Does India Really Need Electoral Reforms

Srinibas Pathi[*]

Abstract

India, world's largest democracy, definitely needs Electoral Reforms which of course would be part and parcel of the comprehensive reforms in administration and governance. Seven decades of working of the Constitutional systemhas had the ups and downs. But the issue is how long we shall continue to take shelter behind the pretext of being a new, developing or evolving democracy. It is high time that the stakeholders sit down and take a serious note of the gravity of the situation and decide the course of action. It may so happen that electoral reforms become the starting point of revival of the democratic ethos and building of resurgent India.

Keywords*: Electoral Reforms, Administration, Governance, Democracy, Constitution.*

The obvious answer to the quintessential question is only in the positive. India definitely requires electoral reforms. It has to be coupled with the larger issue of comprehensive reforms in administration and governance. Seven decades of working of the Constitutional system has had the usual ups and downs associated with the working of the governmental system that has borrowed extensively from a number of nations and their experiences with a view to coping with the vast majority as well as other groups of citizens based on the cardinal principle of multi-cultural mosaic called India. But the issue is how long we shall continue to take shelter behind the pretext of being a new, developing or evolving democracy. It is high time that the stakeholders sit down and take a serious note of the gravity of the situation and decide the course of action. It may so happen that electoral reforms become the starting point of revival of the democratic ethos and building of resurgent India. A lot of debates, discussions, points of view, and arguments have been there in the public domain pertaining to electoral reforms in India. Here, an attempt is put forth to discuss a few steps that can contribute to cleansing of elections in our country while paving the way for reforms in administration and governance. The crux of the whole issue is that all the stakeholders are very much aware of these aspects of elections. But the question is who would bell the cat.

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[*] Professor and Head, Department of Public Administration & Former Dean, School of Social Sciences, Mizoram University, Aizawl - 796004, Mizoram. Email: srinibaspathi@gmail.com

Re- introduction of Paper - Ballots in place of EVMs

Unfortunately, there are just two diametrically opposite views on this vital issue ofRe-introduction of Paper Ballots in place of EVMs, such as that of the ardent supporters (normally the winners) and those who oppose the use of the EVMs (normally who lose); and absolutely there is no neutral or constructive debate that goes into all the relevant issuesincluding relative merits and demerits of both the processes.

Without aspersion to anybody including the Judiciary, Media, Political Parties, Civil Society Groups, Public Authorities, et al, the following aspects need to be considered in re-introducing paper ballots in our country:

There are different generations of EVMs that have been manufactured at different points of time; by different agencies; in different countries which have shown different patterns of working and operational issues and problems.

All types of EVMs including the VVPAT-enabled EVMs are not free from mal-functioning. There are instances when at the time of mock voting and display, EVM does not open. In some other cases, EVMs stop working abruptly in the midst of voting. In other cases, the VVPAT slips show different data than corroborating the actual voting data. Some of the EVMs have problems in showing the beep sound and/or light. These are actual issues and concerns across places and different election times.

Some of the EVMs have shown erratic functioning like being heated at early hours of voting i.e. morning time when there was no sun rays.

It has been widely reported in our country as well as elsewhere in the world, scientists, students, researchers, tech-savvy persons have come out with startling revelations about the vulnerability of EVMs. All such assertions can hardly be rejected as motivated.

In 2019 General elections, reportedly more than 16 lakh EVMs have been used in India that take the total number of EVMs to more than 30 lakh out of which only ONE EVM was displayed by the ECI before the media and the conclusion was drawn that all the machines (of all the manufacturers; of different countries; of different generations, etc) are quite satisfactory and are tamper-proof. This incident defies logic, science, universal research sampling practices, common sense, etc which raises a lot more questions than it answers.

There have been reports that in the same 2019 Elections, in spite of VVPATs, while in certain Lok Sabha Constituencies, total votes counted as valid votes outnumbered the votes displayed by the VVPATs, in some others, the valid votes counted were less than the number shown by the VVPATs. In digital environment, there is absolutely no scope for such discrepancies. So, the results must always be mathematically perfect and accurate. Such a scenario raises serious concerns.

There is an argument that we are the largest democracy and such a large number of paper ballots can't be printed. This issue is not larger than the authenticity of the EVMs and their perfect working. We may use recycled and reusable papers; more voting and counting days; and more stringent security arrangements. Because, authentic electoral system can't be replaced by a quick and potentially doubtful system.

We may not accept the views of those more than 120 democracies throughout the world, who have banned, rejected, suspended, withdrawn or done away with the use of EVMs for different reasons. But the fact remains that super computers, macro servers, WAN, LAN, mobile technology and sets, etc have been subjected to wide spread hacking, tampering and manipulating tactics. Is it so safe to deduce that a micro machine likethe EVM is free from any such potential mechanical and technological threat?

Last but not least, there is an urgent need to have a re look at the entire gamut of issues, concerns, and potential vulnerability of the EVMs and once some of these concerns are found to be genuine, then we need to switch over to the paper ballot system in the interest of our democracy, propriety and fool proof electoral system.

List System / Proportional Representation in relation to Votes polled / Area-wise calculation of votes {National / State / Local}

Another very significant issue is related to the present system of calculating election results. We have adopted the *First Past the Post System*. A candidate who secures the highest number of votes in the election is declared as the winner, irrespective of his or her vote share or percentage of votes pooled in relation to the total valid votes. This situation has led to a number of issues including the following:

A candidate getting any number or percentage of votes (not necessarily the majority or more than fifty percent of valid votes) which is the highest in comparison to other candidates is declared as the winner. A number of studies have revealed that on an average the vote share of the majority of candidates in the elections range from ten p.c. to thirty-nine p.c. In the case of winning political parties, it has been below forty-two p.c. in almost all the elections.

Another issue is that the parties getting a smaller number of votes in any particular Constituency as well as in totality in all the Constituencies it contests, may get zero seats because of the first past the post system. It has been the case in all the elections held till date.

If the list system is adopted in India, then the parties will get seats proportional to their vote share and no vote will be wasted. While preparing the lists (National list for the Lok Sabha, State list for the Assembly, and Local list for any local body election, as the case may be), the parties may keep in mind reservation of seats for different categories such as general, SC, ST, women, et al. A concrete situation would be like as follows. A particular political party gets 20 p.c. of valid votes in the election. If the total number of seats in the legislature concerned is 100, then it can send 20 members to that house. Out of 20, it has the

choice of persons as per rule and prerogative. Today also, it is the party that has the final say in the selection of candidates. Such a system takes care of all the anomalies in our present system while providing for opportunities for proportional representation, utilization of each single vote cast, and giving meaning to our federal structure and eliminating the sweeping results in which a party getting 33 p.c. of votes can get 67 p.c. of seats and another party getting 30 p.c. of votes may get only 10 p.c. of seats. So far as the independent candidates are concerned, they are to be considered on the basis of their respective constituencies. If an independent candidate receives the highest percentage of valid votes in a constituency, then s/he may be declared to be the winner in that seat provided the percentage is fifty p.c. or more out of the total valid votes. And in the case of the party candidates in that constituency, their votes would be added to the total votes pooled by the parties in the entire country/ state/ area, depending upon the nature of the election.

The majoritarian trend in Indian political system coupled with a single party dominated multi-party system for a long time has been the beneficiary and the trend suits to all the winning candidates and parties who might not be comfortable with such an arrangement. But all the parties need to be reminded that calculating the total valid votes in favour of the political parties has been the legal and Constitutional practice since the first general elections as it decides the status of the parties as National, State level, Regional or Local parties. Only this calculation has not been used to elect the winning candidates in the elections. A simple amendment to the provisions of the People's Representation Act can go a long way in rectifying the system while providing for proper and appropriate representation of the will of the voters in any given election.

NOTA

The existing NOTA (None of the Above) rules may be looked into. Clear actions may be drafted regarding the fate of voting in case of sizable number of NOTA indications. Of course, NOTA can be retained in case of the paper ballots also.

One Candidate One Constituency

The curious case of one candidate contesting simultaneously from multiple Constituencies should be banned. It creates whole lot of legal, procedural, practical and political problems, besides leading to gross financial and logistics expenditure (both from the ECI and candidates / parties, etc).

Exception may be made when one holds another elected position, but has very few months to be in that post and which does not necessitate a by-election.

However, till the last date of withdrawal of nomination, a candidate, if need be, may file multiple nominations from different Constituencies. But s/he must withdraw from all other seats except one from which s/he decides to contest, failing which her/his candidature from all the Constituencies should be rejected. It will save huge public expenditure and would allow smooth functioning of our democratic institutions without complications.

Transparent Political Donations

Political donations including the nature, amount and sources of funding during election times need to be made transparent, accountable and brought under full public scrutiny.

According to section 29B of Representation of People's Act, every political party may accept any amount of contribution voluntarily offered to it by any person or company other than a Government company provided that no political party shall be eligible to accept any contribution from any foreign source defined under clause (e) of section 2 of the Foreign Contribution (Regulation) Act, 1976.

Clause 217 of Finance Bill 2018 amends Section 236 of the Finance Act, 2016 to regularise all donations made by "foreign" firms: "The proviso to the said sub-clause inserted under Finance Act 2016 states that notwithstanding the nominal value of share capital of a company exceeding one-half per cent. at the time of making contribution, such company shall not be deemed to be a foreign source, if the foreign investment is within the limit specified under the Foreign Exchange Management Act, 1999 or the rules or regulations made there under. It is proposed to bring the said amendment with effect from 5th August, 1976, the date of commencement of the Foreign Contribution (Regulation) Act, 1976, which was repealed and re-enacted as the Foreign Contribution (Regulation) Act, 2010."

Still there remain so many ifs and buts relating to political donations in India that require clarity and transparency; in the context of general funding and specially on the eve of elections in India.

Common / Public / Low cost Campaign

All types of mega rallies, processions having huge number of vehicles, and high-flying rallies by one person in different states or distant placesbe discouraged. If the parties or leaders still continue with such practices, then the actual cost (not hypothetical/ cosmetic cost such as plane/ helicopter cost, travel cost of all the persons attending such mega rallies, food, water, election material cost, electricity and public address system cost, radio-TV-internet live coverage cost, etc be calculated and be instantly added to the election expenditure of the speakers/candidates of the constituency/ constituencies covered) may be calculated and immediate action be taken as per the expenditure rules or for their violations.

The paid news in the print media be strictly monitored and action be taken as per rule. Another clandestine way of paid news is the new found way of TV coverage (both live and repeat) of election campaign trail of some leaders and parties. Another way is that on the very day of election some other events are covered all day long(the day before and on the election day) that shows some particular individuals in such a way which amounts to virtual live campaign by some during the period when no campaign should take place as per rule.

Given the growing size of the electorate (and eventual need and demand for more seats in different Legislatures in India on the basis of Census figures), election expenditure

(both open and clandestine) can rise beyond expectation. So, there is an urgent need to go for common graffiti, digital sign boards, local display of common sign boards, etc in prominent places (may be at the booth level) that can reduce costs significantly and at the same time spare defacing of private and public walls and other spaces. Such a scenario would save a lot of public and private resources (as well as conflicts and frictions) during the election campaigns and afterwards. Huge resources can be saved in the process that can be used in better ways.

Radio, TV, Newspaper and Net Campaign besides door to door campaign and small meetings, etc

The election campaign needs to be streamlined in such a manner that the judicious use of mass media including radio, tv, newspapers, internet- based campaign give a level playing field to all the parties and candidates.

Strict Monitoring of Fake news, hate speech, rumour mongering, etc

In the age of booming social media, election time comes as a free for all field when anything and everything can be passed on to the citizens in general and the voters in particular as news including fake news, rumour, hate speech, etc that require strict monitoring and control. But it also presents a paradox. It can be a double- edged weapon. In the name of monitoring, there can be undue curbs on genuine circulation of news, messages, posts, etc that could create hindrances for free flow of ideas and views.

Election Manifestos

The sky-high electoral promises without proper assurance of sources of funding, feasibility, time line of implementation, etc need to be explained by the parties releasing their manifestos. If not the ECI, the civil society groups including the mass media need to ask such questions both before and after the elections(throughout the tenure at regular intervals) in the interests of the voters. One instance would be appropriate here. In one of the elections, one of the candidates promised that if elected, s/he would distribute water, light, and AIR among the voters of the constituency in EQUAL amount! This is only the tip of the ice berg. There are thousands of such weird examples of promises made throughout the country during the elections which have been written, communicated, and distributed as part of election manifestos.

Citizens' Supervision of Elections- the MPF Model (including the Right to Recall-Madhu Sudan Das Model of 1922-23)

Last but not least, we need to amend the laws and rules of elections so as to incorporate the provisions regarding the supervision of the entire election process (including campaign, actual voting, counting, etc) by the civil society groups. This would be done in addition to and complementary to the formal observation and monitoring by the ECI conducted with the help of central and state officials.

In this context, reference may be made to the Mizoram People's Forum, a conglomerate of religious, spiritual and civil society groups which has been actively

monitoring different elections including campaigns, use of resources, ethical practices. Such efforts have contributed to cleaner electoral process in the tiny, peaceful and picturesque north eastern state of Mizoram over past few elections and have received attention of and acclamation from within the country and outside. When one state can do it, all others might try. As reported in the media, some other states have also tried similar exercises which need to be regular partof all the elections. The actual implementation and modalities may be worked out in different states on the basis of their local conditions and circumstantial factors.

Last, we need to consider the aspects of and provisions for the Right to Recall of the elected representatives. It is worth mentioning that Mr. Madhu Sudan Das, the visionary leader and the leading light contributing to the formation of the separate state of Odisha, and the then Minister in charge of Local-Self Government moved the Right to Recall Bill in the Bihar-Orissa Legislative Council, 1922-23 which is an example of one of the best practices that can ensure effective and efficient working of our elected representatives. In the post-Independent India, there have been few instances in which some organizations and citizens working for the democratic rights of the citizens have tried in similar lines, but without much headway. In the light of erratic behaviour of some of the representatives, rampant misuse of power and position, corrupt and unethical practices, etc, the Right to Recall with proper checks and balances against motivated and premeditated steps need to be considered in right earnest.

Epilogue
There would be few takers of the aforesaid ideas. These are only of academic and research significance. Given the state of affairs in our country, citizens might be discussing such issues in the twenty second century too; as these have been in public domain during more than half of the twentieth century and the first two decades of the twenty first century without much to cherish! But the silver lining is that we can still wait for another century as real democracy is not only a form of government, but also a way of life and it is so close to our heart and soul.

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