

ANNUAL CONFERENCE ON THE APPLICATION OF ELECTION LAWS (P-998)

November 5&6, 2016

PROGRAMME REPORT

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Day I

Session I

Theme - Free and Fair Elections - Constitutional and Statutory Bases - Evolution through Precedents

Speaker - Hon'ble Justice PV Reddi

Panel- Mr. TS Krishnamurthy, Dr. SY Quraishi, Mr. VS Sampath and Dr. Jayaprakash Narayan

The conference commenced with the introductory address by Justice G. Raghuram, Director NJA. In his address, Justice Raghuram set out the thematic context of the conference. He dwelt on the mission of NJA in organizing conferences to sensitise judges on crucial and relevant themes and the constant effort of the institution to provide a forum to judges to interact, share their expertise and experience and to develop a common body of knowledge on issues of judicial importance. The Director then introduced the speakers of the conference and welcomed them.

The speaker for this session- Justice PV Reddi discussed the constitutional origins of the right to vote. The speaker discussed the issue of whether the right to vote was a statutory right or did this right emerge from the Constitution of India. The judicial pronouncements on this issue were discussed. The speaker also highlighted the judicial contribution to facilitate the conduct of free and fair elections in India and the landmark rulings that changed the course of election law. The speaker then stressed that two aspects are crucial in the conduct of free and fair elections - the legal aspect and the management aspect of free and fair elections. Various factors come into play in elections like, religion, caste etc. The management of all the factors in elections is a crucial element of the conduct of free and fair elections. Another important aspect highlighted as a management aspect of elections is the registration of voters. The speaker also discussed the issue of compulsory voting and stressed that it would not be possible to compulsorily enforce voting as elections must be free and voters have a right to abstain from voting. The discussions concluded with an analysis of whether

the situation in the political arena has improved. It was opined that the several problems still remain. The increased criminalization of politics and its adverse impact on governance was highlighted as a major concern. Further, the success of NOTA has been minimal and the voters are not well informed about this right to choose none of the candidates in an election. The increased role of money power in elections is also a cause for concern.

Session II

Theme - The Election Commission - Supervisory and Regulatory Jurisdiction- Scope and Limits

Speaker - Mr. TS Krishnamurthy

Chair- Hon'ble Justice PV Reddi

Panel- Dr. SY Quraishi, Mr. VS Sampath and Dr. Jayaprakash Narayan

In this session, the speaker discussed the position of the Election Commission of India in the Constitutional setup in India, and the role it plays in the conduct of free and fair elections in the country. The position of the Election commission vis-à-vis the other wings of the State, the control of the ECI by and the relation with the government was discussed. The speaker critically analysed the composition of the ECI and opined that unanimity of opinion between the Chief Election Commissioner and the Election Commissioners is a crucial factor to the effective functioning of the ECI. For this purpose the current composition of 3 is adequate. If the number is increased then unanimity in decision making would be a problem. The autonomy of the ECI was highlighted as an important feature of election law. The speaker stated that the functioning of the ECI is successful as the executive and the judicial involvement in the conduct of elections is minimal. Another issue discussed was the regulation of the use of State machinery in election campaigns and the case of Subramaniam Swamy vs State was discussed. The speaker highlighted the issue that ECI does not have any penal powers and that is a challenge in the functioning of the ECI. The success of the ECI is also due to the support from the Supreme Court and the High Courts as 90% of the Election Commission's actions are approved by the courts. The areas of concern identified in the discussion are -

- The lacuna in the law relating to conduct of elections is that the ECI does not have powers to deregister political parties

- The Model Code of Conduct does not have any statutory backing and is legally unenforceable.
- Control of distribution of freebies is a challenge
- Regulation of political parties is a challenge. The number of political parties is increasing and there is no mechanism to regulate non- contesting parties as they play a negative role in the state level elections.
- Due to the varied stages of elections – Central, State, local government etc. there is a problem of too many elections and less governance
- The anti-defection law has had the negative impact of silencing independent opinion. Elected representatives are forced to toe the party line and this has had a severe impact on the parliamentary debate. It was suggested that the application of the 10th schedule be limited to issues of government existence and not be applied to the legislative function of the members of the legislature.
- The ECI is not vested with powers to take disciplinary action.

Session III

Theme - Six and a Half Decades of Electoral Reform - Event Manager to Effective Monitor

Speaker - Dr. SY Quraishi

Chair- Hon'ble Justice PV Reddi

Panel- Mr. TS Krishnamurthy, Mr. VS Sampath and Dr. Jayaprakash Narayan

In this session, the speaker discussed the reforms undertaken in the conduct of elections in India. The speaker commenced the discussions by outlining the unique nature of the indian election system and the significance of periodic and credible elections for the sustenance of democracy in India. The role of the Election Commission of India in the conduct of free and fair elections in extraordinary circumstances was highlighted. The importance of the Election Commission and the powers exercised by the Election Commission was discussed. The speaker was of the view that free and fair elections were considered to be so important that the Constituent Assembly even considered treating the independence of elections as a Fundamental Right of the citizens. The founding fathers had great wisdom to provide an institutional design and

framework to the Election Commission to be an independent body. The speaker then discussed the constitutional provisions relating to the conduct of elections in India and the Election Commission viz. Articles 324 and 329. The speaker highlighted the fact that judicial support has been instrumental in enabling the Election Commission in conducting free and fair elections. In *MS Gill vs Chief Election Commissioner [AIR1978SC851]* the Supreme Court has stated that the Chief Election Commissioner must exercise his function independently in all matters relating to the conduct of elections and see that the election process is completed in a free and fair manner. The speaker then stated that the Indian democracy is unique in several aspects. Firstly, it has adopted universal adult franchise from the inception of independent India and secondly, it has a robust election mechanism with the Election Commission acting as a neutral umpire. Some of the features of the electoral system in India pointed out by the speaker are –

- Apart from its small Secretariat, the Election Commission has no independent electoral machinery in the field. Temporary seconding of state/central government staff is done to provide the manpower to conduct the elections.
- The Model Code of Conduct is a unique document in India which does not have statutory backing and is not legally enforceable but is accepted by all the political parties.

The major reforms made in the electoral system which were discussed are –

- Transition from ballot system to electronic system
- Measures undertaken to build voter awareness
- Monitoring mechanism for election expenditure
- Computerization of electoral rolls and streamlining the process of voter registration

In the discussion the reform measures that were advocated for future included the creation of a National Electoral Database for better election management and the incorporation of modern technology to facilitate the electoral processes

The major concerns expressed are –

- Increasing apathy of the voters towards the political system and the election process
- Role played by money power in the elections and the bribery of voters
- Criminalization of politics
- Dependence on other agencies including the government and the police for the facilitation of the conduct of elections
- Paid news which influences voters in the election

Session IV

Theme - Criminalisation of Politics -Implications for Democracy and Governance

Speaker - Dr. Jayaprakash Narayan

Chair- Hon'ble Justice PV Reddi

Panel- Mr. TS Krishnamurthy, Dr. SY Quraishi and Mr. VS Sampath

In this session the speaker examined the growing trend of involvement of criminal elements or persons with criminal backgrounds in politics. The speaker stated that criminalization is not a problem but rather a symptom of a greater crisis in the Indian polity. In order to understand this phenomenon and to address it effectively, the root causes need to be understood. The first issue dwelt on in the discussion was why a criminal is respected rather than reviled. The viewpoints expressed were that the cause for this is a self-serving purpose as people seek to benefit from protection given by criminal elements. Most of the common man's problems are taken care of by criminals and the state fails to handle the needs of society. Another view expressed is that people fear criminals and criminals do not fear law so people tend to respect such persons. Also the bargaining power of criminals in terms of muscle power and money power is a factor that makes people respect them. The major issue is that there is a need of the people that is not addressed by the government and the state. The normal due process is not working for the common man. The second issue that was discussed was why criminals are joining politics. It was opined that criminals join politics to legitimize the power wielded by them and to take the benefit of the State's protection and immunity. It also adds a cloak of respectability to them. The third issue discussed was why do

respected political parties and leaders accept and nominate criminals as candidates. It was opined that the political parties associate with the criminal elements to take the benefit of their popularity with the people and to garner the vote of the people and to maximize the chances of getting elected. Also, the parties associate with these persons to procure funding for the elections. Fourthly, why do people vote for criminal elements? The views expressed were that the people believe that the criminal will address their needs as they have in the past and hence vote for them. The criminals are found to be more accessible to the people in terms of approachability to address their problems and this makes them a favourable option. Another view expressed was that the lack of options in terms of the candidates also plays a role in the entry of criminal elements in politics. The problem of criminalization is a symptom of the failure of the State in addressing the needs of the people. One of the measures recommended by the speaker to tackle criminalization of politics is to isolate crime investigation and prosecution from political influence to preserve the independence of criminal investigation.

Day II

Session V

Theme - Pervasive Role of Money Power in Election & Measures taken by Election Commission of India

Speaker - Mr. VS Sampath

Panel- Dr. SY Quraishi and Dr. Jayaprakash Narayan

In this session the discussions focused on political finance and the challenges emerging in the regulation of the same. The speaker commenced the discussion by elaborating on the kinds of finance involved in politics- party finance and campaign finance. He briefly presented the various aspects of expenditure involved in politics viz. advertisement, publicity, paid news, operational costs for campaigns, rallies, distribution of cash and benefits to the voter etc. The speaker dwelt on the impact of money on elections. He was of the view that financing of elections has the effect of creating an uneven playing field. There is an inflow of illicit money into the system A major concern also arises that moneyed interests often manipulate electoral politics to

suit their interests and politically exclude the other marginal players. Furthermore, these moneyed interests play a considerable influence on governance and policy. The speaker then outlined the efforts made by the Election Commission of India to tackle the illicit financing of elections in 2014. The speaker then discussed the ways by which money is used to influence voters, political parties and media. The speaker stated that the following pose a challenge in the regulation of election finance –

- Absence of law regulating Political Parties
- No ceiling on Party campaign expenditure
- Anonymous donations received by political parties
- No laws regulating media and social media during elections
- Cash economy and no laws relating to cash transactions
- No pre-candidature accounting of expenditure by candidate
- Low level of awareness of voters and giving/acceptance of bribes with impunity

The speaker then discussed the legislative framework governing election finance and highlighted the major legislative handicaps –

- The Election Commission's power to regulate election finance is purely an executive action under Article 324 and there is no law providing a basic framework under which the Election Commission can address the problem.
- While expenditure ceilings exist vis-à-vis individual candidates, parties are free to spend without limit in the name of 'general party propaganda'. In many cases, the average expenditure by parties on candidates exceeds the permissible candidate spending cap.

The speaker also discussed the Election Commission's transparency guidelines and its provisions. Further, the issues related to third party campaigners in elections was also discussed. Another crucial issue that was discussed at length was the practice of bribery of voters and vote buying that is prevalent in Indian election. It was stressed that bribery of voters currently is a non-cognizable offence and this poses challenges as arrest, search and seizure actions cannot be taken unless there is a warrant and investigations cannot be undertaken without the permission of the court. Currently, bribery of voters is a bailable offence attracting minimal punishment (one year imprisonment and/or fine) and premises cannot be searched without warrant. It was suggested that bribery of voters should be made a cognizable offence. The speaker concluded by presenting the measures taken by the Election Commission of India to regulate campaign finance.

Session VI

Theme - Judicial Contributions to Electoral Reform

Speaker - Dr. Jayaprakash Narayan

Panel- Dr. SY Quraishi and Mr. VS Sampath

The speaker commenced by raising the issue of the causal factors of the problems plaguing the Indian democracy. The speaker stressed on the need for each wing of the State to analyze the problem and to find solutions to address the problem and what the judiciary can do to nudge the system towards reform. The speaker traced the development of the Indian democracy. The speaker drew a comparison of the Indian democracy with the successful democracies in USA and UK. The development of the Indian democracy is at a different stage as compared to the other democracies in view of the paucity of time that independent India has had to evolve and also due to the differing historical and social context in India. Along with the positives in the maturity of the democratic thought in terms of grant of adult suffrage to all, there are certain negative aspects such as the lack of concern about the inequality by birth. The speaker then highlighted a few issues in the Indian polity such as the high cost of contesting elections, caste and religious divide and the conflict between various factions of society. The speaker was of the view that the Indian democracy has not had enough time to evolve like the democracies in USA and UK and this is one of the reasons for the problems in the Indian democracy. Despite this India is one of the few countries that has built a robust federal and democratic system post-World war II. Despite the diversity in culture, Indian democracy has been able to preserve the diversity and build a robust democracy, ensure peaceful transfer of power and maintain rule of law and freedom. However, some concerns in India which existed at the time of independence were not adequately addressed. Another factor that was highlighted was the asymmetry of power between the citizen and the public servant. In this system there is no relation between the citizen and the State. The citizen views his vote as a right to choose the ruler but does not view his vote as an element of self-governance. The disconnect between the government machinery and the citizen is a concern that persists and has significant ramifications in politics and elections. The speaker opined that local self-government system was ideally suited to the needs of governance in India rather than the federal system adopted from other countries. He discussed the 73rd and 74th amendment to the Constitution. This system has led to the dependence on

the concentrated political machinery and the failure to address the needs of the citizens. The speaker stressed on the need to reform the political system and the governance system and to adopt a decentralized system of governance. The speaker highlighted the need for individualization of politics i.e. the voter exercises his rights while keeping in mind what is at stake for him/ her and his family rather than voting blindly as a group. The speaker stressed that each person in their capacity as a voter or a person in authority especially judges should dwell on the reform that is needed and the measures that they can undertake to achieve such reform. The measures suggested were improvement of the citizen services so as to reduce the parallel political machinery and the insulation of crime investigation from the political process and definition of crime investigation as a part of rule of law and dispensation of justice.

The conference concluded with the closing remarks by the Director, NJA.
