

February 24, 2011

Mr. VK Bhasin
Secretary - Legislative Department
Ministry of Law and Justice
Government of India

Dear Mr. Bhasin,

I write this as a follow up of our discussion yesterday at the meeting of the Core Committee on Electoral Reforms. I enclose herewith the DRAFT summary of discussions based on all the notes available with us from the regional consultations held at Bhopal, Kolkata, Mumbai, and Lucknow.

We are yet to incorporate any discussions held at Chandigarh and Bangalore. I have requested Committee Member Mr. Mohan Jain to furnish us the copy of the notes from Chandigarh. For Bangalore, we have made notes of the plenary sessions which can be incorporated into the enclosed draft.

If you are able to share with us any of the notes of discussions that may have become available to you, we can include those in the note and make it more complete. Please do let us know if you would like us to do this. Alternatively, you could have someone in your office work on the summary of discussions and share the final draft with the Core Committee.

Yours sincerely,



CV Madhukar

Member
Core Committee on Electoral Reforms

Copy:
Mr. Vivek Tankha
Chairman, Core Committee on Electoral Reforms

Secy. L.D. Office
सं. सं./Dy. No. 703-6
दिनांक/Date 28/2/2011.

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CORE COMMITTEE ON ELECTORAL REFORMS

SUMMARY OF RECOMMENDATIONS MADE IN REGIONAL CONSULTATIONS

Ministry of Law and Justice, Government of India
Election Commission of India

New Delhi

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Approach to Regional Consultations

The Ministry of Law and Justice, Government of India, constituted a Core Committee on Electoral Reforms in partnership with the Election Commission of India. The main purpose of the Committee was to recommend to the government concrete ways in which our election system can be strengthened. The Committee was expected to examine the current issues in our election system and make recommendations, *inter alia*, on the following issues: Criminalisation of Politics, Funding of Elections, Conduct and Better Management of Elections, Regulation of Political Parties, Audit and Finances of Political Parties, and Review of Anti-Defection Law.

As part of the process of understanding the current issues and suggesting possible ways to strengthen the election system in India, the Core Committee decided to hold Regional Consultations across the country. Accordingly, Regional Consultations were held in 7 cities in the country covering all states.

During the regional consultations a wide range of stakeholders participated in the proceedings and shared their views and suggestions. The consultations have had the benefit of opinions of political leaders, Government servants, legal experts, NGOs, scholars, academics, journalists, individuals, and other stakeholders.

As a culmination of the process of consultations, the Committee proposes to hold a national consultation in New Delhi. At the national consultation, it is proposed to share the suggestions that have come up at the regional consultations. The process is aimed at developing a set of actionable recommendations. The objective of these recommendations would be to provide the basis of developing legislative and other proposals which can then be taken forward.

This note covers recommendations made by invited speakers and members of the general public at the first four regional consultations in Bhopal, Kolkata, Mumbai, and Lucknow from December 2010 to February 2011.

It has been observed in these consultations that many people are passionate and intent on seeing important changes in the electoral process to strengthen democracy. This note is only a small but important step in developing a national consensus on this very

important issue. It is hoped that many more stakeholders will be able to provide inputs to the Ministry of Law and Justice, Government of India both on the website and in the form of written representations. The work of this Committee will be enriched by such inputs, and the Committee looks forward to wide participation in the weeks ahead from experts and ordinary citizens alike. Comments and suggestions are welcome and may be sent via email to electoral-reforms@nic.in or by post to:

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Summary of Recommendations

1st Regional Consultation on Electoral Reforms

Bhopal, Madhya Pradesh

(Covering Madhya Pradesh, Chhattisgarh, and Jharkhand)

12th December 2010

1. Introduction

The 1st Regional Consultation on Electoral Reforms was held on 12th December, 2010 in Bhopal, Madhya Pradesh. Sessions were held at the RCVN Naronha Administrative Services Academy and at the Madhya Pradesh Vidhan Sabha.

Discussion was based on the Background Paper on Electoral Reforms, and covered the following broad categories: Criminalisation of Politics, Financing of Elections, Conduct and Better Management of Elections, Regulating Political Parties, Adjudication of Election Disputes, and Review of Anti-Defection Law. Recommendations made by Dr. S. Y. Quraishi, Chief Election Commissioner of India, and Dr. M. Veerappa Moily, Hon'ble Union Minister of Law and Justice are not included below as they are present in the Background Paper.

The following is a summary of recommendations made at the Consultation.

2. Criminalisation of Politics

2.1 Disclosure of criminal antecedents by candidates

Currently, Rule 4A of the Conduct of Election Rules, 1961, prescribes that each candidate must file an affidavit (Form 26 appended to Conduct of Election Rules, 1961) regarding (i) cases, if any, in which the candidate has been accused of any offence punishable with imprisonment for two years or more in a pending case in which charges have been framed by the court, and (ii) cases of conviction for an offence other than any of the offences mentioned in Section 8 of Representation of the People Act, 1951, and sentenced to imprisonment for one year or more. In addition to this, pursuant to the order of the Supreme Court the Election Commission on March 27, 2003, has issued an order that candidates must file an additional affidavit stating information relating to all pending cases in which cognizance has been taken by a Court.

It was suggested that information on criminal cases pending against candidates should be made into a publically available register.

2.2 Ban on candidates with criminal cases pending against them

Several speakers suggested that candidates with serious criminal cases pending against them, warranting 5 years or more imprisonment, should be banned for the duration of the trial against them.

It was also suggested that candidates who have been convicted of any serious crime (such as murder, rape, dacoity) should be barred from contesting elections for life.

One speaker expressed his reservations that the abovementioned provisions would enable a sitting government to sideline rivals by framing false charges against them.

2.3 Negative/neutral voting

There should be a provision allowing for negative voting, by which voters are able to reject all candidates if none are found satisfactory.

3. Financing of Elections / Auditing of Finances of Political Parties

Several speakers mentioned that current limits on election spending were not being observed and that measures to correct this were necessary. The prevalence of "black money" in election funding was noted.

3.1 Political parties should face the same level of income tax scrutiny as individuals, with requirements of clearly establishing all income sources.

3.2 Finances of political parties should be subject to a yearly audit, results of which should be made public.

3.3 Political donations should be made only by cheque. Cash transactions should not be allowed.

3.4 State Funding of Elections

It was suggested by two speakers that state funding of elections be implemented through the Election Commission.

4. Conduct and Better Management of Elections

4.1 Voter rolls

In the current system, the Election Commission prepares electoral rolls for Parliamentary and Assembly constituencies, and the State Election Commissions prepare electoral rolls for local elections. While some states have coordinated their electoral rolls with those prepared by the Election Commission, there are still some states that significantly modify them.

It was suggested by several speakers that common electoral rolls between the Election Commission of India and state election commissions should be implemented without delay. It was further suggested that electoral rolls be placed in the public domain, such as through the website of the Election Commission.

4.2 Streamlined elections

Several speakers suggested Parliamentary, Assembly, and local elections should be conducted at the same time to minimize election related expenditure and fatigue of election officers. It was suggested that such a measure would allow governments to base decisions less on political considerations and more on sound policy analysis.

4.3 Right of recall

It was suggested that a mechanism should be set up by which voters may recall legislators who are not seen to be performing their work satisfactorily.

4.4 Electronic Voting Machines (EVMs)

It was suggested that EVMs should have a paper trail to prevent misuse or tampering. Furthermore, it was suggested that electronic surveillance of EVMs through booth cameras should be in place to deter any misuse.

4.5 Misconduct during elections

Undue influence and bribery at elections are electoral offences under Sections 171B and 171C, respectively, of the IPC. These offences are non-cognizable offences, with punishment provision of one year's imprisonment, or fine, or both. Under Section 171G, publishing a false statement in connection with an election with intent to affect the result of the election is only punishable with a fine. Section 171H provides that incurring or authorizing expenditure for promoting the election prospects of a candidate is an offence. However, punishment for an offence under this Section is a small fine of Rs 500.

It was suggested by several speakers that punishments for electoral offences should be enhanced. One speaker suggested that candidates found guilty of electoral offences should be banned for life.

4.6 Religion and caste based parties

It was suggested that parties based on religion or caste affiliation should be banned.

4.7 Requirements for legislators

It was suggested by members of the public that there should be minimum literacy and education requirements for candidacy to state legislatures and to Parliament.

4.8 Advertisements

4.8.1 Political advertisements and advertisements from the government should be banned six months prior to elections.

4.9 Role of the Media

4.9.1 The media should be banned from publishing appeals to vote for a particular candidate.

4.9.2 There should be a mandated separation between political news and the editorial board in any publication.

4.9.3 Opinion polls should be banned.

4.9.4 Media should be subject to a Broadcasting Code, set forth by the Election Commission, during elections

4.10 Structural Changes

Several major structural changes in the electoral process were suggested by speakers. These include the following:

4.10.1 There should be direct election of Chief Ministers and the Prime Minister.

4.10.2 The Rajya Sabha should be abolished and its members absorbed by the Lok Sabha so that they are directly accountable to the public.

4.10.3 Voting should be made compulsory.

4.10.4 Candidates should have to secure a majority (more than 50%) of votes to win any election.

5. Regulating Political Parties

It was suggested that there some form of inner-party democracy should be mandated by the Election Commission.

6. Adjudication of Election Disputes

Disputes relating to elections of the State Legislature and Union Legislature are adjudicated upon exclusively by the High Courts before whom election petitions under Section 80 and 80-A of the Representation of Peoples Act, 1951, are filed.

Sections 86(6) and 86(7) of the Representation of the People Act, 1951, provide that the High Court shall make an endeavour to dispose of an election petition within six months from its presentation and also as far as practicably possible conduct proceedings of an election petition on a day to day basis.

In practice, however, cases involving election petitions are rarely resolved in a timely manner. According to the report "Ethics in Governance" of the Second Administrative Reforms Commission, "such petitions remain pending for years and

in the meanwhile, even the full term of the house expires thus rendering the election petition infructuous.

6.1 It was suggested that the Chief Electoral Officer of each state should be endowed with the power to resolve election disputes

6.2. Defeated candidates should be brought within the purview of election petitions.

7. Anti-Defection Law

Currently the issue of disqualification of members of Parliament or a State Legislature is decided by the Speaker or Chairman of the concerned House. Aside from those concerning the Tenth Schedule all other matters of post-election disqualification are decided by the President/Governor, on the advice of the Election Commission.

It was suggested that since speakers of assemblies are partisan, they should not be involved with issues of disqualification for violation of the Anti-Defection law.

Summary of Recommendations

2nd Regional Consultation on Electoral Reforms

Kolkata, West Bengal

(Covering West Bengal, Bihar, and Odisha)

9th January 2011

1. Introduction

The 2nd Regional Consultation on Electoral Reforms was held on 9th January, 2011 in Kolkata, West Bengal. Sessions were held at the West Bengal National University of Juridical Sciences.

Discussion was based on the Background Paper on Electoral Reforms, and covered the following broad categories: Criminalisation of Politics, Financing of Elections, Conduct and Better Management of Elections, Regulating Political Parties, Adjudication of Election Disputes, and Review of Anti-Defection Law.

The following is a summary of recommendations made at the Consultation. Recommendations made by Dr. S. Y. Quraishi, Chief Election Commissioner of India, and M. Veerappa Moily, Minister of Law and Justice are not included below as they are present in the Background Paper.

2. Criminalisation of Politics

2.1 Disclosure of criminal antecedents by candidates

Currently, Rule 4A of the Conduct of Election Rules, 1961, prescribes that each candidate must file an affidavit (Form 26 appended to Conduct of Election Rules, 1961) regarding (i) cases, if any, in which the candidate has been accused of any offence punishable with imprisonment for two years or more in a pending case in which charges have been framed by the court, and (ii) cases of conviction for an offence other than any of the offences mentioned in Section 8 of Representation of the People Act, 1951, and sentenced to imprisonment for one year or more. In addition to this, pursuant to the order of the Supreme Court the Election Commission on March 27, 2003, has issued an order that candidates must file an additional affidavit stating information relating to all pending cases in which cognizance has been taken by a Court.

It was suggested that more stringent punishments should be provided for lack of disclosure of criminal antecedents by candidates to deter any underreporting of such antecedents.

2.2 Ban on candidates with criminal cases pending against them

2.2.1 It was suggested by several speakers that any candidate chargesheeted by an independent court shall not be eligible to stand for elections for the duration of trial. It was suggested by another speaker that only candidates with serious criminal cases pending against them, warranting 5 years or more imprisonment, should be banned for the duration of the trial against them.

Two speakers dissented, suggesting that without reform of the judicial system and a system of speedy justice, provisions to disqualify candidates without conviction would be unjust.

2.3.1 Criminal cases against politicians should be expedited through a special tribunal or fast track court

2.3.2 Parties should be banned from giving tickets to convicted criminals and subsequently held accountable if they do.

2.3 Negative/neutral voting

A speaker and several members of the public stated that there should be a provision allowing for negative voting, by which voters are able to reject all candidates if none are found satisfactory.

Two speakers dissented to this view, suggesting that neutral or negative voting is not currently desirable or easily implementable.

3. Financing of Elections / Auditing of Finances of Political Parties

Several speakers mentioned that current limits on election spending were not being observed and that measures to correct this were necessary. The prevalence of "black money" in election funding was noted.

3.1 There should be strict rules regulating disclosure of sources of funds received by political parties.

3.2 The current ceiling on election expenses should either be raised significantly or be abolished.

3.3 Donations and expenses by political parties over Rs. 20,000 should only be by cheque. Cash transactions should not be allowed.

3.4 Corporate Funding of Elections

It was suggested by one speaker that measures should be taken to either (1) ban corporate funding of parties strictly, or (2) encourage corporate funding while ensuring full disclosure through tax incentives or some other mechanism.

3.5 State Funding of Elections

It was suggested by several speakers that state funding of elections be implemented. One speaker suggested that the Election Commission be given the responsibility of overseeing the distribution and use of such funds.

However, several other speakers dissented to this view and described state funding of elections as neither feasible nor desirable.

4. Conduct and Better Management of Elections

4.1 Voter rolls

In the current system, the Election Commission prepares electoral rolls for Parliamentary and Assembly constituencies, and the State Election Commissions prepare electoral rolls for local elections. While some states have coordinated their electoral rolls with those prepared by the Election Commission, there are still some states that significantly modify them.

4.1.1 It was suggested by several speakers that common electoral rolls between the Election Commission of India and state election commissions should be implemented without delay. It was further suggested that electoral rolls be placed in the public domain, such as through the website of the Election Commission.

4.1.2 Lifetime unique voter identification numbers should be issued to voters.