

**UPSC**  
**NCERT Summary**  
**Elections & Democracy- 2**

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## **FREE AND FAIR ELECTIONS**

The true test of any election system is its ability to ensure a free and fair electoral process. If we want democracy to be translated into reality on the ground, it is important that the election system is impartial and transparent. The system of election must also allow the aspirations of the voter to find legitimate expression through the electoral results.

### **(i) Universal franchise and right to contest**

- Apart from laying down a method of elections, the Constitution answers two basic questions about elections: Who are the voters? Who can contest elections? In both these respects our Constitution follows the well established democratic practices.
- You already know that democratic elections require that all adult citizens of the country must be eligible to vote in the elections. This is known as universal adult franchise. In many countries, citizens had to fight long battles with the rulers to get this right. In many countries, women could get this right very late and only after struggle. One of the important decisions of the framers of the Indian Constitution was to guarantee every adult citizen in India, the right to vote.
- Till 1989, an adult Indian meant an Indian citizen above the age of 21. An amendment to the Constitution in 1989, reduced the eligibility age to 18. Adult franchise ensures that all citizens are able to participate in the process of selecting their representative. This is consistent with the principle of equality and non-discrimination. Many people thought and many think so today that giving the right to vote to everyone irrespective of educational qualification was not right. But our Constitution makers had a firm belief in the ability and worth of all adult citizens as equals in the matter of deciding what is good for the society, the country and for their own constituencies. What is true of the right to vote is also true of right to contest election. All citizens have the right to stand for election and become the representative of the people. However, there are different minimum age requirements for contesting

elections. For example, in order to stand for Lok Sabha or Assembly election, a candidate must be at least 25 years old. There are some other restrictions also. For instance, there is a legal provision that a person who has undergone imprisonment for two or more years for some offence is disqualified from contesting elections. But there are no restrictions of income, education or class or gender on the right to contest elections. In this sense, our system of election is open to all citizens.

- Article 324: (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice- President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission).

## **(ii) Independent-Election Commission**

- Several efforts have been made in India to ensure the free and fair election system and process. The most important among these is the creation of an independent Election Commission to 'supervise and conduct' elections. In many countries, there is an absence of an independent mechanism for conducting elections. Article 324 of the Indian Constitution provides for an independent Election Commission for the 'superintendence, direction and control of the electoral roll and the conduct of elections' in India. These words in the Constitution are very important, for they give the Election Commission a decisive role in virtually everything to do with elections. The Supreme Court has agreed with this interpretation of the Constitution. To assist the Election Commission of India there is a Chief Electoral Officer in every state. The Election Commission is not responsible for the conduct of local body elections. The State Election Commissioners work independently of the Election Commission of India and each has its own sphere of operation.
- The Election Commission of India can either be a single member or a multi-member body. Till 1989 the Election Commission was single member. Just before the 1989 general elections, two election Commissioners were appointed making the body multi-member. Soon after the elections, the Commission reverted to its single member status. In 1993, two Election Commissioners were once again appointed and the Commission became multi-member and has remained multi-member since then. Initially there were many apprehensions about a multi-member Commission. There was a sharp difference of opinion between the then Chief Election Commissioner and the other Commissioners

about who had how much power. The matter had to be settled by the Supreme Court. Now there is a general consensus that a multi member Election Commission is more appropriate as power is shared and there is greater accountability.

- The Chief Election Commissioner (CEC) presides over the Election Commission, but does not have more powers than the other Election Commissioners. The CEC and the two Election Commissioners have equal powers to take all decisions relating to elections as a collective body. They are appointed by the President of India on the advice of the Council of Ministers. It is therefore possible for a ruling party to appoint a partisan person to the Commission who might favour them in the elections. This fear has led many to suggest that this procedure should be changed. Many persons have suggested that a different method should be followed that makes consultation with the leader of opposition and the Chief Justice of India necessary for the appointment of CEC and Election Commissioners.
- The Constitution ensures the security of the tenure of the CEC and Election Commissioners. They are appointed for a six year term or continue till the age of 65, whichever is earlier. The CEC can be removed before the expiry of the term, by the President if both Houses of Parliament make such a recommendation with a special majority. This is done to ensure that a ruling party cannot remove a CEC who refuses to favour it in elections. The Election Commissioners can be removed by the President of India. The Election Commission of India has a wide range of functions.
  - It supervises the preparation of up-to-date voters' list. It makes every effort to ensure that the voters' list is free of errors like nonexistence of names of registered voters or existence of names of those noneligible or non-existent.
  - It also determines the timing of elections and prepares the election schedule. The election schedule includes the notification of elections, date from which nominations can be filed, last date for filing nominations, last date of scrutiny, last date of withdrawal, date of polling and date of counting and declaration of results.
  - During this entire process, the Election Commission has the power to take decisions to ensure a free and fair poll. It can postpone or cancel the election in the entire country or a specific State or constituency on the grounds that the atmosphere is vitiated and therefore, a free and fair election may not be possible. The Commission also implements a model code of conduct for parties and candidates, It can order a re-poll in a specific constituency. It can also order a recount of votes when it feels that the counting process has not been fully fair and just.

- The Election Commission accords recognition to political parties and allots symbols to each of them.

### (iii) Special Majority

- Special majority means:
  - Two-thirds majority of those present and voting, and
  - Simple majority of the total membership of the House.
- The Election Commission has very limited staff of its own. It conducts the elections with the help of the administrative machinery. However, once the election process has begun, the commission has control over the administration as far as election related work is concerned. During the election process, the administrative officers of the State and central governments are assigned election related duty and in this respect, the Election Commission has full control over them. The EC can transfer the officers, or stop their transfers; it can take action against them for failing to act in a non-partisan manner.
- Over the years, the Election Commission of India has emerged as an independent authority which has asserted its powers to ensure fairness in the election process. It has acted in an impartial and unbiased manner in order to protect the sanctity of the electoral process.
- The record of Election Commission also shows that every improvement in the functioning of institutions does not require legal or constitutional change. It is widely agreed that the Election Commission is more independent and assertive now than it was till twenty years ago. This is not because the powers and constitutional protection of the Election Commission have increased. The Election Commission has started using more effectively the powers it always had in the Constitution. In the past fifty five years, fourteen Lok Sabha elections have been held. Many more State assembly elections and bye elections have been conducted by the Election Commission. The EC has faced many difficult situations such as holding elections in militancy affected areas like Assam, Punjab or Jammu and Kashmir.
- It has also faced the difficult situation of having to postpone the election process midway in 1991 when the ex-Prime Minister Rajiv Gandhi was assassinated during campaigning. In 2002, the Election Commission faced another critical situation when the Gujarat Assembly was dissolved and elections had to be conducted. But the Election Commission found that unprecedented violence in that State had made it impossible to hold free and fair elections immediately.

## ELECTORAL REFORMS

No system of election can ever be perfect. And in actual election process, there are bound to be many flaws and limitations. Any democratic society has to keep searching for mechanisms to make elections free and fair to the maximum. With the acceptance of adult suffrage, freedom to contest elections, and the establishment of an independent Election Commission, India has tried to make its election process free and fair. However, the experience of the last fifty five years has given rise to many suggestions for reforming our election system. The Election Commission, political parties, various independent groups, and many scholars have come up with proposals for electoral reform. Some of these suggestions are about changing the constitutional provisions discussed in this Chapter:

- Our system of elections should be changed from the FPTP to some variant of the PR system. This would ensure that parties get seats, as far as possible, in proportion to the votes they get.
- There should be a special provision to ensure that atleast one third women are elected to the parliament and assemblies.
- There should be stricter provisions to control the role of money in electoral politics. The elections expenses should be paid by the government out of a special fund.
- Candidates with any criminal case should be barred from contesting elections, even if their appeal is pending before a court.
- There should be complete ban on the use of caste and religious appeals in the campaign.
- There should be a law to regulate the functioning of political parties and to ensure that they function in a transparent and democratic manner.
- These are but a few suggestions. There is no consensus about these suggestions. Even if there was a consensus, there are limits to what the laws and formal provisions can do. Free and fair elections can be held only if the candidates, the parties and those involved in the election process agree to abide by the spirit of democratic competition.

Apart from legal reforms, there are two other ways of ensuring that elections reflect the expectations and democratic aspirations of the people. One is, of course, that people themselves have to be more vigilant, more actively involved in political activities.

But there are limits to the extent to which ordinary people can engage in politics on a regular basis. Therefore, it is necessary that various political institutions and voluntary organisations are developed and are active in functioning as watchdog for ensuring free and fair elections.