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ELECTORAL REFORMS WITH REFERENCE TO SUPREME COURT JUDGEMENTS OF DISCLOSURE AND REAL NEED

Background :

Electoral Reforms are thought to be most essential reforms in the present day Indian scenario. Electoral reforms have been talked about for last 50 years. The latest Supreme Court judgements making it necessary for candidates to give information about educational qualifications, assets and liabilities and criminal background, have resulted in renewed interest in the subject. It was from the year 1975, that different committees have been appointed to suggest electoral reforms and the same include Justice Tarkunde Committee, Dinesh Goswami Committee, Indrajeet Gupta Committee and Vora Committee.

The subject matter of this paper firstly is 'Electoral Reforms' with reference to two recent Supreme Court Judgements. Before making my own suggestions regarding real need, I would, therefore, first of all directly go to two Supreme Court Judgements, Before, however, doing so, I hasten to add that Supreme Court is today doing the work of legislature and executive and the Court has in last about 20 years become a very active Court. These two judgements are also result of this judicial activism. The Court in these judgements under Article 21 where the Court has included the following as the fundamental rights :-

1. The Right to Go Abroad
2. The Right of Privacy
3. The Right against Solitary Confinement
4. The Right against Bar Fetters
5. The Right to Legal Aid
6. The Right against delayed execution
7. The Right against Custodial Violence
8. The Right against Hand Cuffing
9. The Right of Doctor's Assistance
10. The Right to Speedy Trial
11. The Right against Public Hanging
12. The Right to Shelter

One more observation is that both the judgements have come out of the petitions from Non Governmental Organizations (NGO's). I will come back to the importance of the role of citizens and such NGOs, generally in the world as well as in this Country later.

The Judgements :

In the year 2002, the Association of Democratic Reforms field a petition under Article 226 of the Constitution of India before the High Court of Delhi for a direction to implement the recommendations made by the Law Commission of India in its 170th report. It was the contention of the Association that in spite of various reports which included VORA Committee Report and then the Law Commission Report, the successive government has failed to take any action and therefore, they field a petition for implementation of the said report and certain directions to the Election Commission. The Delhi High Court held that, for making the right choice by the citizens, the Election Commission should secure to the voters certain information pertaining to each of the candidates contesting elections to the Parliament and to the State Legislature and the Party they represent. The High Court, therefore, passed certain directions to the Election Commission. The order of the Delhi High Court came to be challenged by the Union of India by filing an appeal to the Supreme Court. The Indian National Congress appeared in this matter as intervener. Another petition which was also heard by the Supreme Court alongwith this petition was field by Peoples Union for Civil Liberties directly under Article 32 of the Constitution of India.

Briefly speaking the arguments of the parties before the Supreme Court were as under :-

1. The Union of India argued that until suitable amendments are made in the Representation of the People's Act and the rules, such directions to the Election Commission can not be given.
2. The Indian National Congress argued that the Petitioner's should be directed to approach the Parliament for appropriate amendments in the legislature.
3. The Election Commission, however, supported the case of the Petitioners. They clearly stated before the Supreme Court that, the law breakers in the Country have become the law makers and hence they agreed that the candidate should be required to furnish certain information.

The Court quoted Sir William Churchill and I quote "At the bottom of all tributes paid to democracy is the little man, walking in to a little booth with a little pencil, making a little cross on a little bit of paper. "The Court, therefore, observed that it is this little man who is most important in democracy and he must be educated and well informed about the contesting candidates. The Court held that under Article 325 of the Constitution of India, the Election Commission is empowered to issue

directions as ordered by the Delhi High Court. Secondly, the Court also relied on Article 19 (1) (a) Fundamental Right of Freedom of Speech and Expression has included the right to be informed and educated about the contesting candidates. The Court analysed the previous judgements, international covenants and practices followed in some other countries, particularly, in US for this purpose. Ultimately, the Court passed the direction to the Election Commission 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 candidate seeking election to Parliament or the State Legislature as a necessary part of his nomination paper. I will come back to the points of disclosure in some time after I refer to the second judgement of the Supreme Court.

The second judgement of the Supreme Court arose after the Parliament amended the Representation of Peoples Act, 1951 in consequence of the above Supreme Court Judgement. The Parliament added Article 33A and 33B to the Representation of the Peoples Act 1951. The following comparative chart will show the difference between the judgement and the amendments :-

Subject	Discussion in Judgement dt 2-5-2002	Provisions Under Impugned Ordinance / Amendment Act.
Past Criminal Record	Para 48 (1) All past convictions/ acquittals/ discharges, whether punished with imprisonment.	Section 33A (ii) conviction of any offence (except Section 8 offence) and sentenced to imprisonment of one year more. No such declaration in case acquittals or discharge. (Section 8 offences to be disclosed in nomination paper itself)
Pending Criminal cases	Para 48 (2) Prior to six months of filing of nomination, whether the candidate has been accused of any criminal offence punishable with	Section 33A (1) (i) Any case in which the candidate has been accused on any criminal offence punishable with

	imprisonment of two years or more , and charge framed or cognizance taken.	imprisonment of two years or more, and charge framed.
Assets and liabilities	<p>Para 48 (3) Assets of candidate (contesting the elections) spouses and dependants.</p> <p>Para 48 (4) Liabilities, particularly, to Government and public financial institution.</p>	<p>Section 75A No such declaration by a candidate who is contesting election, elected candidate is required to furnish information relating to him as well as his spouses and dependent children's assets to the Speaker o the Hose of People.</p> <p>No provision is made for the candidate contesting election. However, after election, Section 75A (1) (ii) & (iii) provides for elected candidate.</p>
Educational Qualification	Para 48 (5) To be declared	No provision
Breach of Provisions	No direction regarding consequences of noncompliance.	<p>Section 125 A Creates an offence punishable by imprisonment for six months or fine for failure to furnish affidavit in accordance with Section 33A, as well as for falsity or concealment in affidavit or nomination paper.</p> <p>Section 75 (5) Willful contravention of Rules regarding asset disclosure may</p>

		be treated as breach of privilege of the House.
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From comparison it is clear that the Parliament did not provide for

1. Requirement of disclosure in cases in which a person is acquitted or discharged of criminal offences.
2. His Assets and Liabilities
3. His Educational Qualifications.

In addition to this, the Parliament also enacted Section 33B which provided that, notwithstanding anything contained in the judgement of the Court, or any order issued by the Election Commission, no candidate shall be liable to disclose or furnish any other information other than the one mentioned above. These two sections came to be challenged by the aforesaid Organizations before the Supreme Court. Obviously, the Court in very strong words stuck down these provisions. Once again to quote from this judgement of the Supreme Court “Members of Democratic Society should be sufficiently informed, so that they may cast their votes intelligently in view of the persons who are to govern them. Right to vote would be meaningless unless the citizens are well informed about the antecedents of a candidate. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means to cleanse the democratic governing system and to have competent legislature.”

It was pointed out to the Court that at present in the year 2003 about 700 members of State legislatures and 25-30 members of Parliament are having criminal record.

The Court observed that the plain effect of the embargo contained in Section 33B is to nullify substantially the directions issued by the Election Commission pursuant to the judgement of the Supreme Court. In other words, the instructions issued by the Election Commission, could only be operated in respect of the items specified in Section 33A and nothing more because of Section 33B. The Court, therefore stuck down Section 33B as unconstitutional and violative of fundamental rights and having an effect of directly affecting the judgement of the Supreme Court. The effect of this judgement is, therefore, that again the directions of the Election Commission became effective.

The judgements lay down the law relating to disclosure at elections. However, it is doubtful as to how far will this have an effect on the elections as day after day we see that though our voters are aware of criminal record, disproportionate assets, heavy liabilities, lack of

educational qualifications of many of the candidates, they do manage to get elected against much better candidates even with clean image. Again, a candidate himself may not have any involvement in criminal activities, but may use criminals. A candidate may himself not spend for him. The real need, therefore, is of public education, awareness and awakening. I will come back to this real need little later.

Still however, it must be said that it is a step in the right direction and hence in my view, needs to be implemented at all levels of elections in this country starting from Village Panchayat, Municipal Councils, Municipal Corporations, Zilha Paraishadas etc. However, for that, the respective laws under which these elections are held will have to be amended. Alternatively, in my opinion, a public spirited organization can file a writ petition in High Court relating to these elections. The Apex Court Judgements will certainly help such public spirited organization or person.

Other Electoral Reforms :

Apart from these reforms relating to disclosure as indicated by the Supreme Court, a number of other electoral reforms have been suggested by different committees and different experts.

However, we can not forged that we have been able to hold elections and that the transition of power in this country has been by and large peaceful in spite of the Chinese aggression in 1962, Prime Minister Nehru's demise in 1964, four wars with Pakistan in 1947 -48, 1965, 1971 and 1999, Prime Minister Lal Bahadur Shastri's sudden death at Tashkent in 1965, Prime Minister Indira Gandhi's assassination in 1984, external and internal emergencies and continuing terrorist onslaughts. The Union and State Legislatures, Executives and Judiciary have functioned even during periods of war and emergency. This is unlike our own neighbour Pakistan and this is a great achievement for us.

However, as we as know all is not well and with time we must welcome certain reforms. It must be mentioned here that electoral reforms also have a direct linkage with socio- economic development. Some of the other reforms which are suggested are –

1. Amending of Anti- defection Law, which is being done now, which in fact became an enabling law for larger defections.
2. Limiting the size of Council of Ministers.
3. It must be borne in mind that nearly 70% of our representatives are elected by a minority of votes casts, i.e. more votes are case against

every winning candidate than for him. The suggestion, therefore, is that we should only have representative who win on the basis of 50% +1 vote. If in the first round nobody gets over 50 % then there should be a run off contest between top two candidates.

4. Voting should be made a citizenship obligation.
5. Incentives for voting and disincentives for keeping away should be provided. Here, we need to mention the recent Supreme Court Judgement wherein the Supreme Court upheld the Hariyana Panchayat law which provides for a 2 child norm to contest the elections.
6. Holding of State of Parliamentary elections at the same time to reduce the cost of elections.
7. Limiting the period of campaign.
8. Women's Reservation the much debated but needed reform which will encourage soft options of health care, education, children, women in politics.
9. Providing for an election fund to compensate people, particularly below poverty line, who have to forgo their days wages to enable them to vote.
10. Dissolution of the government before elections.
11. Introduction of technological advancements like, electronic voting, use of computers, VDOs etc. during elections.
12. Making proper provisions for taking care of election expenses, auditing of accounts etc.

The Real Need :

The most important that what I have said up till now is, what I want to conclude with and for this I will take you back to what I said in the beginning that people all over the world and so in this country are loosing hopes in the technical and legal machineries of executive, legislature and judiciary. They are, therefore, themselves coming together and forming Non Governmental Organizations (NGOs) and putting pressure for their demands. Civil Society groups have recently intervened in a wide range of issues ranging from pesticides in soft drinks, survey of the mid – day meals schemes, People's Commission into communal incidents and public reports. Civil Society groups and activists have produced reports and organized commissions on various issues. These reports do not have legal force but they are real. They represent the voice of the people and come from grass root organizations. Very often they are painstakingly researched and backed by minimum funding but maximum commitment. Very often these reports dispel popular myths and are able to educate people with new ideas. Public reports are written when people feel a lack of justice and want the government to act on public demand . At times of

public stress, it is people themselves who will have to control their destinies. Clearly then, people can secure their common future by combined action. All this, therefore, needs a very active citizenry and any change has to begin at home. The change must therefore begin with us.

We all talk of the United States, but hardly do we realize the Americans have a very active citizenry and they have groups of neighborhood and civil activists which keep their municipalities on their toes. Our tendency to sit back and only complain within us day after day will not take us anywhere. Some of us even justify this apathy by making virtue of it by saying, “Oh, I am not political, I am not interested in politics.” In fact this statement itself is a political statement. Whenever we live in a society with others, everything we do is political including a decision not to be political. Aristotal stated that , “ Man is a political animal.”

It must be remembered that the truth is that only if we engage actively that we can begin to change the political agenda away from Mandir and Mandal towards better education, environment, human rights, health care and other economic reforms.

It is only a small step from here that we must all try and persuade our family members, our neighbourers to put the right persons in power, whose policies we approve. We must start asking questions to our elected candidates. We must start treating them as our representatives to serve us and not ‘Maibap’ Sarkar. We must form groups for this purpose.

If we have lost faith in our corrupt institutions, we must rediscover the faith in ourselves and do something and make a difference. I will end with a small story. President Nixan as we all know lost his Presidential post in the famous ‘Water Gate’ scandal in US. President Nixan however, did not go easily. As he found that the Public Prosecutor appointed to look into the scandle started going against Nixan, he went to the extent of firing the Public Prosecutor one day. As the news of Nixan having fired the Public Prosecutor, reached the citizens of Washington, they started driving towards the White House and stopped ahead of the White House and all that they did was that they started blowing the horns of their cars till Nixan resigned. I feel, even if we all learn how and when to blow the horns, we will certainly bring in all the required electoral reforms.

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