

Efficacy of Free and Fair Elections in India: A Comprehensive Study

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ABSTRACT: The main focus of this research is to understand the significance and efficacy of the Indian election. Elections form the bedrock of every electoral democracy and India is no alien to this practice. Elections in India are conducted with great enthusiasm since the voter turnout is humungous. However, elections in our country are far from being perfect and many electoral malpractices are committed not only by the candidates but also by the voters. The government along with the Election Commission of India, over the years, has undertaken key initiatives to make sure the elections are conducted in a free and fair manner.

Legislations like- The Representation of the People Act, 1951, Conduct of Election Rules, 1961 and The Model Code of Conduct, have ensured that electoral malpractices are curbed and the significance of the voter in an election is maintained. The Research also looks into the provisions of the Representation of the People Act, 1951 and discusses in detail about the corrupt practices which are committed by the candidates. Furthermore, the efficacy and importance of the Model Code of Conduct is also discussed.

Keywords : Free and Fair Elections, Corrupt Practices, Model Code of Conduct, Election Commission of India.

Introduction

“Democracy is based upon the conviction there are extraordinary possibilities in ordinary people.”
Harry Emerson Fosdick

In a constitutional democracy, elections provide an opportunity to ascertain the popular will in regard to the governance of the country. **Election is the act of choosing an individual usually for holding public office through free will of the people in a representative democracy.**

Recently, elections were cancelled in Vellore district of Tamil Nadu on the charges of corrupt practices and misuse of money and muscle power which is often used to manipulate and sway the popular will. This has not been an isolated incident; many such events have taken place over the years. The growing greed for power has turned a sacrosanct activity into a showcase for power.

The recent debates surrounding the power and efficacy of Election Commission of India (ECI) in testing times has opened up the Pandora box of challenges where strengthening ECI has become of paramount importance.¹

Objective of the Study

- The main objective behind this research is to understand the importance and efficacy of the Indian Election.
- To find out the key initiatives undertaken to make sure that the elections are conducted in a free and fair manner.

Concept of Free and Fair Election

- Concept of free and fair election includes even preliminary stages to election such as **delimitation of constituencies, preparation, revision or amendment of electoral rolls** and many others.
- Concept of free and fair election **mainly relates to political liberty and equality**. In matters of election it implies that **no one, under the electoral process, is in bondage of another**, having his personal rights, social and political liberty, free thinking and choice subjected to a legal discipline.
- **While exercising his right to vote one is not under undue influence of party discipline, religion, caste, creed, sex, language and also one is not under the strain of corrupt practices** and so on. Thus, free and fair elections are the foundations of democratic form of government.²
- The eight standards that follow define an ideal. Most countries meet them imperfectly, but the more standards that are met, the more accurately an election represents the will of the people:-

1Citizens are able to register to vote

Governments can place some restrictions on who can register to vote based on age, residency, or citizenship status. However, for an election to be free and fair, governments cannot prevent eligible voters from registering or make it more difficult for some groups of people to register than others. For example, until the Voting Rights Act was passed in the United States in 1965, many Southern states required Black voters to take literacy tests in order to register to vote. These tests were designed to be impossible to pass and to prevent Black people from voting, which means that the elections held in these states during this time period were **not** free and fair.

¹ www.countryliving.com, Accessed on April 25, 2022.

² www.drishtias.com, Accessed on April 22, 2022.

2. Voters have Access to Reliable Information

Governments cannot prevent the media from covering certain candidates or political parties, and they also cannot intentionally spread misinformation. For example, in the 2020 presidential election in Burundi, President Nkurunziza ran for a third term. His government threatened or imprisoned journalists to prevent them from reporting on the candidates who ran against him. Even when governments do not *intentionally* share misinformation, it can spread online and through social media. Voters need access to reliable and unbiased information to freely make decisions about which candidate to support.

3. Citizen can run for Office

Governments cannot attack or intimidate people who decide to run for office or create discriminatory rules about who is allowed to run. For example, in a 2019 city election in Moscow, Russia, opposition candidates—people who were running against the ruling party—were not allowed to place their names on the ballot.

Voters cannot freely exercise their right to select their leaders if certain political parties or candidates are unfairly blocked from running for office.

4. All Voters have Access to a polling place

People need to be able to freely cast their ballots. Voters should be able to reach polling stations, enter them, and cast their votes regardless of who they are or where they live. If voters are unable to vote in person—for example because of a disability, health condition, or a lack of transportation—they should have access to an alternative method of voting, such as voting by mail. For example, during the 2019 elections in India, voting machines were brought to remote communities by a variety of means—including by helicopter, boat, and elephant—to ensure that all eligible voters had access to polling places.

5. People can vote free from intimidation

Polling places should be safe. Violence, or the threat of violence, can make people feel afraid to vote for their candidate of choice or even prevent people from voting at all. Secret ballots can also help prevent coercion or intimidation since they help prevent people from targeting voters based on whom they voted for. In US elections in 1875 and 1876, paramilitary groups associated with the Democratic Party violently attacked Black voters in Mississippi and South Carolina, preventing scores of Black southerners from voting and causing the interracial Republican Party to lose control of the state governments established after the Civil War.

As recently as the 1981 gubernatorial election in New Jersey, the Republican party organized armed poll watchers to patrol polling places in predominantly Black and brown neighborhoods. The courts found that these poll watchers intimidated many potential voters, preventing them from voting.

6. Voting is free from Fraud

Every eligible voter should be able to vote only one time, and ineligible voters should be prevented from voting. For example, opposition leaders in Cameroon accused the ruling party of filling out hundreds of ballots in their favor to stuff into ballot boxes during local and parliamentary elections held in 2020.

When illegal ballots are included, the election does not reflect the will of voters. Most countries have poll watchers who observe voting at polling places to ensure that the election is run properly and no fraud is committed.

7. Ballots are counted accurately and The correct results are announced

Ballots cannot be altered or discarded after they are cast, and all ballots cast by voters must be counted. Most countries have independent electoral commissions or agencies that oversee elections to prevent individuals or the government from interfering in the results. In the 2020 presidential election in Belarus, some poll workers claimed that they were forced to falsify vote counts to allow current president Alexander Lukashenko to remain in power. Ballots must be counted correctly in order for an election to reflect the will of voters.

8. The results of the election are respected

Once the outcome of the election is decided, the candidates must respect the results of the vote. Peaceful transitions of power are vital to democracy, and candidates who are defeated in the polls should not use violence or intimidation in order to seize power.³

Conduct of Free and Fair Election in India

Every society develops and matures over a period of time and so has ours. In this case, the Election Commission of India has evolved not only as an institution of impeccable credibility but also as a gold standard throughout the world to conduct elections. In its long and arduous journey, it has been ably guided by the Supreme Court through significant judgments and the Law Commission through its numerous reports. It has allowed the Election Commission to work more independently and bring numerous changes to the electoral system through various measures:-

Abolition of Election Tribunals

Prior to the year 1966, the Representation of the People Act, 1951 provided for Election Tribunal to adjudicate matters related to elections in India. A three tier structure emerged to decide election petitions which were to be initially decided by the Tribunal, which would then go to the respective High Court and ultimately decided by the Supreme Court of India. However, this modality

³ www.facinghistory.org, Accessed on April 22, 2022.

of dispute settlement consumed time to effectively adjudicate election disputes. The Election Commission in one of its report recommended abolishing Election Tribunals and allowing High Court to handle election disputes.⁴

Decriminalisation of Politics:

the Supreme Court of India in the year 2002 in a landmark judgment in the case of *Union of India v. Association for Democratic Reforms*⁵ directed the Election Commission to call for information on affidavit under Article 324 of the Indian Constitution on criminal background including previous conviction, acquittal or discharge along with fine; declaration of assets of the candidate and his/her spouse along with number of dependants; liabilities including debts owed to any financial institution or otherwise; and educational qualification of the candidate. This historic judgment increased awareness among voters about the potential candidates from their respective constituencies.

Introduction of Electronic Voting Machines (EVM):

In India, Electronic voting Machines (EVM) were introduced to be used on an experimental basis for the first time in sixteen selected Assembly Constituencies in the States of Madhya Pradesh, Rajasthan and NCT of Delhi in their respective Legislative Assemblies held in November, 1998. The use of EVM was further expanded to 46 Parliamentary Constituencies in 1999 Lok Sabha elections. EVMs were then used in four consecutive elections of Lok Sabha conducted in 2004, 2009, 2014 and 2019. Use of EVM in the electoral process led to a more transparent process of conduct of elections. It saved government's expenditure from printing papers used in the earlier process for conduct of elections. Use of EVM also saved time and relentless painstaking human effort in counting votes. Thus, electronic counting of votes has reduced the number of invalid votes due to human negligence or malpractice. EVMs thus reflect the choice of the voters more transparently and have effectively ensured a cleaner and more transparent process of counting of votes.

None of the Above (NOTA):

Supreme Court in the case of *People's Union for Civil Liberties v. Union of India*⁶ in 2013 had allowed the use of None of the Above (NOTA) option for the 2014 Lok Sabha elections. Election Commission in its notification dated 24th January, 2014 had made the use of NOTA mandatory for elections to Rajya Sabha. Thus, the use of NOTA in any constituency reflects the desires and choices of voters that they were dissatisfied with the candidates fielded by the political parties. As of now, the votes casted for NOTA do not have electoral significance. However, votes casted for NOTA do not amount to Right to reject. Law Commission in its 225th Report has rejected the concept of extending NOTA to Right to reject and has recommended introducing the concept of Right to reject at a future date. Thus, the use of NOTA is another evolution in the electoral process as it allows voters the right to protest even though without having any electoral significance.

Hiring and procuring vehicles to carry voters:

The question involved in the case of *R.M. Seshadri v. G.V. Pai*⁷ was whether the respondent is liable under the RP Act, 1951 for carrying voters in a motor vehicle? The Supreme Court held that carrying voters to polling stations and requesting votes from them amounts to corrupt practice under this act and invites punishment. Subsequently, the Court quashed the election of the respondent.

Election Expenditure:

The funds incurred by the candidates during the electoral process are scrupulously systemized and audited by the special observers appoint by the Election Commission. The Election Commission has made it mandatory that each and every candidate must submit their returns to special audit party appointed by the Election Commission to circumvent money power in the elections. In order to prove corrupt practice the petitioner must not only prove that the expenditure has been incurred in excess to the prescribed limit set by the Election Commission but he must also prove that such expenditure has incurred with the consent of the candidate or his agent.

Obstacles in Free and Fair Elections

- Electoral malpractice has appeared in newer forms in recent times. **Voter bribery and manipulation through the media** have become the techniques of unethically influencing voters in place of voter intimidation and booth capturing.
- Over the past few years incidence of **corruption in public life** in which politicians and officials have diverted the available resources to personal use has increased. **Public funds have been misappropriated** and have destroyed the moral and ethical environment of the nation.
- **According to the Vohra Committee Report**, criminalization of politics and corruption in high levels is destroying the very system and edifice of our parliamentary democracy, political authorities, the civil servants and even the judiciary.
- In the era of outside support and the coalition governments in the States and at the Centre, it is an admitted fact that **the representatives of the people in the Assemblies and Parliament accept money to support a particular Government.**

⁴ www.lexforti.com, Accessed on April 25, 2022.

⁵ AIR 2000

⁶ AIR 2013

⁷ AIR 1969 SC 692

Hence, Members of Parliament or State Assemblies became a marketable commodity and a subject of sale and purchase or horse-trading.

- Money power is a crucial factor in elections since **modern devices of election propaganda are expensive**. The availability of large funds ordinarily tends to increase the number of votes a candidate will receive. This money often takes the course of black money and is collected through nefarious and illicit means.
- Electoral bonds which were meant for from enabling a legitimate and transparent means of political funding, **have proved to be the reverse**. The EC, in its own affidavit before the Supreme Court, has admitted as much.
 - The Supreme Court's order has made sure that full disclosure, albeit to the EC, has already effectively killed further funding along this route.⁸

CONCLUSION

Free and impartial elections are fundamental to the functioning of a healthy democracy and an indicator of its magnitude and spirit. The Election Commission must be free from any influence by the Executive and the Legislature. It must secure impartiality to all the political parties and candidates. The Election Commission is empowered with the entire administration of conducting elections and directing the officers and other personnel involved in the preparation and management of electoral rolls. The position of the Election Commission is equivalent to the Judge of the Supreme Court when it comes to independence of authority. Therefore, the Commission has earned plaudits from both home and abroad.

⁸ Ibid.