



# Reconceptualizing Free and Fair Elections: An Analysis of Electoral Reforms in India

**REKHA**

Independent Researcher

## ABSTRACT

Democracy has not been a free gift for most of the present democratic nations including India. India earned its independence and democracy after a long freedom struggle. The most significant feature of a democracy is the election process. Free and fair elections are essential in a healthy democracy. For the success of democracy, it is necessary that people maintain their allegiance towards the democratic institutions based on rule of law. The more the elections are free and fair, the stronger the allegiance the people will have towards democratic institutions. Contrary to this, if the elections are not free and fair, the people will not have faith in democracy. Parliament has made a law to ensure free and fair elections and a very comprehensive system of elections has been developed in the country. The experiences of the last seventeen General Elections have shown the merits and demerits of the system to the people. Minor changes have regularly been made in the election system. However, still our electoral process is beset with many evils like use of black money, casteism, communalism, rigging, abuse of administrative machinery, criminalization of politics, and even capturing of booths in some areas. All these abuses lead to eroding of faith of the people in free and fair elections. This paper discusses the concept of free and fair election, major electoral reform done by the government and the Election commission and the challenges involved in the election process.

**KEY WORDS:** Free and fair elections, Electoral reforms, Election Commission, Democracy, Constitution etc.

## INTRODUCTION

India being a sovereign, socialist, secular, democratic republic in which free and fair elections at regular basis is a basic norm. In other words, a citizen is free to cast his/her vote without any external influence. As in a parliamentary form of government, the electorate is sovereign enough to choose representatives, the Indian democratic system is a result of free and fair adult suffrage. To do justice with the objective of free and fair elections, the constitution makers established a centralized agency in the form of the Election Commission to handle all the election matters.

The Election Commission of India was constituted on January 25, 1950 under Article 324 to 329 of the Indian Constitution. It has the responsibility to conduct elections at numerous levels like Parliament, State legislatures, and the offices of the President and the Vice-president of India to ensure the efficiency of democracy.

Regular elections make a harmonious and systematic transfer of authority to new head. In this context, Pollock said that unless public elections are conducted with accuracy and efficiency, not only the public services are discredited but the whole democratic system is endangered.

But in practice, it depends on the impartial and independent conduct of elections. In a vast country like India, the election machinery and its functioning cannot be compared with any other governmental machinery functioning, whether set up under the Constitution or otherwise.

## The Concept of Free and Fair

The conduct of free and fair elections is the prime responsibility of the Election Commission. If it is not able to hold free and fair elections, the motive of constituting the commission is defeated. This concept includes even the preparatory stage to election such as the delimitation of constituency, preparation, revision, or amendment of electoral rolls, etc. Mainly the concept of free and fair elections relates to political liberty and equality.

‘Free and Fair’ in matters of election connotes that while exercising his right to vote, one is not under the undue influence of party discipline, religion, caste, creed, sex and language and also one is not under the strain of corrupt practices.

Thus, free and fair elections form the foundation of the democratic form of government and to ensure transparency in election, certain conditions must be fulfilled.

- There must be a set of election laws that cover the complete process of elections. Indeed, the constitution of India provides full protection to the electorates against any fear, injury, fraud, misrepresentation or the undesirable practices, which may indulge a candidate during elections
- The election laws should contain equal demarcation of constituencies, the principle of one man one vote, the secrecy of voting just procedure of casting vote, counting and declaration of results.
- An independent and impartial body to conduct elections which is not influenced by any external pressures from the party or the executive of the day. The conduct should be left unhindered in the hands of election machinery.
- There must be a healthy co-operation between the branches of government and citizenry, in discharging their duties as per law.
- The election disputes must be resolved expeditiously in conformity with the procedure laid down by law. This duty must be assigned to some judicial authority.

## Electoral reforms

Electoral Reforms refer to the introduction of the best practices in ensuring better democracy, clean politics, fair elections, ideal members of Legislative House, true representation and so on. Article 324-329 of the Indian Constitution deal with elections and electoral reforms. The focus of electoral reforms is on broadening the core meaning of democracy and making it more citizen-friendly along with the implementation of adult suffrage in true sense.

## Constitutional article related to electoral reforms

Article 324-329 deals with elections and electoral reforms.

- **Article 324** vests the superintendence, direction and control of the preparation of electoral rolls and conduct of elections in an independent Election Commission.
- **Article 325** states that no person to be ineligible for inclusion in, or to claim to be incorporated in a special, electoral roll on grounds of religion, race, caste or sex.
- **Article 326** provides that the elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage.
- **Article 327** provides power to the Parliament to make provisions concerning Elections to Legislatures.
- **Article 328** provides power to the Legislature of a State to make provision concerning elections to such Legislature.
- **Article 329** provides bar to make any interference by Courts in electoral matters.

## Need of electoral reforms

The need for electoral reforms has been felt mainly to avoid the malicious people and their hostile activities. Their requirement can further be elaborated as follows

1. The election process should reflect the situation of the day and should not be imposed on contemporary society.
2. To prohibit the criminalization of politics.
3. To stop the misuse of government machinery.
4. To discourage money and muscle power to contribute to election processes.
5. To discourage non-serious candidates to contest in the election.
6. To make election processes impartial and unbiased.
7. To build trust in the citizens towards electoral processes.
8. To employ the use of technology to further the election processes and be in synch with modern days methods.
9. Some candidates fight election from two seats, so it is the need of the hour that makes it compulsory for the candidates to pay the expenses occurred on the election of their second constituency.

## Major election reforms

### Tarkunde/ Jaya Prakash Narayan Committee

In August 1974, Jaya Prakash Narayan on behalf of the Citizen's for Democracy appointed a committee to study and report on scheme for electoral reforms. The members of the committee were V.M. Tarkunde, M.R. Masani, P.G. Mavalankar, A.G. Noorani, R.D. Desai and E. P.W. Decosta. It is known as J.P. Committee or Tarkunde Committee. The committee made the following recommendations

1. To change in the procedure of appointment of the Chief-Election Commissioner;
2. To elect three-member Election Commission.
3. To reduce the voting age from 21 to 18 years.(enacted by the 61<sup>st</sup> Amendment act of 1988)
4. The television and radio should be placed under an independent corporation.

### **Dinesh Goswami Committee:**

In accordance with the Janata Dal's election commitment, the national front govt. announced in the Lok Sabha on May 4, 1990. The major recommendations were as follows:

1. Time limit for bye-elections.
2. Increase in deposits from independents.
3. A check on advertisements on new papers and strengthening of the election commission.
4. A series of legislative measures should be set up to eradicate booth-capturing rigging and intimidating.
5. The committee also called for amendment of the anti-defection law to restrict disqualification.
6. Proxy voting for military, para-military, diplomats and for those posted outside India.
7. Ban on candidates to contest elections from more than two constituencies.
8. Extensive restructuring of the account of election expenses is needed.

### **Jeevan Reddy Committee:**

The Justice Jeevan Reddy has proposed far Reaching Electoral Reforms. The Following are the Highlights:

1. The Commission advocated a total ban on splits and mergers of political parties during the term of the Lok Sabha or Legislative Assembly.
2. Once a member has been elected on a ticket of a particular recognized party, then he should remain in that party till the dissolution of the House or till the end of his membership by resignation or otherwise.
3. The Commission has recommended an adequate representation.
4. To discourage non-serious persons from contesting elections, the Commission has recommended a steep ten-fold hike in the deposits of independent and non-recognized party candidates.
5. To curb criminalisation of politics, the Commission has suggested that a person should be disqualified from contesting elections to the Lok Sabha or an Assembly if a court has ordered framing of charges in respect of offences listed in the Representation of the People Act, 1951.

### **Vohra committee**

In 1993, The Vohra Committee was appointed by the Government of India. According to the Vohra Committee, the nexus between Crime Syndicates and Political Personalities was very deep. The entry of criminals into politics is a matter of great concern. According to the Central Bureau of Investigation (CBI) and the Report of the Vohra Committee, Crime syndicates all over India have become a law unto themselves. Even in the smaller urban and rural areas, muscle men have become the order of the day. Hired assassins have become part of these organizations. The committee quoted other agencies to state that the mafia Network is virtually running a parallel Government, pushing the state Apparatus into irrelevance. Some Political leaders become leaders of these gangs and over the years, got themselves elected to Local Bodies, State Assemblies and National Parliament. The committee recommended the barring of criminals from politics.

### **Indrajit committee**

Indrajit Gupta was the chairman of the all-party parliamentary committee on state funding of elections. The 8-member committee that set up by the all-party conference in May, 1998, submitted its report in January, 1999 with the following recommendations:

- State funding should be in kind, that is, no financial support is to be given to parties and also, part of the financial burden of the parties should be initially borne by the state.
- A Rs. 600 crore contribution from the centre and an equal amount by the states, annually, towards an election corpus fund for the purpose.
- Only EC- recognized political parties should be given the state support in terms of printing material and facilities; electronic media time; vehicles and fuel etc.
- Political parties should compulsorily submit their annual accounts to the income tax department, showing their receipts and expenditure failing which the party or the candidate foregoes the state support.
- Complete account of the election expenditure should be filled by the parties to the EC.
- All donations above Rs. 10,000 by the parties should be in the form of cheque/draft and the names of the donors should be disclosed in the accounts.
- Ban on donations by government companies for political purposes will continue, but whether other companies can donate or not is to be determined by the parliament.

## Law commission report on reform of electoral laws

In 1999, a commission headed by B.P. Jeevan Reddy was appointed who gave a report recommending various measures to be taken: -

- To make the electoral system more representative, fair and transparent.
- To strengthen democracy.
- To introduce stability in the governance.

The election commission has produced a comprehensive set of proposals regarding electoral reforms and implemented many of the recommendations of the above committees.

## OTHER REFORMS BY THE ELECTION COMMISSION AND GOVERNMENT

The government has taken the following initiatives to enhance the Election process in India and contribute to better electoral reform.

- **Electoral bonds scheme:** Electoral bonds are like a promissory note that can be bought by an Indian citizen or company incorporated in India from select branches of the State Bank of India. It is a bearer instrument which do not mention the name of the donor.
- **Introduction of VVPATs along with EVMs:** It is a method of providing feedback to voters using a ballot-less voting system. It is an independent printer system attached to EVM that allows the voters to verify if their votes has gone to the intended candidate.
- **Systematic Voters' Education and Electoral Participation (SVEEP)** program for voter education, spreading voter awareness and promoting voter literacy in India. It aims to build India a truly participative democracy by encouraging all eligible citizens' to vote and make an informed choice during elections.
- **Cvigil App:** This app provides time stamped, evidence based proof of the Model Code of Conduct, Expenditure Violation etc.
- **NOTA (None of the Above) Option:** By choosing NOTA, voters have the right not to choose any nominated candidate.
- **Decriminalization of Elections:** ECI and the Court have ensured together that the candidates declare their criminal record and any cases, pending or not.
- **National Voters' Day:** The government decided to observe January 25 as 'National Voters Day' to mark the Election Commission's founding day and encourage people about their voting rights.
- **Voters Helpline App** to ease the registration.
- **Divyang Sarathi and Divyang Doli** mobile application for persons with disabilities.
- **Committees for Accessible Elections** at National and State Level.

## CHALLENGES ASSOCIATED WITH ELECTIONS IN INDIA:

- **Distorting Informed Decision Making of Voters:** Unregulated populism that offers and distributes 'irrational freebies' during election campaigns causes voters to be biased, especially the unprivileged, since freebies can sway them and affect the informed decision making process for choosing their representatives.
- **Lack of Independent Staff:** Since ECI does not have its own staff, it relies on those of the Central and State Governments whenever elections are held.
  - As a result, the administrative staff is also responsible for ordinary administration, as well as electoral administration, which makes the electoral process less impartial and efficient.
- **No Statutory Backing for Enforcing Model Code of Conduct (MCC):** As far as enforcing Model Code of Conduct (MCC) and other election-related decisions are concerned, there is no clarity regarding the powers of Election Commission of India (ECI) to enforce them on ground.
- **Booth Capturing:** A polling booth, which is the designated location where voters exercise their right to vote, is the most important part of the election process.
  - There are many instances of booth capturing due to decay in the standards of political morality where party loyalists or hired criminals "capture" a polling booth and vote in place of legitimate voters to ensure that a particular candidate wins.
- **The criminalization of Politics and Politicisation of criminals:** Nexus between the two groups of Politicians and Criminals ensure each other's survival in Indian democracy. Criminals use money and muscle powers to enter politics and ensure that the cases against them have not proceeded. Political parties also field such candidates with a criminal background to secure a seat for the Party.

**According to Association of Democratic Reforms (ADR), 43 % elected members in 17<sup>th</sup> Lok Sabha constituted in 2019 have criminal charges against them, a 26% increase as compared to 16<sup>th</sup> Lok Sabha.**

- **Casteism:** In India, many political leaders use the caste issue as a political agency to divide the people for their benefit of votes.
- **Politicisation of Social Media:** Social media reflects public opinion, that is a currency of democracy. But one of the most common criticisms of social media is that it creates echo chambers where people only see viewpoints they agree with.
  - The political campaigns on social media sometimes spark religious and social tensions in different parts of the country that affect the impartial electoral process.
- **Inaccessibility of Booth for PwD:** A large number of persons with disability (PwD) faced immense problems in casting their vote due to lack of supporting infrastructure at polling booths.

## SUGGESTIONS

- **Democratizing Elections:** In a democracy, equality for all parties is demanded, and free & fair elections ensure those opportunities.
  - To ensure equal attention is given to minority political campaigns, strict norms must be established for the use of social media for political purposes.
    - The Election Commission of India can go to great lengths to make sure that one party doesn't have an undue advantage over another just because it is in power.
  - Regulations should also be maintained to ensure checks on use of personal data in the context of electoral campaigns complies with national laws.
- **No Voter to be Left Behind:** Apart from conducting free and fair polls, the Election Commission should take steps to ensure "participative, accessible, inclusive" elections by providing necessary infrastructure and facilities especially to the persons with disabilities.
- **Voter Awareness:** Voters hold the power to block or permit the march of freebies. There must be a consensus on regulating irrational freebies and ensuring voters are not swayed by irrational promises.
  - All of this requires eternal vigilance on the part of the voting class.
- **Enforcing Model Code of Conduct:** There is a need to enforce the Model Code of Conduct for Guidance of Political Parties and Candidates by providing it a statutory backing to effectively regulate election manifestos in order to prevent the manipulation of informed voter behaviour.
- **Law Commission 255<sup>th</sup> Report on Electoral Reforms:** A permanent and independent Secretariat for the Electoral Commission of India (ECI) along the lines of Lok Sabha/Rajya Sabha Secretariat is recommended in this report.
  - Furthermore, State Election Commissions can also be provided with similar provisions to guarantee their autonomy and fairness.

## CONCLUSION

There is no democracy without elections. The success of democracy depends upon holding free and fair elections. There is a multiparty system and every political party registered with the election commission can take part in the elections by fielding candidates based on manifestos issued by the concerned political party. Voting right is a fundamental right for the citizen and it can't be taken by force. In early 1946, new elections were called in British India when the people of India got the opportunity to use their right to cast the vote. The Indian Independence Act, 1947 brought freedom to India and thereafter the regular process of elections started in India and first general election was held in 1952. The constituent assembly had agreed that the free and fair elections was a matter of great importance and established a centralized election agency in the shape of the Election Commission to be put in charge of all election matters. Elections provide an opportunity for the voters to elect their representatives and hold them accountable for their actions. It is a method for identifying public opinion which is supposed to be the source of the guide for what political leaders do. Thus, an election has been playing a key role in a democratic polity because it gives a mandate to elected members for forming the government.

But the current election system is facing a number of challenges that raise doubts about its "free and fair" nature. Thus, we require the election amendment for retaining the trust of commoners in the election process. There are many steps that has been taken by the Election Commission and the government but much more are still required. It is therefore imperative that the issues are carefully scrutinised and addressed holistically.

## REFERENCES

1. Ahmadi, A.M, *T.N. Seshan v. Union of India*, AIR 1995 SCC (4) 611, JT 1995 (5) - 337. Accessed from <https://indiankanoon.org/doc/525269/> on October, 10, 2019.
2. Ambedkar, B. R. “*Constituent assembly debates*”.1948. Accessed from, [https://www.constitutionofindia.net/constitution\\_assembly\\_debates/volume/7/ 1948-12-09](https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/ 1948-12-09) on November, 04, 1948.
3. Bakshi, P. M., & Kashyap, S. C., “*The Constitution of India*”. Universal Law Publishing. New Delhi,1982
4. Basu, D.D., “*Introduction to the Constitution of India*”, Vikas Publishing, New Delhi, 1982.
5. *Committee on State Funding of Elections Report*, (1998). Accessed from [https://adrindia.org/sites/default/files/Indrajit\\_Gupta\\_Committe\\_on\\_State\\_funding\\_of\\_Elections.pdf](https://adrindia.org/sites/default/files/Indrajit_Gupta_Committe_on_State_funding_of_Elections.pdf) on October, 09, 2019.
6. Fadia, B. L., “*Indian Government and Politics*”. Sahitya Bhawan Publications, Agra, 2000.
7. Ganguly, A. K., *Ramesh war Oraon v. State of Bihar*, AIR 1995 Pat173, 1995. Accessed from <https://indiankanoon.org/doc/536680/> on October, 11, 2019.
8. “*India is paving the way for truly accessible elections*”, The Hindustan Times, 06-12-2022.
9. Kafaltiya, A. B., “*Democracy and Election Laws*”, Deep & Deep Publication, New Delhi, 203.
10. Laxmikanth, M, “*Indian Polity for UPSC 3E*”: Tata McGraw hill Education Private Limited, New Delhi, 2010.
11. Mirchandani, G.G., “*The people’s Verdict*”, Vikas Publishing, New Delhi, 1980.
12. Mourice, D., “*Political Parties: Their Organization and Activity in Modern State*”, Methuen and Compres, London, 1954.
13. Pollock, J., “*German Electoral Administration*” (New York, 1934), 1960. 1 See also TE Smith. *Elections in Developing Countries*, 3.
14. Sawant, P., *Dhanao S.S. v. Union of India*, AIR 1991 SC 1745. Accessed from <https://indiankanoon.org/doc/852842/> on October, 10, 2019.
15. Shukla, V. N., “*The Constitution of India*”. Eastern Book Company. Lucknow, 1964.

