost of elections. The largest proportion of election expenditure is presumably done by political parties. As of now, there is no reliable data about the financial affairs of political parties. More than 70 per cent of their donations are from unknown sources. With the introduction of ‘Electoral Bonds’ opacity in their funding will only increase and it has to be seen in the coming years what are its effects on our electoral process and elections. The foremost requirement for

getting a clear and comprehensible picture of financing of elections is to get financial transparency in the financial affairs of political parties.

- Political parties should implement CIC's order and be open for public scrutiny under the provisions of the Right to Information Act, 2005.
- The Institute of Chartered Accountants of India (ICAI) guidelines should be made mandatory, and any failure to comply with these should lead to automatic deregistration of the party.
- There should be a ceiling on expenses that can be incurred by political parties during the election period.
- There should be intra-party democracy in the political parties and candidates should be selected democratically.
- ADR is not against the concept of State funding of elections but is NOT in favour of State funding being provided for elections in any form in the current situation till the functioning and finances of political parties are not made transparent and amenable to public scrutiny.

3. Misuse of Caste and Religion for Electoral Gains

This has been the subject for discussion from time to time. The use of religion, caste, community, tribe, and any other form of group identity for electoral gain or for gathering political support should not be allowed and the Representation of the People Act, 1951, be suitably amended to give the Election Commission powers to take deterrent actions against those candidates and political parties who resort to it, such actions should include, but not limited to, disqualifying candidates from contesting elections and de-registering the offending political parties. Political parties should also not be allowed to use overtly religious, caste, community, tribe, and other such expressions and words in their names.

4. Regulating Political Parties

It is a desirable objective to promote the progressive polarization of political ideologies and to reduce less serious political activity. The Election Commission should progressively increase the threshold criterion for eligibility for recognition so that the proliferation of smaller

parties is discouraged. There are more than 1600 political parties registered with the ECI, however, only a few ever contest elections. ECI should be authorized to de-register such parties, which do not contest elections.

5. Political Reforms

It needs to be understood that mere periodic holding of elections to Parliament and State Assemblies, and occasionally to Municipalities and Panchayats, is not enough for an effective or a vibrant democracy, as we pride in calling ourselves. The underlying democratic foundations are severely lacking in the political system in India. No electoral system can provide real and effective representation for the larger societal aspirations unless the political system underlying it is not democratic in real terms. Some of the areas of concern are:

- *Institutionalization of political parties*: Need for a comprehensive legislation to regulate party activities, criteria for registration as a national or State party, derecognition of parties.
- *Structural and organizational reforms*: Party organizations – National, State and local levels; Inner party democracy— regular party elections, recruitment of party cadres, socialization, development and training, research, thinking and policy planning activities of the party.
- *Party system and governance*: Mechanisms to make parties viable instruments of good governance.

In view of the above, the deeper political reforms can be presented in three interrelated but distinct parts: registration and de-registration of political parties, internal democracy in political parties, and comprehensive legislation for the regulation and functioning of political parties. These are discussed below and recommendations presented.

- **Registration and de-registration of political parties:**

The authority for registration, de-registration, recognition and de-recognition of parties and for appointing the body of auditors should be the Election Commission. The decisions of the ECI should be final, subject to review only by the Supreme Court of India.

- **Internal democracy in political parties:**

This is arguably the single most critical and important reform needed to make India a truly democratic society. It is absolutely beyond any doubt that political parties are sine qua non-political parties. They are an essential requirement of a representative democracy, that India has chosen for itself. The critical issue is how do they function or how should they function. While it would be normally expected that political parties which function in a democracy, and claim to be defenders of democracy at every opportunity, would/should function, in their own internal functioning, in a democratic manner but that, as we have observed, unfortunately, this does not happen.

Lack of internal democracy makes any organization, and political parties are not an exception here, over-centralized. In addition, in a party, which does not have internal democracy, power will be exercised more remotely from the people (members of the party), thereby increasing the distance between authority and accountability. Moreover, in large political parties without internal democracy, there will be very few decision makers. As a matter of fact, it is no secret that in an overwhelming number of parties in India, there is usually only one decision maker. ADR therefore, strongly recommends that provisions should be made to introduce inner-party democracy within the political parties. This should include mandatory secret ballot voting for all elections for all inner party posts and selection of candidates by the registered members, overseen by Election Commission of India.

- **Financial transparency in political parties:**

This is also one of the fundamental deeper political reforms that is a necessary precondition that must be satisfied before any meaningful electoral reforms can actually take place on the ground. Bulk of the donations are currently from unknown sources of funds and the introduction of 'Electoral Bonds' has made the financial transparency even more opaque than earlier. Political parties should be required to maintain proper

accounts in predetermined account heads and such accounts should be audited by auditors recommended and approved by the Comptroller and Auditor General of India (CAG), and available for the information of the public.

For bringing a sense of discipline and order into the working of our political system and in the conduct of elections, it is necessary to provide by laws for the formation, functioning, income and expenditure and the internal working of the recognized political parties both at the national and State level. ADR therefore, recommends that a comprehensive law be enacted to regulate the functioning of political parties.

Conclusion

Despite landmark judgements delivered by the SC and efforts by the ECI, the system continues to be prone to mischief. To stamp out these tendencies, there is a need to strengthen the EC to punish errant politicians and defiant political parties. Maintaining the sanctity of electoral process, requires a multi-pronged approach, including removing criminal elements and moneybags in politics, disposing poll petitions, introducing internal democracy and financial transparency in the functioning of the political parties.

Free and fair Election process is a foundation of healthy democracy. The democratic future of India depends upon healthy political environment, and to protect it with free and fair election process which is inevitable. The entry of criminals in election must be restricted at any cost. A number of commissions and committees have examined the issue of criminalization of politics however; the problem is increasing day by day. The Parliament has taken efforts by amending the laws but the exercise has proved futile. The Supreme Court of India has also made efforts to keep a check on the evil of criminalization of politics but the problem remains unbeatable, though it had not made any radical suggestion however, whatever suggestions being made are not acceptable to the politicians. There exists a wide gulf between preaching and practice in today's modern political era. Actually, the roots of the problem lie in the political system of the country. There is lack of political will to combat the problem. As being said earlier, Election is a soul of Democracy, that not only nourishes the faith of common person in the ideals of democracy but also protects the nation from the threat of authoritarian politics. Weak electoral system is the biggest threat not

only to the national integration but also to the Democratic Consolidation of India. Electoral Reforms of radical nature can only save this glorious nation from political deterioration. Sanctity and purity of elections must be protected at any cost, as the future of India depends on it.

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Afghanistan - Indian Options Post US - Taliban Deal

Indranil Banerjee*

As Washington gets busy working out a deal with the Taliban, to pull out its troops from Afghanistan, the uppermost geopolitical question is whether that country is headed back to the future – to the return of a regime dominated by black flags, barbarism, hardcore Islamist beliefs and allegiance to Islamabad's generals. For, this is precisely what had happened in the past.

After the Soviet withdrawal from Afghanistan in early 1989, the country was plunged in a bloody civil war with several Mujahideen factions backed by Pakistan trying to grab power. Eventually the Taliban, an extremist outfit spawned by Pakistan's military establishment and nurtured in the country's madrassahs, wrested control of the country.

This was possible mainly because of Pakistan's direct intervention in the warfare and tacit US go ahead. According to the former Director of the US Task force on Terrorism, Yossef Bodansky: "Starting in the early 1990's, Pakistani sponsored Jihadist forces were fighting for power in Kabul, as the rest of Afghanistan and Pakistan's own tribal areas were rapidly descending into chaos. Throughout, the ISI continued sponsoring local chieftains who guaranteed no other power could prevent Pakistani forces from deploying into the strategic depth area should the need suddenly arise. Only when the US gained access to oil and gas in Central Asia, interest in Afghanistan was renewed, simply because it is impossible to get the oil and gas to the West but via pipelines crossing Afghan and Pakistani territory. Indeed, the Taliban were originally established by the ISI, and late Mullah Omar was empowered, at the behest of the US in order to clear and control Afghanistan's southern ring road where the pipelines should have passed. Former Pakistani

* Shri Indranil Banerjee is a well known commentator and analyst on security and strategic matters. Email: Indranil.banerjee@gmail.com

interior minister, Naseerullah Babar, acknowledged in fall 1998 that the Taliban were organized under his guidance in 1994. ‘Taliban were also given military training when I was interior minister in 1994,’ he said. Significantly, Benazir Bhutto was more ruthless than Zia ul Haq and less apprehensive about tribal backlash. Therefore, she had the ISI reach out not only to the religious ‘orders’ or ‘schools’ used in the 1980’s but also to tribal leaders and drug lords.’

Things are no different today. Pakistan continues to control the Taliban, the leadership of which is known as the Quetta Shura, based in the Pakistani city of Quetta. Controlled by the ISI, the Quetta Shura is virtually a branch of the Pakistan Army. This fact is recognised by the United States government which is engaged in talks with the Taliban to work out an honourable exit plan.

Islamabad too has made it clear about who holds the key in the negotiations. When the Indian Air Force air strike (Feb 26, 2019) on Balakote and subsequent Indian statements cornered Pakistan’s military establishment, the Pakistan government openly threatened the US that the Afghan talks would be “affected” (read fail) if Washington did not rein in New Delhi.

Islamabad’s centrality in the future of Afghanistan has many implications for both the United States and India although for entirely different reasons.

US-Taliban Secret Talks

The United States has long become weary of the Afghan war which is now 18 years old. Many US presidents have tried to wind down or end the war but have failed because of strategic compulsions. Now, President Donald Trump seems determined to do what his predecessors failed to do: pull the plug out entirely from Afghanistan.

The proximate cause is Washington’s desire to finally pull out from Afghanistan where it has fought – and largely lost – an 18-year old war. US President Donald Trump appears to be bold enough to do what his predecessors always wanted but did not dare: that is, walk away from the Afghan conflict. Trump does not care a hoot about what happens to Afghanistan and there is no good reason why he should. Thousands of Americans have been killed fighting in that country and even the modest US military presence there costs the US taxpayer

billions of dollars. Besides, it is amply clear by now that the US military is incapable of winning the war against the Taliban. Nor can US money transform the country into a vibrant squeaky-clean Western style democracy.

Towards this end he has tasked former US Ambassador to Afghanistan and a regional expert, Zalmay Khalilzad, to work out an honourable and workable withdrawal. A US team led by Khalilzad, designated a “Special Envoy,” has held five rounds of talks in Doha (till mid-March 2019) with a Taliban team headed by Mullah Abdul Ghani Baradar, head of Taliban’s Qatar office.

The talks are shrouded in utmost secrecy with even the elected government in Kabul kept outside the loop. All that is known emanates from US State Department briefings, Pakistan Foreign Office statements and media comments by Taliban leaders. There is nothing official except that the ongoing Afghan peace talks in Qatar are focusing on four core issues and that both sides are trying to reach a final agreement.

The US State Department has stated that the “talks are focused on post-peace deal counter-terrorism efforts, intra-Afghans talks, US forces withdrawal and ceasefire and that both sides have to work out how to reach an agreement in this regard.”

The State Department claims the talks constitute a “private diplomatic conversation” between the United States government and the Taliban. What is unprecedented, however, is the exclusion of the Afghan government from the negotiations on Taliban demand.

The latest round of talks in March, which was spread over 16 days, appears to have been half successful. According to US State Department’s deputy spokesperson, Robert Palladino, reports from Khalilzad suggest “they’ve had meaningful progress.”

Khalilzad had said in a tweet that “In January talks,” we “agreed in principle” on these four elements. We’re now “agreed in draft” on the “first two.” He felt the conditions for peace have improved and that it is clear that all sides want to end the war. “Despite ups and downs, we kept things on track and made real strides,” he said. The next step would be an agreement on a withdrawal timeline and effective counterterrorism measures. Finally, he added, “the Taliban and other Afghans, including the government, will begin intra-Afghan negotiations on a political settlement and comprehensive ceasefire... My next step

is discussions in Washington and consultations with other partners. We will meet again soon, and there is no final agreement until everything is agreed.”

It is clear however that the latest round of talks did not yield a final resolution. For immediately after the talks, the Taliban clarified no deal has been signed by the negotiating teams and that they will come together after consulting their leaderships about the talks.

The sticking points are two: the withdrawal of US troops, as well as the Bilateral Security Agreement (BSA) between Afghanistan and the US, and the issue to ultimate dialogue with the elected Afghan government in Kabul.

Sayed Akbar Agha, a former member of Taliban, admitted the issue of the US forces withdrawal has made the talks complicated. ”The foreigners are trying to remain in Afghanistan until the time mentioned in the security agreement between Kabul and Washington to show that they did not fail in Afghanistan. But the Taliban say that they should leave within one year. So far, they have not reached an agreement in this regard,” he said.

Some reports suggest that the United States wants to continue a small military presence in Afghanistan even after its formal withdrawal. In exchange Washington has assured a non-interference policy by the US and regional countries in Afghanistan’s internal affairs.

News reports claim Mullah Abdul Ghani Baradar, Taliban’s deputy leader and head of the group’s Qatar office, is optimistic about the marathon talks between the US and Taliban negotiators in Doha. Baradar says that significant progress was made in the Qatar talks and he hopes that more developments are made in the future.

Baradar tried to sound conciliatory by adding that he hopes that the Afghan political leaders would not leave the country or stand against them. The reports claimed Baradar said the future system in Afghanistan would not harm anyone.

He also admitted that the Taliban and the US agreed on the first two issues under discussion, as mentioned by Khalilzad. “In this round of talks, we were able to move to agreement in draft on the first two principles, counterterrorism assurances and troop withdrawal. And when that agreement in draft is finalized, Taliban and an inclusive Afghan negotiating team that includes the Afghan government and other Afghans

to begin intra-Afghan negotiation for a political settlement and a comprehensive ceasefire,” he added.

Elected Afghan Government Out in the Cold

But all is clearly not well. Afghan government’s National Security Advisor Hamdullah Mohib dropped a bombshell during his Washington DC visit in March by declaring that Khalilzad was keeping the elected Afghan government in dark about the talks or what kind of deal would be reached. “We don’t know what’s going on. We don’t have the kind of transparency that we should have,” Mohib told reporters at a news conference. He said the Afghan government was getting the information in bits and pieces. “The last people to find out (about the peace talks) are us,” Mohib complained, adding that in the latest round of Doha, Afghan government representatives were humiliated and made to wait in a hotel lobby.

He also said that the talks were essentially a “surrender” discussion and that the Afghan-born US diplomat Khalilzad has personal ambitions in Afghanistan. ‘The perception in Afghanistan and people in the government think that perhaps all of this talk is to create a caretaker government of which he will then become the viceroy,’ Mohib alleged. Mohib’s remarks appear to have made the Americans furious and media reports suggested he had been “summoned” by the State Department hours after he criticized US Special Envoy Zalmay Khalilzad for bypassing the elected government of Afghanistan in peace negotiations with the Taliban.

However, Mohib did not pull his punches. Speaking at the Hudson Institute, he said while the democratically elected Afghan government has been kept out of the peace talks, Islamabad was well aware of the developments happening at the talks in Doha. ‘The patron (Pakistan Foreign Minister) tweets and says there was progress in Doha. Were they there? What is the relationship of the Taliban with Pakistan? I have to say it, spell it out,’ he asked.

He went on to ask: “What is the relationship (between the Taliban and Pakistan)? Has anybody asked and what does it mean? What will be the end of that relationship? Will peace in Afghanistan mean Pakistan no longer using proxies for their political objectives and terrorists. Will

the UN raise that question of what the policy or non-state actors?’ There will be no peace unless Pakistan stops supporting ‘non-state actors... Imagine these discussions were successful. What would be Pakistan’s objective? What would it be for the Pakistani military? What would be the incentives for them? The incentive for them is they’ve just defeated the United States [and] all of its coalition partners... If (Pakistan) has the incentive to continue to sponsor and support its policy of Islamic extremists. That is the best weapon they have, and they will continue to use it at the cost of all Muslims.”

Mohib’s allegations were proved right within a few days when Pakistan Prime Minister, Imran Khan assured the world that peace in Afghanistan is “around the corner” and that a “good government will be established in Afghanistan, a government where all Afghans will be represented. The war will end and peace will be established there.” Clearly, as Mohib had warned, Pakistanis knew more about the peace talks than did the Afghan government and that his apprehensions about his country’s future are spot on. Moreover, the Taliban’s reluctance to talk to the Afghan government indicates it does not really want reconciliation or power sharing; it wants total domination.

Pakistan’s Role

It is becoming increasingly clear to all Afghan observers that the Pakistan’s military establishment has won through their Islamist proxy, the Taliban. This is the reality and no amount of argument can change the fact. Thus, the Taliban, a violent extremist Islamist organization bolstered by arms and money from the Pakistani establishment, has all of a sudden acquired a certain legitimacy. The United States, Russia and Iran are all talking to the Taliban leadership.

Problem is that nothing suggests that Pakistan will end its policies of using Islamist extremists as an instrument of its foreign policy, as it always has. This is especially true of its fight against India.

Former Pakistan Ambassador to the US, Hussain Haqqani pointed out [The Wire, 9 March 2019]: “This time it is contended that the harmony of views between civilian Prime Minister Imran Khan, and Chief of Army Staff, General Qamar Javed Bajwa, will pave the way for better coordination and honest implementation of a strategy to finally wind down the terrorist-Jihadi infrastructure. But the differences between civilian leaders and the army in the past were partly about the extent

to which counter-terrorism steps were to be taken. It is unclear how Bajwa and Khan being on the same page would make a difference in prompting a more robust counter-terrorism policy. General Bajwa could be sincere and well-meaning and Imran Khan might really be more liberal and westernised than his pro-Taliban statements allow him to seem. But clearly, Pakistan faces a structural, institutional, and deep-rooted reason that has led to the flourishing of Jihadis for three decades. That reason likely transcends personalities. All steps announced by Pakistan against the Jihadis, on almost every occasion, have been in response to international pressure. The state's story about the question has changed multiple times. It often starts with "There are no terrorist groups in Pakistan," turns to "These groups have no state support," and "There is no evidence of their involvement in specific acts of terrorism," before evolving into "We have banned these groups, arrested their leaders, and seized their assets." Meanwhile, the ground reality remains the same. For example, undertaking terrorist operations is a young man's job, and while the founders and Amirs of Jihadi groups might have aged over the years, the groups banned repeatedly still manage to recruit and train younger generations of terrorists."

If this is the case, then a Taliban settlement with the United States will only further embolden the generals in Rawalpindi.

Indian Options

Question now is what should India do? Talk to the Taliban or stay away and hope for the best?

The only high ranking Indian official candid enough to say something on this issue was Army Chief General Bipin Rawat who, during a discussion at a conference, said "if other nations are keen on initiating talks with Taliban and that this is what the host nation desires; then India should not be left out of the bandwagon, because of our positive engagements with the Government in Afghanistan. This was also in line with representatives from India attending the recently held discussions in November 2018 in Russia; however no preconditions should be put forward by Taliban." The Army chief has also tweeted: "Many are engaging with Taliban for having peace. We should engage unconditionally to the extent of having a sense as to what is happening. India has contributed immensely for peace in Afghanistan and plans to do so."

But New Delhi's foreign policy establishment has largely remained silent on this issue, although there can be no denying a sense of urgency. Significantly, both Iran and Russia want India to parley with the Taliban while the US, especially President Trump, remains dismissive about India's importance in the Afghan scheme of things.

President Trump had recently complained that Prime Minister Narendra Modi kept talking about a library India had built in Afghanistan. Modi "is constantly telling me, he built a library in Afghanistan. Library! That's like five hours of what we spend (in Afghanistan)," Trump declared in an interview, adding "I don't know who is using it." Although President Trump might be unaware of it, the fact is India has been extremely proactive in Afghanistan since 2002, pouring in over US \$ 2 billion in aid. Indian money has saved thousands of Afghan children and helped development in severely distressed areas.

The aim has been to build lasting ties with the Afghan society and all ethnic groups. New Delhi appears to believe that a strengthened Afghan economy and polity would keep out the Taliban. This clearly will not happen.

India, it will be recalled, had effectively been thrown out of Afghanistan the moment the Taliban took over Kabul on 26 September 1996. The Indian diplomatic mission in Kabul barely had hours to pack up and leave. It was only after the retreat of the Taliban following the US sponsored Northern Alliance offensive in late 2001 that India could return to Afghanistan.

Today, New Delhi is faced with the prospect of the Taliban's return. The only good news is that most regional and global powers supporting the present Afghan government believe that the Taliban will not be able to take over all of the country and will ultimately have to agree to a modus vivendi with the present Kabul regime and its supporters.

Iranian Foreign Minister Javad Zarif, during a recent visit to New Delhi, said: "we also believe that the Taliban should not have a dominant role in Afghanistan ... Nobody in the region believes that a Taliban dominated Afghanistan is in the security interests of the region. I believe that is almost a consensus."

The Russians, who are particularly worried about the activity of jihadis in northern Afghanistan, unabated heroin exports and the continued US presence in the region, also wish to deal with the Taliban.

They believe a power sharing deal would be in the best interests of all parties involved, including New Delhi, which is being kept in the loop.

Both Russia and Iran want India to open talks with the Taliban. The Iranians who believe a Taliban role in Afghanistan's future is inevitable have said that they would be only too happy to facilitate talks between the Indian government and the Taliban.

While a US military withdrawal will delight Islamabad, most nations in the region, including Iran and Russia, fear for the long-term stability of Afghanistan. Taliban might agree to a power sharing deal to get the Americans out, but Pakistan's military establishment which seeks total domination over Afghanistan, or at least the eastern and southern parts of the country, is unlikely to relent. They will press for total domination. Their long-standing desire to achieve strategic depth in Afghanistan will also mean unremitting pressure on India to vacate that country.

Prudence suggests that India cannot go it alone in Afghanistan. The only sensible course of action would be to team up with Moscow, Tehran and even Beijing to talk to the Taliban and work out a viable compromise. Moreover, New Delhi should also prepare for some sort of military and covert action through proxies willing to stand up to the Taliban.

Turkey: From Muslim Democracy to Islamicist Authoritarianism

Anwar Alam*

Introduction

Any serious observer of Turkish affairs would notice its rapid transformation into some kind of elected Islamicist authoritarianism under the leadership of Rajyap Tayyab Erdogan. The symptoms of authoritarian shift had begun to surface in the aftermath of Constitutional Referendum, 2010, which among others had resulted in significantly clipping the power of army – the very institution that all democratically elected government in Turkey including the current regime feared most. The early sign of authoritarianism could not be noticed due to two specific reasons. First the Constitutional Referendum, 2010, attracted the global attention, in particular of European stake holders, which was designed formally to meet the Copenhagen accession criteria for membership in European Union. Second, the ‘Turkish model of democracy’ was favourably debated across the Arab region in the context of development of Arab Spring in early 2011. Many scholars of Middle Eastern affairs saw the Turkish Constitutional Referendum, 2010 as a precursor of Arab Spring in the region.

However, the ‘authoritarian turn’ in Turkey soon became visibly manifest in public domain in the aftermath of 2013 December Corruption cases against the government, which included Erdogan’s family members and close associates – a process that culminated in full authoritarian consolidation in favour of President Erdogan in the aftermath of 14-15th October 2016 failed military coup. The Turkish government has justified its reversal to authoritarian mode of governance in order to eliminate the perceived internal threat from Gulen movement¹

* Professor Anwar Alam, Senior Fellow, Policy Perspectives Foundation, New Delhi.

to its existence. Though Gulen movement, a faith based civic social movement, is prime victim of increasing State hostility, all dissenting voices –whether individual, institutional, business houses, NGOs, media houses have been violently crushed and their assets and properties have been confiscated by the State in addition to illegal arrests, confinement, detention and dismissal of more than 100,000 government employees from all sectors of the State, particularly from police, judiciary and military. Turkey now has dubious distinction of putting largest number of journalists in the jail.²

How one explains the gradual transformation of Turkey from a model of ‘Muslim Democracy,’ to use the phrase of Iranian scholar Vali Nas³ into a ‘Sunni Islamic authoritarianism’ within a span of last one and half decade? What is more puzzling is that the Erdogan regime, which was credited to usher Turkey into ‘Muslim democracy’ combining the element of Islam, democracy, secularism and a phenomenal economic development between 2002 and 2012, is also the prime vehicle to transform Turkey into the authoritarian party-state and dismantling its own democratic legacy. Is political Islamism an inherently undemocratic creed, considering the fact that AKP shares strong genealogy of political Islamism? What is the impact of this transformation on the regional stability? Would this shift towards Islamic authoritarianism contribute to stabilisation of the fragile region or further de-stabilise the region? What makes the people accept authoritarian polity after having experienced a limited, but significant, democratic life over the past decade?

Before providing explanatory framework for the ‘authoritarian shift’ into Turkish politics, it is important to briefly mention about demography and democratic progress in Turkey during 2002-2012.

Demography, Democracy and Development in Turkey (2002-2012): An Overview

Turkey is a nation of 72.5 million with a growth rate of 1.45 per cent per year as per figures in 2010. More than 99 per cent of its population is Muslim with Sunni-Hanafi Muslims constituting around 85-90 per cent and Shii Alevites around 10-15 per cent. There are an estimated 100,000 to 150,000 Christians in Turkey. The two largest groups within Christianity are the Greek Orthodox and the Syrian Orthodox communities. Armenians, Greeks and Jews are officially recognized as

religious minorities while Arabs, Assyrians, Caucasians, Kurds and Roma do not have any legal status as minorities. It has a young population structure with 15–64 age group constitute 67 per cent of the total population. Life expectancy stands at 71.1 years for men and 75.3 years for women, with an average of 73.2 years for the populace as a whole.⁴

Between 2002-2012 Turkey witnessed one of the fastest economic growth in the history of any nation. This period registered an annual GDP growth rate of 6.8 per cent between 2002 and 2010, compared to an annual average of 4 per cent in the 1990s.⁵ Annual growth reached an average rate of 7.3 per cent between 2002 and 2010⁶ and attracted foreign direct investment to the tune of \$22billion a year throughout the decade compared to \$1billion a year in 1990s.⁷ There had been a rapid growth in exports, from \$13 billion in 1990 to \$73.3 billion in 2005 breaking all records in the history of the country. Based on demographic, economic and social indicators, Turkey is ranked as a high development country by UNDP human development index (HDI) and clustered as an upper middle income country by the World Bank with its GDP per capita that exceeded \$ 10,000 in 2008.⁸

The high growth rate in the economic sector was accompanied by the rapid reform in the social sector, particularly in the field of education and health. In 2003, the government introduced a sweeping health reform programme aimed at making health care available to a larger share of the population. As a result, the number of hospitals in the year 2008 had reached 1,350 with a steady increase from 1,155 in 2002 and the number of hospital beds in the year 2008 had reached 188,065, which were equal to 22.3 hospital beds per 10,000 people.⁹ Similarly, the literacy rate steadily increased from 69 per cent in 1980 to 86 per cent in 2009.¹⁰ The gender gap in primary education at national level continued to narrow and was virtually closed.

In tune with social and economic progress, Turkey witnessed significant democratic achievement. Though Turkey's transition towards democratic rule began with the coming of Democratic Party (DP) in 1950 and adoption of 1961 Constitution that guaranteed significant civil and political rights, the real progress towards democratic consolidation began since 2002 with the coming of AKP, a party with Muslim/Islamic sensibilities. European Commission has noted the significant measures that Turkey under AKP has adopted towards fuller realization of democratic rule. The observation of European Commission¹¹ in this regard is as follows:

The 2011 elections took place in a generally peaceful atmosphere. For the first time, political parties and candidates were able to purchase broadcasting time for political advertisements. In March 2011 the Supreme Election Board (YSK) ruled that, while political parties and candidates will principally use Turkish in their advertising, use of other languages, including Kurdish, is possible. Various parties tried to target Kurdish voters by running election campaign advertisements on TRT 6, the first national Kurdish language TV station.

The Supreme Military Council of August 2011 was a step towards greater civilian oversight of the armed forces. Civilian oversight of military expenditure was tightened and a revised National Security Plan adopted. In addition, Supreme Military Council decisions were opened to civilian judicial review. *Overall*, good progress has been made on consolidating the principle of civilian oversight of security forces.

There has been progress in the reform of the judiciary, notably with implementing the 2010 constitutional amendments. As regards the *independence* of the judiciary, a Law on the High Council of Judges and Prosecutors was adopted in December 2010. This law, together with the constitutional amendments approved by referendum in September 2010, established a new composition of the High Council¹⁰ that is more pluralistic and representative of the judiciary as a whole. *Overall*, progress has been made in the area of the judiciary. The adoption of legislation on the High Council of Judges and Prosecutors and on the Constitutional Court marks progress in the independence and impartiality of the judiciary.

As regards freedom of expression, the media and public continued debating openly and freely a wide range of topics perceived as sensitive, such as the Kurdish issue, minority rights, the Armenian issue and the role of the military. Opposition views were regularly expressed. Following the review of the legal framework on freedom of expression by the Ministry of Justice, a draft law has been submitted to the Parliament with the aim of changing a limited number of articles of the Turkish Criminal Code, including Articles 285 and 288, which are often used to start procedures against journalists. *Overall*, open debate, including on issues perceived as sensitive, continued. However, in practice, freedom of expression was undermined by the high number of legal cases and investigations against journalists, writers, academics

and human rights defenders and undue pressure on the media, which raised serious concerns.

As regards freedom of assembly, there were positive developments. *Newroz* (New Year) ceremonies in the South East and 1 May demonstrations took place in a generally peaceful atmosphere. Several activities, including *Armenian Genocide Commemoration Day*, organised by intellectuals and civil society representatives to commemorate the 1915 events also proceeded peacefully.

Concerning freedom of thought, conscience and religion, freedom of worship continues to be generally respected. Ecumenical Patriarch Bartholomew celebrated in August, for the second time after almost nine decades, the Divine Liturgy of the Dormition of Theotokos at the Soumela monastery in the Black Sea province of Trabzon. In September, the second religious service since 1915 was held at the Armenian Holy Cross church on the Akhdamar Island in lake Van. A Protestant church was officially opened in June in the city of Van in Eastern Turkey. The Turkish authorities, including a Deputy Prime Minister, held a number of meetings with religious leaders of non-Muslim communities, including a visit to the Ecumenical Patriarchate, the first visit by a high-ranking official of the Patriarchate since the 1950s. The Ministry of National Education has prepared new religious education textbooks containing information on the Alevi faith, too. These are to be used as of the 2011-2012 school year. *Overall*, there has been limited progress on freedom of thought, conscience and religion. The dialogue with the Alevis and with the non-Muslim religious communities continued. Members of minority religions continued to be subject to threats from extremists. A legal framework in line with the ECHR has yet to be established, so that all non-Muslim religious communities and the Alevi community can function without undue constraints.

Limited progress can be noted on women's rights and gender equality. The Parliamentary Committee on Equal Opportunities for Women and Men has issued a number of reports on women's issues and improved its institutional capacity, including the aid for training. Legislation was adopted in January 2011 (Law on obligations) to address the problem of bullying at work, followed by a Prime Ministerial circular in March 2011. The female participation rate in the labour market increased from 26 per cent in 2009 to 27.6 per cent in 2010. The gender gap in primary education at national level continued to narrow and was virtually closed. The 2011 elections increased women's

participation in Parliament approximately from 9 per cent to 14 per cent of its membership.”

As regards cultural rights, the Law on the establishment and broadcasting principles of radio and TV stations entered into force in March 2011. It permits broadcasts in languages other than Turkish by all nationwide radio and television stations. Temporary suspension of broadcasting remains possible by Prime Ministerial or Ministerial decision, in cases of threats to national security and public order, but can now be appealed against in court.”

Explanations to Authoritarian Turn in Turkey

Popular explanations range from inherent power conflict between Ergodanism and Gulenism, personal authoritarian ambition of Erdogan himself as evident from his demand for Executive Presidency and extraordinary condition of national crisis created due to failed military coup. Though these factors may have contributed towards the push for authoritarian turn in Turkish polity, however they are mostly individual centric rather than structural. The return to authoritarian rule has both structural, ideological and individual roots and can be addressed under the following sub heads:

(A) Turkish Experience of Western Modernity

At a macro structural level the set back to democratic rule partly lies in Turkey’s specific experience of historical encounter with modernity. The indigenous ruling elites of Ottoman Empire were primarily tempted towards western modernity in order to protect and strengthen the Ottoman Empire. All political, economic and administrative reforms that were carried out since Tanzimat era including the Kemalist revolution, which abolished the Ottoman Empire and Caliphate, was having central objective of ‘preserving and strengthening’ either of ‘Empire’ or ‘Republican State.’¹² In other words it is the centrality of discourse of *Dawla* or State that has shaped the reception of political modernity among the Turkish elites and intelligentsia. Dominant political discourses and formulations of Turkish nationalism in the Ottoman-Turkish setting, which ranged from Ottomanism to Islamism to Turkism, were premised on the idea of European ‘nation-state’—the imagined core of political modernity and political engine of power, growth and development.

As the State was centre of discourse of political modernity, the Turkish intelligentsia and elites were mostly attracted towards and sought to import mainly the masculine, hard aspects of modernity that could bolster the State authority. In the process the soft aspects of modernity such as democracy, rule of law, civil and political rights, rights of the people, sanctity of the constitution etc. were either ignored or did not receive serious attention. Surveying the trajectory of evolution of nationalism in Turkey Ayes Kadioglu and E. Fuat Keyman observed: *the main raison d'être of nationalism was enunciated as the preservation of the state rather than the transfer of power to the people.*¹³ (emphasis mine). One consequence of this process is that the category of 'people' is yet to emerge at the centre of democratic discourse in modern Turkey despite more than 60 years of seemingly multiparty-based democratic experience.

(B) Turkish State: A Father Figure

The democratic experiment in Turkey including its most vigorous manifestation during 2002-2012 could not replace the traditional imagery of Turkish State as 'father figure' or 'guardian' to be personified into the strong personalities such as Kemal Ataturk, Erdogan and others. It is this traditional expectation of people and the idea of 'strong state' that continues to allow the Turkish State to register its strong presence in almost all walks of life. Three decades of liberalisation of political and economic sphere, which did weaken the State's hold over many sphere of life, has not brought a significant change in the public perception about the State as 'sacred' and 'father figure.' In this context a few analysts have linked the recent trend of authoritarianism in Turkey as the State's re-assertion to re-establish its control over social, political and economic forces appeared to be slipping from the State's control during the process of liberalisation and thus was viewed by the State as posing a 'threat' to its existence.

(C) Secularism, Nationalism and Democracy: Instrument of State Power

One implication of ideological treatment of political modernity, particularly secularism and nationalism, in the Turkish setting is that the democratic experience since late 1940s has been marred by frequent intervention of military establishment (1960, 1970, 1980, 1997 and

2004) whether directly or indirectly. Military and judiciary has historically served as ideological stronghold of Kemalist State and have thwarted the 'democratic experiment,' mostly supported by Turkish religious masses. The military junta and judiciary have often dismissed the popularly elected governments, outlawed political parties and imprisoned political leaders (mostly Islamic/Muslim and Kurdish oriented parties and leaders) in the name of violation of secularism and nationalism. Today populist democracy in the hand of Erdogan has emerged as a powerful tool to marginalize the secular, Kemalist elite in the power structure of the Turkish State. Thus, in the Turkish political setting, secularism, nationalism and of late democracy too have functioned as an instrument of power, rather than as value.

(D) The Nature of Middle Class

Theories of democracy have traditionally factored the role of middle class in the development of democracy. However, the expanding zone of middle class in Turkey and elsewhere in the WANA (West Asia North Africa) region has historically or in the present time hardly acted or stood for the democratisation of State institutions. Though the absolute linkage between middle class and political democracy is itself tenuous and lacks uniform application across many societies; however unlike other post colonial countries, the degree of dependence of middle class, particularly its upper section, on State resources in WANA region including Turkey is too high. Further access to State patronage has traditionally defined the economic, social and political status of individual in Middle Eastern societies. For these reasons, the middle class has a huge stake in the stability of strong, functional authoritarian State. The failed Arab Spring, though a significant democratic moment in the annals of political history of WANA, was not directed against State authoritarianism or alternatively in favour of wider democratisation of the State. The collective anger of the predominantly middle class was addressed to the failing capacity of the State, particularly the 'Secular- Republican' ones, to address their 'rising material expectation' raised in the context of liberalisation and privatisation of economy on account of multiple factors. The secularists and kemalists, who constituted the bulk of middle class in Turkey, had consistently opposed Turkey's entry into European Union for the fear that resultant democratic process would open the State resources for other social groups and thus indirectly threaten its entrenched position within the State system.

(E) Lack of Democracy as National Value

This non-emergence of democracy as a national value and identity in Turkish setting partly explains *the ease and speed* with which Prime Minister Erdogan can reverse the democratic courses and indulged in undemocratic practices with impunity and without any respect for law, under the circumstances, when the legitimacy of his rule has been seriously questioned. Thus, in one context democracy was required to consolidate Erdogan's regime; in another context anti-democratic measures have become essential for the survival of his regime. Thus, the democratic experiment in Turkey is also linked with 'politics of regime survival,' much like Middle Eastern politics where 'expansion and contraction of democracy' depended upon the 'politics of survivability of regime.'

(F) Rise of 'Muslim Turkey'

Another structural factor for authoritarian consolidation in favour of the Erdogan regime lies in rise of 'Muslim Turkey' or 'black Turks' against 'Secular Turkey' or Secular Turks.' The former represents historically peripheral, marginalised religious Anatolian Muslims, who were excluded from the State sectors or were having insignificant presence in the national economy, while the latter represents secular, Kemalists and Alvites social and political classes with historically strong presence within the Kemalist State system and in the national economy. In the hindsight, the rise of Muslim middle and entrepreneurial class, since 1980s,¹⁴ who otherwise came at the national scene through democratic process under the leadership of Turgut Ozal, and later Erdogan, is today at the forefront of authoritarian consolidation under Erdogan's leadership with a sole objective of either developing monopoly over the State resources or greater share in the national economy by eliminating the Kemalist and Secularist presence within and outside the State system. It may be noted that despite more than two decades of Ergodan's rule, TUSIAD, the institutional representative of secularist industrial houses, remained the largest industrial and financial houses in Turkey.

The Erdogan regime remained fearful of this social class and its perceived dominance in military and judiciary — the two institutions that has been historically active in dislodging and outlawing the Muslim friendly governments and Muslim oriented parties. The 2013 December

Corruption Scandal and July 2016 failed military coup provided the Erdogan regime an opportunity to achieve the kind of authoritarian consolidation needed to deal with future internal and external threats, principally from a secular segment. Though the regime has identified the Gulen movement – a section of black Turks itself, as prime internal threat to the State and sought its elimination, its ultimate objective is the completion of process of de-Kemalisation itself, the process which has always been underway in bits and pieces since the government has come into power in 2002, which gradually resulted in de-militarization of public sphere and de-legitimization of military institutions by sending the former army chief and other military officers to prison, following the trial of Ergenekon case. Further, of late, Erdogan has consistently dissociated himself with the symbolism of Kemalist-republican traditions.

(G) Individual Factor

When Erdogan arrives at the national political scene in early 2000s, he found his Islamist political vision circumspect by the existing Kemalist constitutions, structure and agency, particularly the military and judiciary. Between 2002 and 2010 he skilfully navigated the Kemalist infested political terrain with the combination of support of his own Anatolian Muslim constituency and Gulen movement from below and politics of European Union from above, as well due to ‘visible developmental work.’ With successive electoral victories between 2002 and May 2014 at all level of elections including the Presidential election, Erdogan developed a new found ‘charisma,’ started casting himself into the mould of a ‘Leader’ of the nation, parallel to Kemal Ataturk. As he moved in that direction since 2010, he found the ‘social presence’ of Hizmet and its inspired people in the State institutions, European Union and ‘democratic framework of governance’ as obstacles in the path of exercise of his unfettered rule. If the 2013 December Corruption Scandal and 2015 July Failed Military Coup provided ‘godly opportunity’ to the Erdogan regime to effectively deal with any internal Islamic (Gulen movement) and secular-Kemalist threat (mostly coming from judiciary and military), the regime deftly played the card of threat of Syrian Refugee Migration and ‘Islamic State’ to ‘manage’ European Union over its growing democratic deficit in governance and human rights abuses.

(H) Islamic Tradition and Political Islamism

Finally, if not the least, the authoritarian turn in the Turkish polity under the leadership of Erdogan emanates from its Islamists roots. Examples from Islamic Republic of Iran, Sudan, Saudi Arabia, Pakistan, Egypt and other Muslim countries where political Islam managed to exercise or share State power also confirms the same trend. Looking at experiences of Political Islam in Iran, Sudan, Saudi Arabia, Pakistan, Egypt, Bangladesh and others, it is safe to conclude that as a modern phenomenon and concept, that germinated in a besieged, victimhood, fear of survivability and inferiority complex mentality, Political Islam remained guided by power-driven instrumental rationality along with conspiracy perspective and as such is obsessed with harnessing the hard, masculine political tradition of control, regulation and disciplining of both life worlds—secular as well as Islam in order to remain ‘political’: acquiring and maintaining the State power with all means at its disposal—legal or illegal. Beyond a crude instrumentalisation of Islam, Islam’s ethical and moral perspectives cease to be a factor in its governance.

Moreover, the democratic forms of governance continue to suffer from an inferior status in the Muslim imagination of ‘good rule’ for two reasons. First, not only the political Islamists, but Muslims in general continue to associate the modern concept of nationalism, secularism and democracy as ‘western ideas,’ ‘conspiracy,’ alien to Islamic tradition, that has done harm to Muslim civilisation and unity and brought misery, humiliation and subjugation. A large number of Muslims, particularly in WANA region including Turkey, continue to subscribe to the discourse of ‘western conspiracy’ against the Muslim world. This ‘readymade conspiracy political market’ immensely helps the rules, particularly in the WANA countries including Turkey, to carry out their anti-democratic measures.

Second, the ‘idea of progress’ and ‘ideal governance’ continues to be centred on ‘Prophetic Model,’ model of Four Rightly Caliphs in Sunni Islam and Imamate system in Shii Islam which is highly individualistic in orientation. It is not the institution/structure that enjoys the legitimacy in the eyes of people but the person who occupies this office. The issue of legitimacy of structure/institutions is relatively very weak in post-colonial countries and more so in the Muslim countries where Islamic/Muslim tradition legitimizes the individual/personality based governance. Given such a situation and tradition, a person coming

from Muslim/Islamic/Islamist background and in a context of being at the helm of political affairs for a long-term might conceive himself/herself as someone ‘chosen’ by God to fulfil a historical mission or lead/guide the community/umma and in the process cast himself/herself as invincible and above law. Such is currently the case with Erdogan, the current President of Turkey – the longest serving head of the government after Ataturk, who has casted himself in the role of Amir-ul-Muminin and *Rais*.

Conclusion

As Erdogan moved on the Islamicist path of authoritarianism with political ambition of becoming leader of the Muslim world, it has adversely impacted the stability of Turkey – both internally and externally. Internally it has deeply fragmented the already deeply polarised Turkish society along the ethnic, sectarian and religious lines resulting into Turkish-Kurdish, Sunni-Alvi, Muslims-secular conflicts with greater frequency, even though it paid good political dividend to the regime.

Second, by crushing the Gulen movement it undermined the Islamic ideational resources needed most to fight Islamic terrorism. Further, by flushing out the State officials and silencing all dissenting voices by linking them with FETO, PKK and terrorism the Erdogan regime has crippled the administrative capacity to effectively counter the menace of terrorism. No wonder, since 2013, terrorism of one or other form has hit Turkey with greater frequency. Third, the government’s crackdown on the military officers, mostly serving in NATO, in the aftermath of the failed military coup, would further jeopardise the military capacity to conduct successful anti-terrorist operation either within Turkey (e.g., against PKK) or across border in Syria or Iraq apart from negatively affecting its relations with the US. The US government’s refusal to handover Fateullah Gulen to the Turkish government has already brought a trust deficit between the two countries, which will have implication in affecting Turkey’s role in the Middle East.

Externally, as Turkey increasingly became a part of ‘Sunni axis’ along with Saudi Arabia and Qatar and its political harbouring of Muslim Brotherhood of Egypt, HAMAS, and even ISIS (atleast till mid 2015) it further contributed to the political climate of Shii-Sunni conflicts in the region. This in part explains his reluctance

to fight decisively the ISIS, at least within Syria, partly for fear of loss of section of Turkish Muslim support, partly for its understanding of ISIS as resistance force to the Assad regime in Syria and partly to check the Iranian influence as a part of 'Sunni axis.' One consequence of its 'Sunnitisation of its foreign policy' was that Turkey increasingly lost its ground in the Arab world which it had achieved in the wake of the Arab Spring, resulting in jeopardising its political relations with Syria, Egypt, UAE and Shia dominated government of Iraq and dismantling much of its zero neighbourhood policy. Trade with Middle East Countries slumped from high of 69 billion US dollar in 2012 to 30-35 billion dollar in late 2014. This economic slide continues till date that has badly affected the domestic Turkish entrepreneurs.

Today Turkey, as economic and political player, is mostly confined to North Iraq of Kurdistan Regional Government (KRG), which absorbs over 70 per cent of the \$12 billion of Ankara's trade with all of Iraq and offers Turkey a possibility to increase its energy security and to become an energy corridor between the Middle East and the European market in future. For KRG, Turkey is the most easily available outlet for this land locked country to market its oil and gas. This intricate political and economic relations with KRG partly explains why the Turkish government could cooperate with KRG supported Peshmerga (Iraqi Kurdish force) in fight against ISIS and even decided to send the troops to Mosul in order to protect its economic interest in the future breakup of the country. Moreover, Turkey's trade with Iraq witnessed a 35 per cent drop compared to the same period of the previous year after Mosul was seized by IS in July 2014,. However, Turkey's refusal to cooperate with Syria based PYD, which it accuses as PKK Outfit, in its reluctant fight with ISIS in Syria.

Though under pressure from USA and NATO, Turkey allowed its Inkrik (now declared Democratic Park after military coup) and other military air bases for USA military to launch the military offensive against ISIS. However, its recent military foray in Syria, the Euphrates Shield Operation, was more intended to prevent the Kurdish State becoming a reality on its border with Syria with all possible means including the plan for demographic change, if so required, by resettling the Syrian Arabs living in Turkey into the Kurdish dominated area of Jazeera Kobane, Afrin, Manbij, Al-Bab and Jarablus, than to physically liquidate the ISIS. In the past, the

Turkish government had indirectly supported the ISIS to push a section of Syrian Arabs living within Syria into Kurdish dominated areas, so as to change its demographic structure. In addition, the operation was also meant to end the increasing Turkish isolation and secure its presence on the table of future international negotiations related to Syria.

As the Turkish government has been increasingly treating the factor of 'ISIS' and 'Refugee Issue' as bargaining tool vis-à-vis Europe and US, the latter has increasingly come to view the Ergodan government as an unreliable partner in fight against terrorism and promotion of peace and regional stability; rather a source of radicalism. Facing isolation and economic stagnation the government quickly moved to mend its ties with Russia and Israel, partly to revive its tourist industry; but these moves are unlikely to strengthen the security situation in the region.

In view of the above, Turkey's economic prospect and democratic future looks bleak. Rather one fears the return of 'Pakistanization of Turkey,' given the fact that terror and terrorism often grows under the fertile conditions of political authoritarianism, democratic deficit in governance and relative cultural and material deprivation. This slide of Turkey into the vicious cycle of terrorism is bound to further exacerbate the already fragile political situations in the region.

Notes

- ¹ On Gulen Movement see, Anwar Alam, *For The Sake Of Allah: Origin, Development and Discourse of Gulen Movement*, Blue Dom Press, USA, 2018.
- ² For details, see, <https://turkeypurge.com>. According to this source, as of March 2019, the Erdogan regime since 15th July 2016 has dismissed 150,348 government officials, detained 500,650, arrested 85,998, shut down 3,003 schools, dormitories and universities, 6,021 academics lost jobs, closed down 189 media outlets and 319 journalists arrested. Accessed on 12.03.2019.
- ³ The term 'Muslim democracy' refers to a kind of democratic and secular State in a Muslim majority country that respects and allows the display of Muslim cultural and religious symbols in public sphere. V. Nasr, 'The Rise of 'Muslim Democracy,' *Journal of Democracy*, 16, 2005, 13-27.
- ⁴ The figures in this paragraph are compiled from various sources published by TURKSTAT, Turkish Statistical Institute. www.tuik.gov.tr

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14. According to a report, there were more than 4,000 pro-Islamic corporations in Turkey and about 203 out of 385 major corporations were owned by interests aligned with Gulen Movement. See, Cemal Karakas, *Turkey: Islam and Laicism Between the Interests of State, Politics, and Society*, PRIF Reports No. 78, Peace Research Institute Frankfurt (PRIF) 2007, Frankfurt am Main ÜxÜ Germany, p. 21).

Autonomy and Autonomous District Councils in the Study of Tiwa Autonomous Council

Dr. Bhaskar Kumar Kakati*

Abstract

Autonomous District Councils (ADCs) are the outcome of demand for self-rule or autonomy by the diverse ethnic communities of North East India. Simultaneously, the Constitution of India has provided the provision for ADC in its Sixth Schedule. Further, in Assam, the legislation of Assam has promoted different ADCs for the overall development of ethnic communities resides in Assam. Although the Government has constituted these Councils, empowered with different powers, but in the ground it has not worked properly as it was formulated. Within this backdrop, this paper attempts to understand the degree of autonomy that the ADCs enjoy in Assam, both from the views of the members of the Councils and the communities that reside in the territory of these Councils with special reference to Tiwa Autonomous Council.

Key Words: Statutory Autonomous Council, *Lalung (Tiwa) Accord*, *Lalung Durbar*, Financial autonomy.

Introduction

The issue of autonomy has always been a subject of debate and controversy. “The demand for autonomy is raised from a wide spectrum of political communities” (Basu, 2005, pp. 285-86). Thus, the movement for autonomy in North East India has a long history and the outcome of

* Dr. Bhaskar Kumar Kakati is Centre Manager, Dr. APJ Abdul Kalam Centre for Policy Research and Analysis, IIM Shillong, Nongthymmai, Shillong-793014. Email: bhaskarmorigaon@gmail.com, Mobile-9854754514.

this movement is the formation of Autonomous District Councils (ADCs) for different ethnic communities in different States. The struggle for the autonomy in this region “are played out between dominant majorities and minorities. The minorities perceiving ill-treatment from the dominant other, come to believe that the State does not represent their interests properly, and therefore they must control their ‘own affairs’ via a devolved autonomous political structure within the State” (Goswami, 2006, p. 14). “The aim and purpose of this autonomy movement are not only to bring change in the existing system, but also to augment legitimate expressions of aspirations by the people having a distinct culture, tradition, and common pattern of living” (Tuolor, 2013, p. 16). In order to preserve its own identity and ethnicity, the Government of Assam, declared the Autonomous District Council for *Tiwa*, one of the major tribes of Assam in 1995, following a movement by the community.

Tiwa is one of the major tribes of Assam mainly concentrated in the central part of Assam with a total population of 371,000 persons, which contributed to 1.18 per cent to the total population of Assam (Census 2011). In Assam, they are mainly concentrated in *Nagaon, Morigaon, Kamrup, Karbi Anglong, Dhemaji* districts. Further, some of them also live in *Khasi* and *Jayantia* districts of Meghalaya. *Tiwa* belongs to the great *Bodo* race and bears the physical characteristic of the Mongoloids. There are many popular legends associated with the origin of *Tiwa*. There are many myths prevalent about their origin. On the other hand, there is no clear-cut date about the migration of the *Tiwas* to the plains of Assam, yet it can be assumed that they had migrated to the plains sometimes in the middle of the 17th century A.D. *Tiwas* believe and trace their origin to one of the Hindu Gods, Lord Shiva, or Lord Mahadeo. According to their language, ‘*Ti*’ means water and ‘*Wa*’ means superior (Bordoloi, Sharma Thakur, & Saikia, 1987). Some of them like to call themselves as *Lalung*.

The Sixth Schedule under Articles 244 (2) and 275 (1) provides for the Autonomous and Regional Councils in four Northeastern States of Assam, Meghalaya, Tripura and Mizoram. These Councils are empowered with legislative, judicial, executive, and financial powers. In Assam, the provision of Sixth Schedule as envisaged in the articles 244(2) and 275 (1), providing for the administration of three Autonomous Councils such as the North Cachar Hills District, the Karbi Anglong District, the Bodoland Territorial Area District (BTAD). However, with the creation of Bodoland Autonomous Council (BAC)¹ in 1993, by enacting the Bodoland Autonomous Council Act, Assam

embarked on an experiment of decentralization of powers, by granting tribe specific Autonomous Councils. After the formation of the Bodoland Autonomous Council, other ethnic communities of Assam raised voice for the Autonomous Councils. Thus, in 1995, the then Chief Minister of Assam Late *Hiteswar Saikia* entered into a Memorandum of Settlement with different groups, demanding Autonomous Council and constituted three separate Autonomous Councils i.e. – Rabha Hasong Autonomous Council (RHAC), Lalung (Tiwa) Autonomous Council (TAC) and Mishing Autonomous Council (MAC). Further, in 2005, the Government of Assam constituted three others Autonomous Councils for three other communities, viz. Thengal Kachari Hill Council, (TKHC) Sonowal Kachari Autonomous Council (SKAC) and Deori Autonomous Council (DAC). The administrative structure of these Councils is patterned on the Autonomous District and Regional Councils created by the Sixth Schedule. However, the difference between these Councils and the Councils created by the Sixth Schedule is that in order to cover as many habitations of the tribe as possible, their jurisdiction not only transcends to district boundaries but also skips areas lacking the relevant population to cover pockets of that population. Thus, Assam experienced two types of Autonomous Councils i.e. Territorial Councils under the Sixth Schedule and Statutory Autonomous Councils promoted by the State Legislature.

The major objectives of promoting these Statutory Autonomous Councils by the Government of Assam was to provide more power to different tribal and ethnic groups in Assam. Although it aims to speed up development of the areas inhabited by these groups, there is a strong demand among the people to include the Statutory Autonomous Council into the Sixth Schedule of the Indian Constitution, since the inception of these Councils. Moreover, the issue of autonomy of the Statutory Autonomous Councils is still questionable because of many reasons, which are being discussed in the later part of this paper. With this backdrop, this present study aims to understand the issue of autonomy as experienced by Tiwa Autonomous Council.

Understanding the present political, social, economic and cultural status of the community that reside in the villages that come under the Autonomous District Council is very critical to understand the issue of autonomy of the Council at grassroots level. As autonomy of ADCs has been referred in terms of political, social, economic, and cultural upliftment by the Sixth Schedule and State Legislation. Therefore, this study is based on primary data collected from the field. Major tools

used for the collection of data were intensive interviews, Focus Group Discussions (FGDs) and observations in the field. Data was collected from the Executive Member (EM), staff of the TAC, Office bearer of different Tiwa Organization and villagers. Thus, to understand the present political, social, economic and cultural status of the community that reside in the villages that come under of TAC, the present study was conducted at three villages of Morigaon, namely *Udahinbori*², *Patidoiya*³ and *Kapurpurabori*.⁴ Further, as mere presentation of data cannot fulfil the objective of this paper, thus, explanation of these data constitutes one of the prime focus of this paper to analyse these data to have a complete picture (Scott, 1985, p. 138).

Part-I: Search for Identity: History of Autonomy Movement of Tiwa

The genesis of Tiwa Autonomy can be traced back to the formation of the different Autonomous Councils in then Assam in 1951. In this year, The Central government created two different Autonomous Councils in Assam, namely North Cachar (now Dima Hasao) and Mikir Hill (Now Karbi Anglong), and three different Autonomous Councils in Meghalaya such as Jyantiya Hill, Garo Hills and Khasi Hills Autonomous District Councils under the Sixth Schedule of the Constitution. However, the formation of these Autonomous District Councils created a controversy about the Tiwa dominated areas of the hills, whether it could be included with Mikir Hills (Now Karbi Anglong) or to remain with Jayantia Hills. Unfortunately the Lalung were deprived of hill tribe recognition on the ground that majority of them had been living in the plains and some of them had already assimilated into the Assamese society. Now questions arise, what will be the status of the Tiwa (Lalung)? Whether they will be the part of these Council or they will be provided a different Council? Meantime, feeling of deprivation, especially among the Tiwa people living in the hill areas and enjoyment of autonomy by hill tribes inspired them to fight for autonomy. One of the prominent leaders was *Abra Malang*, as mentioned by *Rabindra Bordoloi* referring to the interview with *Narayan Radu Kakati*, who first raised the voice for a separate council for Tiwa community. However, his movement was suppressed harshly and he was imprisoned for four years and the government had also seized his property (Bordoloi R., 2015). Till 1967, nobody from Tiwa community raised a voice for autonomy until the Language Bill introduced by the Government of Assam. During 1960,

the Assam Official Language Bill was moved which declared Assamese as the official language of Assam. The introduction of Assamese as a medium of instruction in education by the Government of Assam created a fear psychosis among some ethnic groups and developed the feeling that they will lose their own dialects. This move alienated the Tiwas along with other ethnic groups, who had also apprehended the suppression of their language and cultures in Assam (Deuri, 2010). Thus, to preserve their own ethnic language and culture, many dynamic young leaders from Tiwa community like *Indrasing Deuri* and *Ananda Ram Deuri* again reunited the Tiwas community in 1967, under one single political organization, known as *Lalung Durbar*. The objective of this organization was to have an autonomous hill district for Tiwa, which includes the Tiwa dominated areas of Assam and Meghalaya, such as Mikir Hills, Jayantiya Hills, Nagaon, and Kamrup. Interestingly, the leaders of Lalung Durbar were from peasantry and semi-literate middle class of the society whose agitational programmes were limited to holding meetings, conventions, submit memorandums etc. (Bordoloi T. , 2010).

Political representation is also one of the major causes for autonomy movement of Tiwa community. Historically, Tiwa enjoyed autonomy in the form of their own system of political set-up under few smaller kingdoms such as *Gova*, *Nelliee Khola* and *Chahari*. However, they “lost their autonomy during the British rule as well as after Independence of India in 1947” (*ibid* :214). Their political representation to the Legislature of Assam was stopped by shifting the reserved constituency seat from Morigaon to Dhokuakhana of Lakhimpur district of Assam in 1977. Earlier the Morigaon constituency seat was reserved for Scheduled Tribe until 1977. All these moves of the government led to political consciousness among the Tiwas and they formed various socio-political organizations for creating political consciousness.

Meantime, Lalung Durbar initiated Lalung Durbar Youth Forny (later known as Lalung Youth Front since 1980), in 1977 to boost up the autonomy movement. Although Lalung Durbar had initiated different organizations to boost the movement, the movements were extremely peaceful in character, because they were firmly loyal to the government (*ibid*). On the other hand, the youth wing of the Lalung Durbar was in favour of agitation to achieve the goal of Tiwa autonomy. This ideological difference, led to the split of the youth wings from the Lalung Durbar in 1978.

During 1979, Assam experienced another important event in the modern history of Assam. The Assam movement led by All Assam Student Union (ASSU) more or less attracted all the Assamese speaking communities of Assam. *Tiwa* community also participated in this movement. One of the major issues of this movement was to protest against the illegal immigration to Assam from Bangladesh. They believed that the heavy influx of Bangladeshi immigrants into Assam would initiate the process of the tribal land alienation (Deuri, 2010). This was one of the significant reasons for the Tiwa participation. However, the result of the movement was highly unsatisfactory to this community as “at the end of the movement, Assamese, middle class leaders refused to consider the causes of tribals” (Bordoloi T., 2010, p. 222). The Assam Accord, which was signed as a peace negotiation in 1985, did not meet the aspirations of Tiwa community to have exclusive right on their land, which is being occupied by many Bangladeshi immigrants. Further, Article 10 of the Assam Accord increasingly emphasized on the eviction of tribal people from the forestland. It should be remembered that land alienation is one of the major factors for autonomy movement of Tiwas. In this situation, Tiwa again felt deprived and neglected which led to a tribal upsurge in different forms.

As the Tiwas were dissatisfied with the Assam Accord, in 1985 the Lalung Youth Front again tried to reunite all the organization of Tiwas to fight for autonomy under one platform. Consequently, on 30th October 1985, the youth organization the Tiwas formed “Autonomous Lalung District Demand Committee” (ALDDC) at Jagiroad of Morigaon district of Assam. *Giridhar Patar* and *Narayan Radu Kakati* were elected as President and Secretary respectively. This organization felt that as the majority of Tiwa live in the plains, they decided to demand for Autonomous Lalung District instead of Autonomous Lalung Hills District, which shall include some part of Karbi Anglong, Nagaon and Kamrup districts. Thus, for the first time, they excluded the part of Khasi and Jaintiya hills from being the part of their autonomous districts like the Lalung Durbar.

With the formation of “All Tiwa Student Union” (ATSU) on 25th February 1989, the autonomy movement of Tiwa gained a new dimension. Since its inception, this student organization demanded the formation of the Autonomous District Council to preserve the social, cultural, and political rights of Tiwas. The ATSU included three main demands in their charter of demands. These are: (1) Creation of a separate Tiwa Autonomous District Council under the Sixth Schedule

of the Constitution (2) Inclusion of Tiwas in the hill tribes list living in Karbi Anglong district of Assam and in Meghalaya State and (3) Introduction of Tiwa Language as a subject in primary school of Assam (*ibid*). However, the significance of the formation of the ATSU lies in the character of the Tiwa Autonomy Movement. Since then the autonomy movement got another shape. With the formation of the ATSU, the autonomy movement of Tiwa community took the shape of a mass movement (Kachari, 2005). The ATSU, in order to strengthen their autonomy demand movement which was based on different forms such as demonstration, dharna, mass rally, middle Assam bandh etc. In 1990 it formed its women wing known as All Tiwa Women Association (ATWA).

Although, ALDDC, ATSU, and all other organizations submitted several memorandums to both the Central and State governments for the Autonomous District Council, but until 1993, the Government of Assam did not respond to it. It was on 11th March, 1993, the then Chief Minister of Assam Hiteswar Saikia announced in a public meeting at Dibrugarh that the Government of Assam is going to consider the grant of autonomy to Mishing, Rabhas and Tiwas (Amsi, 2001). Tiwa was granted autonomy by the Government of Assam through Lalung (Tiwa) Accord by creating Tiwa Autonomous Council with its headquarter at Morigaon district of Assam. Although, many clauses of the Lalung (Tiwa) Accord was not acceptable to ATSU and other organizations like Autonomy Demand Struggling Forum (ADSF) and the ATWA, yet it was signed between the Government of Assam and ALDDC, *Tiwa Yuba Chatra Parishad, Tiwa Nari Santha* on 13th April 1995. And finally the interim council was formed by the Government of Assam by Lalung (Tiwa) Autonomous Council Ordinance, 1995; with effect from 27th July 1995. Accordingly, on 27th July 1995, the interim Tiwa Autonomous Council took an oath and started a new era for the Tiwa community.

According to the Lalung (Tiwa) Accord, the administrative structure of Tiwa Autonomous Council is patterned on the Autonomous District and Regional Councils created by the Sixth Schedule. The General Council shall consist of 40 (forty) members of which 36 (thirty-six) shall be directly elected by the people residing in the Council area. Remaining 4 (four) shall be nominated by the Governor of Assam. The General Council shall have executive powers in relation to the Council Area on all 34 subjects of Government of Assam, such as Agriculture, Rural Roads and Bridges, Sericulture, Education (Adult, Primary,

Education, Up to Higher Secondary, including Vocational Training), Cultural Affairs, Soil Conservation, Handloom and Textile, Public Health Engineering – drinking water, Minor Irrigation, Cottage Industry, Animal Husbandry and Veterinary, Forest other than Reserved Forest, Co-operation, Fisheries, Panchayat and Rural Development, Handloom and Textile, Public Health Engineering – drinking water, Minor Irrigation, Flood Control, Sports and Youth Welfare etc.

The General Council shall elect the members of the Executive Council, which is the Executive Body of the Council responsible for carrying out all the executive functions of the General Council in the Council Areas. It shall consist of a Chief Executive and Executive Members. Later, through a memorandum of understanding (MoU) was signed between the Government of Assam and ATSU in 1998, the Government of Assam amended the Act of the Lalung (Tiwa) Autonomous Council and created the post of Chairman, Vice Chairman and one Deputy Chief Executive Member. The Government of Assam also agreed to demarcate the boundary of the Tiwa Autonomous Council through this MoU. The primary level of the Council shall be the Village Council constituted at the grassroot level consisting of 10 members directly elected by the villagers of the council area.

At present, the jurisdiction of the Council is at Morigaon, Nagaon and Kamrup. The Council has two kinds of jurisdiction, such as satellite areas means the area or areas consisting of a non-contiguous cluster of villages predominantly inhabited by Scheduled Tribes, having 50 per cent and above as a whole in the cluster and not necessarily in the individual village. Another is core area means the compact and contiguous areas predominantly inhabited by Scheduled Tribes population having 50 per cent and above as a whole in the area and not necessarily in the individual villages.

Part-II: Autonomy vs. Autonomous District Council

Autonomous District Councils of Assam is the outcome of movements launched by different organizations and intellectuals. It is, in fact, the outcome of rigorous demands for self-rule by different ethnic communities in North East India. The major attribute of the Autonomous Council is to grant autonomy to the community for self-rule. “The concept of autonomy initially referred to ‘self-legislation,’ whereby the autonomous individual carried out its will on itself by itself; hence, self-rule or governs itself (Cornell, 2002; Benedikter, 2009; Schneewind,

1997). The concept of Autonomous Councils is based on the concept of autonomy or providing self-rule to the specific ethnic community. The major objective of these Councils is to provide self-rule to the different communities or autonomy to rule. Thus, autonomous districts can be “defined as self-established rules, self-determination, self-organization and containing self-regulating practices particularly vis-à-vis the State and capitalist social, economic and cultural relations” (Sarmah, 2011, p. 23).

It has been mentioned above that autonomy means “certain degree of independence in decision making in internal matters” (Ray, 1997, p. 255) yet, it was observed during the field visits that, even after achieving the autonomous status, the residents of these areas have been agitating for the distribution of power by the State government to the Councils. The earlier study (Bordoloi T., 2010) also shows that the Tiwa Autonomous Council constituted by the State government of Assam does not enjoy all the powers available under its provision. He further mentioned that “The Lalung Autonomous Council was constituted by an Act of Assam government. It has no constitutional legality. It was created to serve the interest of the ruling party but not for the people” (*ibid* :238). One Executive member of the Council informed the researcher that “the Council is working on paper only; they had not enjoyed any real power till now. We have a handsome amount of departments but not a single power has been transferred to us by the Government.”⁵ This reflects that there are many conflicts between the Council and the State government on the transfer of all the authority given to them by statutory provisions. It is same for the case of other line departments too. Further, the researcher was informed by the staff of the Council that many concerned line departments are not interested in implementing the schemes of Autonomous Council due to non-receipt of any guidelines from the Government of Assam. The Government of Assam has also not delegated powers to the Council to issue instructions to the line departments for implementation of various schemes of the Council area.⁶ Thus, one can conclude, that “there is no co-ordination of functions between the District Council and the State Government” (Deka, 1997, p. 120).

However, according to the Executive Member and another officer holder of the Council, financial independence is the most affected area of the Tiwa Autonomous Council. They do not have the right to prepare their own budget independently rather they have to depend upon the government of Assam for financial assistance. It is very important that

the District Council must get the required grants-in-aid to continue the smooth functioning of the Councils. Because of lack of adequate financial support, TAC has not been able to take charge of many functions prescribed by the Act. Further, it was observed that fund allocation is not adequate to take up and implement various schemes practically to meet the needs/expectations/aspirations of the Schedule Tribe, Schedule Caste, and Other Backward Communities, who are living within the jurisdiction of the Councils. It has been the endeavour of the Council, since its inception to look into all round development of the Council Area with the limited amount of fund released against annual budget. The normal fund allocated from the annual State plan budget is not adequate to meet the requirement, particularly for the infrastructural development. The present system of allocation of funds to the District Councils would not be able to bring major development, as it was originally expected, because of the fact that the funds given to these Councils are quite inadequate to meet their requirements. Thus, this in turn, had reduced and restricted their autonomy and performance being as Autonomous District Council in holistic development of its jurisdiction.

There are many issues that need to be addressed by the Government of Assam. It has been also observed that, the Government of Assam is violating many clauses of different MoUs, signed by the Government of Assam with different parties like ATSU. One of such important violation is the non-introduction of Tiwa language in class III and class IV standard as a subject. However, the Government of Assam had conducted the interview for the posts of Tiwa language teachers but even a single language teacher yet not appointed till date. Worst replication of non-use of Tiwa language is that people are using Assamese, as a medium of communication in spite of their own enriched language. It was found that in the sample village of Morigaon, among the Tiwa community, nobody was found to be communicating in their own Tiwa language among themselves. It is because they are taught through Assamese medium from primary level of schooling.

Another most prominent violation of Lalung (Tiwa) Accord is the operation of Panchayati Raj system in the Council Area. According to the Accord, Assam Panchayat Act 1994 and Assam Municipal Act 1994 cannot be introduced in the Council Area. However, in the field (i.e. in Council Area) functioning of Panchayati Raj Institutions (PRIs) is a common phenomenon. Therefore, at present the council has to function parallel with PRIs. Further, the State government has not taken any

initiative to constitute the Village Council at the grassroots level which is one of the major components of Lalung (Tiwa) Accord. However, apprehension is that once the Village Councils are constituted after the election, the conflict between the Village Councils and the Gram Panchayat is bound to arise due to overlapping of functions of these two elected bodies. Clear demarcation of functions and jurisdiction is the necessity of the day. On the other hand, ATSU has already taken it to the High Court at Guwahati. They felt that it is very problematic to work with PRIs as it is another self-ruled institution. They feel that the lack of protective umbrella of the District Council of the Sixth Schedule area is the major reason for non-fulfillment of their goal of self-rule. This strengthens their demand for upgrading the Council to Sixth Schedule Council. However, the Autonomous District Council have several regulatory powers subject to State control, the PRI are in a more advantageous position in respect of development function. “In fact, in the matter of exercise of development function, the Autonomous District Councils are at the mercy of the State governments. However, “a large number of developmental functions came within the operational jurisdiction of Panchayati bodies” (Gassah, 1997, p. 10).

The condition is worse at grassroot level. There is no Village Council. Villagers are still not aware of the functioning of the Council. They only know that the Council is the institution that occasionally provides them relief materials. It was found that the aspirations of common masses from these Councils are limited to subsidy only. Further, the researcher has observed that at the village, the function of the Council is confined to three distinct areas i.e. construction, liaisoning and a small grant to individual. Construction and other activities include repairing of roads and other public buildings and distribution of goods like tin, bricks, small equipment to small entrepreneur for entrepreneurship development. The second important function is the liaisoning of the different development programmes with the line department and last is the small grants such as financial assistance to a student from poor economic background etc. Thus, one can conclude that the role of the Council is still a mere distributor of Government Programme, rather than the policy maker of the community for holistic development. Thus, the earlier studies (Bordoloi T., 2010) rightly mentioned that “the autonomy of the Tiwa people that they are not given an effective autonomy with necessary legislative, executive and financial power”(ibid : 239).

Conclusion

Autonomy is an instrument for negotiating competing claims in the multi-ethnic and multi-religious State. In fact, it has been seen as a panacea for solving ethnic conflicts in different parts of the world (Ghai, 2000). Interestingly, in North East India, the autonomy movement also leads to the violent movement. The focus of autonomy movement in North East India has shifted to the accommodation of competing ethnic claims instead of tackling the real issues of isolation and socio-economic development (Sarmah, 2011). This study found that ADCs have the inheritance problem with the same bureaucratic character of autonomous democracy. Therefore, it can be concluded that the common people are not benefited from the Council. Lack of healthy parliamentary practices in the legislative field, lack of effort on mobilization of additional revenue by developing financial resources for undertaking development activities and lack of coordination between official departments and political components of District Council, lack of peoples' participation, failed to evoke local initiative are the major reasons that are directly or indirectly responsible for the failure of the ADCs. Thus, the Councils have hardly brought about the intended social and economic changes in the tribal areas and "not been able to live up to the people's expectations" (Agnihotri, 1997, p. 97).

Although, the Autonomous Councils whether constituted under the Sixth Schedule or constituted by State Legislature, have hardly brought about social and economic changes in the tribal areas (Agnihotri, 1997) (Prasad, 1997), however, the Sixth Schedule have provided a fair degree of autonomy for the tribal people living in Assam (Deka, 1997) (Prasad, 2004). May be it is the reason which induce the different Tiwa organization basically the ATSU to demand the inclusion of Tiwa Autonomous District Council under the Sixth Schedule of the Constitution. They⁷ think that inclusion of Tiwa Autonomous District Council under the Sixth Schedule of the Constitution would lead to protection of identity of Tiwa as ethnic community as the Sixth Schedule have provided a fair degree of autonomy to the respective Councils formed under the Sixth Schedule. However, the analysis of the autonomy at the District Council taken for study, shows that demand for the autonomous status to protect own identity, ethnicity cannot be the solution for the problem of identity and ethnicity in the State like Assam, which is the homeland of many different communities, until the District Council would address the "issue of control of resources,

finances and costs of running autonomous territories in a comprehensive manner” (Barbora, 2005, p. 53).

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Notes

- ¹ Is a territorial privilege established according to the Memorandum of Settlement of February 10, 2003. BTC came into existence immediately after surrender of Bodo Liberation Tigers Force (BLTF) cadres. The BLTF laid down their weapons on December 6, 2003 under the leadership of Hagrama Mohilary and Hagrama was sworn in as the Chief Executive Member (CEM) on December 7, 2003. The aim of the BTC is to (a) fulfil the economic, educational, and linguistic aspirations and preservation of land rights, socio-cultural and ethnic identity of Bodos and (b) speed-up infrastructure development in BTC area. The BTAD is to consist of four contiguous districts — Kokrajhar, Baksa, Udalguri and Chirang — carved out of seven existing districts – Kokrajhar, Bongaigaon, Barpeta, Nalbari, Kamrup, Darrang and Sonitpur. That the BTAD is created under the Sixth Schedule of the Constitution of India has been opposed by some organizations.
- ² Is a small village situated approximately 20 km north-west to the district headquarters of Morigaon district of Assam, having 126 households

inhabited by Tiwa Community; in fact, all the villagers are Tiwas. According to the village survey conducted for the purpose of this study, total population of this village is 660, out of which 338 are male and 322 are female, hence, the sex ratio of this village is 953 which is lower to the sex ratio among the Scheduled Tribe live in the district which is 1000 female per thousand male. The sex ratio of this village is also lower to the overall sex ratio of the district, which are 967 female per thousand male. However, the most alarming situation is in relation to the demographic composition of this village is that the sex ratio among below 06 year population is very low, accounts only 851 female per thousand male. Status of literacy at the village, according to the survey is not satisfactory. The village has only 60.91 per cent literate populations, which includes 68.05 per cent male and 53.42 per cent female.

- ³. Is a small village situated approximately 10 KM north-west to the district headquarter of Morigaon district of Assam having approximately 280 households. Tiwa community dominates this village. Kachari community constituted the second largest community live at the village. The village Patidoiya comes under LAC and look after by Patidoiya Khatarbori Lalung Village Council of LAC. Relatively this village is well of village.
- ⁴. Is a small village situated at approximately 18 Km north to the district headquarter of Morigaon district of Assam having 47 households dominated by Tiwa community; in fact, all the villagers are Tiwa. According to the village survey, conducted during the study period, the village has total 217 populations consist of 117 male and 100 female hence the sex ratio is 855.
- ⁵. Interview with the Executive Member of TAC at the Council office.
- ⁶. Interview with the Executive Member of TAC at the Council office.
- ⁷. Interview with the office bearer of ATSU at the ATSU office.

Rejuvenating the Mahanadi River Basin: Contributory Role of People's Movements

Keshab Chandra Ratha*

Introduction

The Mahanadi river, is a treasure of Kalinga's (now Odisha) affluent history, strength and character. It provides sustenance to life and livelihood for the people and a bionetwork for the several species of birds and animals. The estuarine ecological systems of the river mouth of Mahanadi are replete with diversified mangrove flora and fauna including rich aviaries. This ecosystem regulates the regional climate of this tract, and keeps safe the seacoast from erosion. The Mahanadi River is one of the famous freshwater turtle habitats in the country as its deep water pools, sand banks and mid river islands provide a congenial habitat for the animals. The massive flora and fauna of this region gives succour to the livelihoods of lakhs of people. The wetland ecological systems of Ansupa, Chilika and artificial lake like Hirakud are also of immense value to Odisha. Ansupa is a freshwater lake formed by river Mahanadi. The flora and fauna of this freshwater lake is only one of its kinds. Similarly, the lagoon ecosystem of Chilika is quite distinct from other freshwater ecosystems. The unique flora and fauna including sea-mammals are sustainably reared by this oceanic wetland. This is also a land of rookeries and nests of several reptiles and birds. Again the artificial lake like Hirakud, shelters several migratory birds of foreign lands, including residential birds and animals every year. Besides the above ecosystems, the Satakashia Gorge Ecological System is noted for Gharial (fish eating crocodiles)

* Keshab Chandra Ratha is Lecturer in Political Science, Pallishree Degree College, Chichinda (Sambalpur University) Bargarh, PIN 768104, Odisha, India.
Email: keshab_ratha@rediffmail.com

(Kanoongo, 2016). Unfortunately, its delicate balance is now under stress by growing industrialisation, urbanisation, mining operations, bio-medical wastes, building of multiple dams along its course by both the State governments. It has always been treated as the hallmark of civilisational development and the lifelines of Odisha and Chattisgarh for millenia. But in a span of one generation, the river Mahanadi is being subjected to dangerous levels of depletion. The uncontrollable developmental thirst for energy trumps all environmental concerns as well as anxieties about the Mahanadi. Perhaps the untimely death of the river is a price that needs to be hugely paid in the name of development. Owing to the pressures of population and development, the perennial river gradually is becoming seasonal. A polluted river rings the bell to the society about its lifestyle. A river is the most important natural resource for a city and its development. However, over the last few decades, the river has become so polluted that it has shrunk into a drainage canal now. This affects the public health of the city, as well as future development. The major pollutant of the Mahanadi is actually the indiscriminate sewage and domestic waste water entering the river without any treatment. Fortunately, a number of people's organizations sensitive about this problem are trying their best to combat the challenges ahead. Their approach is to lay emphasis on 'Working at Source' of pollution rather than 'Treatment' of pollution. To them, if large chunk of people wisely follow certain principles and introduce some lifestyle changes, then the pollutant load on the river can be brought down considerably. And this will provide a sustainable solution to the problem and could be emulated by others, thereby creating a public movement in bringing back the river to its previous glory.

Shocking Apathy

The construction of coal-fired power plants and haphazard industrialization are the foremost reasons for water shortage and related marginalization of local and indigenous communities in the basin. Most of the controversial dams and barrages are responsible for hindering water flow downstream of the river. The core purpose of all projects is in fact to supply water to such coal plants and industries. As a result it inflames the conflict as well as suffering of the local communities. If all the coal-fired power plants committed by the governments become operative, the river will dry up in a short duration from now. Added to this problem, Mahanadi is one of the most vulnerable river basins in

the country to climate change impacts. But the States are not prioritizing on this while discussing the plight of the river. The State governments of both the States Odisha and Chhattisgarh, do not recognise that climate change has an equally important effect and its impacts are going to grow manifold. Instead of making the basin more climate resilient, both State governments are busy to eke out political advantages out of it. Scientific studies have concluded that while there is at least a 10 per cent decrease in the water retention capacity of the basin, due to decrease in monsoon rainfall, the chances of flood frequencies are going to increase due to increase in extreme precipitation events. However, the governments are just limiting their talks to the quantity of water that is flowing in the main river without taking into account the changes that have happened in land and forest cover in the basin, which clearly indicates the lack of vision in this regard. Rise in temperature in the basin, rapid degradation of forest cover, increasing soil erosion and diversion of water to industries are creating a dangerous combination of devastation in the basin. There is a lack of people-centric system in the country. Gone are the days when Hirakud was considered as a temple of development but it has now turned into a temple of destruction. Thousands of people have been displaced by the dam and they are yet to be compensated or rehabilitated. It is an irony that instead of pondering over energy alternatives, both governments are prioritizing water-intensive thermal power.

The construction of barrages across the Mahanadi in Chhattisgarh is “illegal” from the viewpoint of Odisha. Sadly speaking, while Odisha was crying that barrages in Chhattisgarh are “killing” the great Mahanadi river, it remains to be seen how it has planned to “save” the river through the same set of actions? How can that same action be “legal” in Odisha? The sudden declaration of barrage plans by Odisha has made the issue of the Mahanadi conflict more cloudy. Instead of emphasizing on forest conservation and restriction of mining zones in the catchment areas, further construction of dams and barrages by the State governments invites several woes and disasters to the basin. There are dreadful stories of devastation the dam has exposed the locals in the recent past. Any further displacement and submergence will tend to cause a lot of suffering and to protest from the locals. [Panda, 2015]

Both States are adept in the art of rapid industrialization, by exploiting the rich mineral resources of the area. Odisha had informed that the current average annual run-off into Hirakud has been brought down to 17.3 MAF. In spite of that, Odisha submitted a much higher

projected utilization of 22.53 MAF. To put in other words, Odisha has made an utilization plan which is much more than the current average run-off it receives at the site. In accordance with the claim of Odisha Government, along with a communication to it made on August 27, 2016, Chhattisgarh has informed that it will utilize a total of 33,896 MCM, about 27.48 MAF water through existing, ongoing and future planned projects. Chhattisgarh has planned to utilize an amount of water that it is not likely to get in a normal year. The “planned utilization” of Chhattisgarh through “ongoing” and “future” projects is about 19.17 MAF which is significantly higher than 15.6 MAF of present average annual run-off from Chhattisgarh. Such “plans” indicate irrationality and irresponsibility of both Odisha and Chhattisgarh Governments. These unhealthy developments across the breadth of the Mahandi basin in both the States have exerted serious environmental and ecological ramifications. It seems that a vested industry-engineer-politician lobby is bent upon to control and appropriate the river water.[Pandia, 2018]

The governments of both States are only allowing industrial projects and investment to come up in the State without caring about ecological costs. No visible action is initiated to restrain industrial pollution except to serve notices by the State Pollution Control Board. The board has failed to draw any comprehensive plan to control water pollution in the Mahanadi. It neither conducts any survey to identify the polluting industries in the State, nor maintains any such inventory for planning purposes. The absence of a resolve displayed by the State points to a diagnosis of a lack of intention rather than the failure of strategy. Otherwise, an operation on a war footing could have been carried out by creating structures that could co-ordinate action across different arms of the government. Instead, what is tangibly visible is defensive statements and platitudes bereft of necessary acts. (Desai, 2016).

The State government of Chhattisgarh wants to take over the water share of Odisha illegally and trying to take hold of a lion's share of water. Its main commitment is to supply water to different mega industries like Bhilai Steel Plant, Balco, SECL, CSEB etc. The State would obtain Rs 800 crore water tax annually from the firms. Such type of leasing out of Mahanadi water has also received the consent of the Central government. Between 2000 and 2007, allocations from the reservoir have enlarged six times. A technical expert team raised the alarm in 2006 that the allocations could hinder power generation. Ignorant of the warning, the State government of Odisha made further

allocations to industrial houses in Sambalpur and Jharsuguda districts. Besides, the Cuttack Municipal Corporation (CMC) is a silent onlooker about the high-rise in pollution. It has not even come up with proposals to divert the drain to some distant place outside the residential area. Neither any action is being taken to recycle drainage water. Both the State governments are involved in the dispute of water allocation to such an extent that it lessens the chances of bringing them together to tackle the pollution menace. The basic issue is that both the State governments are looking at the Mahanadi as a resource to favour the industries which is contrary to the interests of the farmers and the people. This pro-industry policy is now crystal clear as there is no provision for water for agriculture in seven barrages in Chhattisgarh. Likewise, more and more water is being allocated for industrial use from the Hirakud dam and its downstream delta region in Odisha. As a result of which, the livelihoods of both the river bed cultivators as well as the fishermen are being destroyed. The other important issue is the alarming pollution in the river affecting the drinking water, water for irrigation and the aquatic life. (<http://www.indiawaterportal.org/articles/people-two-states-join-hands-save-mahanadi>). In spite of cautionary advice by the Comptroller and Auditor General (CAG) to Odisha government and the State Pollution Control Board in 2001 to spend at least 5 crores per year approximately to keep the industrial pollution under control in the Mahanadi, the State government is yet to submit a compliance report. In Chhattisgarh, the work for completing two effluent treatment plants is in progress but the State Pollution Control Board is confident that this will not be enough. A corporate-driven democratic government can not play an effective role in the restoration of a river.

Rise of People's Movements

Looking at the relentless sand mining and encroachment, rampant industrialization, pollution and exploitation, the indifferent attitude of governments, coupled with deficient rainfall over the years, the locals are committed to start a people's movement by mobilizing resources solely from individual contributions as they love the river. They have conducted several awareness campaigns on the river protection and maintenance of a non-polluted green environment. By dint of their sheer will and public support, they undertook several moves towards conserving the river from being polluted. For the well-being of the people of both States, they brought together experts in various fields to

save and devised various methods to enable its revival, ensuring pollution-free and uninterrupted flow of the river and defending community rights. The people's organizations comprised thousands of environmental, human rights, and social activist groups by both States on the Mahanadi. They wanted to address the problem of climate change on the basin by encouraging community-managed eco-friendly development activities and livelihoods. They tried to build up social activism through policy advocacy, generating awareness and inculcating the sense of rights and responsibilities among people. They advocated an entirely different model of political and economic development. Prominent people's organizations like Lok Shakti Abhiyaan, Paschim Odisha Kisan Samanvya Samiti, Odisha Nadi Suraksha Samukhya (all from Odisha) Chhattisgarh Bachao Aandolan, Kheti Bachao Jeevan Bachao Aandolan, Jan Swasthya Abhiyan, Ekta Parishad and Prayog Samajik Vikas (all from Chhattisgarh) are working to save the river from the crisis. A resolution was adopted by the Lok Shakti Abhiyan to save the Mahanadi, demanding both the Odisha and Chhattisgarh Governments to immediately discard all the proposed big thermal power plants and mega industrial projects on its basin. The resolution said that Mahanadi row rather than being an inter-State water dispute is more of an industrialization versus irrigation dispute. The Mahanadi Bachao Andolan (convenor Sudarshan Das), Agami Odisha and others feel that the dispute can't be solved if the political blame game continues between the two States. They feel that water is nature's precious gift and there is a need for a holistic approach to conserve the river water. These various organizations have successfully organized related events expanding their activities to work on larger areas. Their active involvement spoke volumes that people could move to any level to restore the ecology.

Key Activities

The Water Initiative Odisha argues that the Mahanadi has turned into a dumping ground for fly ash owing to a rising number of thermal power plants. The thermal power plants near water bodies may invite big catastrophes and kill the river in days to come. Being pressurised by the initiative, now the government has decided to study flood plain management and prepare a policy for it. It is due to pressure by the organization that the government has stepped up to identify and demolish buildings erected on flood plains and has already served notices to

some. Urban populations are water insensitive, when it comes to the use and abuse of water. Urban people lay blame on the poor for wasting water as their activities are visible. As a matter of fact, it's the urban people who consume excess water and put to wrong use more. A civil war between rural and urban India is on the anvil. The Water Initiative Odisha has also devised plans to go to court in opposition to release of untreated effluents into the Hirakud reservoir (Panda, 2013).

Government had also allotted 3.47 cumec of water to POSCO India through the Taladanda irrigation canal from the Jobra barrage. The Mahanadi Bachao Andolan opposed further diversion of Mahanadi water for industrial use due to the growing pressure on Hirakud dam. "Its water is meant for irrigation," says Dillip Malik, "The dry season flow in the Mahanadi has already reduced to 4 mcm," he adds. Led by Justice (retired) Choudhury Pratap Kesari Mishra, the Mahanadi Bachao Andolan Committee has decided to launch an agitation demanding that the government revoke its decision to allow the use of water from the Mahanadi river by the industries, as this will affect irrigation. In the last year, farmers and civil society groups demanded constitution of a water commission to make judicious allocation. Government showed undue haste in allocating water to industries and ignored irrigation needs, they said: Lingaraj Pradhan, a farmer leader who had spearheaded a movement way back in 2008 against the overuse of the river water by the Chhattisgarh government, feels: "the way Chhattisgarh is progressing, Hirakud reservoir may not even get filled during monsoon in case of scanty rainfall" (Padhan, 2017).

At a consultative meeting titled 'Building a People's Agenda for Management of the River Mahanadi,' organized by Water Initiatives Odisha and Nadi Ghati Morcha, Chhattisgarh, at Sambalpur ask date activists and farmers who underscored the need for greater understanding and cooperation on use of water of the Mahanadi river. The activists realised that both the State governments are allocating water to industries with no concern for its consequences from the Mahanadi, ignoring interests of riparian communities living along over 800 km-long river course. Run off from Chhattisgarh to Odisha has decreased at a rate of 4 to 5 per cent every decade. Convenor, Nadi Ghati Morcha, Bandyopadhyay suggested (The Hindu, 2012), a 'River Parliament' to ensure the rights of the community over the river.

Many academics and civil society activists from all over India and different people's organizations from both Chhattisgarh and Odisha assembled in a day-long meeting at Raipur on 11 August 2016, to talk

about the basic issues and principles of water use and allocations and also the emerging political landscape around the Mahanadi basin. The people's organizations present in the meeting had prepared a very clear and transparent policy on the water use of the river by taking the local communities into confidence. Prior to construction of any more dams and barrages on the river, they demanded an extensive study to ensure that the new structures would not exert an effect on both the basic character of the river and its flow. Further, they pressurized for immediate stop to the present illegal use of industrial water from the river, water pollution caused by industries and cancel the environmental clearance issued to such polluting industries (<http://www.indiawaterportal.org/articles/people-two-states-join-hands-save-mahanadi>).

In this environment, even the Mahanadi Tribunal can't resolve the pollution problems. DMF and CAMPA funds should be used wisely. (DMF -District Mineral Fund, CAMPA – Recognising community forest rights under FRA (Forests Rights Act). Unless both States devise a joint strategy to mitigate, rights of farmers, fishermen and indigenous communities on the Mahanadi degradation of forests and surface water bodies are two key reasons for increased floods, droughts and reduced water which should be arrested soon. The Mahanadi Tribunal can't address all these vital issues.

Water Initiative of Odisha (WIO), feels that the Mahanadi is profoundly polluted in the stretch from Hirakud to Sambalpur. Untreated waste is released into the Mahanadi at 14 different locations between these two towns. In the 15-km stretch, drains discharge 40 million litres of sewage into the river. In addition, 100 tonnes of solid waste finds its way to the Mahanadi, It says: while about 40 per cent population of the Sambalpur city excretes faeces in the open, at least 10,000 people do so on the banks of the river itself. This is a health hazard, as 30,000 people take bath in the 50 ghats from Hirakud to Sambalpur, the survey reveals. The survey was made public on the occasion of the launch of the Statewide campaign at Sambalpur titled 'Healthy Rivers, Happy Cities' Panchanan Kanungo, former Finance Minister, appealed the participants to keep up the voluntary spirit and work towards protection of the rivers. The WIO convener said that the campaign would conduct studies on the health of the rivers from various aspects and put the findings before the people as well as the policymakers before advocating policy changes for the sake of the Mahanadi's existence. (The Hindu, 2013).

The Way Ahead

To stabilize and revitalize the Mahanadi demands creating and maintaining tree cover for a minimum of one kilometre on either side of the entire river length and half a kilometre for tributaries. Besides, the need for an evolution of a consensual framework. A river restoration demands a law, an enforceable law. The well-being of people and the nation's well-being are dependent on the well-being of rivers. To reverse the grave falling up of the Mahanadi river is the need of the moment or else the next generation will pay a heavy penalty for it. The need is now being felt from all quarters for a comprehensive river rejuvenation plan to reverse this decline and revive the river. Dr. Arvind Boaz, Principal Chief Conservator of Forest, Chhatisgarh said: "For the restoration of the Mahanadi basin there is a need to follow an integrated watershed approach, which is lacking at this moment" (<http://www.indiawaterportal.org/news/chhattisgarh-preparing-roadmap-serve-mahanadi>). If Mahanadi and its river basin is to be saved, it is now or never. Or else an environmental disaster awaits us.

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The Protection of Cow is Not a Matter of Dispute Between Hindus and Muslims

Lakshmi Narayan Mittal

All of us know the importance that cattle and its progeny have in the agrarian economy like that of our country. However, the issue of cows has been a very sensitive one in our country. It has largely been perceived as the central issue behind Hindu-Muslim tension and the cause of many communal riots during the last 150 years, definitely in India before partition. But we all need to know the active involvement of the British in promoting this Hindu Muslim strife.

A few facts:

1. There is no practice of beef eating among Muslims of Iran and among the Arabs. Lamb, mutton and meat of camels is commonly eaten in these countries. In any case there are very few cows in Arab countries.
2. Beef is a popular meat in Europe and the practice of beef eating has increased since 1600.
3. The ancestors of majority of the Muslims in India were from here and were not migration from other parts of the world and therefore normally they do not consume beef even after converting to Islam. However, there could be some exceptions and others who have migrated from outside may be consuming beef on certain special occasions, but even they, normally refrain from this practice.
4. Before independence, cows were mainly slaughtered for the consumption of the soldiers and officers of the British army. Prior to 1857, there were about forty thousand British soldiers

* Dr. Lakshmi Narayan Mittal lives in Morena (M.P.). This article was written on the occasion of release of late Dharampal's book "The British Origin of Cow-Slaughter in India" by SIDH, Mussoorie.

and officers in the army, while the number of Indian soldiers, both Hindus and Muslims, were 8-10 times more. After 1857, the number of British soldiers increased dramatically, by about two and a half times to over a lakh. And the slaughter of cows increased in the same proportion. Gandhiji was aware of all this and that is why in 1917-1918 he stated that we unnecessarily blame the Muslims for the killing of cows because in reality the cows were being slaughtered for the British soldiers. According to Gandhiji, there were nearly thirty thousand cows being slaughtered every day in the slaughter houses by the British, during those days.

During the Mughal rule Akbar, Shahjahan and Jehangir had banned the killing of cows. It is also said that a number of Muslim communities who migrated to India from other parts of the world did not normally eat beef.

If a survey could be conducted to find out which community groups in India consume beef and on which occasions, Muslims would not figure prominently. Perhaps this will remove the apprehension and reveal that beef eating is not very common among the Muslims, especially in those groups who have converted to Islam from Hinduism. It is also a fact that when different Indian States began to enter into treaties with the British to formalize their relationship, it was usually on the condition that kine killing would not be allowed in their States. However, it is a different matter that this clause was never officially included in the treaty. But the Indian States had the right to exercise a ban on cow slaughter. It was on the basis of this right that there were many States in Rajasthan, Jammu and Kashmir, Gujarat, Maharashtra, Madhya Pradesh etc. where there was a total ban on kine killing until recently.

Fortunately, most documents from 1750 onwards, after the British came to India, until now are available to us. After the British came to India, cow killing kept on increasing which led to a sharp decline in Indian agriculture, because along with kine killing, until about 1900s nearly half the number of Indian oxen were forcefully deployed into carrying the load for the British army. As a result of all this, by the end of the 19th century many movements against kine killing started in India. The Sikh Kukas initiated a major movement against kine killing around 1874. Both Hindus and Muslims were equally involved in a major national movement against the killing of cows.

If it could be proved that protection of cows is not a matter of dispute between Hindus and Muslim, it could give a new perspective to the issue of cow protection and possibly take a positive step in the direction of total ban on cow killing.

In 1947-48 a high level committee had decided that cow killing would be completely banned in India within two years. But divisive forces had already succeeded in making fissures within the hearts and minds of communities in India and by 1946 the cultural beliefs and mentalities had changed a lot. By then the Indian intellectual, the political leaders as well as the officials had come under the complete spell of the West and thus they totally ignored the sentiments and beliefs of the majority of the Indian people and began to mindlessly tread the same path as that of the West. In 1950 the Government of India wrote to the State governments, advising them that they should not close down the slaughter houses because the leather of the slaughtered animals was more valuable. In 1954, the Department of Animal Husbandry wrote in their report that India could only afford to feed forty per cent of their cattle and remaining sixty per cent would necessarily have to be killed. Therefore, in the last 52 years the killing of our cattle – with the help of the government – has been on the rise. In 1954, the then Prime Minister of India, Pandit Jawaharlal Nehru, went so far as to threaten to resign if the Lok Sabha decided to ban cow slaughter.

The export of meat is a major threat to the survival of cows. The government of India books at the export of meat. Leather and skin of cattle from the profit motive and any ban on their exports as a reduction in foreign exchange reserves. But we claim to be a non-violent society. Our beliefs and systems have been different. These cultural beliefs do not belong only to the Hindus but also to the people following Islam, Christianity, Jainism, Buddhism, Sikhism etc. in this country. After all, not all activities in a country, are undertaken for economic profit or loss alone. Gandhiji while delivering a talk in Muir College Economic Society, Allahabad, on December 22, 1916, on “Does economic progress clash with real progress?” stated: “Western nations today are groaning under the heel of the monster god of materialism. Their moral growth has become stunted. They measure their progress in pounds, shillings and pence. American wealth has become their standard. All nations envy her wealth. I have heard many of our countrymen say that we will gain American wealth but avoid its methods. I venture to suggest that

such an attempt, if it were made is foredoomed to failure. We cannot be 'wise, temperate and furious' in a moment." (CWMG Vol. XIII)

One needs to seriously ponder over these issues. The Government of India sets up a special commission for cow protection on the one hand and on the other, puts forward the suggestion to mechanize the slaughter houses in its Tenth Five Year Plan, in order to generate foreign exchange from the export of cattle meat, skins and leather. Our thinking and system are riddled with such contradictions and dilemmas. We therefore need to find alternative ways of thinking to resolve such contradictions legacy of our colonial past.

If the majority of Indians of all religious denominations support the ban on the killing of cows then we can convert this into an opportunity which based on our cultural beliefs can become an instrument to assist the majority opinion. This in turn could rejuvenate and reinstate the system which will make us healthy strong and self reliant once again.

Towards this aim, noted historian and Gandhian, Dharampal, has just concluded a book *'The British Origin of Cow Slaughter in India – with some British documents on the Anti-Kine-Killing movement 1880-1894'* (SIDH, Mussoorie.....)

Dharampal's works have consistently challenged the prevalent mainstream understanding and belief about the nature and functioning of Indian society and polity before the arrival of the British. His work has stimulated a radically fresh perspective on the nature, design, functioning and organisation of Indian society. It shows that the system bequeathed by the British must be seen as an alien imposition and India cannot revive and renew herself unless she rediscovers her own genius, talents and traditions. Some of his well-known works include: *The Beautiful Tree: Indigenous Indian Education in the Eighteenth Century; Indian Science and Technology in the Eighteenth Century; Civil Disobedience and Indian Tradition, etc.*

This latest book by Dharampal is about one of the most significant movements in India, against kine-killing by the British, during the nineteenth century. The enormity of this movement and the threat it posed to the British may be gauged by the statement of Viceroy Lansdowne when he said that: "I doubt whether, since the Mutiny, any movement containing in it a greater amount of potential mischief has engaged the attention of the Government of India."

While it may be generally known that a very large number of the cow and its progeny were daily slaughtered by the British for their army and civilian personnel in India from about 1750 onwards, very little is known, even to most scholars and historical researchers on India, about this India-wide anti-kine-killing movement against the British during 1880-1894. Even those among the few scholars who have taken some note of this movement have treated it as a Hindu-Muslim conflict. But such was not the case, as the documents presented in this book show that many prominent Muslims as well as Parsis and Sikhs actively participated in the movement. The fact that the movement was directed against the British and not against the Muslims, as commonly believed, was very clear to Queen Victoria and her high-ranking officers. Queen Victoria says in a letter to Viceroy Lord Lansdowne: "Though the Muhammadan's cow killing is made the pretext for the agitation, it is, in fact, directed against us, who will far more cows for our army, etc. than the Muhammadans."

The book counters the general impression that Muslims in India eat the flesh of cow, which is perhaps a myth perpetuated by the British. Though the Muslim community was encouraged to take up the slaughter cattle, as the large number slaughterhouses set up by the British required professional butchers, but a majority of the immigrant Muslims, as well as the converted, seldom did take to eating of cow flesh. This is borne out by many clippings from the Urdu press as well as from the correspondence between British officials of that period, as documented in this book. The British tried their best, and largely succeeded in projecting this movement, which was in the words of Lansdowne himself 'political' in nature, to one which now appears to the educated Indian as a conflict between Hindus and Muslims.

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