

**Reforming the electoral system**  
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**The founding fathers** of the newly independent India resolved to constitute the country into a 'democratic republic'. A democracy, according to one definition, is 'the form of government in which the supreme power is vested in the people and exercised by them or by their elected agents under a free electoral system.'<sup>1</sup> The same dictionary describes republic as 'a state in which the supreme power rests in the body of citizens entitled to vote and is exercised by representatives chosen directly or indirectly by them.' Holding periodic elections may give the system of governance in a country the veneer of being a democracy but whether a society is really a democracy or not is determined by how good and how effective the electoral system is. The electoral system is therefore, the very heart of democracy.

The phenomenon most associated with the electoral system is the actual conduct of the election, but the electoral system actually covers a much wider canvas. It determines: Who can or should be allowed to vote? When should electoral rolls be prepared, revised, and how? The formation, functioning (including funding) of political parties is also an integral part of the electoral system. Included is the basic question: Who can contest an election? On what basis is the winner of the election decided is another key element.

These are some of the pre-election and during election activities. There is a separate range of post-election activities during which the outcomes of the electoral process are managed, such as post-election disputes, election petitions, formation of the government, and subsequent functioning of the government including issues such as defections. This illustrative list indicates the critical role of the electoral system in ensuring an effectively functioning democracy.

Another measure of the effectiveness of the functioning of democracy is representativeness, which is reflected in the extent to which the elected representatives really represent the will of the electorate. Going by the above criteria, how effective is our democracy? Yes, we do have elections regularly, there is a lot of activity around election time and that is what often leads to India being described as a vibrant and vigorous democracy. However, what happens in the periods between elections, particularly in some of the state legislatures and increasingly in both houses of Parliament, raises serious doubts about even the mere functioning of our governance system.

The cynicism about politics, and particularly politicians, is growing rapidly and more and more people are getting disenchanted with the political process. But putting the entire blame on the politicians for all that is wrong overlooks the fact that the political class does not exist or develop in isolation, that it emerges and evolves out of the society. While the political class is largely responsible for the current state of affairs, the society at large, of which all of us are a part, cannot escape responsibility.

To be fair to politicians, much of the behaviour of the political class can be explained as a logical response to the broader social system within which they have to operate. And the

electoral system is a major and immediate part of that broader social system. Consequently, one way to change the behaviour of the political class would be to change the system in which they have to operate and to which they have to respond. That is why the electoral system is the key to effective democracy and needs close attention.

**The current election process** is governed by the Representation of the People Act 1951. This act was enacted in the afterglow of independence by a group of principled and high-minded people. In their deliberations on the future of the nation, they were influenced by their own idealism and possibly assumed that people with similar ideals would lead the country in the years to come. The Indian genius has certainly evolved over the last 50-plus years, and at least in some ways the sociopolitical milieu of India has changed almost beyond recognition. Some of the assumptions and expectations of the founding fathers of the nation are therefore, and unfortunately, not valid today.

As society and polity evolve, one would expect laws to be modified to respond to the changing circumstances. Although there have been piecemeal and sporadic attempts at tinkering with the electoral system from time to time over the years, particularly when it suited the party in power, it has, by and large, continued as it was envisaged in the RP Act of 1951. There have been a large number of reports and recommendations on what needs to be done to improve the system. Some significant examples are the Indrajit Gupta Report, the Dinesh Goswami Report, the 170th Report of the Law Commission of India on Electoral Reforms, and the Recommendations of the National Commission to Review the Working of the Constitution (NCRWC) submitted in March 2002. It is noteworthy that hardly any of the recommendations of these learned and painstakingly prepared reports have been implemented.

The general disaffection with the political process seemed to have reached disturbing levels around 1998-99. One of its major causes was the increasing criminalisation of political processes. From the earlier situation where politicians took the help of criminal elements to win elections, using unaccounted money and muscle power provided by them, the situation changed to where criminals themselves started contesting elections and entering the state legislatures and Parliament.

Public awareness about the infirmities of the electoral process, particularly criminalisation, increased. Mass media, both print and audio visual, contributed significantly to heightening this awareness by highlighting the weaknesses of the electoral system. The Law Commission's report submitted in May 1999 was one of the high points of this process. Several civil society groups in different parts of the country initiated activities at improving the electoral processes, particularly reducing the impact of criminality.

**The major roadblock in reforming** the electoral process are the politicians who have learnt to 'use' the existing electoral system to their advantage and therefore do not want it to change. This roadblock is almost fatal because it is the politicians themselves who are responsible for changing the laws in the country, including those that govern the electoral process. Two instances of the behaviour of the political class with a gap of 27 years, one in 1975 and the other in 2002, are illustrative of this quagmire.

The best known example of the obduracy of the political establishment till last year was adding Explanation 1 to subsection (1) of Section 77 of the RP Act, 1951. This explanation enabled unaccounted money to be brought into elections by maintaining that expenditure incurred or authorised by anyone other than the candidate, including the political party, and friends and supporters of the candidates, will not be counted as election expenditure of the candidate.

**When the original Section 77** which did not have this explanation came before the Supreme Court for consideration in 1975, the court held that ‘a party candidate does not stand apart from his political party... The same proposition must also hold good in case of expenditure incurred by friends and supporters directly in connection with the election of the candidate. *This is the only reasonable interpretation* of the provision which would carry out its object and intendment and suppress the mischief and advance the remedy by purifying our election process and ridding it of the pernicious and baneful influence of big money’ (italics added).

The political establishment of course did not approve of this. An ordinance was issued soon after the above judgment, inserting Explanation 1 in subsection (1) of Section 77 which clarified that ‘any expenditure incurred or authorised in connection with the election of a candidate by a political party or by any other association or body of persons or by any individual (other than the candidate or his election agent) shall not be deemed to be, and shall not ever be deemed to have been, expenditure in connection with the election incurred or authorised by the candidate or by his election agent for the purpose of this section...’ In effect the ordinance, which was subsequently passed as an amendment to the RP Act, completely nullified the object and purpose of the Supreme Court judgment and underlying Section 77 (1) read with Section 123 (6) of the Act.

**The Supreme Court** has reiterated its stand in several subsequent judgments and has also said that since laws have to be made and amended by the Parliament, and the courts can only interpret and implement them, it is for the Parliament to correct this situation by removing Explanation 1. But politicians in Parliament have not considered it worthwhile to rescind the amendment for 27 years now. Why? Because it is convenient and comfortable for the politicians to have a system which can be manipulated. Big money is brought into the elections under the garb of Explanation 1 which, in the opinion of the Supreme Court, has removed even the ‘fig leaf to hide the reality’ of the impact of big money on the outcome of elections. Big money is contributed by criminal elements who look for favours and paybacks in kind from the politicians after they get elected. Politicians are an active and willing party to the arrangement.

There was an almost exact replay of the above situation last year. An activist group, the Association for Democratic Reforms, filed a public interest litigation in the Delhi High Court in December 1999 requesting the court to direct the Election Commission to collect information about criminal backgrounds of candidates contesting elections to Parliament and the state assemblies, and to make this information available to voters to enable them to make an informed choice while voting. The Delhi High Court, in its judgement in November 2000, directed the Election Commission to collect, and make this information available to voters, along with the assets possessed by the candidates, his or her spouse and dependent relations, and educational qualifications of the candidate.

Though the direction of the Delhi High Court was only to the Election Commission, the Government of India chose to appeal against the High Court judgment. Political parties such as the Congress and the Samata Party became intervenors to the petition. The Supreme Court pronounced its judgment on 2 May 2002, substantially upholding the Delhi High Court judgement and directing the Election Commission to collect the following information from candidates contesting elections to state assemblies and Parliament in an affidavit to accompany the nomination form: details of past criminal cases – whether convicted, acquitted, or discharged; any pending criminal cases; assets and liabilities (immovable, movable, bank balances, etc.) of the candidate and his/her spouse and dependants; and educational qualifications of the candidate.

**When the Election Commission** decided to implement the above judgement by issuing an order on 28 June 2002, the entire political class was up in arms. In an unprecedented show of unanimity, 21 political parties attended an all-party meeting on 8 July 2002, and decided that implementation of the Supreme Court judgment could not be allowed and that the RP Act should be amended to nullify it. The Government of India acted with supreme efficiency and produced a draft bill for amending the RP Act in 7 days. The bill, however, could not be introduced as the functioning of the Parliament was continually disrupted due to what came to be referred as the petrol pump scam, and the Parliament was adjourned.

This did not deter the politicians. The Cabinet decided to get an ordinance issued by the President to prevent implementation of the SC judgment. A group of 26 people from different parts of the country representing more than 20 civil society organisations met the President on 16 August 2002, and urged him to return the ordinance without signing it because some of its provisions were violative of the Constitution. The President did return the ordinance to the Cabinet seeking some clarifications. The Cabinet, however, sent the ordinance back to the President without giving clarifications or making any modifications. In keeping with tradition, the President signed the ordinance on 24 August 2002.

**Three PILs have been filed** in the Supreme Court challenging the ordinance. At the time of writing, final hearings have been completed and the judgment is awaited. It is worth noting, however, that the ordinance does require a candidate for election to Parliament or state legislature to file an affidavit with his/her nomination paper giving details of criminal convictions and pending criminal cases in which charges have been framed by a court of law. The last requirement, of disclosing pending criminal cases, is a step forward because the previous laws provided for disqualification from contesting elections only if a candidate had been finally convicted of a criminal offence with imprisonment of two years or more.

Given the way the judicial system operates, final convictions of criminal politicians are almost impossible and therefore the existing law was really not effective. And disclosure of pending criminal cases was what the Association for Democratic Reforms had originally set out to seek. However, several other useful provisions, such as disclosure of financial assets and liabilities, which were stipulated by the Supreme Court have been removed. The ordinance also prohibits asking for any information other than what is allowed under the ordinance that goes against the voters' right to information which is needed to make an informed choice while voting.

The above two examples are ample proof, if proof is needed, that the political establishment, left to itself, will not only not initiate any progressive changes in the electoral system but will resist any such attempts with all its might. The dilemma therefore becomes: How to get the politicians to change the system, which will be better for society but will create significant uncertainties for them?

**It seems that the politicians** will agree to changes in the electoral system either when they have no other choice or when they are convinced that they will actually lose votes at election time if such changes are not made. The fact that the ordinance to prevent the implementation of the Supreme Court judgment was issued at lightening speed whereas a bill to make very modest changes in the electoral laws including funding of elections, introduced in March 2002,<sup>2</sup> is languishing and is unlikely to see the light of day in a hurry, also point to the same.

Public support for electoral reforms is widespread. A survey by a leading newspaper soon after the Delhi High Court judgment in November 2000, which asked the question, 'Will providing criminal records of aspiring MPs check criminalization of politics?' had 79% of the respondents saying 'Yes'.<sup>3</sup> The response of civil society groups and the media in the aftermath of the Supreme Court judgment was similar.

**A large number of civil society groups** came together in a loose federation under the label National Coalition for Electoral Reforms, and took several initiatives including requesting the President to return the ordinance without signing it. The response went beyond the national borders of the country. An Internet based appeal to implement the Supreme Court judgment was signed by more than 61,000 people which included a large number of NRIs. People from several walks of life sent in messages expressing their support for reforming the electoral system.

One of the main arguments put forth by politicians against implementation of the Supreme Court judgment of 2 May 2002, has been that the Supreme Court and the Election Commission have transgressed into the legislative arena. In this context, it is important to remember that for a democracy to function effectively, each organ of the state has to perform its assigned role properly. Since it is impractical to expect all the constituents of a multiple-component system to function optimally all the time, it is necessary to provide checks and balances so that some components compensate for the suboptimal performance of others to ensure that the democratic system continues to perform at acceptable and progressively enhanced levels.

Using this principle of checks and balances, diverse approaches to electoral reforms have been followed by different civil society groups. These include seeking judicial intervention through public interest litigations for various purposes, using the media to create awareness of the importance of the electoral processes to democratic functioning in the country, and using statutory organs of the state such as the Election Commission and the Law Commission that are somewhat free of political influence due to statutory provisions.

The above approaches have often been used together. The main reason for using them together is that it results in more effective outcomes due to synergy. There has also been

networking among several groups leading to concerted campaigns and actions, once again with enhanced results.

**It is clear** that making even small and incremental changes in the electoral system requires long and sustained effort on the part of civil society, an effort that will invariably be obstructed by the entire political spectrum. But unless civil society decides to fulfil its responsibility to ensure good governance for itself, we may have to continue being in our current state which is best explained by the old Greek saying, ‘The price good men will pay for not getting involved is to be governed by bad men.’ Just as war is too important to be left to the generals, so is politics too important to be left only to the politicians. Concerned citizens must take an active interest in politics without being politicians.

So, what does the stocktaking reveal? The electoral system needs to be reformed, and urgently. It will not be easy to do that as the politicians will resist any change. The civil society in its myriad manifestations will have to work in a sustained manner to achieve any worthwhile change.

**Footnotes:**

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1. The Random House Dictionary of the English Language, 1976.
2. The Election and Other Related Laws (Amendment) Bill, 2002 (Bill No. 23 of 2002).
3. The Times of India, 3 November 2002.

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