

## Free and Fair Elections: An Effective Tool to Strengthen the Indian Democracy

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Modern Democracies are mainly representative in character where the elected representatives of the people are made responsible for the governance of the country. Democracy has been universally accepted as a dynamic process which keeps the political consciousness animate and active. Democracy, being another name of liberty of faith and belief, and inevitable intellectual advance, becomes the fountain and mainstay of human values.

Lord Bryce rightly observes that, "a democratic person is one who is friendly regardless of his wealth or social status". Aristotle defined democracy as "the rule of many". The most accepted definition was given by President Lincoln of U.S.A. as, "a government of the people, by the people, and for the people". Seeley defined it as "a government in which everyone has a share. Dicey considered it "as a form of government in which the governing body is comparatively large fraction of the entire nation". Bryce defined it as that form of government "in which the ruling power of a state is largely vested, not in any particular class or classes, but in the members of the community as a whole.

The Constitution of India vests sovereignty in the people of India and it is exercised through their elected representatives. Universal adult suffrage, free, fair and periodic elections and independent election machinery are regarded the most prominent among the basic features of democracy. The Constitution of India guarantees the universal adult suffrage by proclaiming under Article 326 that every citizen having attained the age of 18 years and not otherwise disqualified (by reasons of non-residence, unsoundness of mind, crime or corrupt legal practice) shall have the right to be registered as a voter.

The Constitution does not specifically proclaims the fundamental right to vote to its citizens, nonetheless, this right has been regarded a fundamental right as being an integral feature of the right to freedom of expression provided in Article 19(i)(a). Thus the right to be registered as a voter in the electoral roll and the freedom of expression guaranteed under Article 19 viewed together forms the basis of a citizen's fundamental right to vote.

The conduct of free and fair elections depends much upon the performance of three elements which form a triangle. They are:

- (i) Independent and impartial electoral machinery;
- (ii) Political parties and candidates; and
- (iii) The electorate.

The electoral machinery employed for the conduct of elections should be able to enthrone confidence among the other two elements namely- political parties and candidates, and the electorate- that elections are being conducted and directed in a completely non-partisan spirit and the machinery is free from extraneous pulls and pressures.

In fact, elections lie at the heart of democratic process and are considered as the oxygen of democracy. Without the fairness, an election loses its meaning and sense; fairness and credibility of the electoral process crucially depend upon the efficiency, impartiality and adequacy of the electoral machinery.

### **Electoral Machinery in India**

As per the provisions of the Constitution of India, the entire electoral machinery is supposed to function under the superintendence, direction and control of Election Commission of India.<sup>8</sup> Unlike other integral features, the election machinery is also centralized which comprises of:

- (a) Election Commission of India;
- (b) State Election Machinery i.e. the Department of Elections at the State Headquarters; and
- (c) Election machinery at the district level and below.

This election machinery functions under the guidance of Election Commission of India during the preparation of the electoral rolls for, and the conduct of all elections of Parliament and to the legislature of every state and of elections to the offices of President and Vice-President held under the Constitution.

The Election Commission consists of the Chief Election Commissioner (CEC) and such number of other Election Commissioners (EC), if any, the President may from time to time fix. The appointment of CEC and EC shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President. The Election Commission has been granted freedom of functioning from the executive branch of government.

Once, the appointment of Chief Election Commissioner is made by the President, the Election Commission remains insulated from any kind of extraneous influences. This is ensured through inbuilt safeguards provided in the Constitution itself which specifically proclaim that the conditions of service and tenure of the CEC once determined by the President shall not be varied to his disadvantage after his appointment, that he shall not be removed from his office except in like manner and on like grounds as a judge of Supreme Court. As per the amendment made in August, 1989, the CEC has now been fully equated to the status of a Supreme Court Judge in regard to his salary and other conditions of service.<sup>9</sup> In addition to this, the President and the Governor of a state shall, when so requested by the Election Commission, make available to it such staff as may be necessary for the discharge of his functions.<sup>10</sup>

The head of the state level election machinery i.e. the Chief Electoral Officer (CEO), who is usually an officer of the concerned state government, is also nominated or designated for each state and Union Territory by the Election Commission of India. This officer functions, subject to the superintendence, direction and control of the Election Commission for the administrative management of all electoral proceedings in the state. "Similarly the various other electoral officers like District Election Officer for each district, the Electoral Registration Officer and the Returning Officer for each constituency appointed or nominated by the Commission discharge their responsibilities under the overall control of the Election Commission."<sup>12</sup>

The expressions, 'superintendence, direction and control' appearing in Article 324, indicate comprehensive responsibilities and wide set of powers which enable the Election Commission to attend to the duties and functions of many sorts, administrative or other, depending on the circumstances. In fact the Constitution contemplates the free and fair elections and vests comprehensive responsibilities in the Election Commission covered under these expressions.<sup>13</sup>

The blanket and plenary powers of the Commission vested in it by the Constitution are supplemented further by Parliament, mainly through two Acts viz. the Representation of the People Act, 1950 and The Representation of the People Act, 1951, and by rules made thereunder covering the whole range of the election field starting from the preparation of the electoral rolls and ending with the declaration of the result and even thereafter in regard to post-election matters.<sup>14</sup>

### Various Facets of the Role of Election Commission

Empowered by the Constitution, various Acts of Parliament and the rules made thereunder, the Election Commission performs numerous functions and responsibilities for the conduct of free, fair and impartial elections in the country. Important facets of the role of Election Commission can be identified as under:

- (a) As per the provisions of the Constitution, Delimitation of the constituencies to the House of People and State Legislative Assemblies has to be decided in an honest and fair manner by the Delimitation Commission from time to time. In this respect, the Election Commission is expected to maintain the orders of Delimitation relating to parliamentary and assembly constituencies and bring them up to date and making necessary amendments whenever the boundaries of the constituencies are altered.<sup>15</sup> Further the EC recommends to the President necessary alteration or amendment in the delimitation orders relating to the Council constituencies, namely graduates', teachers', and local authorities' constituencies, and the President issues the amendment after consulting the Commission.
- (b) The other requirement that all voters shall be registered prior to the day of election is one of the most important safeguards. It constitutes the very foundation upon which an honest election system must rest, and if properly administered, prevents many of the more serious ills and problems of the electioneering.<sup>16</sup> The constitution vests the power of superintendence, direction and control of the preparation of the electoral rolls in the Election Commission.<sup>17</sup> Empowered by this provision the electoral rolls for, and the conduct of, all elections to Parliament and to the legislature of the state and election to the office of President and Vice-President are to be prepared and finalized under the direction of the Election Commission.<sup>18</sup> It is entirely within the purview of the Election Commission to decide whether the electoral rolls need revision before each general election or by-election. The Commission also order special revision of the rolls and lay down the procedure for such revision.<sup>19</sup>
- (c) The Election Commission is empowered to regulate the existence of political parties for the purpose of elections in the country. The Election Commission has promulgated the rules<sup>20</sup> to provide for specification, reservation, choice and allotment of symbols at elections and for the recognition of the political parties in relation thereto. Such recognition of political parties also enables them to function in the country, in Parliament and state legislatures. The Commission examines the application submitted for registration of a political party and makes a detailed enquiry. Political parties are supposed to comply with the instructions and orders issued by the Commission from time to time for regulation for their activities. Allotment of symbols and disputes in political parties are also dealt with by the Commission. The Commission acts as the quasi-judicial final authority in this field.
- (d) The Election Commission performs the important role in administrative management and conduct of different elections for which the Commission is held responsible under the Constitution. In this respect, so many consecutive administrative steps are taken by the Commission. These steps are:
  - (i) The Election Commission fixes the dates for various stages of election like filing of nominations, scrutiny of the nominations, withdrawal of candidature, the date of poll and the date by which the process of election should be complete. If necessary, the Commission can alter the dates which have been originally fixed.<sup>21</sup>

- (ii) As recommended by the Election Commission the President or the Governor, as the case may be, issues notification in relation to the general elections to the *Lok Sabha* and the Legislative Assembly of a state. These notifications cover the programme of election announced by the Commission. Such notification is also issued for the biennial election to the *Rajya Sabha* and the Legislative Council of a state in pursuance of the recommendations of Election Commission.<sup>22</sup>
- (iii) The Election Commission also issues notifications for bye-elections to fill casual vacancies in both the houses of State Legislature.<sup>23</sup>
- (iv) If the poll is adjourned in a polling station on account of any sort of interruption or it is not possible to take the poll on account of any natural calamity or any other sufficient cause, the Election Commission on a report of adjournment from the Returning Officer decides the date on which the adjourned poll shall be completed.<sup>24</sup>
- (v) In the case of destruction or damage of ballot boxes or tampering with them to such an extent that the result of a poll at a polling station cannot be ascertained or in case of any irregularity in procedure which is likely to vitiate the poll, in such case the Commission is the deciding authority after taking into account all material circumstances either to order a repoll or to proceed with the election if it is satisfied that the fresh poll is not necessary.<sup>25</sup> The Commission can also exercise this power at the time of counting the ballot papers if it is found that the ballot papers were either destroyed, damaged or tampered with.<sup>26</sup>
- (vi) The declaration of result can also be stopped by the Commission.<sup>27</sup>
- (vii) The Election Commission may, for reasons to be recorded, order re-poll in an entire constituency before the result is declared, even though the grounds for such re-poll are not specifically covered under the election law. In such cases the Commission invokes the residuary powers conferred on it.<sup>28</sup>
- (viii) When the general election is completed, the Election Commission issues notification for formal constitution of the House of the People or the Legislative Assembly of a state. The Houses can meet only after such notification is issued.<sup>29</sup>
- (ix) The Constitution has vested powers in the Election Commission with regard to the question of disqualification of a sitting member of both Houses of Parliament and state Legislature.<sup>30</sup> Though the question of such disqualification is raised before the President or the Governor and formally decided by them, as the case may be, they are expected to refer this question for the opinion of the Election Commission and act according to such opinion. This is the only matter on which the President or the Governor is not advised by the Council of Ministers.
- (x) If a person is found guilty of a corrupt practice at a trial of an election petition, the President is required to determine whether such person should be disqualified; and if so, for what period. In this respect, the President is expected to act according to the opinion of Election Commission.<sup>31</sup>
- (xi) Election Commission, under the provisions of law of the country is empowered to seek the report of election expenses from the candidates. In this respect, the Commission is the final authority to decide the question whether a candidate has failed to lodge an account of election expenses within the time and in the manner

required by the law; the Commission can disqualify him for three years if it finds that the candidate has no justiciable reason for such failure.<sup>32</sup>

- (xii) The Election Commission is vested with power to remove or reduce the disqualification incurred by a person for contesting election except the disqualification for corrupt practice.<sup>33</sup> Similarly, the disqualification of a person for voting can also be removed by the Commission.<sup>34</sup>
- (e) Though the election schedule is announced by the Election Commission and notifications are issued by the President and the Governor but the actual responsibility of conducting a free and fair poll is carried out in the field by the state election machinery. The officers of the State Election Machinery like Chief Electoral Officer, the District Election Officers, the Returning Officers, the Electoral Registration Officers and other subordinate officers are supervised, guided and continuously controlled at each step of electioneering by the Election Commission of India. Any difficulty arising during this entire process is referred to the EC, and resolved as per the directions of the Election Commission.
- (f) For ensuring free, fair and impartial elections, a model code of conduct for the observance by political parties, candidates and the governments in power is issued by the Election Commission. The Commission tries to strictly enforce this code of conduct to cut down the misuse of official machinery by the political parties in power. Similarly, the political parties and the candidates participating in the electioneering are also expected to behave in such a manner that tension should not aggravate among different castes and communities. Parties and candidates are also expected to check their behavior so that there should not be any problem during the electioneering.<sup>35</sup>
- (g) The Commission requires adequate manpower for the purpose of conduct of elections, both civil and police. When requested by the Election Commission, the President and the Governor of the concerned state make available to the Election Commission such staff as the Commission may consider necessary for the discharge of its functions. For this purpose, the staff of the central and state governments may be requisitioned for the conduct of elections. In fact, during the process of elections, the deployment of personnel is done by the Returning Officer of the constituency and by the District Election Officer in accordance with the guidelines laid down by the Commission. In order to make effective use of available police forces, the Union Ministry of Home Affairs and Department of Home at the state government level assists the Commission and ensures that the sufficient police force is made available for maintaining peaceful atmosphere during the elections. If adequate police arrangements are not made by the government concerned, the Commission may take a decision to postpone the poll.<sup>36</sup>

These are the various dimensions wherein the Election Commission plays its role for the smooth conduct of elections in India. Scholars and critics feel that the Election Commission so far has sincerely tried to control the entire process of conduct of elections in such a manner that the free, fair and impartial elections be ensured.

During the last sixty eight years of the working of the Constitution, India has witnessed sixteen general elections to Lok Sabha i.e. the popular chamber of Union Parliament and many more elections to the State Legislatures. During this period, the single member Election Commission has been converted into multi (3 members) member Commission since 1989. The Commission has regularly demonstrated its efficiency and effectiveness in the conduct of elections. Since the governments in power, in a parliamentary system, continue in office only till they possess the majority in the popular house concerned, the Election

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Commission faced with the situation of holding elections time and again without the expiry of the prescribed term of Lok Sabha.

Despite numerous challenges, the general independence in the functioning of Election Commission has not been doubted so far. The Commission has properly conducted all elections during the last almost seven decades since the commencement of the Constitution. During this period, Election Commission has not only identified so many problematic areas of electioneering but also has tried its best to improve the system. To avoid rigging and impersonation, the Commission has introduced the use of electronic voting machines in the country. Similarly, the Commission has introduced videography of the election campaign in the entire country. As a consequence of these measures the social auditing, at large, of election expenses has been possible. Steps are being taken by Election Commission like mandatory filing of election expenditure, flying squads etc.

The voter ID cards are essential now to cast the votes. Ceiling on election expenses, introduction of code of conduct to the government in power and the political parties and candidates; safeguard against misuse of official machinery and numerous other steps have been taken to check the electoral malpractices. The Election Commission, in exercise of its constitutional powers has framed the rules and regulations to regulate the political parties in the country. The Commission has also announced the guidelines for carrying out the election propaganda of political parties on electronic media. If any doubt by different political parties or independent candidates is raised before the Election Commission, the Commission tries to investigate the matter through its observers and remove all sorts of doubts raised by them.

Holding regular periodic elections based on universal adult suffrage in a country like India is not a small and easy task. Election Commission has successfully completed this task in a country with nearly 863,500,000 (as per the last 2014 general election) electorate spread over in 29 states and 07 Union Territories of varied sizes and polling stations including those located “in sky high and snow-clad mountains in North, scattered tiny islands in South, thick forests in East and vast tracks of marshy and desert lands in West.”<sup>37</sup>

Thus the Election Commission has several achievements to its credit for strengthening the largest democracy of the world; yet there have been occasions when the efficacy and efficiency of Election Commission during the management of elections has been questioned.

### **Problems and Solutions**

Elections are the most important aspect of politics in a democratic system of governance. While politics is the art and practice of dealing with political power, election is a process of legitimization of such power.<sup>38</sup> Purity of elections is, therefore, the essence of democracy. Purity of elections proceeds on the diction, “Not only the end must be pure, but the means to achieve that end should also be pure.” Hence it is expected that a candidate should secure his election by fair means and not by resorting to foul methods or malpractices.

In India, the context of the challenges in the task of conducting free and impartial elections can be analyzed by dividing them into two categories. **Firstly**, the corrupt and wrong practices of elections which are indicated in the different acts related to elections and the rules made thereunder. Important steps have been taken both by the Election Commission and the government through different enactments and also through the introduction of model code of conduct to check these ills. Election Commission to a great extent has been successful in eradicating these malpractices which vitiate the whole electoral process.

The **second** context pertains to the electoral offences. This is one area which requires more effective steps to be undertaken.

### **Election Commission's Role in Checking the Corrupt Practices and Electoral Offences**

Since its inception, the Election Commission of India has been trying to check the mal or corrupt practices of the electoral offences by implementing the provisions of the Representation of People Act, 1950, the Representation of People Act, 1951 and Indian Penal Code. The election law in India specified penal consequences for corrupt and illegal practices. Even a single proven act of corrupt practice committed by a candidate or his agents or workers with his consent or knowledge, is enough to vitiate his election. Such a candidate might also suffer certain other electoral disabilities. He might suffer disqualification for standing as a candidate at future election for a specified period or he might even lose his voting right.<sup>39</sup>

Eight types of activities during the electoral process are regarded as corrupt electoral practices.<sup>40</sup>:

- (1) Bribery;
- (2) Undue influence;
- (3) Appeal on the ground of religion, race, caste, community, language, religious symbols or national symbols.
- (4) Promotion of enmity or hatred between different classes of citizens of India on grounds of religion, race, caste, community or language.
- (5) Publication of false statement in relation to the personal character or conduct of any candidate;
- (6) Illegal hiring or procuring of vehicles or the use of such vehicles for free conveyance of voters;
- (7) Incurring or authorizing election expenditure in excess of the prescribed limit;
- (8) Obtaining or procuring assistance from Government servants of specified categories.

The acts and practices identified as electoral offences at present are<sup>41</sup>:

- (1) Promoting enmity between different classes of citizens in connection with election;
- (2) Holding of public meetings on the day preceding the election day and on the election day;
- (3) Disturbance at election meetings;
- (4) Restrictions on the printing of pamphlets, posters etc;
- (5) Violation of secrecy of voting;
- (6) Officers acting for candidates or influencing voting at elections;
- (7) Canvassing in or near polling stations;
- (8) Breaches of official duty in connection with election;
- (9) Government servant acting as election agent, polling agent and counting agent;
- (10) Fraudulent defacing, destruction, removal etc. of election papers like nomination papers etc.

The Election Commission plays a regulatory role in the whole electoral process to control the above mentioned corrupt practices and electoral offences enumerated in the different sections of the

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Representation of the People Act, 1951 and also covered under the different sections of Indian Penal Code. To check the corrupt practices or any kind of electoral offences, the Election Commission issues the model code of conduct, before the commencement of the process of election itself, to be abided by the candidates, political parties and the government in power.

Though this model code of conduct is not backed by any legal binding, the Election Commission has been regularly taking effective steps to check the corrupt practices and electoral offences by making use of its vast powers granted to it under Article 324 of the Constitution of India. There have been such occasions when the Election Commission has either given strict directions to the officers of state election machinery or has appointed its observers at the spot or has postponed the electoral process in between, if such a need arises due to any situation of imbalance or disorder in the necessary arrangements during the election. While taking any of these steps, the Election Commission is guided and inspired only by the primary goal of ensuring free and fair poll.

If all these steps prove to be inadequate and candidates feel that any of the electoral offences has been committed or corrupt practices have been resorted to, the candidates are free to challenge the result of the election in a particular constituency even at a later stage in the competent court of law by filing an election petition. Though the process of such petitions has proved to be very cumbersome; still it provides a room to challenge the election, if a candidate is not satisfied with the arrangements made by the election machinery- or he has witnessed any gross irregularity or any corrupt practice by some other contesting candidate.

The Election Commission of India has successfully supervised and guided the election process but still there are some crucial areas which could not be effectively checked by the Commission. The critics feel that the Commission should strive to evolve a consensus among the political parties so that these ills could also be checked, and the success of the most vital aspect of the largest democracy of the world could be positively assured.

### **Role of Money and Muscle Power**

The political parties and the candidates try to collect enormous funds through dubious means. After independence, an unethical nexus between politics and business has surprisingly developed. This nexus seems to have continued with more disastrous consequence in the form of overflow of black money into the affairs of the political parties despite deregulation and decontrol measures in the liberalized market economy.<sup>42</sup> By and large, political parties and their candidates and supporters are inclined to win elections through use of force or by impersonation or violence or by steering up narrow sentiments of caste, community and religion rather than by building up political support in favor of their party organization.<sup>45</sup>

Fighting elections are costly affair as candidates spend money on promotion by organizing big political rallies, advertisements in print and electronic media etc. The limit on this expenditure is around Rs 70 lacks and Rs 28 lacks for Lok Sabha and State Legislative Assemblies respectively. Political parties find it preferable to give tickets to those who can fund themselves and the more deserving is robbed of opportunity.

### **Misuse of Government Power and Machinery**

Misuse of government power and machinery during the elections has also increased over the years with a corresponding decline of Election Commission's authority and prestige. By and large, the governments in power either at Union or in State try to announce a new policy, making promise of starting a new project, grant of allowances or loans, waiving of interest on loans etc.

### **Caste, religion and class disparity**

Promoting interests of one's own community is not wrong and may help in balancing the disparities in social structure, but when candidates canvass for votes by channeling hatred towards the other, this makes the election unfair as some social groupings own disproportionate amount of wealth to back their candidates.

### **Fake news and paid media**

With advent of social media everyone has a social presence and can be the consumer and producer of content at the same time by reading and sharing. Unauthenticated content on these channels may influence public opinion and can pose a challenge to fair elections.

### **Electoral Illiteracy**

Illiteracy among voters hinders their ability to properly research about the candidates they are voting for. Other side to this is the lack of interest among educated voters who do not take their right seriously. Election Commission has taken steps towards correcting electoral rolls and promoting electoral practices.

Moreover, the Election Commission can take initiative in the direction of developing consensus among the political parties to take up the required electoral reforms to ensure free, fair and impartial elections. To conclude, one can say that though there are big challenges in conducting the free and fair elections; the constitutional provisions, election commission, Supreme Court, various acts prove to be an ineffective and elaborate mechanism for ensuring free and fair elections in the country.

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