INTRODUCTION

Democracy has not been a free gift for most of the present democratic nations including India. India earned its independence and democracy after a long freedom struggle. The most significant feature of a democracy is the election process. Free and fair elections are essential in a healthy democracy. For the success of democracy, it is necessary that people maintain their allegiance towards the democratic institutions based on rule of law. The more the elections are free and fair, the stronger the allegiance the people will have towards democratic institutions. Contrary to this, if the elections are not free and fair, the people will not have faith in democracy. Parliament has made a law to ensure free and fair elections and a very comprehensive system of elections has been developed in the country. The experiences of the last fifteen General Elections have shown the merits and demerits of the system to the people. Minor changes have regularly been made in the election system. However, still our electoral process is beset with many evils like use of black money, casteism, communalism, rigging, abuse of administrative machinery, criminalization of politics, and even capturing of booths in some areas. All these abuses lead to eroding of faith of the people in free and fair elections.

ELECTORAL REFORMS

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In order to restore the faith of people in democracy, there is an urgent need of electoral reforms. Various electoral reforms have been introduced in our electoral system in the past. Parliament through a constitutional amendment in 1989 reduced the minimum voting age from 21 to 18. The Representation of the People’s Act, 1951, was amended to facilitate use of Electronic Voting Machines (EVMs). A person who is convicted for the offences under the Prevention of Insults to National Honour Act 1971 is disqualified to contest in the elections to the Parliament and state legislature for 6 years. There is prohibition on entering into the neighbourhood of a polling station with any kind of arms. Under a 2003 provision, the Election Commission should allocate equitable sharing of time on the cable television network and other electronic media during elections to display or propagate any matter or to address public. Candidates are now required to furnish their criminal antecedents, assets, educational qualifications, etc. on their nomination papers. The above mentioned as well as other numerous electoral reforms have been introduced by Election Commission from time to time but still there is lot to be achieved. The ship of democracy in India is adrift in choppy waters. Grave risks lurk all around. Unless it is steered with great care and in the appropriate direction, it just might hit a rock of an iceberg and disintegrate of sink. Nothing is impossible in the volatile world in which not everyone is happy to see India prosper. However, no electoral system can function properly unless the underlying political system in which it operates is appropriate, just as a healthy plant cannot grow and bear good fruit unless the soil is properly prepared…the fruit in this case being governance. Therefore, the political will is must to introduce the much required core electoral reforms in a sustainable manner.

Among the much needed core reforms in the electoral system, decriminalization of politics deserves a central position. Criminalization of politics in India is today a sad reality. According to the Association for Democratic Reforms (ADR), 76 of the 543 members elected to the Lok Sabha in 2009 had been charged with serious criminal charges such as murder, rape and dacoity. Under the present setup, getting elected to the legislature becomes a convenient shield to delay and extend the legal processes and escape being convicted. The Second Administrative Reforms Commission (ARC) noted that the “opportunity to influence crime investigations and to convert the policemen from being potential adversaries to allies is the irresistible magnet drawing criminals to politics.” Criminalization of politics does more than just subvert ethics in governance, it hits at the root of public engagement with the system. Not only is this trend highly demoralizing for the general public, it reduces their trust in the system and forces them into apathy and disillusionment.

**CRIMINALIZATION OF POLITICS**

It implies that the criminals entering the election fray and contesting elections and even getting elected to the Parliament and state legislature. It takes place primarily because of the nexus between the criminals and some of the politicians. The criminals need the patronage of politicians occupying public offices to continue with their criminal activities and the politicians need the money and muscle power that the criminals can offer to the politicians to win elections. In course of time, the nexus led the criminals themselves to contest elections. Further, the criminal justice system has inbuilt delays. It takes on an average 15 years for a criminal case to be finally disposed off by the courts. Under the golden rule of criminal law on which the entire criminal justice system is based, the accused is presumed to be innocent till he is proved to be guilty. Therefore, after the accused is convicted and sentenced by trial court, by going on appeal to higher court, his conviction and sentence are suspended by higher court till it disposes off the appeal. Thus, the convicted person becomes innocent once more in eyes of law and is not prohibited from contesting elections. Moreover, the rate of conviction in the country has been going down which means more and more criminals may go unpunished as their guilt is not proved beyond reasonable doubt in court of law. Thus, the known criminals are not legally prohibited from contesting elections.
The elections to Lok Sabha and state legislatures are based on the First Past The Post (FPTP) electoral system. FPTP electoral system allows a candidate to be declared elected from the constituency on the basis of plurality of votes polled and not on the majority of votes polled. Thus, in a multi-cornered contest, a candidate with as low as 25-30% of valid votes polled may get elected which criminals does not find difficult to get because of the use of their money and muscle power. Thus, FPTP system doesn’t discourage criminals from contesting elections. The Parliament also so far has failed to enact adequate electoral reforms to decriminalize politics. The political parties are also guilty of not following value-based politics which combined with declining value system in society has also contributed to criminalization of politics. The criminalization of politics has very adverse consequences on the society as well as on nation.

**CONSEQUENCES**

The major impact is that the law-breakers get elected as law-makers. According to Election Commission, about 40% of members elected to 15th Lok Sabha are facing criminal charges in court of law. This makes the Parliament less efficient in enacting necessary laws for the effective administration of country. The Parliament loses its credibility and the Council of Ministers loses its legitimacy to administer the country. Political patronage and a ‘culture of adjournment’ collude to prevent speedy trials against elected representatives. Public prosecution is often ineffective and coloured by vested interests. All in all, the system is wired to push for a favourable outcome for an accused elected representative. It also leads to increased circulation of unaccounted money or black money during and after elections, diluting the probity in public life. The increased levels of corruption in public life weakens the state institutions including the bureaucracy, the executive, the legislature and the judiciary. Further, it introduces a culture of violence in the society and sets a bad precedence for the youth to follow.

**SUPREME COURT’S MEASURE**

Several measures have been undertaken and umpteen measures further needs to be taken to ensure decriminalization of politics. Judiciary has time and again endeavored to decriminalize the politics. The Supreme Court in Union of India vs. Association for Democratic Reforms 2002 held that the voters enjoy right to make informed choices during elections and hence directed Election Commission of India to make it mandatory for contesting candidates to declare their assets and liabilities, that of their spouses and dependent children, any criminal conviction in the court of law, any criminal case pending and the educational qualifications at the time of filing the nomination papers. In Ramesh Dalal vs. Union of India 2005, the Supreme Court held that a sitting Member of Parliament (MP) or Member of State Legislature (MLA) shall also be subject to disqualification from contesting elections if he is convicted and sentenced to not less than 2 years of imprisonment by a court of law. In 1997, the Supreme Court directed the High Courts to not suspend the conviction of a person if he is convicted under The Prevention of Corruption Act 1988. The Parliament introduced Section 33-B in The Representation of People’s Act 1951 under which a person had to declare his assets and liabilities only before the presiding officer of the house within 90 days after having become member of the house. However, Supreme Court struck down Section 33-B as unconstitutional and void on the ground that it violated the Fundamental Rights of citizens to make informed choice. Recently, Supreme Court has come out with certain judgments to cleanse the political system off the criminals. Section 8(1), 8(2), and 8(3) of the RPA, 1951 provide grounds of disqualification for any person who is convicted and given varying range of imprisonment, for a period of 6 years from the date of his release from prison. Section 8(4) states that if a sitting member of Parliament or state legislature is convicted and sentenced to not less than 2 years of imprisonment shall be disqualified from being member of house. However, if the member goes on appeal against his conviction within 3 months, then he shall not be subject to disqualification. The Supreme Court in Lily Thomas vs. Union of India 2013 held Section 8(4) as unconstitutional and void. Hence, now if a sitting member of Parliament or state legislature is convicted and sentenced to not less than 2 years of imprisonment, he will get
immediately disqualified from being member of house. This is a crucial judgment and will go a long way in cleaning our political system. In another recent judgment, 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 (EVM). The court directed the Election Commission to provide the NOTA button in the EVM. Writing the judgment, the CJI said: “Giving right to a voter not to vote for any candidate while protecting his right of secrecy is extremely important in a democracy. Such an option gives the voter the right to express his disapproval of the kind of candidates being put up by the parties. Gradually, there will be a systemic change and the parties will be forced to accept the will of the people and field candidates who are known for their integrity.” The Bench said the NOTA option “will accelerate effective political participation in the present state of the democratic system and the voters will in fact be empowered.” The right to cast a negative vote, “at a time when electioneering is in full swing, will foster the purity of the electoral process and also fulfil one of its objectives, namely, wide participation of people.” Following the judgment, Election Commission provided NOTA button option in the recently held state legislature elections for 5 states of Chhattisgarh, Madhya Pradesh, Rajasthan, Delhi and Mizoram.

ELECTION COMMISSION’S MEASURES AND RECOMMENDATION

Election Commission of India has consistently undertaken certain electoral reforms which it could take on its own as well as at the direction of Supreme Court. In 1997, Election Commission directed all the Returning Officers (ROs) to reject the nomination papers of any candidate who stands convicted on the day of filing the nomination papers even if his sentence is suspended. Election Commission has also made the following recommendations to the Union Government to be made into law in the form of electoral reforms for the decriminalization of politics:-

- If a person is accused of a serious crime (that is, where the law prescribes a punishment of not less than 5 years for the alleged crime) and if a court of law has framed criminal charges against the accused, then it shall be regarded as a reasonable ground for the disqualification of accused from contesting elections. The Election Commission is of the opinion that framing the criminal charges by a court means that the court prima facie believes that the accused might have been involved in the alleged crime.

- If a person is found guilty by a Commission of Inquiry then he shall be disqualified from contesting elections.

- The FPTP electoral system shall be replaced by the 2-ballot system under which a candidate is declared elected from a territorial constituency on the basis of majority principle. In a multi-cornered contest if no candidate attains more than 50% of valid votes polled, then the 2 candidates who obtained the largest number of valid votes polled alone shall be allowed to contest the next round of elections. This system would make it difficult for a criminal to get elected.

- Along with 2-ballot system, the negative vote shall also be introduced. This step has already been taken with the help of above mentioned Supreme Court judgment.

Some other measures which could also be pondered over for decriminalization of politics include:

- Right to recall - It confers the power on the registered voters in a constituency to recall their elected representatives from the house on the ground of non-performance. It could empower the people at grassroot level. The elected representative could be made truly accountable to the people. In such scenario, political parties will be forced to nominate eligible and desirable candidates to contest elections because of the fear of removal of elected representative.
However, for such system to work high level of political maturity is required on the part of voters.

- State funding of elections - It means government extending financial assistance to the political parties to contest elections in part or in full, in kind or in cash. The objective could be to control or eliminate the outside pressure over government policies and functioning by vested interests by funding political parties and candidates during elections. It could help in controlling the flow of unaccounted money and muscle power of criminals during elections and corruption in public life.

**CONCLUSION**

It is very important that democracy forms the basic structure of the society. Effort must be made to make society democratic. Democracy should be the value system of Indian citizens. The responsibility of survival of democracy can’t be shifted on the state institutions alone. The citizens have an equal part to play in the healthy functioning of the democracy. Hence, there is no doubt that electoral reforms are the need of the hour in order to attain sustainable democratic India. The objective of electoral reforms is the distillation of General Will. There must be no place for the criminals in the sacred electoral process of obtaining General Will. Electoral system should be able to attract the best talent in the country. Elections should not be seen as mere rituals but the pathways of democracy. Honesty shouldn’t be a disincentive but instead a reward in the electoral system. For a true decriminalization of politics, the instant need is to abolish the patronage to criminals which is often given by politicians and political parties. A strong political will is required on the part of government to decriminalize the entire political system by taking stringent measures as well as by enactment of required legislations. Supreme Court has also held that free and fair elections is a part of the basic structure of the Constitution. There is an urgent need to break the criminal-political nexus. Unless some decisive action is taken soon, the public will lose all faith in politics, politicians and democracy itself. This will do irreparable damage to our republic.

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