



Concept Note

National Seminar on "Electoral Reforms in India- Prospects & Challenges" -Organized by Amity Law School, Delhi on 23rd January, 2015.

1. Parliamentary democracy in India is a constitutional mandate and an integral part of the basic structure of the Constitution. Its success, however, depends upon the right kind of candidates being elected as people's representatives and, therefore, free and fair elections are imperative in the larger interest of any parliamentary form of government and for strengthening democracy and the rule of law.
2. While recognizing the need for wider representation from diverse geographical, social and political denominations, every individual citizen in India is today concerned with qualitative improvement in the conduct of election process. The subject of electoral reforms has been taken up by several government appointed Committees and Commissions who have given valuable suggestions and recommendations for the consideration of the government.
3. The judiciary has also played an important role in bringing about reforms in the electoral process necessitating the required amendments in the Representation of the Peoples Act, 1951. As per the direction of the Supreme Court, a new Section was incorporated in the Act making it compulsory for the candidates to submit an affidavit along with their nomination papers giving information about their educational qualifications, assets and liabilities, pending criminal cases, if any, etc.
4. In 2013, the court handed over two landmark judgments with a view to decriminalize politics. Thus, the court held that sitting MPs and MLAs will be disqualified from the day they are convicted in a criminal case by a trial court. In another case, the court declared that a person who is confined in prison or in the lawful custody of the police is not entitled to vote and, therefore, is not an elector, and as such, is not qualified to contest elections to the Parliament or the State Assembly.

However, these judicial decisions and the recommendations of the Commissions and Committees have not brought about the needed changes in the electoral process in the country as is evident from the 16th Lok Sabha election results.

5. In a recent survey, it has been found that as many as 186 of the total number of 541 MPs elected to the 16th Lok Sabha, face criminal charges. This is because the candidates with pending criminal charges against them are permitted to contest

elections despite the recommendations of the Law Commission and other Commissions as well as the judicial decisions of the Supreme Court to the contrary.

6. The thematic areas, therefore, which may be highlighted for discussion during the Seminar are listed as under :-

(i) Criminalization of politics :

The issue is whether persons involved in serious offences punishable with imprisonment for five years or more, should be disqualified during the process of their trial, provided the competent court had taken cognizance of the offence and framed charges against them as recommended by the Law Commission.

(ii) Model Code of Conduct:

There has been large number of violations of the Model Code of Conduct during the recent elections. Under the existing law, the violation of the Model Code cannot be enforced as it does not have any statutory sanction.

The issue, therefore, is whether the Model Code of Conduct should be provided with statutory sanction to give it more teeth to deal with violations.

(iii) Election Funding:

The role of money in election disturbs the level playing field between political parties and candidates and corrupts the whole economic system of the country.

The issue, therefore, is whether there is a need for state funding of the elections, and if so, the procedure, the safeguards and the precautions to be taken by the concerned state governments in funding the political parties.

(iv) Recall of Elected Representatives:

Recently in England, a new legislation viz, the Recall of MPs bill has been announced which will allow the voters to recall MPs who are given jail sentences or have been engaged in serious wrong doing.

The issue, therefore, is whether it is advisable to incorporate provisions in the Representation of Peoples Act to allow the voters to recall the MPs/MLAs who are awarded jail sentences or who are engaged in serious wrong doings, and if so, the procedure to be followed in this regard.

(v) Educational Qualifications of Elected Representatives:

Recently, there has been some debate and discussions on the educational qualifications of MPs and MLAs. At present, the Act does not prescribe any educational qualification for the members of the Parliament or the State Legislature.

The issue, therefore, is whether a minimum educational standard should be prescribed for candidates to contest elections for the Parliament or the State Legislature.

(vi) Role of RTI:

Recently, the Central Information Commission has decided that political parties are covered under the RTI Act and, as such, are required to furnish the relevant information about their candidates including funding to any person seeking such information.

The issue is whether the relevant provisions under the RTI Act should be amended to specifically include political parties under the Act.

(vii) NOTA:

In a recent judgment, the Supreme Court upheld the rights of the electors to express in secrecy the disapproval of all the candidates by pressing the NOTA BUTTON (None of the above) on the Electronic Vote Machine that he does not wish to vote any of the candidates. However, since the NOTA votes are not taken into account in the final compilation of votes, some feel that it is a frivolous exercise by the voters.

The issue is whether NOTA votes should be taken into account in the final result of the election, and if so, the procedure to be followed in such cases.

(viii) Any other issues which are relevant for improving the electoral process to achieve the goal of good governance in the country.
