

## ELECTROL REFORMS: SUPREME COURT GUIDELINES

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*"Always vote for principle, though you may vote alone, and you may cherish the sweetest reflection that your vote is never lost".*

-Anonymous

### Introduction

Elections play very important role in democratic countries. Every democratic country must have a sound election body. Constitution of India created various constitutional bodies like Legislature, Executive, and Judiciary apart from these bodies the Nation require independent and powerful constitutional mechanism which will hold elections throughout country and the Citizens of country have equal chance to choose their representatives. As rightly stated by John Locke that Government must be with the mandate and with consent of the people of the country<sup>100</sup>. Elections should be conducted in free and fair conditions and there should be an impartial body for that purpose, and free and fair election is the basic structure of Indian constitution<sup>101</sup>.

### Constitutional Provisions of Election

Indian Constitution is the biggest constitution in the world. It provides various aspects of organs of the government and plethora of other Constitutional machineries like Election Commission of India. Part XV of Indian constitution devoted to the Elections in India to Superintendence, control and direction and control of the preparation of the electoral rolls and also the conducts of elections in India. Article 324 to Article 329 of Indian constitution provides election system in India<sup>102</sup>. Article 324

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<sup>100</sup> Dr. S.N. Dhyani "Fundamentals of Jurisprudence", Central Law Agency Allhabad, 3rd Edition 2004 P. 89.

<sup>101</sup> Dr. J. N. Pandey "Constitutional Law of India" Central Law Agency, Allhabad. 44<sup>th</sup> Edition 2007 P. 734.

<sup>102</sup> P.M. Bakshi "The Constitution of India " Universal Law Publication, 6th Edition 2004, P 274.

established the office of the Election Commission of India, which is comprised of Chief Election Commissioner and other election commissioners. It is the duty of Commission to conduct elections throughout India. It can prepare voters list of India for general elections. Under respective powers the commission can fix code of conduct for the candidates who are willing to contest the elections. This code of conduct is mandatory for the candidates and Election commission can take those who will transgress the same appropriate action and it can invalidate the election of candidate.

### Object of Election Reforms

The elections are conducted to choose representatives for the governance of the country, in the democratic country like India where we adopted the democratic form of the government and our constitution is federal in nature<sup>103</sup>, where central and state level government has to play a very important role for the progress and development of the country. To achieve the goals set by constitution it requires highly qualified and visionary leadership and the elections should be conducted without and pressure or burden on the citizens of the country. In India there is an independent and impartial constitutional mechanism to deal with elections but it is observed that there is great need to reform the present electoral scenario. In the country like India where literacy rate is so low i.e. 74% according to the Census 2011<sup>104</sup>, the citizens are unaware about their Rights, Right to vote is a constitutional right granted by the Art.326 of Indian Constitution<sup>105</sup>. The present election mechanism is drafted in 1940s and there is a drastic change in the Socio-political situation in India. India is the largest democracy of the world and it is shameful matter for India the candidates who use to contest election by fraud, Misrepresentation, booth capturing and mal-administration. No doubt that Election commission Of India is trying to reforms the election system but there is a great space for the reformation. It open secret in India that all the elections are conducted on the basis of money and muscle power this is the reality of Present Election system in India.

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<sup>103</sup> M.P. Jain "Indian Constitutional Law", Lexis Nexis Butterworths Wadhwa Nagpur, Reprint 2012.

<sup>104</sup> [www.wikipedia.org](http://www.wikipedia.org).

<sup>105</sup> *Supra* note 5.

## Electrol Reforms and Supreme Court of India

Supreme Court of India is the watchdog of Indian constitution apart from its original jurisdiction Supreme Court was allotted with extra power of Judicial Review of Administrative action, Legislative Action, and judicial review of Judicial Actions itself. Article 32<sup>106</sup> of Indian constitution empowers Supreme Court to enforce the rights granted under part III of constitution, Supreme Court shall have power to issue directions or orders or writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari which may appropriate for the enforcement of the rights. Under the power of judicial review Supreme Court shall maintain balance among various constitutional bodies it shall respect the jurisdictions of other bodies. Many persons are approaching to the Supreme Court for justice; under various petitions Supreme Court directed election commission of India for various reforms, the role played by judiciary is very important we will discuss this role in detail right from the commencement of Indian Constitution.

### Supreme Court Guidelines for Electrol Reform in India

The Supreme Court of India has played *sin qua none* role in the progress and development of the nation, Supreme Court is guardian of Indian constitution so it the duty of Supreme Court to balance between the organs of the state. Whether an organ of a state or any constitutional body is functioning as per the mandate of Indian constitution, Supreme Court can give directions to these bodies. Election Commission of India is also a constitutional body; there is plethora of incidents where Supreme Court laid down guidelines for the electoral reforms, some cases are decided by the Indian Supreme Court as follows.

#### ***Union of India v. Association for Democratic Reform***<sup>107</sup>

In the above case Hon'ble Supreme Court of India laid down very important guidelines they are as follows:

The Election Commission of India is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the constitution of India from each candidates seeking election to parliament or state legislature as

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<sup>106</sup> Durga Das Basu, "Introduction to the Constitution".

<sup>107</sup> (2002) 5 SCC 294 AIR 2002 SC 2112.

a necessary part of his nomination paper. Furnishing there in information on the following aspects in relation to his candidature:

**A) Criminal background of candidate**

Whether the candidates is convicted / acquitted / charged of any criminal offence in the past – if any, whether he is punished with imprisonment or fine?

Under this guideline Supreme Court of India directed to receive the information about the candidates criminal background the candidate have to furnish the said information on affidavit at the time of file form for election. This information is for public purpose, so that the citizens of the country can choose better representative for their constituency. If candidate is having criminal background then citizens can decide the fate of candidate.

**B) Criminal charges against candidate**

Prior to six months of filling of nomination whether the candidates is accused in any pending case of any offence punishable with imprisonment for two year or more, and in which charged is framed or cognizance is taken by the court of law, if so details thereof.

Under this guideline Supreme Court of India directed to the Election commission of India for securing the information about criminal charges against candidate so that such persons can be stopped from entering in the arena of politics. It is the right of Citizens to know about the background of the candidate, whether any court punished him? It is a great help for keeping political arena as clean and healthy for protection of democratic values.

**C) Financial position of candidate**

The assets (immovable, movable, bank balance etc) of candidate and of his/her spouse and that of dependents. It is observed that politicians become more rich after winning the election, it is matter of great threat to existing democracy. There should be check and balance on the financial position of the candidate; does it mean that candidate shall not acquire property? No they can, but with proportionate to their Official income. Supreme court laid down the guideline to election commission, and then was implemented through India and it is great electoral reform in Indian scenario.

**D) Financial liabilities of candidate**

Liabilities if any particularly whether there are any over dues of any public financial institution or government dues. The supreme court of India laid down the guideline that at the time of filling nomination form for contesting election, Supreme Court made it mandatory to provide an affidavit of the financial liabilities of candidate. Very such person shall produce no dues certificate at the time of filling nomination for elections.

**E) Educational background of candidate**

The leadership of nation must be visionary, it determines the fate, progress, and development of the nation. But there are no provisions in Indian constitution about educational qualification. Now it is mandatory to all candidates furnish information about their educational background. So that citizens can choose highly qualified representatives for the national administration.

**Criticism**

The Hon'ble supreme court of India laid down important guidelines in the case of *Union of India v. Association for Democratic Reform*, AIR 2002 delivered on 2nd May 2002 in Civil Appeal No 7178 of 2001.

The guidelines played *sin qua non* in the democratic country like India where most of people are unaware about their rights. These guidelines are implemented by the election commission of India in their operation for conducting general election throughout India and it is one of the essential characteristics for free and fair elections in India. The election commission should hold procedural integrity and peaceful elections to be an inviolable norm. Any violation of this norm should result in countermanding the election because the integrity of the electoral process cannot be compromised at any cost<sup>108</sup>. Still it is observed that much candidate use to file false or misleading information about their criminal financial, and educational background, so it is time to take strict action against those candidates and to encourage the citizens of India and to bring

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<sup>108</sup> "Politics and Democracy – Electoral Reforms", Amicus Books, The Icfai University Press, edited by K Prasanna Ranni .

drastic changes in the field of elections to mention real democratic values constant.

## Conclusion

“Elections become the game of scoundrels”-up to certain extent this statement is true. If we observe today's political situation with keen observation criminality is increasing day by day, elections are won on the basis of muscle and money power, citizens of India are helpless. Hon'ble Supreme Court of India is the only ray of hope to the citizens of this country, and the role, which was cast upon Supreme Court of India by the Indian constitution, was fulfilled by it. Hon'ble Supreme Court of India issued detailed guidelines for election reforms in India. We are the eyewitnesses of the role, which Supreme Court has played for maintenance of democratic value high. Supreme court of India played a significant role for creation of free and fair atmosphere in the country.

