

Introduction

Are Elections in India Free and Fair ?

| **M. G. Devasahayam***

The US based Freedom House's 2021 report that appeared across the media on March 8, 2021 should put all Indians to shame. "India loses its status as 'free'... Political rights and civil liberties have worsened since 2014, and the decline has accelerated since 2019." India's status on Freedom House's report on political rights and civil liberties was lowered to "partly free." In 2020, the organisation's report had ranked India as "free."

The decline is due to the increased pressure on human rights organizations, rising intimidation of academics and journalists, and a spate of bigoted attacks, including lynchings, aimed at Muslims. The coronavirus-induced draconian lockdown that "resulted in the dangerous and unplanned displacement of millions of internal migrant workers" also resulted in the degeneration. The report expressed concern that the fall in India's status from the "upper ranks of free nations" may have a damaging impact on international democratic standards.

The just released 'Democracy Report' by the Varieties of Democracy (V-Dem) Institute based at the University of Gothenburg, Sweden, puts India in the league of countries who have seen significant slides into authoritarianism. According to the Report India's democratic process is 'on a Path of Steep Decline' turning the country into an 'electoral autocracy'. The unkindest cut in the Report is the comparison with Pakistan: "India is, in this aspect (censorship), now as autocratic as is

Pakistan, and worse than both its neighbours Bangladesh and Nepal. In general, the government in India has used laws on sedition, defamation, and counter-terrorism to silence critics.”

This is speaking ‘truth to power’. Since Parliament Election-2019 India has witnessed several draconian laws and predatory policies being rushed through in an arbitrary and autocratic manner, not complying with even elementary principles of democracy. Prominent among these are Citizen’s Amendment Act, RTI Amendment Act, National Education Policy, Privatising Public Sector Policy, OTT Rules and the three anti-Farmer laws only to favour a select corporate-oligarchy. Added to these is a near 75% jump in sedition and UAPA cases against academics, lawyers, journalists, students and activists just for questioning the government!

Parliament Election-2019 is being flagged as the flash-point that has led to India losing the status as ‘free’ and becoming an ‘electoral autocracy’. This is a very serious matter and it is therefore imperative to analyse as to how this election was conducted, and how it answered to the requirements of ‘free and fair elections.’ As it is, India has a deeply flawed first-past-the-post election system wherein a political party winning just about 25% of the electorate’s mandate can capture power by having majority number of MPs and impose its will on the entire population as is happening now.

This itself is a cruel assault on representative democracy. And if an unfair election is added to it that could spell the death knell of democracy itself. Sadly enough, ECI’s conduct of the Parliamentary Election-2019 invited serious controversy and criticism and its very fairness was questioned, with adequate reasons, by several organisations. The Association for Democratic Reforms, the Constitutional Conduct Group (CCG) of former civil servants and the Forum for Electoral Integrity were among the several groups that were compelled to draw public attention to the lack of fairness in the conduct of the election. Many political parties, mainstream and digital media houses and civil society groups also voiced serious apprehensions at the manner in which the ‘model code of conduct’ was being violated by the ruling party.

The response of ECI to all these serious public concerns was indifferent bordering on hostility. So, civil society groups got together and held seminars and public discussions in 2019 and 2020. Of the suggestions that emanated, a unanimous one was to constitute a body of eminent and experienced persons with domain knowledge on issues relating to elections. Thus, the Citizens’ Commission on Elections (CCE) was constituted to delve deeper into critical aspects concerning elections, call for expert advice where necessary and come up with appropriate findings and suggestions to ensure that elections are conducted with fairness and integrity.

After due deliberations CCE was set up on March 5, 2020 and went into specific areas/themes that have direct bearing on the integrity and fairness of Parliament election-2019. Each theme had a mentor/mentors:

Theme	Mentor
i. Integrity and inclusiveness of the Electoral Rolls	Harsh Mander IAS (Retd) and Venkatesan Ramani IAS (Retd)
ii. Electronic Voting [EVM/VVPATs] and its compliance with Democracy Principles	Prof. Sanjiva Prasad , Dept of Computer Science, IIT Delhi
iii. Criminalization, money power and Electoral bonds.	Ms Anjali Bhardwaj , Co-convenor, National Campaign for People's Right to Information
iv. Scheduling and processes of elections and compliance of Model Code of Conduct.	Prof Jagdeep Chhokar , Co-Founder, ADR and Former Dean, IIM, Ahmedabad.
v. Role of media including social media, fake news, etc.	Paranjay Guha Thakurta , Distinguished Journalist.
vi. Autonomy of ECI and its functioning before, during and after Elections.	Prof. Sanjay Kumar , Centre for the Study of Developing Societies, Delhi

Mentors prepared the Report based on depositions, RTI replies, published papers, articles and other relevant documents. Based on the depositions and analysis CCE came across severe flaws in all these areas before, during and after Parliamentary Elections-2019. Reports have been prepared on all these areas/themes.

Volume I

Since the theme “Electronic Voting [EVM/VVPATs] and its compliance with Democracy Principles” is largely technical in nature it was dealt with separately and the Report under the title “Is the Indian EVM-VVPAT system fit for democratic elections” was released as Volume I on 30 January, 2021. Key findings in this Report are:

- i. EVM voting does not comply with the essential requirements of ‘Democracy Principles’ i.e. each voter having the direct knowledge and capacity to verify that his/her vote is cast-as-intended; recorded-as-cast and counted-as-recorded.
- ii. It also does not provide provable guarantees against hacking, tampering and spurious vote injections. That an EVM has not yet been detected to have been hacked provides no guarantee that it cannot be hacked. Thus, elections must be conducted assuming that the EVMs may possibly be tampered with.
- iii. Though VVPAT is installed in every EVM not even one paper slip is counted and matched to verify/audit the votes polled and votes counted

- before making the results public. This has exposed elections to serious fraud.
- iv. Design and implementation of ECI-EVMs as well as the results of both software and hardware verification are not public and open to full independent review. VVPAT system does not allow the voter to verify the slip before the vote is cast.
 - v. Due to absence of End-to-end (E2E) verifiability, the present EVM system is not verifiable and therefore is unfit for democratic elections.
 - vi. In practice, it may be necessary to test more EVMs than even what the civil society and the political parties demand (30% and 50% respectively) to ensure verification and reliable ascertainment of results.
 - vii. There must be stringent pre-audit of the electronic vote count before the results are declared. The audit may in some cases - depending on the margin of victory - require a full manual counting of VVPAT slips.
 - viii. The electronic voting system should be re-designed to be software and hardware independent in order to be verifiable or auditable.
 - ix. The decision-making processes within the ECI was not logical, rigorous and principled during the 2019 parliamentary elections. It is essential for elections using electronic means to adhere to standard democratic principles. Only then can elections be free and fair, engendering confidence in election outcomes and democratic process. This is not so now.

This Report has gained considerable traction among the media, public and political parties. [Link: https://www.reclaimtherepublic.co/report](https://www.reclaimtherepublic.co/report)

Volume II

Compiling the Reports of all other themes Volume II is released now under the title "Are elections in India free and fair?" Herewith is the summary of each theme.

(a) Electoral Rolls.

- Significant exclusion has been noticed of vulnerable and disadvantaged groups: Circular migrants; Urban homeless persons; Trans-people; Women (especially single women, widowed, divorced women); Sex workers; Highly stigmatised caste groups (Manual scavengers); Adivasis (Including PVTG's (particularly vulnerable tribal groups) and DNT's (De-notified Tribes); Muslims (even Christians in some Constituencies); Persons with disabilities; Persons with mental illnesses; Old people without care.
- There is no doubt that many names do not figure in the electoral rolls, whether through mischief or oversight: minority communities, the homeless

and the disadvantaged, the aged, etc. The modalities for ensuring that these names are included need to be clearly spelt out. It is obvious that the electoral rolls registration machinery has been found wanting in carrying out a door- to-door enrolment campaign.

- There is still the issue of whether the voter's name actually figures in the electoral rolls. The National Voters' Service Portal (NVSP) allows for downloading the electoral roll part, but this is hardly a feasible task for the average voter without internet facilities. There is still a need to go through hundreds of names to locate one's name in the rolls. Some easier method of verifying in advance of the date of polling whether one's name is in the rolls would make the task easier, especially for the aged, sick, etc.
- Two categories of voters would still have a problem of casting their votes at the polling station: (a) migrant labour located at other places away from their place of residence; and (b) those who, because of age, disability, illness, etc. are not able to travel to the polling station. What provisions need to be made for such voters will need to be decided.
- Effective mitigation of the electoral roll problems that have been pointed out requires maintaining records in a manner that enables 1. complete transparency; 2. public verifiability of all decisions regarding enrolment, updates and deletions. The above are necessary conditions for ensuring the integrity of the electoral rolls. Sufficiency will also require defining fool-proof processes beyond data organisation, especially for identification of all eligible voters and avoiding exclusion, which are beyond the scope of this document.
- ECI's proposal to link voter ID with Aadhar is a 'very dangerous proposition'. It could lead to massive data leak, fraud and theft that can severely endanger India's democracy.

(b) Criminal, Money, Electoral Bonds

- The problem is enormous. Government told SC that for the period between 2014-2017, 3,045 criminal cases, including heinous ones, involving 1,765 MPs and MLAs were pending. This continues to rise assuming alarming proportions.
- Money-power in election is the fountainhead of all corruption in the country. It compromises the integrity of democracy in multiple ways: it raises the entry barriers to politics; excludes honest candidates and parties; leads to corruption and big money controlling the state; distortion of policy making in wasteful, inefficient, and anti-democratic directions and exacerbation of polarization.
- Despite opposition from ECI and RBI, government, using Money Bill route to bypass Rajya Sabha, introduced electoral bonds. Finance Act, 2017,

increased opaqueness and consolidated the role of big money in electoral politics, giving huge advantage to the ruling party and destroying level playing field.

- Total expenditure on Parliament election-2019 is estimated at a staggering Rs 60,000 crores making it the costliest in the world, more than double of 2014 polls, according to Centre for Media Studies (CMS). As per the Report, out of this amount the ruling party (BJP) spent close to Rs 27,000 crore i.e. 45%. This works out to Rs 89 crores per seat (303) won by this party.
- The fast-rising economic Oligarchy in the country, threatening India as a welfare state is the direct fallout of this extreme money power in elections.

(c) Electoral Process and MCC

- ⌘ For Parliament Election-2019, ECI deliberately delayed the announcement to enable PM to complete the inauguration blitz of a slew of projects (157 of them) that he had scheduled between February 8 and March 9.
- ⌘ It was the longest election in the country's history, and its scheduling gave room for suspicion that it had openly and unabashedly favoured the ruling party.
- ⌘ Some of the major controversies of MCC pertain to (a) Lack of consistency by the ECI in enforcing the MCC, (b) ECI treating the ruling party with kid gloves, (c) ECI not using its powers under Article 324 of the Constitution.
- ⌘ The Election Commissioner who dissented and stood his ground was eased out from the ECI.
- ⌘ This is a very critical issue because the major raison d'être of the MCC was to provide a level-playing field to all contesting political parties. Dealing with the ruling party with kid gloves negates the very reason for the existence of MCC.
- ⌘ One of the most disturbing phenomena in this election was the abuse/misuse of Armed Forces for election purposes by the party in power. Propaganda went the extent of calling Indian Army 'Modi's Sena' causing anger among Veterans. This forced a large number of veterans to write to the President of India that received no response.

Media, fake news, etc.

- India's mediascape has undergone a major transformation with the exponential growth in the use of the internet across the world and also in India.
- A very substantial section of the mainstream and mass media in the country has become excessively supportive of the ruling BJP.
- Despite guidelines and codes ECI did not take note of the many media violations – particularly by the ruling party.

- ❑ The most blatant violation was the opening of a new channel called Namo TV which continuously telecast speeches and events about the PM. Namo TV did not have permission from the I & B Ministry to go on air and did not comply with the regulations necessary to start a new channel.
- ❑ ECI failed to curb fake news online before and during the 2019 elections.
- ❑ Procrastination, silence and inaction characterized ECI's responses even to serious violations of MCC, media code and guidelines by the ruling party!

(e) ECI-Functioning and Autonomy

- ECI has plenipotentiary powers drawn from Article 324 of the Constitution of India to conduct free and fair election.
- In addition, Supreme Court has ruled: "When Parliament or any State Legislature made valid law relating to, or in connection with elections, the Commission, shall act in conformity with, not in violation of, such provisions, but where such law is silent, Article 324 is a reservoir of power to act for the avowed purpose of pushing forward a free and fair election with expedition..."
- But ECI is just not using these powers, because ECs are the appointees of the Government of the day and not through an independent process of collegium. The case of one dissenting EC, who was side-lined and then eased out has caused irretrievable damage to ECI's independence and integrity!
- This compromises the autonomy of the ECI and creates doubts about the neutrality of the CEC and the ECs, and consequently, the neutrality of the Commission itself. This poses serious danger to the fairness and integrity of not only the elections, but democracy itself...

End-Note

In his well-researched Book "An Undocumented Wonder-Making of the Great Indian Election" former Chief Election Commissioner SY Quraishi (Rain Light; First edition- 21 April 2014) writes thus: "The Indian election is a gigantic exercise that is often called the 'greatest show on earth', not merely because of the scale, size and diversity of the exercise but because of the vibrant volatility of our democracy."

Writing the Foreword to the Book Gopalkrishna Gandhi, former civil servant, diplomat and Governor of West Bengal noted: "India is valued the world over for great many things, but for three over others: The Taj Mahal, Mahatma Gandhi and India's electoral democracy. The credit for the last of the three fames goes to the people of India ... The people are the propulsive force, the driving energy of India's Electoral democracy. ... But the vehicle's engine, where ignition and

combustion take place and the fuel and engine combine to move the vehicle is the Election Commission of India ”.

Sadly, since then, ECI, the ‘engine that drives India’s elections’ seem to have corroded fast and has morphed into an ‘unelected autocracy’. It is maintaining the fig leaf of ‘free and fair elections’ only by deploying vast array of paramilitary forces, variety of observers and flying squads while losing its essence of level playing field, “democracy principles” and public faith. In the event, ECI has drifted away from its constitutional (Article 324) mandate of holding genuinely free and fair election. No wonder then that India is being branded as ‘electoral autocracy’!!

In his seminal work “The Oak and the Calf” the Russian recluse Alexander Solzhenitsyn famously wrote: *“It is infinitely difficult to begin when mere words must move a great block of inert matter. But there is no other way if none of the material strength is on your side. And a shout in the mountains has been known to cause an avalanche.”*

We have only words and no material strength. There may not be an avalanche. But, if these words can facilitate a rapid return to ‘democracy principles’ and ‘free-and-fair’ elections, thereby reversing the drift towards ‘electoral autocracy’, that would be reward enough.



*** **M.G. Devasahayam** is former Army and IAS Officer and is presently Coordinator, Citizen’s Commission on Election; Convener, Forum for Electoral Integrity; Member, Constitutional Conduct Group and Chairman, People-First.