



Free and fair election in India: Assessing the structural determinants

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Abstract

In modern electoral democracies election is the universal mechanism for the election of representatives by the people. Free and fair elections are the backbone of a strong democratic system. India has become the largest democracy in the world. The strength and resilience of Indian democracy stay behind its free and fair election system and independent and impartial election set up known as Election commission of India (ECI). Certain ideal rules and practices need to be followed, before, during, and after the election, in order to ensure that the election is conducted in a free and fair manner. Despite systemic advancements, several structural issues present formidable challenges to India's electoral apparatus. However, the Election Commission of India has been working persistently to bring about a large number of reforms in the electoral system through various regulatory and institutional measures.

Keywords: Free and fair election, determinants, Election Commission, challenges

Introduction

Elections are considered as life line of democracy. For strengthening democratic system, the elections need to be free and fair. It is through such elections, the citizens express their sovereign will. Prof. M. V. Pylee (2003) ^[10] rightly remarks, "The sine qua non for a true democracy is the holding of fair and free elections of the people's representatives to the legislative bodies." The advantage of the free and fair election is that the voters do not remain under the undue influence of religion, caste, creed, sex language and corrupt practices. As a result, the foundation of the democratic governance is strengthened, greatly ensuring transparency in election. The constitution of India has vested powers with the election commission (ECI) as an independent constitutional body for conducting free and fair elections (Das, 2021) ^[2]. However, in emerging democracies, the electoral management system often faces considerable distrust, criticism and scrutiny due to questionable way of conducting elections. The present paper aims at analyzing the structural determinants as well as the challenges in the process of free and fair election in India.

Theoretical Framework

The idea of free and fair elections is grounded in political liberty and equality. In the context of electoral choice, it implies that each voter casts his vote without any corrupt practices. Here, 'Free' implies that all voters have the equal right to be registered and to vote and must be free to make their voting choices. An election is said to be 'free' when voters vote freely for the candidate or party of their choice without fear or intimidation. In a 'free' election, the voter casts his vote with full confidence that his vote remains secret. 'Fair' refers that all political parties and eligible citizens have an equal opportunity to contest the elections, campaign for voter support and hold meetings and rallies. In a fair election, the role of money and muscle power as well as caste, religion, language, sex etc. is restricted. A level playing field is ensured for all contesting parties as well as candidates and the ECI plays a non-partisan role.

Pre-conditions

There are several standard prerequisites that must be fulfilled in order to ensure electoral integrity, according to the existing political and legal frameworks (Goodwin-Gill, 2006; Kumar, 2022) ^[5, 7]:

- There should be a corpus of election laws governing the whole of the election process, with full safeguards to the electorates against any fear, injury, fraud, misrepresentation or undesirable practices.
- The election laws must make provisions for the logical demarcation of constituencies, the principle of one person one vote, secrecy of voting and a just procedure for the casting of the votes.
- The elections should be held by an independent and impartial body (the ECI) and the transparency and integrity of the electoral process should be preserved. This body must be free from the undue influence of the ruling party or the executive.
- There has to be good coordination between the different arms of the government, especially the law and order agencies.
- Voters must be broadly literate about the electoral process.
- The role of money and muscle power has to be eliminated in the election process.
- With the support of an alert public opinion, the media and civil society have to play an active role.
- The appropriate authority shall decide election disputes expeditiously according to law.

Factors Determining Free and Fair Elections

There are certain ideal rules and practices which the government should follow, before, during, and after the election, in order to ensure that the election is conducted in a free and fair manner. The followings are the important eight standard rules or determinants for free and fair election:

1. **Equal opportunity to all eligible voters for voting registration:** In order to enroll the eligible voters, the ECI adopts a variety of methods, including door-to-door campaigns, online registration portals, and designated voter registration centres etc. It undertakes annual summary revision and Special Intensive Revision (SIR) to update the electoral roll.
2. **Voters have access to Information:** The ECI should make available of information about the political parties and contesting candidates both online and offline. The media should be facilitated to cover contesting candidates, political parties and key political functionaries without spreading fake news and misinformation. The voters should access to reliable and unbiased information to freely make decisions about which candidate or party to vote.
3. **Citizen can run for office:** The citizens interested to contest for any election should not be harassed by the party in power and government. The people raising voice against the ruling party should not be forced to withdraw their candidature. It is not possible on the part of the voters to freely exercise their right to select their leaders if certain political parties or candidates are unfairly blocked from running for office by ruling dispensation.
4. **Access to polling stations:** The citizens should be facilitated to freely cast their votes. The voters should be able to reach polling stations easily within shortest time. The ECI has made it a principle to set up polling station within one km. distance from the home of the voters. Further, polling station should be provided with necessary amenities.
5. **Intimidation-free Voting:** The Polling booths must be safe and secured. Any threat of violence should be prohibited because it will make the voters to feel afraid to vote for their candidate of choice or even prevent people from voting. The voting secrecy should be maintained as it helps prevent coercion or intimidation.
6. **Fraud Free Voting:** Every bonafide voter should be able to vote only one time, and fake voters should be prevented from voting. The ECI has introduced EPIC and allowed several other documents for establishing identity of voters at the time of voting. This process facilitates only genuine voters to vote thereby the possibility of any fraud in the electoral process is avoided.
7. **Votes are counted accurately and open announcement of results:** Votes cast through ballot or voting machine should be properly counted transparently in the presence of agents of contesting candidates and parties. In case of any doubt in the minds of candidates, the votes can be recounted. The result should be openly declared after completion of counting.
8. **Election result should be respected:** Once the election result is declared, the candidates and parties must respect the electoral verdict. This facilitates peaceful transition of power which is vital for the success of democracy. The defeated candidates should accept the result in a democratic spirit.

Challenges to Free and Fair Elections

Despite systemic advancements, several structural issues present formidable challenges to India's electoral apparatus (Association for Democratic Reforms [ADR], 2024; Vaishnav, 2017)^[1, 16]:

▪ Voter Bribery

Electoral malpractice has become a formidable challenge to free and fair elections. Voter bribery is frequently used to manipulate low-income demographics. Political entities often announce hyper-targeted populist "freebies" or gender-centric welfare schemes immediately preceding an election to consolidate specific voter bases.

▪ Money Power

Modern election propaganda is capital-intensive. Candidates and political parties with deep financial resources enjoy an asymmetric lead over smaller parties and independent candidates, spending heavily on campaigns to influence voter perception.

▪ Criminalization of Politics

Political parties consistently issue tickets to candidates with pending criminal backgrounds due to their perceived "winnability." These candidates often use muscle power and local influence to crowd out honest alternatives and intimidate selected group of the electorate.

▪ Media Manipulation and Fake News:

Parties and candidates routinely attempt to co-opt digital, social, and electronic media platforms to project biased narratives while obscuring negative records. Paid news and coordinated disinformation campaigns are frequently deployed to mislead voters.

▪ Lack of a Level Playing Field

Financial disparities among political organizations create an uneven playing field. Major political entities accumulate vast party funds, amplified historically by institutional mechanisms like corporate donations and high-value electoral bonds, leaving parties with poor financial resources at a distinct structural disadvantage.

Regulatory and Institutional Measures

Meanwhile, the Election Commission of India (ECI) has been working persistently to bring about a large number of reforms in the electoral system through various regulatory and institutional measures:

▪ Abolition of Election Tribunals

Before the year 1966, the Election Tribunals used to decide the election disputes in India and subsequently, these cases are being taken to the respective High Court and eventually the Supreme Court of India decides the same. This three-tier system was a lengthy system where electoral justice often delayed. The Election Commission of India strongly pleaded for abolishing Election Tribunals and allowing High Courts to adjudicate election disputes directly, a reform enacted through the Representation of the People (Amendment) Act, 1966 (RPA, 1966).

▪ Decriminalization of Politics

In the landmark judgment in *Union of India v. Association for Democratic Reforms* (2002)^[15], the Supreme Court directed the Election Commission to call for information on an affidavit under Article 324 of the constitution of India. This affidavit mandates the disclosure of criminal backgrounds (including previous convictions, acquittals, or discharges), assets and liabilities of the candidate, their spouse, and dependents, and the candidate's educational qualifications (*Union of India v. Association for Democratic Reforms*, 2002)^[15]. This mandatory process has increased civic awareness regarding candidate profiles.

▪ Introduction of Electronic Voting Machines (EVMs)

The ECI has introduced Electronic Voting Machines (EVMs) replacing ballot papers to ensure a more transparent election process. EVMs were first introduced in 1998 on an experimental basis across sixteen selected Assembly Constituencies in Madhya Pradesh, Rajasthan, and the NCT of Delhi (McMillan, 2012)^[8]. Subsequently, EVMs were adopted in all assembly and parliamentary elections, saving time during counting and reducing human errors or malpractices associated with invalid paper ballots.

▪ Provision of None of the Above (NOTA)

In compliance to the judgment of Supreme Court in *People's Union for Civil Liberties v. Union of India* (2013)^[9], the Election Commission made the use of the NOTA option mandatory (*PUCL v. Union of India*, 2013). The NOTA button on EVMs reflects the choice of electors who are dissatisfied with all contesting candidates.

▪ Prohibiting the Use of Vehicles for transporting the Voters

The Supreme Court held in *R.M. Seshadri v. G.V. Pai* (1969) that transporting voters to polling stations and soliciting their votes constitute a corrupt practice that invites punishment (*R.M. Seshadri v. G.V. Pai*, 1969)^[12]. Accordingly, the ECI strictly prohibits the commercial or party-organized transport of voters under its regulatory frameworks.

▪ Monitoring Election Expenditure

The ECI prescribes strict monetary limits, varying by state and constituency type, on the amount of money a candidate can spend during an election campaign. The expenditures incurred during the electoral process are systemized and audited by Financial Observers appointed by the Commission, and it remains mandatory for every candidate to submit their expense returns (Sridharan, 2018)^[14].

▪ Imposition of the Model Code of Conduct (MCC):

The ECI issues the Model Code of Conduct (MCC), which is a set of operational guidelines regarding speeches, polling booths, polling day behavior, election manifestos, and processions. The MCC comes into effect the moment the election schedule is announced by the ECI and remains active until the entire election process is completed, ensuring a standardized set of "dos and don'ts" for political parties (Quraishi, 2014)^[11].

Discussion and Conclusion

Life-line of democracy is called elections. Free and fair elections are the backbone of a strong democratic system. People vote in elections that are free and fair to show what they want. An essential element in maintaining election integrity is the sound management of elections by a credible election management body. In order to be credible, the electoral administration must be impartial and have adequate institutional capacity to hold free and fair elections. No electoral system tolerates insecurity, fraud and corruption which flourish in a chaotic environment. Sound and impartial election management can remove many possibilities for subversion or graft. In this context, the election management becomes crucial for ensuring the impartiality required to earn voter's trust. The electoral management body plays crucial role to safeguard integrity of the electoral institution and fairness of the election process. Ultimately, free and fair elections remain foundational to the survival of a democratic system.

The strength and resilience of Indian democracy stay behind its free and fair election system and independent and impartial election set up known as Election commission of India (ECI). The commission plays a pioneering role in mitigating these challenges, continuously updating its frameworks to empower voters to cleanly express their sovereign will.

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