

Indian General Elections Announced

Vinod Rai



Executive Summary

The election schedule to constitute the 17th Lok Sabha was announced on 10 March 2019. Indians will yet again go to the ballot box, to elect a new government. The entire mammoth exercise will be spread over seven phases with counting to be done on 23 May 2019. We analyse the thought process behind setting up a unitary body for the legislative bodies at the central and state levels, the use of the electronic voting machine, the efficacy of the model conduct and the attempt to have simultaneous elections in the states and the centre.

Elections Announced

The election bugle has been sounded. The Election Commission of India (ECI) has announced the dates for polling in the 2019 general elections, which will be spread over seven phases. The first day of polling will be 11 April 2019 with the last day being 19 May 2019. Counting will be done on 23 May 2019 with the results being announced on the same day. With this announcement, the model code of conduct has come into effect.

India's general elections involve a huge mobilisation of manpower. The process involves providing for roughly 15 per cent of the global population to cast their votes. To get an idea of the magnitude of the exercise, we need to study the following statistics pertaining to the 2014 general elections:

- In 2014, the size of the electorate was 814.5million. This was 100 million more than in 2009. Of these 814.5 million, 100 million comprised the age group 18-19 years and the voter turnout was 66.38 per cent. That year, 28,314 trans-genders also exercised their franchise, being registered as 'others'. In 2019 the number of voters is expected to be 900 million.
- In 2014, 8,251 candidates contested 543 seats in the Lok Sabha. There were 930,000 polling stations with nearly 1.5 million electronic voting machines (EVM) and 989 counting centres. In 2019, the number of polling stations will be up by 10 per cent and the EVM will display the face of the candidates. There will be a paper trail in all polling stations.

We attempt to study the setting up of the election commission and the factors which have contributed to its credibility, as well as the challenges and effectiveness of the institution.

One Election Body

While discussing the process of setting up an election body, the constituent assembly, unanimously affirmed that to ensure credibility and freedom of elections to the legislative

bodies, the Election Commission must be freed from any kind of interference from the executive of the day.¹ The drafting committee put in a separate part including Articles 289 and 290, among others. Article 289 transfers the superintendence, direction, and control of the preparation of the electoral rolls and of all elections to parliament and legislatures of the states, to a body outside the executive, to be called the Election Commission. It was decided that the entire election machinery should be in the hands of a central Election Commission, which alone would be entitled to issue directives to returning officers, polling officers and others engaged in the preparation and revision of electoral rolls so that no injustice may be done to any citizen in India, who under the Constitution, is entitled to be brought on the electoral rolls.

Model Code of Conduct

The Commission issues the Model Code of Conduct, a fairly potent weapon under Article 324 of the Constitution. This code involves a set of guidelines for the general conduct of political parties and candidates during elections mainly with respect to speeches, polling booths, election manifestos, processions and polling day. These set of guidelines have been evolved with the consensus of political parties, which have consented to abide by the principles embodied in the said code in its letter and spirit. The Model Code of Conduct comes into force immediately on announcement of the election schedule by the Commission to ensure free and fair elections. Much of it is designed to avert communal clashes and corrupt practices. There have recently been instances of politicians making hate speeches, pitching one community against another or making promises about new projects that may sway a voter. The code ensures that such unethical practices do not take place. It prohibits the distribution of liquor to voters and the ruling party from making announcements which may sway voters or take policy decisions which would again favour the interest of the party in power. The code is basically designed to ensure a level playing field among all political parties.

The code has been very effective in regulating the conduct of the political parties largely because of the fact it is self-regulatory in nature and not been backed or created by an Act of parliament. Despite the fact that it does not arm the commission with any penal powers other than a reprimand or censure, yet any castigation by the commission on violation of the code has very adverse repercussions for the politician, or party, among the citizenry, thereby inviting ridicule and condemnation.

A widely reported case of a Minister violating the code of conduct and falling foul of the ECI is that of the then-Law minister Salman Khurshid. While canvassing for his wife's candidature in the Legislative Assembly elections in 2012, Khurshid promised in his speech that if elected to power in Uttar Pradesh, the Congress would give religious minorities a 9 per cent sub-quota out of the 27.5 per cent Other Backward Class (OBC) quota for government jobs.² This was seen as violative of the model code and the Minister was given a censure by the commission. He was however defiant and went on to state that he would reiterate his earlier stance even

¹ S.K. Mendiratta: Election laws, practices and procedures. Constituent assembly debates.15 June 1948

² The Times of India. 14 February 2012. 'Petition filed versus Khurshid over Muslim sub-quota remark'. <https://timesofindia.indiatimes.com/india/Petition-filed-against-Khurshid-over-Muslim-sub-quota-remark/articleshow/11885214.cms>

if “they hang me”. Though the Congress party originally defended him³, it eventually sought to distance itself realising the seriousness of the delinquency stating that “people occupying posts of responsibility should speak responsibly”. The Commission was compelled to write to the President of India on the violation by the Minister and his subsequent ‘improper and unlawful’ defiance of its orders under which he was censured for promising sub-quota for minorities. The Minister was compelled to express regret saying that it was never his intention to transgress the law and undermine the code of conduct.⁴ This apology ended the row clearly indicating the superiority of the constitutional body and its principled stand irrespective of parties, personalities or the government.

The Electronic Voting Machine (EVM)

Certain political parties had raised doubts that the EVM could be tampered such that, irrespective of the button that the voter presses, the vote goes to a particular party candidate itself. Such a claim obviously suffered from a typical loser’s syndrome. The parties had not pointed fingers at the credibility of the EVM when their party had been in the winning position. Nevertheless, the allegation did raise doubts in the mind of the common man and hence became the responsibility of the ECI to assure the public at large of the machine being tamper proof. In fact, the Aam Admi Party (AAP) went to the extent of demonstrating in the Delhi legislative assembly about the manner in which the machine could be tampered with. This compelled the EC to issue a letter, inter alia, stating: “.....it is possible for anyone to make any electronic gadget which ‘looks-like’ a ECI EVM and demonstrate any magic or tampering. Very simply put, any ‘look-alike’ machine is just a different gadget, which is manifestly designed and made to function in a ‘tampered’ manner and has no relevance, incidence or bearing on the Commission’s EVMs. Any person with reasonable common sense can understand that gadgets other than ECI EVMs can be programmed to perform in a pre-determined way, but it simply cannot be implied that ECI EVMs will behave in the same manner because the ECI EVMs are technically secured and function under an elaborate administrative and security protocol. Such so-called demonstration on extraneous and duplicate gadgets, which are not owned by the ECI cannot be exploited to influence our intelligent citizens and electorate to assail or vilify the EVMs used by the commission in its electoral process”.⁵

The Big Challenge: Curbing Money Power

It is commonly believed that one of the major maladies plaguing the Indian democracy has been the use of money power in elections and the amassing of wealth by those elected. Lok Prahari, a non- governmental organization (NGO), had filed a public interest litigation (PIL) drawing attention to the exponential rise in the assets of a politician within a span of five years, between two successive elections. Delivering its verdict, in what is now a landmark move in electoral reforms in February 2018, the Supreme Court declared

³ Rediff News, 11 February 2012. ‘EC complains to President against ‘defiant’ Khurshid’.
<http://www.rediff.com/news/slide-show/slide-show-1-ec-complains-to-president-against-defiant-khurshid/20120211.htm>

⁴ The Deccan Herald. 14 February 2012. ‘EC may put lid on row with Khurshid’.
<https://www.deccanherald.com/content/227072/ec-may-put-lid-row.html>

⁵ Press Information Bureau, Government of India, 9 May 2017. ‘ECI EVMs are Non-Tamperable’.
pib.nic.in/newsite/PrintRelease.aspx?relid=161677

that politicians, their spouses, and associates must declare their sources of income, along with their assets, in order to qualify for contesting elections.⁶ They will also be required to declare their sources of income. This will subject them to scrutiny, among others, by civil society. The reasoning behind the Supreme Court direction is that the voter enjoys a fundamental right in making an informed choice among those seeking his vote and needs to know all details about the person he is going to vote for. The court has also suggested that a law be passed disqualifying those with disproportionate sources of income.

Simultaneous Elections in States and the Centre

There has been much talk of holding simultaneous elections in the state legislative assemblies and the parliament. The advantages include economising on the massive expenditure that is currently incurred for the conduct of separate elections, the so-called ‘policy paralysis’ that results from the imposition of the Model Code of Conduct during election time, the delay in delivery of essential services as the administrative machinery gets diverted and a repeated withdrawal from routine duties of crucial manpower that is deployed during election time. In 2016, the Model Code of Conduct was notified in Maharashtra for 307 days — in different areas — due to elections to parliament, assembly or local bodies.⁷ Though India did begin by conducting simultaneous polls in 1961, however; with reorganization in some states and tenures of certain assemblies getting curbed ahead of their scheduled terms, the practice could not be continued. Of the 16 Lok Sabhas that have been constituted so far, seven were dissolved pre-maturely due to coalition governments.⁸

The ECI is in the process of procuring new EVMs and Voter Verifiable Paper Audit Trail (VVPAT) machines for this general election. A total of 1.5 million EVMs will be required. Additional VVPATs are also being procured as a cushion in case of machines malfunctioning. This is a precautionary measure as about 11 per cent of the 10,300 VVPAT machines across 10 States had developed faults and had to be replaced during the by-election on 28 May 2018. It is assessed that if simultaneous elections to the Lok Sabha and State Assemblies were to be held in 2019, the ECI will require nearly 2.4 million EVMs. This is double the number required for the Lok Sabha polls in 2014.

A Credible Track Record

There is enough historical evidence to show that the courts are no deterrent to the wily politician as cases can drag on for years. For instance, Lalu Prasad Yadav was convicted in December 2017 for misdemeanours conducted in 1990-94. Sukh Ram was convicted in 2017

⁶ The Hindu. 16 February 2018. ‘Supreme court: Show sources of income to contest polls’. <https://www.thehindu.com/news/national/reveal-source-of-income-sc-orders-politicians/article22771987.ece>

⁷ The Indian Express. 20 August 2018. ‘BJP chief Amit Shah to Law Commission: Simultaneous polls can be implemented’. <https://indianexpress.com/article/india/one-nation-one-poll-amit-shah-law-commission-simultaneous-polls-5305372/>

⁸ PRS Legislative Research. 4 January 2016. Standing Committee Report Summary Feasibility of holding simultaneous elections to Lok Sabha and State Legislative Assemblies. <https://www.prsindia.org/report-summaries/feasibility-holding-simultaneous-elections-lok-sabha-and-state-legislative>

for bribes allegedly taken in 1996. The CBI takes years for successful prosecution and, at times, politicians have been known to change party, in the hope that being part of the ruling combine may help their case with the agency. It is thus ultimately only the objectivity and alacrity of decision making in the ECI that serves as a deterrent to the politician. Being a constitutional body enjoying autonomy and a guaranteed tenure provides comfort to the commissioners of neither being beholden to any party nor needing to play footsy with any politician. They are able to take decisions purely on merits and thus ensure that the process is not vitiated.

The ECI has delivered flawless elections, year after year, with a zero tolerance for error. It is truly amazing that the same bureaucracy, which becomes the hand maiden of politicians, is alleged to kowtow to all their political whims and is purported to be lacking in probity and professional integrity, manages to overcome its own obvious inadequacies to deliver such immaculate elections. The very same bureaucracy manages to contain unruly and wanton politicians, create a level playing field, ensuring that there is no booth capturing as was the practice in the past, and constrains money and muscle power. It is indeed a remarkable commentary on the very same bureaucracy, which, after all the perceived inadequacies, is able to get its act together and function as a well-oiled machinery.

The Commission has gone through turbulent times. Its credibility has been repeatedly tested in courts. It is functioning and lately, its reliance on the EVMs has withstood the test of scrutiny, and it has endured all this stoically. This has been its strength. It has received support and often acclaim from citizens, the media, courts and even political parties, who more often than not, love to hate it. All this has been possible only because the Election Commission has stood firm, objective and transparent in its conduct. It is truly a beacon of hope, empowering the citizenry to determine a nation's destiny and thereby strengthen the foundation of the Indian democracy.

The most potent instrument in a democracy available with the people is the power of casting their vote in a free and fearless manner. Many powerful leaders have been ousted from power, by the people, through the ballot box. This process provides citizens the satisfaction of participating in nation building and in deciding, to whom they will entrust the right to govern on their behalf. In India, the facility of free and fair elections is assured by the election commission of India (ECI). The ECI has been a vital pillar, upholding the gift of democracy that the constitution makers provided to the citizens of India, by ensuring fair elections and encouraging voter participation in the electoral process. The 2019 elections will be another test for this vital institution of accountability, which supports the vibrant democracy that India practices.

.

Mr Vinod Rai is a Distinguished Visiting Research Fellow at the Institute of South Asian Studies (ISAS), an autonomous research institute at the National University of Singapore (NUS). He is a former Comptroller and Auditor General of India. He can be contacted at isasvr@nus.edu.sg. The author bears full responsibility for the facts cited and opinions expressed in this paper.