

## **Consultation Paper on Electoral Reforms**

### **1. Introduction**

1.1 The issue of electoral reforms with all its connotations has been receiving attention of the successive governments and of the Election Commission of India for some time now. The importance, nature and complexity of the issues involved in the subject have led to the engagement of both, government as well as the civil society. A cursory glance at several reports and recommendations made by various bodies concerned with the subject reveals the contentious dimensions of some of the issues. A divergence of views further underlines the need to engage in identifying the direct and indirect connection between these issues and the constitutional obligations of strengthening democracy and the rule of law. The principle of individual and collective accountability of the elected representatives and political parties in this regard is also an important concern.

The Law Commission of India (hereinafter referred to as “the Commission”) has attempted to prepare this Consultation Paper to obtain feedback from various stakeholders for enhancement of the quality of democracy, and greater participation of citizens in the process of electoral reforms and democratic process.

### **2. The Framework**

2.1 While preparing this Consultation Paper, the Commission was alive to the varied dimensions of reforms, namely, specific legislative amendments and the broader fundamental, political and constitutional principles touching upon democracy and greater effective and meaningful participation of all sections of society in the democratic process. It is significant that the current realities which impede the effective and meaningful participation of all sections of the society in the democratic process must clearly be grasped and stated. Such a statement will be akin to charting a road map for enacting suitable legislative measures. It would be useful to remember in this context that the subject or domain of electoral reforms with its direct social, political and economic connotations is not like any other subject of legislative changes. These observations are made to secure clarity and consensus on the issues identified, and to offer new insight in the context of emerging social and political developments in the country as well as to impress upon the course of deliberations and consultations to follow with the need not to traverse the process of reports and recommendations already available.

2.2 The Consultation Paper has two parts. The first part provides a brief summary of agreements, consensus and an outline of the recommendations on which, there is a serious divergence of views, and the second part contains the relevant issues. An attempt has been made to comprehend and enumerate various issues which emerge from the materials referred to above, in the perceived order of priority.

2.3 The following framework statements may be kept in view for the purpose of focus and direction:

- (a.) As stated in the Preamble to the Constitution of India, it is designed to secure to all citizens of India: Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all Fraternity, assuring the dignity of the individual and the unity and integrity of the nation.
- (b.) Sovereignty, democracy, republicanism, secularism, federalism, parliamentary governance with a multi-party system, and the principles of free and fair elections are amongst the basic features of the constitution.
- (c.) Legislative enactments and functioning of various institutions should be so designed so as to bolster the cause of the basic features of the Constitution.
- (d.) Factors which impede or obstruct the process of protection and enhancement of the basic features will have to be clearly identified and progressively eliminated.
- (e.) At a complementary level factors which enable free and effective participation of all citizens and sections of society need to be identified and supported through legislative measures.

2.4 It is equally important to bear in mind that many a times, for being in power, the democratic process is distorted by the conduct of the elements amongst political parties, elected representatives and different sections of society, who try to influence the process of governance for purely partisan ends. That is why, over a period of time, regulation of the conduct of political parties, election expenditure and corrupt practices in the conduct of elections attracted the attention of the civil society and of the Government. While some constructive steps have been taken through significant amendments to the Representation of the People Act, 1951 (hereinafter referred to as “the Act”), these reforms have failed to keep up a consistent pace with the growth and strengthening of the democratic values. Issues pertaining to election malpractices seem to come into the limelight in times of brazen and gross violations of procedures but soon fade into oblivion. Therefore, a review of the laws and procedures in light of new developments and complexities is necessary.

2.5 The main area of concern relates to what is described as ‘criminalization of politics’. Fitness of a candidate in all respects to contest elections can thus be seen as connected with enhancement of the democratic process, free and fair elections and the rule of law. The need to take the law forward on the candidate disqualification issue is thus long felt. The cleavage of opinion available by now, broadly suggests three models relating to disqualification. Under the first existing model, disqualification is triggered upon conviction. Under the second model, disqualification would be triggered when charges are framed by the court with respect to offences enumerated in Section 8 of the Act.

2.6 Through deliberations over the multitude of opinions received, the Commission has noticed that suggestions pertaining to decriminalization of politics vacillate between the above two extremes: disqualifying a candidate at the stage of framing of charges or only on final conviction. Under the present scheme of Section 8 of the Act, disqualification triggers on conviction for the offences enumerated therein, which requires proof beyond reasonable doubt. Concern has been raised that for preserving the integrity of the election process, there is need to travel beyond the domain of criminality and to evaluate the fitness of a candidate on the touchstone of certain enumerated standards. This can be called the third model. Such an approach, it is believed, would be a significant step in the direction of enabling and facilitating the infusion of new standards as regards nomination of candidates and transparency and accountability of political parties.

2.7 It has been suggested that there is a need to have an independent adjudicatory body for the purpose on the lines of a quasi-judicial tribunal, which will pronounce with respect to disqualification on the basis of petitions alleging misconduct by the candidate. Misconduct may have to be defined and enumerated. The said body may evolve its own set of parameters to determine the question of disqualification as also to curtail frivolous and motivated complaints with relaxed standards of *locus standi*.

2.8 In the third model as stated above, disqualification will follow upon the declaration by such independent adjudicatory body. Such declaration shall be with reference to standards of conduct in public life and on the basis of ‘preponderance of probability’ and not ‘proof beyond reasonable doubt’.

2.9 The process of elections shows a symbiotic relationship with the fourth estate of society - the media, which performs the crucial function of dispensation of information about candidates and about parties. It is generally felt that this symbiosis is being abused through a phenomenon popularly referred to as ‘paid news’, which is affecting the vitals of our democratic polity. It is believed that the present institutional set up lacks teeth to curtail this malpractice. There is also a view that the news channels owned or controlled by the political parties or candidates or vested interests engage in prejudiced reporting that affects free and fair election. This concern needs consideration keeping in view the right to free speech and expression in the context of election.

2.10 The election system comprises a complex web of different kind of nuances - legal, political, economic, social, religious, ethical and moral. All these nuances influence each other through close inter-linkages and inter-dependences. That is why - a subject like ‘Electoral Reforms’ necessarily requires developing a deeper understanding, diagnosis and appreciation of these inter-linkages. The nature of complexities involved makes the job of suggesting reforms quite challenging. No single aspect of the election process can be looked at in isolation from others. For example, political dimensions of elections cannot be separated from their economic or ethical dimensions and vice-versa. While appreciating the tediousness of the task, the Commission is of the view that

most, if not all, of these aspects, though interlinked, display a strong interaction with law. There are areas of these aspects where law either interacts or needs to interact with these areas more closely. There is need for law to influence, impact and, if need be, to regulate some of these areas. Law intersects methods, processes, economics, politics and ethics as well as moral dimensions of directions in the election process. Thus, the focus of the Commission is to identify those areas and aspects of different nuances of the election system where law should play a prominent role.

2.11 Hence, the Commission proposes to focus largely on issues such as disqualifications/qualifications of those seeking election, or disqualification of candidates already elected; modes, methods and quantum of funding of elections; transparency, accountability and sources of spending by political parties and their respective candidates during elections; regulations and the extent of such regulations dealing with moral and ethical conduct of political parties or candidates participating in elections.

### 3. Issues for consideration

#### 3.1 Decriminalization of Politics and Disqualification of Candidates

- (i) Whether the existing provisions (Constitutional or Statutory) relating to disqualification to contest elections need to be amended?
- (ii) Whether disqualification should be triggered upon conviction, as it exists today, or upon framing of charges by the Court or upon presentation of report by the Investigating Officer under Section 173 of the Code of Criminal Procedure, 1973?
- (iii) Whether, in addition to the existing scheme of disqualifications, a new statutory provision needs to be inserted for evaluation of fitness of a candidate by an independent body?
- (iv) If yes, what standards of public life need to be enumerated for the purpose of determining the fitness of a candidate?

#### 3.2 Need to strengthen the provisions relating to the period of disqualification

- (i) Whether the existing provisions relating to disqualification need to be amended?
- (ii) Whether certain offences, so far not included, ought to be included in law for the purpose of disqualification?
- (iii) In what manner the procedure for implementing the provisions relating to disqualification be strengthened?

#### 3.3 State funding of election expenses and regulation of conduct of Political Parties

- (i) Whether there should at all be State funding of elections of a candidate or political party?
- (ii) If yes, what should be the criteria and quantum of funding?
- (iii) In what form should such funding and its accountability be provided for?

#### 3.4 Donation

- (i) Whether the existing provisions with regard to voluntary donations to political parties need to be amended?
- (ii) If yes, what mechanism should be developed to ensure accuracy and transparency in the process of giving and taking of donations?

#### 3.5 False Affidavits

- (i) Whether filing of a false affidavit under Section 125A of the Act should be a ground for disqualification?

- (ii) If yes, what mode and mechanism needs to be provided for adjudication on the veracity of the affidavit?

### 3.6 Electronic and Print Media

- (i) How can the integrity of election be protected from being affected by the impact of 'paid news'?
- (ii) What measures need to be taken within the constitutional framework of free speech, where print or electronic media owned or controlled by political parties, candidates or vested interests, directly or indirectly, broadcast prejudiced news in such a manner so as to influence free and fair elections ?
- (iii) Whether any restriction on governmental advertisements highlighting its achievements for a period of six months prior to the date of expiry of the term of the House should be imposed?
- (iv) Whether violation of such restrictions or prohibitions be made punishable?

### 3.7 Enhancement of punishment for electoral offences

- (i) Whether the existing scheme of electoral offences and the punishments needs to be reviewed?
- (ii) If yes, what changes seem appropriate?

### 3.8 Adjudication of Election Disputes

- (i) Whether the existing scheme of adjudication of election disputes deserves a fresh examination including timely disposal of such cases?
- (ii) If yes, what kind of new arrangement should be made for speedy disposal of election disputes?

### 3.9 Other issues

- (i) Whether law should be amended to provide that a person shall not contest from more than one constituency at a time?
- (ii) Whether the official limit of the expenditure incurred on campaigning during the period of election needs to be reviewed, in light of increase in the cost/price index?
- (iii) Whether furnishing of incomplete, false or inaccurate particulars of election expenses should be a ground for disqualification?

4. Besides, the issues raised in this consultation paper, suggestions are invited from all stakeholders on any other issue which may be considered relevant to the subject of electoral reforms.

\* \* \* \* \*