

ELECTION 2014¹
A PARADIGM SHIFT IN INDIAN POLITICS

REFORMS WHICH ARE OVERDUE

The year 2014 will be remembered for the wind of change on the political scene. The BJP led by Shri Narendra Modi has won the confidence of the voters in the Lok Sabha elections and Assembly elections in Maharashtra and Haryana. The Party has not only humbled the Indian National Congress but also sidelined the regional parties. To the extent BJP is able to provide a stable Government in the Centre and in the State of Haryana it is a welcome development as the people are fed up with corrupt and non performing coalition Governments at the Centre and in the States. Notwithstanding the success of BJP, the basic problems of Indian democracy remain. They are corruption, mis-governance, lawlessness etc, misuse of power and the elections are influenced by money power, muscle power, media power and caste and community besides other corrupt practices. Political parties, by and large, have in varying degrees lost credibility. With too many political parties aspiring for power, it has become difficult to realize the aims and objects of the Constitution speedily. Viewed against this background, the results of the elections this year appear to be a gust of political wind. In the past also there have been occasional landslide victories. The problems which have manifested themselves during the last over six decades and the tensions building up on our borders with China and Pakistan and the threats to security from terrorist outfits operating in different parts of the country need to be tackled on a war footing through comprehensive reforms i.e., electoral reforms, administrative reforms, legislative reforms and judicial reforms. First and foremost we need to keep the country united and strong to safeguard the integrity of India. The Union Government and Parliament have a challenging task before them.

The problems which the country is facing today were anticipated before Independence. The defects in the existing set up and the deficiencies in the working of any democracy have also been identified from time to time and possible solutions suggested by informed persons. They include C. Rajagopalachari (1922), Acharya J.B. Kriplani (sixties), Justice Sarkaria Commission (1988), Dinesh Goswami Committee (1990), Justice V.R. Krishna Iyer Committee (1993), N.N. Vohra Committee (1997), Inderjeet Gupta Committee (1998), Shri Atal Behari Vajpayee (1998), Law Commission of India (1999) and the National Commission to Review the Working of the Constitution (2002).

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C. Rajagopalachari was a farsighted leader. He wrote in his prison diary on July 24, 1922: *“Elections and their corruption, injustice and the power and tyranny of wealth, and inefficiency of administration, will make a hell of life as soon as freedom is given to us. Men will look regretfully back to the old regime of comparative justice, and efficient, peaceful, more or less honest administration.”* He added: *“Hope lies only in universal education by which right conduct, fear of God and love will be developed among citizens from childhood.”*

In the sixties, Acharya J.B. Kriplani wrote in his article ‘Politicians of Today’: *“After Independence, the character of the politician has been undergoing an ugly transformation. Instead of sacrificing his comfort for the good of the people, he directs his attention and effort to securing power and the privileges which go with it.... His sole aim is acquisition of power, which unfortunately ensures for him a dominant position in society. He works for his party only when it ensures his advance.”*

In late seventies, Nani Palkhivala said: *“By voting ignorant professional politicians to power, we have kept a singularly gifted and enterprising nation in the ranks of the poorest on earth.”* *“In the fifties we had many eminent men in public life who were every inch gentlemen. In the sixties, we had many public figures who were every alternate inch gentlemen. Unfortunately, in the seventies, we have an unacceptably large number of politicians who are no inch gentlemen.”* (What is the position today?) *“It is not the Constitution which has failed the people but it is our chosen representatives who have failed the Constitution.”* ... *“It is high time that, having regard to the lack of character and caliber in the overwhelming majority of our politicians, we should think of making some badly needed changes in our Constitution.”*

The N.N. Vohra Committee constituted by the Government of India in 1997 noticed that the mafia was virtually running a parallel government, pushing the State apparatus into irrelevance. The report disclosed a powerful nexus between the bureaucracy and politicians with mafia gangs, smugglers and the underworld. The Election Commission too is exercised about the criminalisation of politics.

The following excerpts from a lecture delivered in 1998 by Shri Atal Behari Vajpayee on *“Whither Accountability”* indicate his concern for democracy:

“... Barring exceptions, those who get elected to these democratic institutions are neither trained, formally or informally, in law-making nor do they seem to have an inclination to develop the necessary knowledge and competence in their profession.” ... *“Sadly, serious debate has ceased to take place in our elective bodies, which have come to resemble akharas (arenas for fighting bouts) where noisy confrontation is the norm.”* ... *“the*

electoral system has been almost totally subverted by money power, muscle power, and vote bank considerations of castes and communities. As a result, although casteism and communalism may be weakening in social life, the same are being aided and abetted by the electoral process. Elections are not entirely free and fair; they are not reflecting the true will and aspirations of the people.” ... “The natural inclination of today’s MPs and MLAs is to get involved in the executive function – that too without accountability and much capability. The exceedingly high premium placed on capturing power by fair or foul means is because of the elected representatives’ conviction that power is the passport to personal prosperity.” ... “the biggest challenge that we, who have preached and practised probity in public life, face is to restore faith in the political class and rejuvenate the democratic process.”

In 1999 the Law Commission in its Report on Reform of the Electoral Laws observed: *“The proliferation of political parties – almost a mushroom growth – over the last few decades, necessitating the formation of coalitions with all their internal contradictions, pulls and pressures, has contributed to instability in the governance. This has to be checked.”*

In 2002 the National Commission to Review the Working of the Constitution (2002) noted with concern: *“There is increasing criminalisation of politics and of the electoral process. If remedies are not found and implemented speedily there might remain very little of value to salvage.” ... “There is crisis of confidence. There is crisis of leadership. Political leaders, owing to narrow partisan or sectarian interests and desire for short-time political gains, are unable even to agree upon broad common national purposes.”*

Democracy is passing through a difficult phase of institutional decline. The Political parties have failed to live up to the expectations of “We the people of India”. There is neither accountability nor transparency in their functioning. The quality of leadership by and large is far from satisfactory. There is a growing conflict of interest between the parties and people they profess to serve. Persons without any commitment to the Constitution and its aims and objects are seen in large numbers in Parliament and State Legislatures. Political parties routinely promise reforms but do not redeem the promise. The need for comprehensive reforms is obvious but the political will for carrying out the reforms through legislation has been lacking. Political parties have developed vested interests in the present system. They do not allow electoral reforms.

Let us consider some of the recommendations made by experts for reforming the system.

1. To eliminate influence of cast and community in elections, it should be made mandatory for the winning candidate to secure at least 50% + one vote of the total votes polled in a constituency.
2. To prevent undeserving candidates getting elected, there should be a provision for negative vote with a rider that if a majority of the votes polled in a constituency rejects all the contesting candidates by exercising the negative vote ("None Of The Above"), there should be a repoll with fresh candidates. Following the judgment of the Supreme Court in *Lily Thomas Vs. UOI (2013) 7 SCC 653*, the Election commission has since made a provision in the ballot paper/EVM for negative voting, without a provision for a fresh election in the constituency with fresh candidates. The present provision for NOTA is toothless.
3. A person accused of offences involving moral turpitude ought not to be allowed to contest in any election after the framing of charges by a court. If already elected, his membership shall remain suspended till he is acquitted by the Court.
4. In addition to citizenship, prescribed age and being a voter in a constituency, there should be additional conditions of eligibility for the contesting candidates. For every public office or for any employment under the State from the lowest to the highest post, certain essential qualifications and experience are prescribed; but not for membership of Parliament or of a State Legislature. For example, to be a member of a District Consumer Forum, a person is required to have ability, integrity, and standing in addition to adequate knowledge and experience in one of the specified areas vide Section 10(1)(b) of the Consumer Protection Act, 1986.
5. Regulation by law of political parties is necessary to ensure inter-party democracy, transparency and accountability. Subject to judicial review, the Election Commission may be made the regulatory body.
6. In *Indian National Congress (I) Vs. Institute of Social Welfare (2006 5 SCC 685)*, the Supreme Court has pointed out a lacuna in the Representation of the People Act, 1951 which provides for registration of political parties but does not empower the Commission to cancel the registration of a political party on the ground of violation of the undertaking given in its constitution at the time of registration that the party shall bear true faith and allegiance to the Constitution of India and to the principles of socialism, secularism, democracy

and uphold the sovereignty, unity and integrity of India. This lacuna needs to be removed.

7. Following the declaration by the Supreme Court of India, in *Association for Democratic Reforms Vs. UOI (2002) 5 SCC 294* that the voters have a right to know the assets and liabilities, criminal antecedents, if any, and the educational qualifications of every contesting candidate, the Election Commission has made it compulsory for candidates to furnish in an affidavit the said information along with their nomination papers. But there is no provision to declare the election invalid on the ground of furnishing false information in the affidavit. This needs to be rectified. The R.P. Act makes filing of a false affidavit an offence punishable with imprisonment upto six months. This is not enough. There should also be a provision making it a ground for declaring the election invalid.
8. The ceiling on election expenses prescribed by law is rarely adhered to by many candidates. At present the maximum permissible limit for a Parliamentary election is Rs.70 lakhs and for an Assembly election it is Rs. 28 lakhs, whereas the candidates are spending crores of rupees. The ceiling needs to be revised realistically.
9. The office of Minister being the highest office in a department, the incumbent should have necessary equipment, ability and experience. It is necessary to lay down appropriate conditions of eligibility for ministership. Anybody and everybody cannot be allowed to occupy such an exalted office.
10. Consistent with the basic feature of Separation of Powers, it is necessary to disqualify a Member of Parliament or of a State Legislature from holding any Executive post other than the post of Minister simultaneously.
11. It is also necessary to insert a provision in the Constitution for the lateral induction of experts in the Council of Ministers and making them ex-officio Members of Parliament to facilitate transaction of business in Parliament or a State Legislature.
12. To tackle the problem of corruption effectively, it is necessary to make a provision in the Constitution for relieving forthwith a public servant of doubtful integrity of his duties without prejudice to further proceedings which may be taken in accordance with law. The definition of "public servant" given in the Prevention of Corruption Act is wide enough to include MPs, MLAs, MLCs, in

addition to Ministers, civil servants, judges and judicial officers. Needless to mention the opinion that a public servant is of doubtful integrity should be formed by the authority at the highest level.

13. The Constitution was designed to work with a two party system. Too many political parties tend to destabilise democracy just as too many cooks spoil the broth. As Justice Sarkaria Commission noted, "a large number of splinter group with shifting loyalties and narrow interests have been thrown up rather than large size political parties with healthy traditions and broad outlook which could shoulder heavy responsibility if occasion arose. This has tended to encourage irresponsible political behaviour..." The Law Commission of India in its 170th Report has also expressed concern about the proliferation of political parties necessitating forming of coalitions with internal contradictions, pulls and pressures, all of which result in lack of good governance. It is therefore necessary to raise the norms for recognition and registration of political parties by the Election Commission in order to reduce the number of recognized political parties.
14. The norms for classification of the political parties as national parties and state parties also need revision so that not more than two or at the most three political parties would qualify for recognition as national parties. Instead of present two fold classification I would suggest a threefold classification, namely, State Parties, Multi-State Parties and National Parties.
15. In the matter of reforms which are overdue, all political parties in Parliament should extend support to the ruling party in national interest. Electoral process needs cleaning without delay.