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The principle of free and fair elections is an essential postulate of democracy, which in its turn is a part of the basic structure of the Constitution of India.\(^1\) The system of democracy through electoral process is the most practical of all systems and the one that offers the greatest opportunities and happiness with the fewest risks to the common people. It is the only system of government in which the people can enjoy their most valued rights and liberties. It itself has a most beneficent effect on the development of the moral and intellectual stature of citizens. But the system is not without pitfalls. However, its weaknesses or imperfections do not decrease the excellence of the ideal of this system. The weaknesses of the system are generally found due to social, economic or historical factors peculiar to it, which can be removed or minimized. Further, the weaknesses may be remedied, not by less, but by more democracy and, therefore, despite some weaknesses, this system has great advantages in comparison to all other systems of Government. This is the reason that it is regarded as the best system of Government in the modern world. As a system of Government it may vanish from the world from time to time, or may decline but it will never die. It is a system which is continuous, and which has its roots in the nature of the community. The people of India have adopted the system of democracy and electoral process as the central principle of the fundamental law of India. It is the life breath of Indian people as enshrined in the Constitution of India and there is no doubt that the people of India have their full faith in this system.

There are certain fundamental principles of election without which the system of representative democracy and electoral process cannot function.

\(^1\) Indira Nehru Gandhi v. Raj Narain, AIR 1975, SC, 2299.
successfully and becomes delicate and fragile like glass and crockery. So if the system is to survive successfully it will have to observe the fundamental principles of election. The modern democratic country has no alternative to ‘universal adult suffrage’ which is one of the fundamental principles of election. However, in the light of experience of the thirteen general elections so far held its adoption has not fully justified, because the percentage of voters exercising their franchise has been much low, generally below fifty, which defeats the very purpose of the principle. Therefore, the problem of voters’ participation in the electoral process through the exercise of their franchise needs proper consideration. Some measures should be adopted to bring the voters to polling booth. And, there is no doubt that removal of illiteracy is the most effective means by which the adoption of universal adult suffrage in Indian Constitution may fully justify itself in practice. In modern democratic system, ‘equality of suffrage’, i.e. ‘one voter, one vote, one value’ is also regarded as a fundamental principle of election. There are two components of the principle of equality of suffrage: First, one voter one vote, Second, equality of constituencies, which has two dimensions: (i) the quantitative dimension, i.e. equality of population, and (ii) qualitative dimension i.e. no gerrymandering. It has been clarified in the discussion that there have been sufficient constitutional and statutory provisions to adopt the principle of equality of suffrage in reality. In general, the difficult problem of delimitation of constituencies appears to has been solved more satisfactorily in India than in many other countries and accusation of gerrymandering remained rare. In short the value of the vote of a poor or illiterate person or person living in one constituency is the same as the value of a rich or educated person or a person living in another constituency. No less far reaching in its importance than the principle of universal suffrage and equality of suffrage has been the decision of India’s Constitution-makers to abolish the separate communal electoral roll introduced by the British based on religion, caste, sex, etc. and to adopt the principle of ‘common electoral roll’ on secular basis. The electoral roll is the basis of a free and fair elections. Without it there will be no sanctity and the consequent election will not inspire
confidence of the people. However, the study reveals that there is problem of accuracy of electoral roll. In spite of the best efforts of the Election Commission and the electoral machinery in the States at various levels, the possibility of wrong omissions or inclusions of some names from or in the electoral rolls cannot altogether be ruled out in view of the vast area and the vast electorate of this country. The main factors, however, responsible for the problem of accuracy of electoral roll are, the apathetic and non-cooperative attitude of the citizens, lack of co-operation of the political parties, citizens' tendency to seek last minute amendments, the tardy enrolment of service personnel, anomaly on the part of enumerator and officers concerned, illiteracy of the voters, and one qualifying date and no constant revision of the electoral rolls. It is felt that if the said factors responsible for the problem of accuracy of electoral roll are removed, the problem may be solved to some extent. On the other hand, there is no doubt that the recent decision of the Election Commission of India to introduce identity card in the election system is going to solve this problem to a great extent. Like the aforesaid fundamental principles of election, i.e. universal suffrage, equality of suffrage, and common electoral roll, sufficient provisions have been made under the Indian electoral law for the 'secrecy of voting' and 'universal right to contest election' which are also regarded as the fundamental principles of election.

The study of the 'components' of election makes clear that: (i) the House of the People and the Legislative assemblies of the States constitute the 'electorate office'; (ii) an electoral office can have no election at all without 'electorate'. Those citizens of a democratic country, who enjoy the right of voting for the election of members to the representative legislative houses are, in their collective capacity, known as the electorate; (iii) for an election, there must be 'candidates' who are to be elected to the electoral office by the electorate. Candidates are those persons who acquire the legal status of candidacy by following the prescribed process in this respect. However, the study reveals the problem of multiplicity of candidates mainly, due to the entry of frivolous or non-serious candidates in the electoral fray. The multiplicity of candidates causes enormous administrative difficulties, heavy expenditure,
the risk of confusing the electorate and causing public inconvenience. Apart from these difficulties the study also revealed the danger of a number of election petitions arising after every election as an ugly by-product. The problem of multiplicity of candidates has caused concern to the Election Commission of India and it has been making recommendations for what it has described as elimination of non-serious or frivolous candidates. One of the main recommendations of the Election Commission is that the Representation of the People Act, 1951 may be amended suitably so that no person can contest an election from more than two constituencies. In the case of simultaneous elections to the House of the People and State Assembly, this limit will be enforced not separately but jointly; (iv) political parties are also regarded as one of the components of election. It requires the presence of political parties as a means for presenting alternative policies and programmes to public for approval; (v) in a modern democracy 'constituencies' constitute one of the components of election. The delimitation of constituencies involves two questions: first, the principle of delimitation, and second, honest and fair procedure of delimitation. And as has been pointed in the discussion, there have been clear provision in this regard under electoral law of India; (vi) as far as the 'method of voting' which is also a component of election, is concerned, it is clear that at present there is provision for voting by ballot as well as by electronic voting machine. However, electronic voting machine is likely to be introduced in practice throughout the country as there are some advantages of voting by electronic machine in comparison to voting by ballot; (vii) 'mass media' as a component of election plays a very important role in educating the electorate about the various issues involved in the election and about the objects, policies programmes and promises of the various political parties and candidates; (viii) the existing 'electoral system' in India is the simple majority system. However, there has been a proposal to replace the existing system by the proportional representation system. The proportional representation system will not work in India efficiently as Indian democracy is too young, and Indians are too uneducated. However, a "mixed system" as adopted in Germany can be adopted in India also, with the reality
that it is not possible to expect hundred per cent perfection in any system; and
(ix) election always necessitates an ‘electoral machinery’ and consequently it is
one of the components of election. The electoral machinery consists at the
all-India level of full time Election Commission of India, and at the state level a
few regular officials on a part-time basis, namely, the Chief Electoral Officers,
District Election Officers, Returning Officers and their assistants.

The Constitution, powers, functions and independence of the ‘Election
Commission of India’ as the guardian of free and fair elections may be seen as
indispensable in the electoral process of India. The functions or duties of
the Election Commission are varied and manifold. On its shoulders lies the
entire burden of conducting the elections in a free and fair manner throughout
the whole country. And under its orders and supervision electoral rolls which
is the very basis of election are prepared and maintained up-to-date at all
times. Therefore, the Election Commission has a vital role to play in
conducting the elections in such a manner as to inspire the confidence of the
general public, the political parties and the contesting candidates. It has also
been seen that the independence of the Election Commission is as important
as that of the judiciary, because the former is expected to ensure free and fair
elections, just as the latter is entrusted with the task of dispensing justice
without fear or favour. So even the slightest suspicion that the Election
Commission is subjected to political or other pressure of the Government of
the day, will erode the very basis of the free and fair elections in India. It is,
therefore, highly desirable that the Election Commission should be made an
independent branch like that of judiciary. Unimpeachable impartiality of the
Election Commission is one of the main ingredients of our faith in democracy
and electoral process, and no doubt that the people of India can well be proud
that this faith has been vindicated in all the general elections.

It has been witnessed that the use of electoral corrupt practices and
electoral offences are the major factors which are affecting and corroding our
electoral process, and the very foundations of our democracy is foreshaken.
The role played by money power, muscle power, booth capturing, etc. is a
stigma on electoral process and makes it difficult to conduct the election in
free and fair manner. Since the primary object of the law of elections in every country is to create and maintain that sort of atmosphere in which the elections can be held in free and fair manner, i.e. the object of the election law is to ensure free and fair elections. Our electoral law also contains in detail various provisions even though they may appear to be technical to safeguard the purity of the election process. The study thus, makes clear that the dangers of electoral corrupt practices and electoral offences cannot be met by existing legislation alone and that legal measures must be supplemented by a country-wide drive to educate the electorate about their duties with the adoption of certain more legal measure to meet the danger of use of corrupt practices and electoral offences in elections.

The electoral reforms and the role of judiciary in the electoral process within the framework of the Indian Constitution is very significant. Despite of the provisions of Article 329 of the Constitution of India which expressly bars the courts from interfering with electoral matters with a view that it will lead to serious consequences if the elections are unduly protracted or obstructed by the Court's interference, the considerable scope has still been left for the judiciary to play its significant role in the electoral process.

Suggestions

Democracy is very fragile and unless democratic means are followed in letter and spirit, there is danger to the survival of democracy in India. Free and fair elections are the foundation of a democratic system. Thus, everything should be done to see that elections are held in a free and fair manner. Our country needs that the democratic process through free and fair elections should be expanded further, made deeper and wider and protected against all manner of partisan pressures. The complex and manysided problem of electoral reforms has often been discussed at the state and national levels in various forums and the news media but no concrete steps have yet been taken. The only thing that can ensure a free and fair election is a comprehensive electoral reform. In other words, much have been done but more is needed to be done to ensure free and fair elections. No doubt, the
recent Bill on electoral reforms\(^2\) signifies changes in the electoral law which are meant to improve the quality of our democracy through free and fair elections. However, in the light of foregoing discussions the following suggestions may be submitted for more efficient working of our democratic process through free and fair elections in the real sense:

1. If Indian democracy is to flourish, there must necessarily be a whole-hearted participation and involvement of the citizens at large by exercising their franchise properly. The voters’ consciousness to exercise their franchise should be stimulated through means other than compulsory voting, i.e. in order to solve the problem of voters’ participation in India certain means other than compulsory voting are to be adopted. The decision of a voter to participate in elections is an individual’s decision and may be influenced by a number of factors such as the amount of publicity given to the election, the effectiveness of canvassing by parties, literacy of the voters, the general attitude of the community, etc. Such means will of course, take time to be effective but it is better to educate the voter and to convince him for the exercise of the suffrage than to compel for it.

2. Accuracy of electoral role is of basic importance to the entire electoral process. Thus, the problem of accuracy of electoral roll should be resolved. In order to cope with the problem of accuracy of electoral roll it is suggested that:

   (a) there should be co-operation of the citizens. And, it is possible only when there is removal of illiteracy among the citizens and creation of awareness among them;

there should be wide publicity to the preparation or revision programme so that eligible citizens avail themselves of the opportunity as well as citizens should be discouraged from making false statements by drawing their attention to section 31 of the Representation of the People Act, 1950 which specifies punishment in case of false declaration;

like the political parties in Britain, the political parties of India should also co-operate in the preparation and revision of electoral roll;

the citizens should avoid to seek last minute amendments in the electoral roll;

some other measures should be adopted such as proper payment of remuneration to the enumerators and punishment in case of lack of efficiency, i.e. negligence of duty;

there should be as many as four qualifying dates in relation to the preparation or revision of the electoral rolls, namely, the first days of January, April, July, and October as has been suggested by the Joint Committee on Amendment to Election law; and

any person who attains the voting age should have the right to apply for being registered as a voter as soon as he or she attains that age. If such application is accompanied by evidence of age, he should be registered as a voter.

The problem of accuracy of electoral roll will be resolved to a great extent by the recent decision of the Election Commission to introduce the system of issue of identity cards to the citizens. Thus the system of identity card must be introduced without fail.
3. The age should be lowered from 25 to 21 years for the eligibility of candidates to contest an election to the electoral office in view of the fact that the voting age has now been reduced from 21 to 18.

4. For the elimination of "frivolous" candidates, i.e. to check the multiplicity of candidates restriction should be imposed on the number of constituencies from which a person can file candidature. A candidate must be allowed to contest from one constituency only and should not be allowed to contest for both Lok Sabha and State Assembly in case of simultaneous election of Lok Sabha and State Assembly. This will limit over ambitious leaders who contest for both Lok Sabha and Assembly so that in case their party wins an Assembly majority they may opt for the Assembly to gain office otherwise they may retain the Lok Sabha seat.

5. While an understanding is given by a political party under Section 29A(5) of the Representation of the People Act, 1951 with regard to the future conduct of the politicians, the Commission has not only to be satisfied about the allegiance to the principles of secularism, socialism etc. just at the time of filing such an undertaking, but has an obligation to see that it would not do so in future also. Therefore, if a political party violates in any manner the undertaking given by it to the Election Commission under Section 29A of the Representation of the People Act, 1951, pledging loyalty to the Constitution and its secular principles, it would invite derecognition. For this purpose express provision should be made by amending the said Act.

6. There should be provision for rotation of the reserve constituencies for the scheduled castes and scheduled tribes on the basis of their population.
7. There is need of granting autonomy to electronic media, i.e. Doordarshan and All India Radio. It will help the electronic media to justify its place and role in modern Indian democracy and electoral process.

8. Electronic method of voting; i.e. voting by electronic voting machine should be adopted because the introduction of electronic voting machine would help in many ways to make the working of our democratic system through free and fair elections more efficient:

(a) It seems that some of the "non-serious" candidates are really candidates set up by political parties for the purpose of securing additional manpower in the form of polling agents, counting agents, etc. to the official candidates set-up by political parties. The introduction of the electronic voting machine would help in preventing the temptation to have additional manpower in the form of polling agents, counting agents, etc.

(b) Introduction of electronic voting machine will be one of the strong measures to check booth capturing, impersonation, bogus voting etc.

9. One of the main problems of modern democracy through free and fair elections is that of how to achieve the best representation. The proportional representation is, no doubt, suited to resolve this problem. But proportional representation will not work in India efficiently as Indian democracy is too young, and Indians are too uneducated. However, a 'mixed system' as adopted in Germany may be adopted in India also, i.e. the present electoral system of 'First past the post system' should be replaced by the 'mixed system' like that of Germany. But there is no guarantee that the main defect of the existing simple
majority system would be fully remedied by the new system. It can only be said in this regard that the problem of best representation is too complex for an individual to make a firm recommendation. Thus, it can only be urged that the whole question ought to be fully examined and publicly debated.

10. The law on countermanding polls should be changed so that in case of the death of a candidate, the poll might only be deferred, and not countermanded, with the provision to allow the affected political party to bring in the field another candidate in place of a deceased one.

11. In order to ensure the independence of the Election Commission which is regarded as the guardian of free and fair elections the following suggestions may be proffered:

(a) It is highly desirable that the Election Commission should be made an independent branch like that of judiciary.

(b) The method of the appointment of the Chief Election Commissioner and members of the Election Commission needs a fresh look. The selection of the Chief Election Commissioner and members of the Election Commission should be done in such a way that they are not obliged to the Government. The Chief Election Commissioner should be appointed by the President in consultation with the five members committee comprising the Chief Justice of India, Prime Minister of India, Speaker of the Lok Sabha, Chairperson of the Rajya Sabha, and the leader of the opposition in the Lok Sabha or a member of Lok Sabha chosen by all the opposition parties. And, in case of appointment of other
Election Commissioners the Chief Election Commissioner should also be consulted.

12. To cope with the ever-increasing electoral corrupt practices which are affecting and corroding our electoral process and therefore the very foundation of democracy, the following suggestions are proffered:

(a) In order to reduce the effect of “money power” which is the main source of all the corrupt practices in election the following measure may be adopted:

(i) One of the powerful weapons for minimizing the role of money power in elections is State funding, i.e. provision of the State aid to all candidates irrespective of party affiliations. The State aid to candidates would not only reduce the disparity between rich and poor candidates and party organizations in the matter of electioneering but also contribute to their independence by relieving them of their dependence on the money bags or party bosses.

(ii) Donations to political parties by companies and industrial houses should be totally banned and declared a corrupt practice.

(iii) Any expenditure incurred or authorized in connection with the election of a candidate by a political party should be deemed to be expenditure in connection with the election incurred or authorized by the candidate for the purposes of Sub-section (1) of Section 77 of the Representation of the People Act, 1951.

(iv) The party funds and their administration be made a matter of public knowledge through their publications and auditing. It is true that a party can circumvent this provision by various unfair accounting procedure. However, in any organization as widespread as a political party, it would be extremely difficult to have
recourse to such device without serious risk of committing a fraud at the expense of the party itself.

(v) While under Section 10A of the Representation of the People Act, 1951, failure to lodge an account of election expenses within the permitted line and in the manner required under the law entails disqualification for a period of three years making a false report is not covered by that section or under Section 123 of the said Act. This omission should be rectified by suitable amendment of the Law.

(b) Under Section 123(7) of the Representation of the People Act, 1951, teachers in Government Institutions, and employees of public sector undertakings, whether incorporated as Company or Corporation, should also be specifically mentioned. Because the number of these classes of public servants is now very large, and they are in a position to exercise a great deal of influence on the voters. It is, therefore, desirable that obtaining or attempting to obtain assistance from persons belonging to these classes should be treated as a corrupt practice.

(c) Section 8(3) of the Representation of the People Act, 1951 should be amended so that a person convicted for any offence should be disqualified, even if he sentenced for less than two years.

(d) Introduction of electronic voting machines and issuing of identity cards are some special measures to check booth capturing, impersonation and bogus voting.

(e) Booth capturing should be made a cognizable offence and drastic penalty should be imposed on
the candidates and their agents who indulge in, or abet in the commission such an offence.

(f) Unless the 'Model Code of Conduct' is enforce in letter and spirit, the elections will not be able to be held in a free and fair manner. Therefore, the model code of conduct set for the ruling party at the Centre and the States, various other political parties and their candidates in elections should be given legal teeth. And, a violation of the provisions of the code should be declared to be a "corrupt practice" and the persons committing such violations should be liable to penalties provided in the Representation of the People Act, 1951, including disqualification for contesting election.

(g) If every voter exercises his franchise the scope for corrupt practices in elections will be severely restricted. For example, while money bags buy a few voters they cannot possibly bribe the whole electorate.

It is, however, finally submitted that avoidance of corrupt practices in elections is a tremendous task. Money is poured in and the caste and religious differences are exploited to the full to secure votes. It goes without saying that there is no election without corruption, i.e. wherever there is election, there is corruption. It is obvious that unless stern remedial measures through the electoral law reform are taken the corrupt practices mainly the abuse of state power, money power and muscle power would soon delegitimise the electoral process which is the corner stone of democratic system. On the other hand, it is also true that electoral reform alone cannot check the corrupt practices in elections. A mere list of do's and don'ts cannot improve the political morality of the nation. Actually, the crucial factors are political parties, candidates and voters. Much depends upon their attitude. If the political
parties and the candidates decide to follow the code of conduct at the
time of elections, half the battle is won, and if all voters are enlightened
and are able and willing to vote only according to their convictions
many of the other corrupt practices will automatically disappear. And it
is possible only if the people are enlightened and educated on public
issues in which literacy plays the catalytic role, and the people live a
better and fuller life. Talks about morals and dharma do not appeal to a
person whose belly is empty. He wants food for the body first so that
he can have food for the mind and the soul. So economic improvement
in people's condition gives them a sense of dignity, self-confidence,
honesty and integrity. It is, therefore obvious that if education spreads
among the people and if their economic condition is improved, then
corrupt practices will to a great extent disappear from our elections
thereby making democracy safe in India. In short, the best antidote, in
addition to statutory measures, to shorten the corrupt practices in
elections would be removal of poverty, mass literacy, and development
of political morality and political consciousness. The population
explosion, poverty and illiteracy are in the circuit. To enhance the
literacy growth, to minimise the poverty, the government should adopt
and implement seriously plans to curve the population growth
irrespective of religious affiliation of citizens throughout the whole India.
It is of course out of the question to expect hundred per cent perfection
in any system and our democratic system through free and fair
elections is not an exception to it. But, no doubt, we can very well
improve it by purifying social and political life evolving healthy norms of
political conduct as well as proposed electoral law reforms.

It appears necessary that the Parliament and planners of the
country administration may make necessary reforms in the electoral
laws without further delay, in the light of proposed suggestions of this
work and it will be a major step in strengthening and improving the
working of our democratic system through free and fair elections.