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Ethics, human rights and politics: Recognising the interface

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Abstract

Politics is the predominant sector in any state and society, notwithstanding their nature. All walks of life are influenced by politics directly or indirectly. It is immaterial whether the state is authoritarian, a military dictatorship, monarchical, autocratic or democratic. But it is an experiential truism that ethics and human rights are best defended in a democracy, particularly an electoral one. Although there are international human rights norms and ethical standards containing a number of fundamental criteria for politics, free and genuine elections, there is not much scholarly work highlighting the interface between ethics, human rights and politics. This essay seeks to contribute to filling that gap.

Keywords: Politics, authoritarian, military dictatorship, monarchical, autocratic, democratic

Introduction

To talk about first on ethics and politics in India, Indian citizens have, of late, been experiencing a good many governance crises despite having a written constitution. There seems to be three problems in upholding our constitutional democracy. One, the constitutional provisions appear to be prone to more than one interpretation. That is how we find the legal and expert opinion divided on each issue. The ruling party, in such case, takes the opinion that is convenient to its party political interest. Second, we do not conform to the constitution. The Supreme Court interprets the constitution on different occasions. Political leaders invoke the court rulings selectively to their advantage. Third, utter disregard for ethics in the conduct of elected representatives undermine our democracy. Many of the political dramas we witness these days, around making and unmaking of governments, are enacted in moral bankruptcy in politics.

Ethics and morality are tad different in conceptual terms, but are being used here interchangeably. The working definition of ethics could be “know the difference between what you have the right to do and what is the right thing to do”. Laws are inspired by ethics. We tend to respect the law, but ignore its bases, which are a set of moral attitudes and imperatives. Also, it is easier to circumvent the law, work around it, but not morality or ethics. The concept of ethics sounds abstract, but it is really an indispensable part of legal compliance.

Slavery was based on the moral principle that sale and exchange of human beings is evil and human dignity must be acknowledged. Child labour laws are based on the social ethic that children must not be made to work. They should be given skills and education up to certain age in order to enable them to lead a decent life in their adulthood. Suffragette movements were based on the moral principle that men and women are equal. Anti-racism laws are based on the understanding that human beings are equal irrespective of the colour of their skin.

Morality guides our conduct and constitutes a healthy society. Without morality society will go astray. Remember the seven Social Sins ^[1] identified by an Anglican priest, Frederick Lewis Donaldson, popularized in India by Mahatma Gandhi, “Wealth Without Work.....Politics without Principle etc ^[2].” They warned that these sins if not abjured will destroy a society or polity.

Let us recall two other means of building a healthy society and sound politics. Karl Marx, the most venerated philosopher prescribed that you change a system (bring in new laws), a ‘new man’ will be born, whereas, Mahatma Gandhi said, “You change the character of a person, a new society will be created.” In fact, the truth consists of a combination of Gandhi and Marx.

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One needs a conducive system to sustain the values an individual holds. If the system is hostile and corrupt, it is difficult for the individual to hang on to the moral code. Likewise, whatever be the system or the laws enshrined in it, if the individual is immoral, unscrupulous or unethical, she will get around the system to achieve their self-interests. The second scenario is one that renders the anti-defection law ineffectual. How was the anti-defection Law enacted? In 1967, an MLA named Gaya Lal in the state of Haryana, changed three political parties in a few days or so. That is how the epithet, 'Aya Ram Gaya Ram' ^[3] came into political currency.

The origin of the anti-defection law goes back to 1967. From 1967-1971, in four years, 142 Members of Parliament changed their parties more than once. 1969 MLAs defected from one party to another. As many as 212 defectors were made Ministers. 32 governments were brought down by defections.

In 1985, under the premiership of Rajiv Gandhi the anti-defection law was brought in seamlessly as he had an unprecedented majority of over 400 Members of Parliament. The law was listed in the Tenth Schedule of the Constitution. The significant thing to note was that for the first time political parties were mentioned in the Constitution. The law stipulated, unless, one third of members left a party, it would not be regarded as a split and members defecting would be disqualified. In 2003, under Vajpayee government, the split in the party was changed to 'merger.' In order to merge into a new party, two thirds of the members had to take the party into another for merger. Defection became impossible as so many members were not easy to mobilize.

A new means of defection was found in toppling the government of Congress-JD(S) coalition. 17 MLAs defected from Congress to reduce the majority enabling BJP to form the government. All defector- MLAs joined BJP, contested by-elections, won and were made Ministers. The Speaker had ruled that the defector MLAs not contest elections for remainder of the term of the Assembly. The Supreme Court overruled saying there was no such provision in the Anti-Defection Law.

Even the Governors are under cloud in the game of toppling governments. The Supreme Court had settled that the Governor has no discretionary powers in summoning sessions of an Assembly and is bound to act according to the aid and advice of the CM and the Council of Ministers to seek the trust vote etc. The role of the Speakers became controversial. In Manipur, in 2019, the Speaker refused to disqualify a Congress MLA who supported the BJP- led coalition government. Congress had won the majority seats but could not form the government.

The Supreme Court rulings and Constitutional Review Commissions point to further changes in the law, and such changes are happening. But it is pointless in view of the practices indulged in by the leaders. Defections will not stop. Amendments to the Anti-defection Law or any other provisions in the Constitution will not work unless we stick to ethical conduct. Legislators belong to a political party- its ethos, ethics and ideology. How can they suddenly give all that up, join a new party with different tradition and ideology? Either we accept that parties have no values or ideology, and politics is all about self-seeking opportunism or we feel proud of our parties- their values, culture and ideas.

So morality matters. Moralistic people do more than the law requires and less than it allows. Let us also remember the dictum in democracy; we get the government we deserve. If we want ethics to be upheld by our politicians, we must respect it in our lives and censure unethical practice by our leaders.

Human Rights and Elections

As we reflect on the electoral practices in India, which may suggest underestimation if not blatant undermining of human rights, it is in order that we are aware of the international human rights criteria on electoral democracy. The first and foremost is to understand the essence of free elections which represents the will of the people. The question to probe here is whether the elections are free in order to allow full expression of the political will of the citizens in a particular country. According to the Universal Declaration of Human Rights (UDHR) (Article 21 (3)), it is the will of the people that is the very basis of legitimate governance. UDHR also mandates that every citizen has the right to take part in the governance of their country, directly or through the representatives they choose in elections (Article 21 (1)). This right is contained in Article 25 (a) of the International Covenant on Civil and Political Rights (CCPR). The Human Rights Committee considers that the provision lies at the core of a democratic government based on the consent of people ^[4]. It has also indicated that any electoral system must guarantee and give effect to free expression of the will of the electors ^[5].

In India, elections have been regular except during a short period of Emergency during 1975-77 when all political rights were suspended. There have been allegations in the past of poll rigging and booth capturing in some parts of the country. With strict vigil by security agencies, such allegations are rare. The recent controversy is related to the electronic voting machine (EVM). Quite a few people contend that EVMs are manipulated, but there has been no tangible evidence to prove this allegation. Even the courts have ruled against it. Yet the debate continues whether India should go back to paper ballot.

The second criterion has the reference to right to self-determination. This means all people have the right to freely determine their political status. The CCPR and International Covenant on Economic, Social and Cultural Rights record this right to self-determination. Also, the Charter of the United Nations reflects identical concerns; it mandates assistance to people in non-self-governing territories in the development of free political institutions ^[6]. It may be noted that, to be free and effectively participate in the electoral process requires an environment in which all human rights are fully respected and enjoyed by all individuals ^[7].

There are provisions guaranteeing non-discrimination and equal participation in elections to various groups. The International Convention on Elimination of Racial Discrimination prohibits discrimination on grounds of race, (in Indian case, caste and creed), (Article (5) (c), no discrimination against women based on sex, (Article (2), guaranteeing equal access to participation to women, (Article (7)), making information and materials about voting available in minority languages etc ^[8].

There are no structural discriminations in India. The Republic of India began with one person, one vote on the basis of universal adult suffrage. Indian Constitution provides for 'no discrimination' on the basis of caste,

colour, religion or gender or any other social identity^[9]. On the contrary, it makes special provisions for disadvantaged groups. The Article 15 reads:

“It secures the citizens from every sort of discrimination by the State, on the grounds of religion, race, caste, sex or place of birth or any of them. However, this Article does not prevent the State from making any special provisions for women or children. Further, it also allows the State to extend special provisions for socially and economically backward classes for their advancement. It applies to the Scheduled Castes (SC) and Scheduled Tribes (ST) as well”. There are odd allegations of women and other weaker sections being prevented from participating in politics. These allegations stem from a patriarchal society and traditional norms, not from political structures. As Indian society is modernising, the dichotomy between a modern politics and a traditional society is getting diluted.

Along with equal access, an environment free of intimidation and manipulation of the electorate that undermines opportunities for free election cannot be over stated. The International Human Rights Law provides right of safety to all actors involved in elections – voters, activists, media, civil society etc. Accordingly, all persons must be afforded equal access to all electoral events and all candidates must be granted fair media access for campaigning and advertising purposes^[10].

The next important criterion is freedom of opinion and expression. The rights to freedom of opinion and expression are enshrined in Article 19 of the Universal Declaration of Human Rights as well as Article 19 of the International Covenant on Civil and Political Rights^[11]. Since this criteria is central to democracy, it is in order that we quote the exact provisions in the Article (19) of International Covenants on Civil and Political Rights which reads: (1) Everyone shall have the right to hold opinions without interference. (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print in the form of art or through any other media of his choice. (3) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions but these shall only be such as are provided by law and are necessary: (a) for respect of the rights or reputation of others; (b) for the protection of national security or of public order or of public health.

In the light of such provisions, different actors and agencies enjoy full freedom of expression. A free press and other media are able to comment on public issues without censorship or restraint and to inform public opinion^[12]. Furthermore, the scope of such provisions is not confined to only medium of expression, but includes among others, cultural, artistic and other forms of expression, including speech, books, newspapers, pamphlets, posters, banners, dress and the internet^[13]. In particular, the freedom of expression on the internet merits some elaboration as it has become controversial with fake and malicious news. Therefore, the operation of websites, blogs or any other internet-based information dissemination systems must be established by law, which is necessary to the context and proportionate^[14]. However, to prohibit such systems like banning the internet purely on the basis that they may be critical of the government or their policies is not a permissible restriction^[15]. Likewise, blanket internet

shutdowns constitute a violation of international human rights law as they are inherently disproportionate^[16].

Internet shutdowns involve concerns of the state particularly about security, law and order etc, but it also amounts to violation of human rights law if it is done deliberately to prevent access to or dissemination of information online. Various United Nations human rights mechanism have expressed a strong view that blanket shutdowns and generic blocking or filtering of news and information are considered violation of international human rights law due to a lack of a legal basis or failure to meet necessity or proportionality requirements^[17].

Again, there is no bar to freedom of expression in India as it is clearly provided in the Constitution with a rider added that there are reasonable restrictions. Article 19 (1) in the Constitution of India states that all citizens shall have the right to freedom of speech and expression. The philosophy behind this Article lies in the Preamble of the Constitution, where a solemn resolve is made to secure to all its citizen, liberty of thought and expression. The exercise of this right is, however, subject to reasonable restrictions for certain purposes being imposed under Article 19 (2) of the Constitution of India. The reasonable restrictions relate to the security and sovereignty of the country, internal public order and violence etc.

The other key criterion is gender-based violence in the context of elections^[18]. Violence against women in elections poses a major obstacle to the realisation of the women rights to participate in public and political life. Gender-based violence in elections constitutes a human rights violation, prevents women from exercising their political rights. This violation affects the politics and society as a whole as women are underrepresented at all levels of political decision making. Although violence against women in public life is not limited only to elections, this issue gets amplified during elections negatively impacting women’s participation across the entire electoral process – as candidates, activists, voters, election officials or journalists. Violence against women during elections manifests in different forms. At any rate, the unfortunate result of such violence is that fewer women may take part in elections as candidates, political campaigners, voters or members of the electoral administration.

Violence against women is a serious subject in India, which is not restricted only to elections as mentioned in the paragraph above. The reasons for widespread violence against women in forms of rape, brutalisation, bride burning, public humiliation etc. are to be located in patriarchal society and a faulty perception of women as the symbols of community honour and pride etc. Such image of women leads to brutal violence against women in sectarian, ethnic or caste-conflicts etc.

There is a wide range of international human rights provisions related to various other aspects of politics and elections. To list a few: freedom of peaceful assembly, freedom of association, freedom of movement, right to security and freedom from intimidation, right to political education, special provisions for specific social groups like minorities and indigenous people, internally displaced persons. There is also emphasis in international covenant on civil and political rights on genuine elections. There are two aspects of genuine elections in the provisions. The first is procedural which includes periodicity, equality and universality of suffrage, and secrecy of the ballot.

References

1. In a sermon at Westminster Abbey on March 20, 1925, Frederick Lewis Donaldson proposed this list of seven social sins.
<http://ellipticalglory.blogspot.com/2015/07/seven-deadly-social-sins-mid-week.html>
2. Ibid
3. https://en.wikipedia.org/wiki/Aaya_Ram_Gaya_Ram
4. Human Rights Committee, general comment No. 25 (1996), para 1
5. The Human Rights Committee of International Covenants on Civil and Political Rights (CCPR) report on Republic of Laos on 23 November 2018, CCPR/C/Lao/CO/1 para 37
6. UN Charter, Article 73(2)
7. There are guidelines for states in CCPR (Articles 2, 3, 26) on the effective implementation of the right to participate in public affairs and the corresponding recommendations
8. Human Rights Committee, General Comment, No. 25 para 12; c1996.
9. Article 15 of the Indian Constitution
10. A/HRC/26/30, para 48
11. This right is protected by International Convention on the Elimination of All Forms of Racial Discrimination, Article (5) (d) (viii); International Covenant on Economic, Social and Cultural Rights, Article 15(3); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 13 (1); and Convention on the Rights of Persons with Disabilities, Article (21).
12. Human Rights Committee, general comment, No. 25 (1996), para 25. See also general comment No. 34 (2011), para 13.
13. Human Rights Committee general comment No. 34 para 12; c2011.
14. Human Rights Committee, general comment No. 34 (2011), para 22. Restrictions on the right to freedom of expression must conform to the strict tests of legality (they must be provided by law), necessity (they must be necessary in a democratic society) and proportionality (they must be proportionate to the interest to be protected). See also special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Freedom of Expression and elections in the digital age, Research paper 1/2019 pp. 6-8
15. Human Rights Committee general comment No. 34 para 43. See also blocked access to websites in CCPR/C/KWT/CO/3, paras 40-41; c2011.
16. Human Rights Committee, general comment No. 34 (2011), para 43. See also special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the United Nations, the Representative on Freedom of the Media of the Organisation for Security and Cooperation in Europe, the Special Rapporteur for Freedom of Expression of the Organisation of American States and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights, Joint Declaration on Freedom and Expression and Responses to Conflict Situations, 4 May 2015, para 4 (c)
17. In the general comment No. 37, para 34, the Human Rights Committee stated that states and parties must not, for example block or hinder internet connectivity in relation to peaceful assemblies; c2019.
18. See A/73/301. See also UN-Women and OHCHR, Violence against Women in Politics: Expert Group Meeting Report and Recommendations, 8-9 March, 2018, New York, 2018); UNDP and UN-Women Preventing Violence against Women in Elections: A Programming Guide (2017); and A/HRC/23/50.
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22. Human Rights Committee, general comment No. 25, para 19; c1996.