Free and Fair Elections in India

Baseline Report ahead of 2024 General Election

Independent Panel For Monitoring Indian Elections
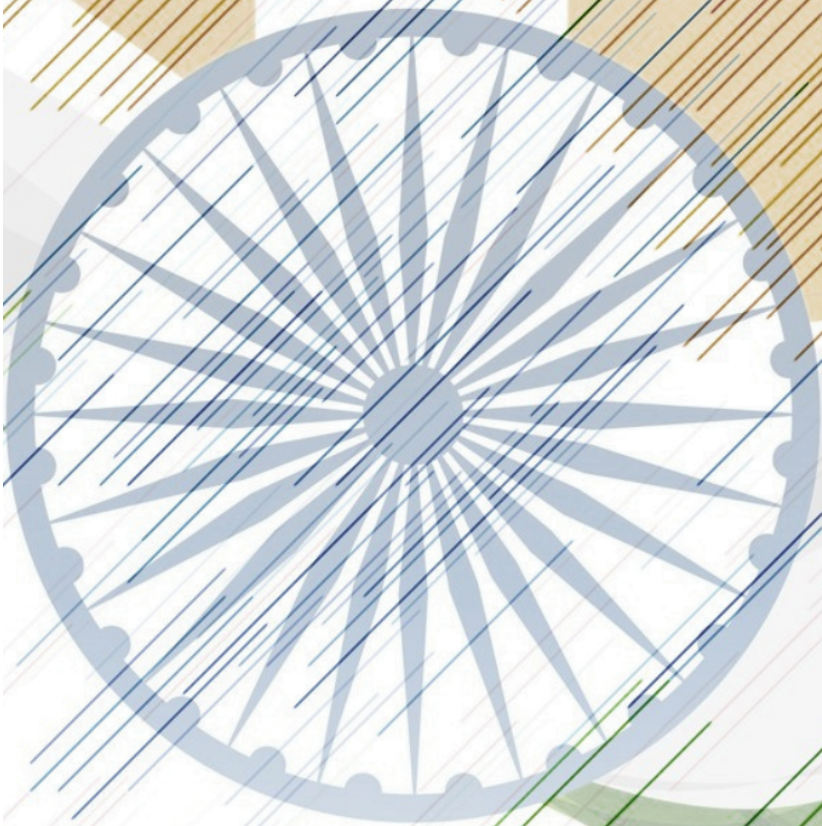
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Independent Panel for Monitoring

Indian Elections – 2024

indiaelectionmonitor.org

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Executive Summary

1. Some 970 million voters in India are going to cast their votes in April-May 2024, to elect members to the *Lok Sabha* – the lower house of Parliament. Citizens groups from many parts of the country, are voicing their worry that elections will not be free and fair, hence not genuine. In specific regions, there is also anguish about the likely denial of elections as well as of exclusion of vulnerable groups from voting. And civil society groups are raising concerns about the credibility of the Election Commission of India (ECI), to ensure a level playing field between political parties, and address grievances of stakeholders.

2. We are a group of independent scholars and practitioners that have constituted ourselves as the Independent Panel for Monitoring Indian Elections (IPMIE) – 2024, prompted by domestic civil society groups to engage with and respond to these challenges, in support of citizens groups seeking to ensure a free, fair and genuine General Election (GE) 2024 in India.

3. The current report is our assessment, based on experience from GE 2019 onward, of whether Indian citizens are able to exercise their right to universal suffrage; are offered free choice; and can make it in an informed manner. According to domestic as well as international law, these are the essence of a free and fair elections, essential for securing the will of the people, itself the cornerstone of a representative democracy.

4. Following are some of the key findings of this 'pre-election' report, that we intend to use as a baseline for our observation of GE 2024 election cycle, once they are notified.

Do Indians enjoy universal suffrage?

i. According to one estimate, more than 30 million Muslim voters and 40 million Dalit voters were missing from electoral rolls across the country, in 2019. There are similar reports of exclusion of Christians, as well as of internal migrants and the homeless.

ii. Voters in Jammu & Kashmir, numbering some 10 million, have not had a chance to vote in elections to state assembly, since 2018, denying their basic right to franchise.

iii. In Assam, Doubtful Voters (D-Voters), so marked by the ECI, numbering some 100,000, mostly Bengali speaking Muslims, as well as the 1.9 million persons from different backgrounds excluded from the National Register of Citizens (NRC), risk their right to vote being denied.

iv. In J&K and Assam, both with large Muslim concentrations, recently concluded delimitation exercises have been flagged for further disadvantaging Muslims in future electoral contests. With an already dismal Muslim representation in Parliament (4.2% against a population share of some 15%) and in state assemblies, and a First Past the Post electoral system, this further compromises the constitutional promise of equal suffrage.

Do Indian voters have 'real choice'?

i. BJP-led central government has systematically targeted opposition parties, whilst it has sought to strengthen the BJP's hold.

- Central investigating agencies have initiated a slew of criminal cases against opposition leaders. According to one report, 90% of all cases against political parties since 2014, by Central Bureau of Investigations and Enforcement Directorate, have been against opposition parties.
- Between 2017 and 2023, BJP reportedly cornered an estimated $ 800 million of the $1.45 billion raised by all parties, via the electoral bond scheme (EBS). This has been possible due to the opaque nature of EBS, and the control that BJP-led administration has on its operations.
- Supreme Court's recent verdict outlawing EBS is welcome, but funds already collected, mean that BJP already has a decisive resource advantage as it heads into 2024 elections.
- There is evidence of arm-twisting too, reports claiming 30 companies donated $ 40 million to BJP after they faced criminal investigations.

ii.   The Election Commission of India has refused to address concerns about flaws with electronic voting machines (EVM) used in elections in India, in place of paper ballot. The design and implementation of EVMs, as well as the results of both software and hardware verifications, have not been made public. They have also not been opened to full independent review. Though Voter Verified Paper and Audit Trail (VVPAT) are now installed in EVMs, no paper slips are counted and matched to verify or audit the votes polled, or votes counted before making the results public. It also does not provide guarantees against hacking, tampering, and spurious vote injections. According to experts, because of the absence of end-to-end verifiability, the present EVM-VVPAT system is not robust and therefore unfit for democratic elections.

<u>Are Indian voters able to make informed choice?</u>

i.   BJP has monopolised the information space, to the exclusion of opposition political parties, and has deepened its already-expansive powers to control the free flow of information.

- Indian media is increasingly concentrated in a few corporate hands. It has been shown that these entities have direct political ties to the BJP. Their programming is also openly supportive of the party. The increasing dependence on advertising support from the government, has further incentivised media to toe the BJP governments' line.
- Pro-BJP actors also dominate social media. BJP's IT Cell has been accused of deliberately stoking communal hatred and spreading disinformation, under protection provided by its top leadership.

ii.   BJP-led central and state governments have also intensified their muzzling of independent media and fact-checkers, including through the misuse of anti-terror and national security laws.
iii. BJP and allied groups seem to have doubled down on religious polarisation for electoral gains – PM Narendra Modi's presiding over the consecration of the Ram temple in Ayodhya in January 2024, and the central government announcing rules to the discriminatory Citizenship Amendment Act 2019, being cases in point. Direct calls to violence against Muslims and other minorities, continue, alongside dehumanising rhetoric, by influential leaders, in online as well as physical spaces.
iv. Against a backdrop of a highly communally charged atmosphere, the emerging threats posed by AI-powered deepfake and other technology, are particularly concerning, as we head into elections.

<u>Is conduct of elections in India independent and objective?</u>

i. Despite enjoying substantial powers, Election Commission of India (ECI) has been wanting in its enforcement of existing laws, rules, and model codes for free and fair elections. Allegations have included:

- Pro-government bias in announcement of election dates, and calendar.
- Failure to strictly enforce the Model Code of Conduct (MCC), including guidelines against communal election speeches, particularly those by top BJP leaders.
- Failure to engage meaningfully with stakeholders, also political parties, on key concerns, including false exclusions from voter rolls, not holding elections where due, the lack of end-to-end verifiability in EVM-VVPATs and biased enforcement of MCC.

ii. Central to ECI's poor performance seems to be its lack of independence from control by the executive. Recent changes to ECI's appointments process, give a virtual veto to the ruling party. This is a body blow, to an already weak system for conducting free and fair elections, resulting in a very uneven playing-field for contestants. Recent leadership resignations from the ECI, give further credence to fears that GE 2024 will be overseen by an ECI subservient to the BJP.

<u>Call to Action</u>

- Election Commission of India must: (i) be fair, and not compromise General Election 2024, (ii) ensure that financial, media and other advantages enjoyed by the ruling party are curbed; (iii) be attentive to complaints where they concern citizens' right to universal suffrage, and on violations of MCC.
- Governments must ensure fundamental freedoms are protected: liberty, association, assembly, expression
- Political parties should abide by MCC and not appeal to communal and caste feelings, in their campaigns.

List of abbreviations

- AAP: Aam Aadmi Party
- BJP: Bharatiya Janata Party
- CAA: Citizenship (Amendment) Act 2019
- CBI: Central Bureau of Investigations
- CCE: Citizens Commission for Elections
- CEC: Chief Election Commissioner
- CM: Chief Minister
- ECI: Election Commission of India
- ED: Enforcement Directorate
- EMB: Electoral Management Bodies
- EVM: Electronic Voting Machines
- FCRA: Foreign Contribution (Regulation) Act
- FPTP: First Past the Post
- GE: General Election
- ICCPR: International Covenant on Civil and Political Rights
- INC: Indian National Congress
- J&K: Jammu & Kashmir
- LG: Lieutenant-General
- MCC: Model Code of Conduct
- MLA: Member of Legislative Assembly
- MP: Member of Parliament
- NDTV: New Delhi Television
- NRC: National Register of Citizens
- PM: Prime Minister
- RPA: Representation of People's Act
- SCI: Supreme Court of India
- SC: Scheduled Caste
- ST: Scheduled Tribe
- UDHR: Universal Declaration of Human Rights
- UN: United Nations
- UP: Uttar Pradesh
- UT: Union Territory
- VVPAT: Voter Verified Paper and Audit Trail

List of tables and graphs

Independent Panel for Monitoring Indian Elections – 2024

The members of the Panel are:

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2. Dr. Thomas Daffern, Philosopher and historian; chairman of World Intellectuals Wisdom Forum; Director, International Institute of Peace Studies and Global Philosophy (France and UK); Convenor, Commonwealth Interfaith Network
3. Mr. Sakhawat Hossain, former Election Commissioner of Bangladesh
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1. Introduction: Will India's General Elections 2024 be Free and Fair?

Ahead of the General Election (GE) 2024 to the Lok Sabha (lower house of Indian Parliament), due in April-May 2024, citizens groups are reporting much anxiety and apprehension, around the sanctity of the voting process, and whether citizen will be accorded a free and genuine choice. In specific regions and among specific vulnerable groups, there is also anguish around the very denial of the right to universal suffrage. Citizens' groups across the country are reporting that concerns among the electorate point to the sanctity of the electoral process being compromised, affecting the inherent rights of all citizens to participate freely in elections. The fear ultimately, is that the free will of the people risks being obstructed.

Election monitoring groups in India have been relaying these concerns, about the integrity of elections in India, and whether elections continue to be free and fair, especially since last General Elections, in 2019. These include Citizens Commission for Elections (CCE).[1] CCE and other groups have raised several procedural and substantive concerns with conduct of elections.[2] These include questions about the integrity and inclusiveness of the electoral rolls – and alleged significant exclusions of disadvantaged groups and minority communities from it. They have raised several issues with electronic voting machines (EVM) that are used in India in place of paper ballots, concluding that EVM voting does not comply with the essential requirements of the voter having the direct knowledge and capacity to verify that their vote is cast as intended, recorded as cast, and counted as recorded. It also does not provide guarantees against hacking, tampering, and spurious vote injections. It is also alleged that the ruling Bharatiya Janata Party (BJP) has garnered, by far, most donations through the electoral bonds scheme, which has increased opaqueness in party finance and consolidated the role of big money in elections, also impairing level playing field. They have also rued the systematic creation of communal divide both through macro level campaigns and specifically at the constituency level. And they have accused the Election Commission of India (ECI) failing in its task of enforcing rules and norms, to ensure a level playing field, including lack of consistency in enforcing the Model Code of Conduct (MCC), and not utilising its vast authority fully. Civil society groups in India are warning, ahead of upcoming General Elections in April-May 2024, that the worsening situation could, if not checked, imperil electoral integrity in India beyond repair.[3]

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[1] 'ECI's Conduct of 2019 Elections Raises "Grave Doubts" About Its Fairness: Citizens' Report' *The Wire* (15 March 2021) <https://thewire.in/rights/election-commission-bjp-polls-fairness-citizens-commission-on-elections-report> accessed 12 March 2024; 'Citizens Commission on Elections Report' (*Reclaim the Republic*, 16 October 2021) <https://reclaimtherepublic.in/category/report/cce-report/> accessed 13 March 2024.

[2] 'Association for Democratic Reforms: Improving and Strengthening Democracy in India' <https://adrindia.org/> accessed 13 March 2024.

[3] M.G. Devasahayam, 'Are India's Elections Free and Fair?' *The Wire* (11 December 2023) <https://thewire.in/politics/are-indias-elections-free-and-fair> accessed 12 March 2024.

These concerns have recently been echoed by the UN High Commissioner for Human Rights, Volker Turk, in his opening remarks at the 55th Human Rights Council, underway currently:

> *In India, with an electorate of 960 million people, the coming election will be unique in scale. I admire the country's secular and democratic traditions and its great diversity. I am, however, concerned by increasing restrictions on the civic space – with human rights defenders, journalists and perceived critics targeted – as well as by hate speech and discrimination against minorities, especially Muslims. It is particularly important in a pre-electoral context to ensure an open space that respects the meaningful participation of everyone.*[4]

It is to engage with and respond to these challenges that we, a small group of independent scholars and practitioners constituted ourselves as the Independent Panel of Monitoring Indian Elections (IPMIE) – 2024. We are drawn from multinational backgrounds and disciplines, all with deep pride and admiration for the promise that India holds for inclusive democracy worldwide. We are equally concerned by recent developments that might imperil that promise. We came together in February 2024 to support local civil society efforts, to observe the upcoming elections and raise concerns publicly.

IPMIE acknowledges that there are democratic aspects in India's electoral politics, even though authoritarian propensities reported to be driving a majoritarian Hindu nationalist political order are rapidly replacing the fabric of political competition that gave voice to the diversity of India's religions and cultural moorings since independence in 1947. If further erosion were to occur in the constitutional commitment to the free choice of the voter, India may turn into a full blown majoritarian and authoritarian state. India is at an inflexion point from where, there can be a healthy recovery towards liberal democratic values. Otherwise, India will renege on its constitutional commitment, and descend towards a majoritarian-authoritarian order.

One of our concerns regarding the integrity of the electoral process underway for India in the 2024 elections is that it should be transparently seen by all international expert bodies and international observers, that Indian democratic standards have not slipped below an acceptable level. As a member of the United Nations and also the Commonwealth of Nations, India has certain statutory duties to uphold when it comes to guaranteeing electoral integrity. We are concerned that the ECI, in its refusal to engage with legitimate concerns that have been raised, including about the integrity of the EVM mechanisms for voting, but not just, has failed to provide guarantees of the robustness of the voting process in the forthcoming election, which is the very bulwark of authentic democracy. Among the important bodies that we are in touch with, and whose expertise is being independently sought regarding our concerns, are the following : *The Ace Electoral Knowledge Network*; the UN *Department Of Political And Peacebuilding Affairs – Electoral Assistance Division* ; The *BRIDGE Project -Building Resources in Democracy, Governance & Elections*; *The Commonwealth Electoral*

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[4] 'Türk's Global Update to the Human Rights Council' (*OHCHR*, 4 March 2024) <https://www.ohchr.org/en/statements-and-speeches/2024/03/turks-global-update-human-rights-council> accessed 12 March 2024.

Network ; the *International Foundation For Electoral Systems* (IFES)[5] ; *The International Institute For Democracy And Electoral Assistance* (I-IDEA).[6] The eyes of the world are on India as we proceed to the election in 2024 and we, as IPMIE, wish to ensure that India conforms to the highest standards of electoral integrity, and if this is not forthcoming for either technical and or political reasons, then we wish to blow the whistle on these matters and not simply allow a conspiracy of silence in the mass media to pretend they are not real issues, when to most expert monitoring bodies worldwide, the issue of India's electoral integrity in 2024 is a matter of real concern.

Our hope is that the reports we produce as part of our monitoring process through the 2024 election cycle will spur political parties to respond to some of the concerns we raise, motivating them to abide by the existing laws, procedures and norms, and that election authorities in India, will take actions that will result in ensuring free and fair elections to the next Parliament.

Standards

As basis for our work, we will use international and national standards on free and fair elections, specifically those that have their grounding in human rights.

As the then UN High Commissioner for Human Rights, Michelle Bachelet (2021) noted:

> *People's right to participate in the conduct of public affairs is a fundamental imperative. Genuine and credible elections remain the most compelling and effective way for people to participate in governance and have their voices heard. Genuine and credible elections are nourished by a complex ecosystem made up of interlocking human rights protections: the impartial rule of law; and respect for fundamental freedoms and essential rights, such as education, which empower people to make free and informed choices.*[7]

Participation in public affairs, including through elections, is a human right protected by international human rights law instruments. It is guaranteed by the Universal Declaration of Human Rights (UDHR) and treaty provisions, principally International Covenant on Civil and Political Rights (ICCPR). These are also guaranteed by the Indian Constitution and legislations including Representation of People Act (1951). Other human rights are instrumental to electoral processes. It is important that there is an environment in which human rights are respected and enjoyed by all individuals, in particular the rights to equality and non-discrimination, to freedom of opinion and expression, to freedom of peaceful assembly and association, to security and to an effective remedy, if the right to vote and be elected are to be exercised meaningfully. Besides the ICCPR, these are also guaranteed in Indian law, including as Fundamental Rights contained in the Constitution of India. And there are norms for free and fair elections, including specifically ensuring

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[5] 'The International Foundation for Electoral Systems: IFES' <https://www.ifes.org/> accessed 12 March 2024.
[6] 'International IDEA' <https://www.idea.int/> accessed 12 March 2024.
[7] Office of the High Commissioner for Human Rights, 'Human Rights and Elections: A Handbook on International Human Rights Standards on Elections' (United Nations 2021) No. 2/Rev.1.

for a level playing field, and the role of election authorities, contained in the Model Code of Conduct (MCC).[8] Our monitoring of India's general elections 2024, will be informed by these rights and be grounded in them.

Methodology

We will monitor all aspects of GE 2024, including voter registration, campaigning, voting and counting system and process, and implementation of MCC. Our reports will highlight any irregularities or malpractices inherent in the process and advocate for their immediate rectification. The goal is to observe elections as they unfold, publish reports and raise concerns in order to ensure that these elections remain free, fair and transparent; reflect the principles of democracy and safeguard the electoral rights of Indian citizens.

In observing elections, we will be guided by international best practice. Election monitoring is a process of deploying non-partisan observers to ensure that the elections are being conducted in a free and fair manner. The Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers are relevant international standards for election monitoring.[9] The Code of Conduct include relevant provisions for observers such as non-obstruction in election process, maintaining accuracy of observation as well as professionalism in drawing conclusions, among others. Our monitoring will be non-partisan and will not interfere with any functions of the official election observers or the polling agents at the booth.

Our outputs are planned as a set of reports that we plan to publish and disseminate widely. The first one, the current report, is meant as a prelude to the main report we plan to publish, just after 2024 elections are concluded and results announced. This 'pre-election' report is based on experience of recent elections, including the 2019 General Elections, besides drawing on state assembly elections over the past years. It speaks to key concerns raised by domestic election watch groups, political parties, experts and the media, about the integrity and fairness of the election process. The final report will be our assessment, based on observation of General Election-2024.

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[8] The Supreme Court has also interpreted the domestic law in consonance with international standards regarding free and fair elections. See Election Commission of India, 'Landmark Judgements on Election Law' (1999) <https://ceodelhi.gov.in/WriteReadData/Landmark%20Judgments/LandmarkJudgementsVOLI.pdf>.

[9] Organization for Security and Co-operation in Europe, 'Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers' (2005) <https://www.osce.org/files/f/documents/e/c/215556.pdf>.

Table 1: Key concerns raised by election watch groups in India

(Source: CCE, ADR, and media reports)

Topic	Description
Voter exclusion	Questions have been raised about the integrity and inclusiveness of the electoral rolls – with significant exclusion reported of disadvantaged groups and minority communities. Delimitation of electoral constituencies, underway, is also causing fears about the possible impact on minority representation in India. Alongside moves by the election regulator to link voter ID with Aadhaar, is being criticised for possible data leak, fraud, and theft.
EVM	From 1998, India moved to Electronic Voting Machine (EVM), in place of paper ballots. Several issues have been raised about flaws with EVM in the voting process. The design and implementation of EVMs, as well as the results of both software and hardware verification, are not made public. They have also not been opened to full independent review. Though Voter Verified Paper and Audit Trail (VVPAT) is installed in every EVM, no paper slips are counted and matched to verify or audit the votes polled, or votes counted before making the results public. EVM voting therefore does not comply with the essential requirements of 'democracy principles', i.e., each voter having the direct knowledge and capacity to verify that their vote is cast as intended, recorded as cast, and counted as recorded. It also does not provide guarantees against hacking, tampering, and spurious vote injections. Due to the absence of End-to-End (E2E) verifiability, the present EVM/VVAPAT system is not robust and therefore unfit for democratic elections.
Party finance	Elections in India are among the most expensive in the world – 2019 general elections estimated at having cost $ 7.2 billion. This was twice the figure for 2014. It is also a very unequal playing field across political parties. The ruling BJP accounted for a full 45% of the 2019 spend. ($ 10.7 million for each of the 303 parliamentary seats it won). Part of the problem is the electoral bond scheme – allowing anonymous donations into party funds. BJP has garnered, by far, most of these donations. Electoral bonds, which were struck down by the Supreme Court in February, 2024, were widely criticised for increasing opaqueness and consolidating the role of big money in elections, also impairing level playing field.
Criminalisation	Big money has criminalised the electoral process, with rampant 'voter buying', and candidates with criminal records. Almost a third of the wining MPs in Parliament in 2019 had serious criminal cases against them; 40 % had some criminal record.
Information environment	A very substantial section of the mainstream and mass media in India is seen to be supportive of the ruling BJP, affecting the fairness of the process. Hate speech, misinformation and disinformation too are rife – vitiating the voting process. According to electoral authorities, the absence of hate speech laws in the country, prevents stricter action. But evidence shows that ruling party politicians, accused of hateful campaigns, often get a pass.
Election commission of India	The Election Commission of India (ECI), tasked with conducting free and fair elections in India, has vast powers, protected by the Constitution (Art 324), and law. Courts have also ruled to further strengthen the ECI's hands for ensuring electoral integrity. But the EC has often been accused of failing in its task – including lack of consistency in enforcing the Model Code of Conduct; treating the ruling party favourably; and not utilising its authority fully. Part of the problem has been attributed to the lack of independence of the ECI, given the executive's control over appointments. Recently the government has moved to further consolidate this control, going against the Supreme Court's ruling to make ECI independent.

Lack of redress	Civil society and opposition political parties' efforts, to demand and obtain effective redress from the ECI, to their complaints, have been unsuccessful. Their recourse to courts too, have not elicited any robust response. These factors, along with the impact of first-past-the-post electoral system, are contributing to the ruling party successfully monopolising electoral space, undermining the goal of free and fair elections in India.

Report of the Panel

In the following pages, we provide an assessment of the challenges to free, fair and genuine elections in India, based on experience of recent elections, 2019 General Elections as well as state assembly elections over the past years, drawing on secondary sources – published reports, mostly that of the Citizen Commission on Elections and other civil society groups, as well as media reports and select published work. The assessment speaks to key concerns raised by domestic election watch groups, political parties, experts and the media, about the integrity and fairness of the election process. The purpose is to prepare the ground for IPMIE's monitoring of 2024 elections, once the elections process is triggered with the formal notification of GE 2024. This review uses, as conceptual framework, international and domestic standards, as set out in the benchmarks note annexed to the report.

We first examine (in Chapter 2) if the guarantee of universal and equal suffrage in the Universal Declaration of Human Rights and key treaty instruments, as well as in the Indian Constitution, is being provided to all citizens, and what the key issues are there. In Ch. 3, we then review the promise of 'real choice', including if there still is political pluralism in India, as well as the robustness of the voting process, together allowing citizens to freely choose between candidates. Are voters able to make an 'informed choice', is the next segment of our assessment (Ch. 4) , examining issues concerning the media environment, including whether media gives equal coverage to all parties and what of the problems of mis/disinformation, as well as the rampant appeal to communal feelings by political parties to distract the electorate from key issues, garner votes, and further polarise society. The final segment (Ch. 5) is on the conduct of elections by the Election Commission of India, key concerns there, as well as the provision of remedy, when political parties as well as civil society and citizens have sought redress of their grievances. This is followed by a conclusion chapter (6), to try to present some final thoughts. We end, in Ch 7, with a Call to Action, for authorities, including the ECI as well as political parties, to ensure integrity of General Elections 2024, including restoring free and fair elections and guaranteeing universal suffrage, equally to all.

2. Do Indians enjoy Universal Suffrage?

2.1 Introduction

Universal suffrage is the principle that the broadest reasonable pool of voters must be guaranteed the right to vote, without discrimination.[10] Equal suffrage is the idea usually expressed as 'one person, one vote'.[11]

Any conditions that are applied to these internationally protected rights must be based on 'objective' and 'reasonable' criteria.[12] While age limits may be set on the right to vote – and even higher age limits may be set for the right to hold public office – unreasonable restrictions identified by the UN include, *inter alia*, excessive residency requirements, as well as economic, linguistic, educational, and literacy requirements.[13] States are required to take effective measures to ensure that all entitled persons can exercise their right to vote, including by facilitating and removing obstacles to the registration of voters.[14] Delimitation, the drawing of electoral boundaries, must not distort the distribution of voters, discriminate against any group, and must take into account a range of factors including, *inter alia*, available census data, territorial integrity, geographical distribution, and topography.[15]

In India, however, experts have noted the systematic exclusion of several vulnerable sections of the population from electoral rolls, particularly Muslims, Dalits, and Christians, as well as groups such as migrant voters and the homeless. Voting rights have also been denied, over the past several years, to those in Jammu & Kashmir (J&K). Bengali-speaking persons in Assam, those identified as D-Voters (Doubtful voters) also stand to risk losing their rights. J&K and Assam, both with substantial Muslim populations, have also seen recent delimitation exercises that critics say may amount to gerrymandering to disadvantage Muslims.

2.2 Restrictions on the right to vote: exclusion from electoral rolls

a. Electoral rolls and exclusion of vulnerable sections

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[10] Office of the High Commissioner for Human Rights (n 7) paras 90–91.
[11] ibid.
[12] UN Human Rights Committee, 'General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service' (1996) CCPR/C/21/Rev.1/Add.7 para 4.
[13] ibid 10.
[14] ibid 11.
[15] Office of the High Commissioner for Human Rights (n 7) paras 117–118.

The Citizens Commission on Elections (CCE) has noted that a significant proportion of India's citizens are unable to exercise their right to vote for one of two reasons: (i) their names are missing from the electoral rolls, or (ii) their geographical location or other infirmities prevent them from participating in the electoral process.[16]

In India, eligible voters from religious minority and other disadvantaged communities have been particularly vulnerable to exclusion from electoral rolls.[17] In 2019, the Centre for Research and Debates in Development Policy (CRDDP) estimated that more than 30 million Muslim voters and 40 million Dalit voters were missing from electoral rolls across the country.[18] Reports of such false exclusions have continued in more recent years. In February, 2023, ahead of assembly elections in Karnataka, local activists, minority faith leaders and opposition politicians alleged that thousands of Muslim, Christian and Dalit voters were arbitrarily deleted from rolls in several districts.[19] Also in February, 2023, a news report revealed that thousands of eligible voters, particularly Muslims and Dalits, were at the risk of such false exclusion in Karnataka's Shivajinagar constituency alone, triggered by a complaint by local BJP activists.[20]

Other categories of voters identified by the CCE, as being particularly vulnerable to exclusion from the electoral process include:

- India's 100 million-plus circular voters, who are not allowed to send their votes through postal ballots under current regulations.[21]
- Urban homeless persons, estimated at around 1% of every large Indian city's population, who have difficulty securing documents required to acquire a voter ID.[22]
- Transpeople, who face social stigma and face difficulty securing documents required for a voter ID.[23]
- Women, of whom 97.2 % are entitled to vote but only 92.7 % are registered voters, with single women particularly at risk of exclusion.[24]

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[16] Harsh Mander and Venkateshan Ramani, 'Electoral Roll and Exclusion of Vulnerable Sections from Voting', *Are Elections in India Free and Fair?*, vol 2 (Citizens' Commission on Elections 2022) 17.

[17] ibid 21.

[18] Aloysius Xavier Lopez, 'In Tamil Nadu, Muslims and Dalits Find It Harder to Stay on the Rolls' *The Hindu* (27 March 2019) <https://www.thehindu.com/elections/lok-sabha-2019/in-tamil-nadu-muslims-and-dalits-find-it-harder-to-stay-on-the-rolls/article26655937.ece> accessed 8 March 2024.

[19] 'More than 1.45 Lakh Names Deleted from Voters' List without Citing Reasons in Mysuru District, Alleges Congress' *The Hindu* (29 November 2022) <https://www.thehindu.com/news/national/karnataka/more-than-145-lakh-names-deleted-from-voters-list-without-citing-reasons-in-mysuru-district-alleges-congress/article66200140.ece> accessed 8 March 2024.

[20] Dhanya Rajendran and Shivani Kava, 'Bengaluru: A BJP Complaint May Disenfranchise Thousands of Dalits, Muslims' *The Wire* (24 February 2023) <https://thewire.in/rights/bengaluru-disenfranchise-thousands-dalits-muslims-bjp> accessed 8 March 2024.

[21] Harsh Mander and Venkateshan Ramani (n 16) 18.

[22] ibid.

[23] ibid.

[24] ibid.

- Sex workers, who face social stigma and face difficulty securing documents required for a voter ID.[25]
- Manual scavengers, the overwhelming majority of whom belong to highly stigmatised caste groups.[26]
- Members of vulnerable tribal groups, who have had to face forced displacement and migration due to development projects.[27]
- Differently-abled persons, who are invisible in political agendas and development strategies, and often face indifferent election staff despite being provided physical access to the voting process. [28]
- Senior citizens lacking familial or institutional support. [29]

Key factors identified by the CCE as being instrumental in this systemic exclusion, include the scope for arbitrary decision making, corruption, and the imbibing of stereotypes and systems of discrimination among election officials.[30]

b. Exclusion from electoral rolls by other means

The CCE also highlighted the recurring problem of absence/duplication of names in voters' lists in different constituencies, noting that such exclusion and false inclusion could prove pivotal in a country where elections are often won and lost on wafer-thin margins.[31]

Another key issue identified by the CCE is the use of India's Aadhaar database for election registration purposes, noting that this has, on many occasions, paved the way for the exclusion of legitimate voters by treating those without an Aadhaar or those whose Aadhaar information did not match, as ghosts or duplicates.[32] In Andhra Pradesh and Telangana alone, around 5.5 million voters were reported to have been excluded from the electoral process in 2019 due to faulty linkage of their voter ID with Aadhaar.[33] CCE experts also warned that the linking of voter IDs with Aadhaar could pave the way for selective targeting of voters and other forms of manipulation.[34]

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[25] ibid 20.
[26] ibid.
[27] ibid.
[28] ibid.
[29] ibid 21.
[30] ibid 22.
[31] ibid.
[32] ibid 29.
[33] Gaurav VIvek Bhatnagar, 'Lakhs of Voters Deleted Without Proper Verification in Andhra, Telangana' *The Wire* (26 February 2019) <https://thewire.in/rights/lakhs-of-voters-deleted-without-proper-verification-in-andhra-telangana> accessed 8 March 2024.
[34] Harsh Mander and Venkateshan Ramani (n 16) 30.

c. Denial of voting rights in Assam

The north-eastern state of Assam has, historically, been the site of tensions between the dominant Assamese-speakers and minority Bengali-speaking persons.[35] The rise of the BJP in the state in recent years, has been reported to have added a more overt communal colour to the "anti-migrant" movement, as part of what a legal scholar described is its 'broader ethno-nationalist project aimed at marginalising Muslims across India.'[36]

State-led efforts to target and penalise alleged 'illegal migrants' in Assam over the decades have included: the mass disenfranchisement of over 230,000 'doubtful voters' by the ECI in the 1990s, as well as the quasi-judicial Foreigners Tribunals (FTs) which have, between 1985 and March 2019, declared over 117,000 Assam residents as foreigners, depriving them of rights accruing to citizens, including the right to vote.[37]

In August 2019, the National Register of Citizens (NRC) was published in Assam, as the culmination of a multi-year administrative exercise to identify 'genuine' Indian citizens and exclude 'illegal migrants'.[38] While over 33 million persons had applied for inclusion in the NRC, a total of 1,906,657 Assam residents – around 6% of the state's population – were excluded.[39] The status of these residents remains in legal limbo, at the time of writing.

While the ECI has not barred NRC-excludees from voting in subsequent assembly elections in Assam, it is unclear how many have found their names in electoral rolls ahead of the 2024 parliamentary elections.[40] In addition to NRC-excludees, there are close to 100,000 ECI-declared 'doubtful voters' still residing in Assam as of February, 2024, who will not be able to vote.[41]

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[35] Government of Assam, 'White Paper on Foreigners Issue' (2015) <http://onlineedistrict.amtron.in/web/home-and-political-department/white-paper#17> accessed 15 October 2021.

[36] Talha Abdul Rahman, 'Identifying the "Outsider": An Assessment of Foreigner Tribunals in the Indian State of Assam' (2020) 2 Statelessness & Citizenship Review <https://ssrn.com/abstract=3723694>.

[37] Amnesty International India, 'Designed to Exclude: How India's Courts Are Allowing Foreigners Tribunals to Render People Stateless in Assam' (2019).

[38] 'National Register of Citizens (NRC): The Final Count | Scroll.In' (*The Final Count*) <https://scroll.in/topic/56205/the-final-count> accessed 4 August 2021.

[39] 'UN High Commissioner for Refugees Expresses Alarm at Statelessness Risk in India's Assam' (*UNHCR*, 1 September 2019) <https://www.unhcr.org/en-in/news/press/2019/9/5d6a24ba4/un-high-commissioner-refugees-expresses-alarm-statelessness-risk-indias.html> accessed 27 October 2021.

[40] 'Non-Inclusion in NRC Does Not Mean Losing Right to Vote: Election Commission of India' *The Times of India* (20 January 2021) <https://timesofindia.indiatimes.com/city/guwahati/non-inclusion-in-nrc-does-not-mean-losing-right-to-vote-election-commission-of-india/articleshow/80369407.cms> accessed 8 March 2024.

[41] 'Assam Has 99,942 Doubtful Voters, Chief Minister Informs Assembly' *NDTV.com* <https://www.ndtv.com/india-news/assam-has-99-942-doubtful-voters-chief-minister-himanta-biswa-sarma-informs-assembly-3878248> accessed 8 March 2024.

2.3 Denial of democracy in Jammu & Kashmir

More than the exclusion from electoral rolls, residents of the Muslim-majority territory of Jammu & Kashmir (J&K) have been denied democracy completely. Since the resignation of the formerly BJP-allied state Chief Minister (CM) in June 2018, J&K has been without any form of popular government, now close to six years. The CM's resignation was followed by a 16 month-long period of Governor's Rule and President's Rule – both under emergency provisions of the Indian Constitution. Since October, 2019, the administration of J&K has been under the control of a Lieutenant Governor (LG) appointed directly by the BJP-led central government.[42]

While elections to the parliament were conducted in J&K in April-May, 2019, the central government had, in August, 2019, unilaterally revoked the erstwhile state's titular autonomy, and divided and downgraded it into two Union Territories (UT) – J&K, and Ladakh. Along with the revocation, central authorities detained, for long periods, the entire political leadership in J&K, including all three MPs elected to the parliament in 2019, from Muslim-majority Kashmir part of the then state.[43] India has failed to conduct elections to the state assembly since, as well as to local bodies, including village panchayats and municipalities. The central government in 2020, revised rules to create District Development Councils - to which elections were held in Novembers 2020 – seen by most observers as centres' attempt to undercut the authority of state-level leaders.[44] Local leaders saw it as a sign that elections to the UT assembly would not be held soon, a fear that has been confirmed.

All key political parties in J&K, such as the National Conference (NC) and the People's Democratic Party (PDP), have held repeated protests demanding the restoration of elected representation in the region.[45] They have further alleged that ECI's failure to conduct elections to the state assembly, was a sign of it becoming a 'compromised' institution that keeps 'considerations of the BJP in mind rather than constitutional requirements.'[46]

In December, 2023, India's Supreme Court– while upholding the central government's decision to revoke the erstwhile state's special status – ordered the Election Commission to conduct assembly elections in J&K before September, 2024, and to restore statehood 'at the earliest and as soon as

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[42] 'From Domicile to Dominion: India's Settler Colonial Agenda in Kashmir' (2021) 134 Harvard Law Review <https://harvardlawreview.org/wp-content/uploads/2021/05/134-Harv.-L.-Rev.-2530-1.pdf>.
[43] https://www.aljazeera.com/news/2019/8/17/key-kashmir-political-leaders-arrested-by-india-since-august-5
[44] https://thewire.in/government/jammu-and-kashmir-panchayati-raj-district-ddcs
[45] Umer Maqbool, 'J&K: Delimitation Over, 2 Voter Revisions Done, But Elections Nowhere in Sight' *The Wire* (11 October 2023) <https://thewire.in/government/jk-delimitation-over-2-voter-revisions-done-but-elections-nowhere-in-sight> accessed 6 March 2024.
[46] ibid.

possible'.[47] Whilst it is not known if that order will eventually be complied with by the central government, it is also not known why the court did not order elections immediately.

2.4 Drawing electoral boundaries to deprive representation

In India, delimitation of assembly and parliamentary constituencies and determining the seats to be reserved for Scheduled Castes (SCs) and Scheduled Tribes (STs) is conducted after every census, last in 2011. While delimitation has been frozen at the national level till 2026, to encourage population control measures, the recent redrawing of constituency boundaries in Assam and J&K has resulted in allegations of gerrymandering.[48] Whilst J&K is the only Muslim majority region in India, Assam has a large Muslim population.

a. *Delimitation in Assam, potentially disempowering Muslims and STs*

In Assam, the presence of 'illegal migrants' and a 'deteriorating law and order situation' had been cited as reasons to delay delimitation, originally due in 2006.[49] The publication of the NRC in 2019, however, paved the way for the ECI to resume the exercise. The final order for the delimitation for assembly and parliamentary constituencies was issued in August, 2023, retaining the number of assembly seats at 126 and parliamentary seats at 14. [50]

While the BJP has praised the latest delimitation as defending the rights of the indigenous Assamese-speaking community, political analysts have highlighted discrepancies that they warn could lead to the disempowerment of several groups, particularly Muslims.

For example, several previously unreserved seats – such as Barpeta and Silchar – where Muslim voters often played a decisive role have now been reserved for SC candidates. [51] Dotoma, another constituency with a significant Muslim population, has reportedly been reserved for ST candidates.[52] One analyst estimated that the number of assembly constituencies in which Muslim voters will play a deciding factor will now reduce from over 30 to around 24.[53] Another analyst

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[47] *Re: Article 370 of the Constitution* [2023] Supreme Court of India WP (Civil) No. 1099 of 2019 [503].

[48] Shoaib Daniyal, 'By Redrawing Assam, Kashmir Constituencies, Genie of Gerrymandering Has Been Let Loose in India' *Scroll.in* (24 July 2023) <https://scroll.in/article/1053126/by-redrawing-assam-kashmir-constituencies-genie-of-gerrymandering-has-been-let-loose-in-india> accessed 5 March 2024.

[49] Parvin Sultana, 'The Politics of Delimitation in Assam' (2023) 58 Economic and Political Weekly <https://www.epw.in/journal/2023/38/commentary/politics-delimitation-assam.html> accessed 7 March 2024.

[50] ibid.

[51] ibid.

[52] ibid.

[53] Rokibuz Zaman, 'Why Redrawn Electoral Boundaries in Assam Have Confirmed Muslim Legislators' Worst Fears' *Scroll.in* (15 September 2023) <https://scroll.in/article/1055228/why-redrawn-electoral-boundaries-in-assam-has-confirmed-muslim-legislators-worst-fears> accessed 8 March 2024.

pointed out that the reservation of some seats – such as Dimora, Naoboicha, Hajo and Bihali – for SCs in areas which have either a majority or a substantial population of various Scheduled Tribes (STs) could lead to their disenfranchisement.[54]

b. Delimitation in J&K, potentially disempowering Muslims

In J&K, the latest round of delimitation was concluded in May 2022, under the oversight of the J&K Delimitation Commission appointed by the central government.[55] According to the official notification, J&K will continue to have a total of five parliamentary constituencies, as well as seven newly notified assembly constituencies, taking the total to 43 in the Jammu region and 47 in the Kashmir region.[56] Nine Assembly constituencies – including six in the Jammu region and three in Kashmir – have been reserved for Scheduled Tribes (ST) candidates.[57]

The central government was reported to have defended the latest delimitation exercise as necessary to give 'immediate democracy' to the region.[58] However, the exercise has been denounced by all major political parties in the region, with the exception of the BJP, alleging that the outcome would disempower voters in Muslim-majority Kashmir.[59]

Political leaders and analysts have pointed out that of the seven newly notified assembly constituencies, six are in Jammu, which is considered to be a BJP stronghold.[60] Four of the six are reportedly Hindu-majority districts.[61] As a result, 44% of the state's population, residing in Jammu, will vote in 48% of assembly seats, while 56% of the population, residing in Kashmir, will vote in the remaining 52% seats.[62] One Kashmiri political leader noted that over the past six decades, number of assembly seats in Jammu has increased by 13, while Kashmir's has risen only by 4.

Critics have also pointed out that the Delimitation Commission ignored crucial factors like geography and connectivity while redrawing some constituency boundaries – for instance assembly

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[54] Parvin Sultana (n 49).
[55] Umer Maqbool (n 45).
[56] Damini Nath and Peerzada Ashiq, 'Delimitation Panel Notifies New J&K Assembly Constituencies' *The Hindu* (5 May 2022) <https://www.thehindu.com/news/national/other-states/jk-delimitation-panel-makes-final-report-public-reserves-two-seats-for-pandits/article65384399.ece> accessed 7 March 2024.
[57] ibid.
[58] 'J&K Delimitation Done to "Immediately Give Democracy" to the Union Territory, Centre Tells SC' *Scroll.in* (2 December 2022) <https://scroll.in/latest/1038840/j-k-delimitation-done-to-immediately-give-democracy-to-the-union-territory-centre-tells-sc> accessed 7 March 2024.
[59] Jehangir Ali, 'With Delimitation Now Complete, J&K Politicians Allege Further Disempowerment of Kashmir' *The Wire* (6 May 2022) <https://thewire.in/government/with-delimitation-now-complete-jk-politicians-allege-further-disempowerment-of-kashmir> accessed 7 March 2024.
[60] ibid.
[61] Vaibhavi Khanwalkar, 'What J&K Delimitation Means' *Deccan Herald* (6 May 2022) <https://www.deccanherald.com/india/explained-what-jk-delimitation-means-1106986.html> accessed 7 March 2024.
[62] Jehangir Ali (n 59).

segments of Anantnag district (in Kashmir) have been merged with those of Poonch and Rajouri districts, which they say will further 'systematically disempower' Kashmiri voters. [63]

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[63] ibid.

3. Do Indian voters have Real Choice?

3.1 Introduction

According to international human rights standards, the question of whether elections can be considered 'genuine' depends on whether they meet certain procedural guarantees, and on whether they reflect and give effect to the free will of the electorate.[64]

Several features of India's current electoral and political system – including issues impacting political pluralism, such as the opacity of political financing and the persecution of opposition political parties and candidates, as well as contentious elements in voting systems and operations, such as the use of electronic voting machines (EVMs) – raise serious questions about whether India's elections indeed offer a 'real choice' to its electorate. Some of these concerns are briefly highlighted in this section.

3.2 Denying political pluralism? Electoral bonds and strong arm tactics

a. India's international obligations vis-à-vis political pluralism

India is internationally obligated to foster a culture of political pluralism, to ensure a genuinely pluralistic political debate, and to desist from excluding opposition candidates from electoral processes.[65] Political pluralism requires that all parties can function effectively, necessitating legal protections to ensure their full participation, and electoral legislation providing for fair and transparent funding of political campaigns.[66] Further, the UN Human Rights Committee has repeatedly emphasised that persons who are otherwise eligible to contest elections must not be excluded or face any discrimination or disadvantage due to their candidacy or political affiliation.[67]

b. Opacity in political financing, disproportionately impacting opposition parties

Several experts have noted that India's extant political financing landscape is marked by a lack of transparency, raising entry barriers to politics, excluding honest candidates and parties, and

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[64] Office of the High Commissioner for Human Rights (n 7) paras 84–101.
[65] ibid 95.
[66] ibid 96.
[67] For example, in UN Human Rights Committee (n 12) paras 95–96 Also see: CCPR/C/COD/CO/4, para. 48 (intimidation of opponents and candidates in the presidential election); and CCPR/C/AZE/CO/4, para. 43 (criminal law provisions used to exclude opposition candidates from electoral processes).

perpetuating corruption as well as the influence of murky corporate actors.[68] Key weaknesses in the current system that have been highlighted by experts include, among others:

- The lack of official caps on how much political parties can spend during elections, despite the presence of limits on how much individual candidates can spend. This has reportedly enabled virtually unlimited spending by candidates belonging to large parties.[69]
- Provisions in the Income Tax (IT) Act that exempt political parties from disclosing the sources of donations amounting to less than ₹ 2,000 (the threshold was ₹ 20,000 till 2017). This provision is reportedly routinely circumvented by big donors who 'break down' their donations into multiple donations of smaller amounts.[70]
- The refusal of national political parties to comply with a Central Information Commission (CIC) decision in 2013 that designated them 'public authorities' subject to scrutiny under the Right to Information (RTI) Act.[71]

It was against this backdrop, and despite the objections of the ECI and India's central bank, and without appropriate parliamentary scrutiny, that the BJP-led central government introduced electoral bonds as a new instrument of political financing in 2017.[72]

Touted as an innovation to increase transparency and reduce the role of 'black' money in the system, these anonymous promissory notes issued by the state-owned State Bank of India (SBI) could be purchased by any Indian individual, association or corporation, without any limits on the amounts purchased, and deposited into the bank accounts of any political party.[73] (Investigative journalists later revealed that these ostensibly anonymous bonds, in fact carried hidden alphanumeric codes that potentially allowed the state to monitor the links between donors and political parties.[74])

The BJP-led central government also simultaneously eliminated the cap on corporate donations, previously set at 7.5% of a firm's average net profits over the past three years, and removed the previous requirement that corporations include a thorough inventory of their political donations in

[68] Anjali Bharadwaj, 'Criminalisation, Money Power and Elections in India', *Are Elections in India Free and Fair?*, vol 2 (Citizens' Commission on Elections) 38.
[69] ibid 39.
[70] ibid.
[71] ibid 40.
[72] Nitin Sethi, 'Paisa Politics: Exposing The Govt's Electoral Bonds Fraud' (*The Reporters' Collective*, November 2019) <https://www.reporters-collective.in/projects/paisa-politics-exposing-the-electoral-bonds-fraud> accessed 1 March 2024.
[73] Anjali Bharadwaj (n 68) 40.
[74] Poonam Agarwal, 'Secret Policing? When The Quint Exposed Electoral Bonds Carry Hidden Numbers' *The Quint* (12 April 2018) <https://www.thequint.com/news/politics/hidden-number-on-election-electoral-bond> accessed 1 March 2024.

their statements of accounts.[75] Shortly after electoral bonds were introduced, and after the Delhi High Court found both the BJP and the INC guilty of violating the Foreign Contribution (Regulation) Act (FCRA), the law regulating foreign funding of Indian associations, the BJP government also retroactively amended the FCRA, effectively enabling anonymous foreign funding of political parties through electoral bonds.[76]

The electoral bonds scheme was roundly criticised by experts for legitimising corruption and further obfuscating India's muddled political funding landscape.[77] The BJP was the prime beneficiary: According to data accessed by the Association for Democratic Reforms (ADR), a democracy watchdog, a total of ₹ 120.1 billion (around $ 1.45 billion) was raised by all political parties through electoral bonds between 2017 and 2023. Of this, the BJP received more than half (55%), amounting to ₹ 65.7 billion (around $ 800 million). The INC, the largest opposition party, received only 9.3%.[78] During the fiscal year between April 2022 and May 2023, the BJP was reported to have received around ₹ 13 billion (around $ 157 billion), amounting to nearly 61% of the total funds it received in the same period.[79]

The BJP also dominated the bulk of funds raised by parties through electoral trusts, a funding route that is more transparent on contributors and beneficiaries: over the past 10 years, the BJP has reportedly received over ₹ 18.93 billion (around $ 229 million) via electoral trusts, while the INC has received only ₹ 2.21 billion (around $ 26 million) over the same period.[80]

In February, 2024, the Supreme Court of India (SC) struck down electoral bonds for violating constitutional right to information, after noting that they posed the risk of enabling *quid pro quo* relationships between political parties and their donors.[81] A week after the SCI verdict, an investigative report appeared to reveal that at least 30 corporate firms that faced investigations by various central government agencies had donated funds to the BJP to the tune of ₹ 3.34 billion (around $ 40.37 million) between 2018-19 and 2022-23.[82]

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[75] Milan Vaishnav, 'Electoral Bonds: The Safeguards of Indian Democracy Are Crumbling' (*Carnegie Endowment for International Peace*) <https://carnegieendowment.org/2019/11/25/electoral-bonds-safeguards-of-indian-democracy-are-crumbling-pub-80428> accessed 1 March 2024.

[76] Anjali Bharadwaj (n 68) 41.

[77] Vaishnav (n 75).

[78] Krishn Kaushik and Kripa Jayaram, 'What Were India's Electoral Bonds and How Did They Power Modi's Party?' *Reuters* (16 February 2024) <https://www.reuters.com/world/india/what-were-indias-electoral-bonds-how-did-they-power-modis-party-2024-02-16/> accessed 1 March 2024.

[79] Prateek Goyal, 'Part 1: Behind the BJP's Rise and Rise, Bonds, Trusts and Raids on Corporates' (*Newslaundry*, 20 February 2024) <https://www.newslaundry.com/2024/02/20/behind-the-bjps-rise-and-rise-bonds-trusts-and-raids-on-corporates> accessed 9 March 2024.

[80] ibid.

[81] Sameer Yasir, 'India's Supreme Court Strikes Down a Fund-Raising Edge for Modi' *The New York Times* (15 February 2024) <https://www.nytimes.com/2024/02/15/world/asia/india-political-finance-ruling.html> accessed 1 March 2024.

[82] Prateek Goyal and others, 'Part 2: 30 Firms Who Donated Rs 335 Cr to BJP Were Also Stung by I-T, ED' *Newslaundry* (21 February 2024) <https://www.newslaundry.com/subscription> accessed 9 March 2024.

The SC also ordered the SBI to disclose details of all electoral bonds encashed so far. As of 9 March, 2024, the SBI was yet to comply with the order, instead requesting an extension till the end of June 2024 – over a month after the 2024 Lok Sabha elections are expected to conclude.[83]

The existing weaknesses highlighted above remain, keeping the political funding scenario heavily tilted towards large political parties – of which the BJP is the most powerful – and corporate interests, raising serious concerns about the true state of political pluralism in India.

c. Persecution of opposition leaders ahead of elections

Several international watchdogs and other observers have noted an escalation in the BJP-led central government's intimidation, harassment and criminalisation of civil society groups, activists, journalists, and opposition politicians, ahead of the upcoming parliamentary elections.[84]

To this end, various arms of the government of India appear to have been systematically mobilised. The Central Bureau of Investigation (CBI), India's main criminal investigative agency, and the Enforcement Directorate (ED), which specialises in financial crimes, both of which are under the control of the central government, appear to have been particularly deployed to target key opposition leaders. Opposition leaders who have faced raids or arrests by these agencies in recent months have included the popularly elected Chief Ministers of at least three opposition-ruled states, including Delhi, Chhattisgarh, and Jharkhand.[85] In August, 2021, it was revealed that the digital devices of several senior opposition leaders, including Rahul Gandhi – a key figure in the principal opposition party, Indian National Congress (INC) party, who is also reportedly facing an ED

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[83] 'Electoral Bonds: SC to Hear on Mar 11 SBI's Plea Seeking Extension of Time to Disclose Details' *The Economic Times* (8 March 2024) <https://economictimes.indiatimes.com/news/india/electoral-bonds-sc-to-hear-on-mar-11-sbis-plea-seeking-extension-of-time-to-disclose-details/articleshow/108328115.cms?from=mdr> accessed 9 March 2024.

[84] For instance, see 'India: Modi Government Targets Civil Society Groups and Activists, Suppresses Protests and Censors Reporting as Election Draws Near' (*Civicus Monitor*, 21 February 2024) <https://monitor.civicus.org/explore/india-modi-government-targets-civil-society-groups-and-activists-suppresses-protests-and-censors-reporting-as-election-draws-near/> accessed 29 February 2024.

[85] 'DJB Scam: ED Raids Dozen Locations Linked to AAP; CM Calls It 'Sheer Hooliganism''; (*The Indian Express*, 6 February 2024) <https://indianexpress.com/article/cities/delhi/arvind-kejriwal-ed-raids-being-carried-out-to-trample-aap-9147555/> accessed 29 February 2024; 'Chhattisgarh: ED Raids At Premises Of CM Bhupesh Baghel's Political Advisor And Officer On Special Duty' *Outlook India* (23 August 2023) <https://www.outlookindia.com/national/chhattisgarh-ed-raids-at-premises-of-cm-bhupesh-baghel-s-political-advisor-and-officer-on-special-duty-news-312892> accessed 29 February 2024; 'Hemant Soren: Jharkhand CM Arrested in a Corruption Case' *BBC News* (1 February 2024) <https://www.bbc.com/news/world-asia-india-68163338> accessed 29 February 2024.

investigation[86] – were potentially illegally compromised and monitored using Pegasus, an Israeli-made spyware that is sold only to government agencies.[87]

In April, 2023, 14 major opposition political parties were reported to have approached the SCI, seeking relief from investigating agencies being increasingly deployed in a 'selective and targeted' manner against them.[88] According to the affidavit filed by the parties in court, of all the political leaders investigated by the CBI or the ED since the BJP-led government assumed power in 2014, over 95% each have belonged to opposition parties.[89] The corresponding figures for the number of political leaders investigated by the CBI and ED , respectively, during the 10 years before 2014 were both reportedly under 60%.[90]

Such selective and targeted punitive action by the BJP-led central government – and the SCI's reported refusal to intervene[91] – suggests that India is falling afoul of its international obligation to ensure that opposition leaders do not face discrimination or disadvantage due to their political affiliations, and to ensure that its electorate has genuine electoral choices from across the political spectrum.

3.3   Compromising voting operations: The case against EVMs

a. India's international obligations vis-à-vis voting operations

As a signatory to the ICCPR and other key international instruments, India is obligated to ensure transparency and independent oversight over the voting and counting process, to ensure adequate protection from fraudulent practices, and to guarantee the security of ballot boxes.[92] It is further obligated to ensure that counting is open to official observation by all concerned parties, and to ensure the availability of appropriate complaints and appeals mechanisms as well as audit procedures.[93] Specifically regarding the adoption of digital innovations in the voting process, such

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[86] 'Rahul Gandhi Questioned by ED for 9 Hours in National Herald Case, Summoned Again' *The Hindu* (New Delhi, 13 June 2022) <https://www.thehindu.com/news/national/rahul-gandhi-appears-before-ed-for-questioning-in-money-laundering-case/article65522709.ece> accessed 29 February 2024.

[87] 'Pegasus Project: 174 Individuals Revealed By The Wire On Snoop List So Far' *The Wire* (4 August 2021) <https://thewire.in/rights/project-pegasus-list-of-names-uncovered-spyware-surveillance> accessed 29 February 2024.

[88] '"Politicians Can't Claim Higher Immunity" : Supreme Court Refuses To Entertain Plea Of 14 Opposition Parties Against "Misuse" Of CBI & ED' *Live Law* (5 April 2023) <https://www.livelaw.in/top-stories/supreme-court-plea-opposition-political-parties-centre-investigating-agencies-ed-cbi-clamp-down-dissent-225564> accessed 29 February 2024.

[89] ibid.

[90] ibid.

[91] ibid.

[92] UN Human Rights Committee (n 12) para 20.

[93] ibid.

as electronic voting machines (EVMs), the UN has emphasised the importance of considering their technical, financial and political feasibility, through a broad and gradual consultative process.[94]

b. *Weaknesses in India's voting operations*

Since 2004, all parliamentary and assembly elections in India have been conducted using EVMs developed by two government-owned companies.[95] A second component – the Voter Verifiable Paper Audit Trail (VVPAT) machine – was introduced later and is now used as part of the EVM in all elections, ostensibly to provide a means for voters to verify that their votes were cast correctly, and to enable the audit of stored electronic results.[96]

Some scholars have argued that the use of EVMs in India has contributed to the reduction of invalid votes, and to an increase in the level of political competition.[97] The Election Commission of India (ECI) too has emphasised these claims and defended EVM-VVPATs from all criticism.[98] However, several scholars and experts have highlighted glaring weaknesses in the current system that, if left unaddressed, is likely to impact public confidence in the overall electoral process.

The Citizens' Commission on Elections (CCE) analysed India's EVM-VVPAT system in detail, in line with standards laid out by Germany's Constitutional Court that had banned electronic voting in that country in 2009.[99] Some of the key concerns raised by the CCE and other experts regarding the problems with EVM, include:

- Possibility of remote and physical tampering of EVMs**:** The ECI has claimed that it is impossible for external actors to remotely tamper with EVM-VVPATs, underlining that they are stand-alone machines having one-time programmable chips, and that they are unconnected to the Internet or Bluetooth.[100] However, CCE's experts have pointed out that there are already numerous examples of EVMs being hacked across the world, including an

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[94] UN Secretary-General, 'Strengthening the Role of the United Nations in Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections and the Promotion of Democratization' (United Nations 2021) A/74/285 para 38.

[95] Madan Lokur and others, 'Citizens' Commission on Elections' Report on EVMs and VVPAT' (2022) 55 Economic and Political Weekly <https://www.epw.in/journal/2022/3/perspectives/citizens%E2%80%99-commission-elections%E2%80%99-report-evms-and.html>.

[96] Damini Nath, 'How EVMs Became a Punching Bag for Parties' *The Indian Express* (8 December 2023) <https://indianexpress.com/article/political-pulse/decode-politics-evms-political-parties-punching-bag-9059550/> accessed 28 February 2024.

[97] Zuheir Desai and Alexander Lee, 'Technology, Choice, and Fragmentation: The Political Effects Electronic Voting in India' (2017) <https://www.semanticscholar.org/paper/Technology-%2C-Choice-%2C-and-Fragmentation-%3A-The-in-Desai-Lee/edb533e49c0ae8786bbfb0933ccf328c35898f56#cited-papers> accessed 28 February 2024.

[98] 'EVMs Can Neither Be Hacked nor Tampered with, ECI Tells SC' *The Hindu* (6 September 2023) <https://www.thehindu.com/news/national/evms-can-neither-be-hacked-nor-tampered-with-eci-tells-sc/article67278357.ece> accessed 28 February 2024.

[99] Madan Lokur and others (n 95) s 2.2.

[100] 'EVMs Can Neither Be Hacked nor Tampered with, ECI Tells SC' (n 98).

earlier version of the Indian EVM.[101] The CCE specifically alleged that the possibility of side-channel attacks through electromagnetic and other channels have not been considered at all in the EVMs' design.[102] CCE experts further warned that modern data analytics – which India's ruling party is reportedly mastering[103] – could potentially enable the swinging of election results for a constituency by targeting EVMs in merely a few polling stations.[104]

The possibility of physical tampering of EVMs has reportedly been acknowledged even by experts appointed by the ECI, who concluded, however, that current protocols are adequate to mitigate this risk.[105] Nevertheless, there have been several recent examples that raise serious doubts. In 2022, during state assembly elections, BJP's principal opposition party in Uttar Pradesh, Samajwadi Party, made the startling allegation that around 20 EVMs were physically 'stolen', two days before votes were officially scheduled to be counted.[106] Earlier, in 2019, analysis of official ECI data by Right to Information (RTI) activists had reportedly shown that around 2 million EVMs had gone 'missing' after being manufactured.[107] And in 2018, the reported malfunctioning of EVM-VVPATs – apparently due to excessive heat, according to the ECI – had forced re-elections in dozens of polling booths in Uttar Pradesh, Maharashtra, and Nagaland.[108] The CCE has highlighted several key weaknesses in the custody chain of EVMs too.[109]

ECI has failed to engage constructively with these criticisms. CCE's demand that EVM's design and prototype be made available for public audit has, to date, remained unheeded by the ECI.[110] In September 2023, the Supreme Court of India (SCI) too dismissed a plea seeking the independent audit of source codes of EVMs.[111]

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[101] Madan Lokur and others (n 95) s 2.2.

[102] ibid.

[103] Srishti Jaiswal, 'The Data Collection App at the Heart of the BJP's Indian Election Campaign' (*Pulitzer Center*, 20 January 2024) <https://pulitzercenter.org/stories/data-collection-app-heart-bjps-indian-election-campaign> accessed 29 February 2024.

[104] Madan Lokur and others (n 95) s 2.2.

[105] 'EVMs Can Neither Be Hacked nor Tampered with, ECI Tells SC' (n 98).

[106] Alok Pandey, 'Varanasi Video Has Trucks "Stealing" Voting Machines: Akhilesh Yadav' *NDTV.com* (9 March 2022) <https://www.ndtv.com/india-news/48-hours-before-counting-akhilesh-yadavs-voting-machine-charge-in-up-2811008> accessed 28 February 2024.

[107] Venkitesh Ramakrishnan, '"Missing" EVMs' [2019] *Frontline* <https://frontline.thehindu.com/cover-story/article27056139.ece> accessed 28 February 2024.

[108] ibid.

[109] Madan Lokur and others (n 95) s 3.3.

[110] ibid.

[111] Padmakshi Sharma, 'Supreme Court Dismisses PIL Seeking Independent Audit Of EVM Source Codes' *Live Law* (22 September 2023) <https://www.livelaw.in/top-stories/supreme-court-dismisses-pil-seeking-independent-audit-of-evm-source-codes-238408> accessed 28 February 2024.

- Inadequate cross-verification of EVMs with VVPATs: The verification of EVMs' electronic vote tally with the VVPATs' manual slip tally has remained a contentious issue in India. Currently, on the orders of the Supreme Court of India (SC), only five EVMs per assembly constituency are cross-checked with VVPATs.[112] The ECI's own prescribed sample size for cross-verification had originally been one EVM per assembly constituency.[113] CCE's statistical experts have concluded that even with the SC's increased cross-checking rate, the current system would fail to detect a faulty EVM in around 50% of total cases.[114]

  Paper trails are counted for only a small percentage (1 per assembly) of the EVMs. The percentage is based on the probability that EVM may have a technical error. However recognising the possibility that EVMs could be purposefully corrupted to bias the reported count of the votes, the sample has to be large enough, and every deviation between the VVPAT and the EVMs tracked back and accounted for. Today the ECI does a token counting of small sample and practically ignores deviations, since these are within the margin of the difference in the votes polled.

  Demands by civil society groups to ensure the cross-verification of at least 50% of all EVMs per assembly constituency have, to date, gone unheeded both by the ECI and the SC. While the ECI has been reported in the past to have agreed to demands for 100% cross-verification, it reportedly opposed a plea seeking the same in September 2023, describing any such move as a 'regressive thought.'[115]

- The political economy behind EVMs: Given the concerns that have been raised by numerous experts worldwide and in India about the reliability and integrity of India's chosen EVM mechanisms to be used at the 2024 elections, we are calling as an Independent Panel even now at this late stage, for a *Committee of Technical Experts* to be convened of the highest level of technical expertise in this matter, to be authorised by all concerned to develop a fail-safe add-on way of guaranteeing the machines have an inbuilt technical ability to trace, record and follow up trail for all votes made via EVM's in the forthcoming and all future Indian elections. We also call that the names of the manufacturers and programmers who have designed these machines, and who maintain them, be made transparently available to members of the public, so as to ensure that these machines will not and cannot be hacked, slanted or pre-programmed towards a particular political party objective outcome, without this matter being known publicly. The public should therefore be informed who exactly owns these EVM machines, who has designed them, who has tested them against possible

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[112] Madan Lokur and others (n 95) s 3.2.
[113] ibid 3.3.
[114] ibid.
[115] Ashish Tripathi, 'Would Mean Reverting to Old Ballot System: EC Opposes 100% VVPAT Verification in Supreme Court' *Deccan Herald* (7 September 2023) <https://www.deccanherald.com/elections/india/would-mean-reverting-to-old-ballot-system-ec-opposes-100-vvpat-verification-in-supreme-court-2676774> accessed 28 February 2024.

hacking, who has financed them, who has paid for the Research and Development which underlies them, and who sits on the governing boards of the companies which have manufactured them and been responsible for their deployment in the forthcoming 2024 election. In other words, we call for the *political economy* behind these EVM's to be made a matter of transparent public record since their integrity (or not) strikes at the very heart of India's democratic process itself.

The reliability and integrity of official machinery used in the voting process, as well as the procedures and protocols followed during the counting and verification of votes, all have implications for whether an election is 'genuine' and can be acknowledged as the free expression of the will of the electors.[116] In light of the concerns highlighted above, and the apparent failure of the ECI and the SC to adequately address them and ensure full transparency, India may be falling far short of its international obligations vis-à-vis voting operations.

The mayoral elections in Chandigarh in January, 2024, were billed as the first electoral contest between the BJP and the newly formed Indian National Developmental Inclusive Alliance (INDIA) coalition of 27 opposition political parties. Shockingly, the presiding officer in charge of the polling was reportedly caught on camera rigging the results in favour of the BJP, necessitating intervention by the SC.[117] While the episode in Chandigarh did not involve EVM-VVPATs, and was not directly overseen by the ECI, it gives further credence to fears that the BJP may be willing to exploit the existing weaknesses in India's voting operations for its political benefit.

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[116] UN Human Rights Committee (n 12) paras 20–21.
[117] Hina Rohtaki and Ananthakrishnan G, 'Article 142, Why SC Quashed Chandigarh Mayor's Election, and Why It Matters' *The Indian Express* (21 February 2024) <https://indianexpress.com/article/explained/explained-law/art-142-why-sc-quashed-chandigarh-mayors-election-and-why-it-matters-9171963/> accessed 29 February 2024.

4. Are Indian Voters able to make 'informed choice'?

4.1   Introduction

A genuine election that reflects the free will of the population presupposes the free communication of information and ideas about public and political issues.[118] This, according to the UN Human Rights Committee, 'implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.'[119] Free and fair dissemination of messaging from across the political spectrum is thus a critical element in determining whether the electorate can make an independent and informed choice during elections, free of violence or the threat of violence, compulsion, inducement, or manipulative interference of any other kind.[120]

The UN has also specifically warned about the impact of big data manipulation and social media during elections, and the risks they pose in adversely impacting the ability of voters to make informed choices. While much political messaging that may be shocking, offensive or disturbing is protected under international law, widespread disinformation may lead to 'reducing understanding among people with different opinions or backgrounds and exacerbating polarisation, playing on and distorting people's negative views of others', and be used to 'splinter and manipulate public discourse, depriving voters of critical information for their decision-making.'[121] Social media in particular may be 'instrumentalised to influence the outcome of elections by discrediting candidates and political parties, providing incorrect information about the voting process (voter suppression) and seeking to influence the voting choices of particular segments of society that may be targeted based on patterns suggested by the processing of personal data and social media activity.'[122]

In India, there are several structural and operational impediments that raise concerns about whether the average Indian voter is indeed able to make an independent and informed choice, ahead of upcoming elections, free of manipulative interference. These include the domination of broadcast and social media networks by actors friendly to the ruling Bharatiya Janata Party (BJP), BJP's continuing proclivity to use communal polarisation and disinformation as part of its electoral strategy, and BJP-led central and state governments' recent moves to muzzle independent voices and control the free flow of information. The following sections detail some of these impediments.

4.2   Monopolising the airwaves, to shut out Opposition

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[118] Office of the High Commissioner for Human Rights (n 7) para 97.
[119] UN Human Rights Committee (n 12) para 25.
[120] ibid 19.
[121] Office of the High Commissioner for Human Rights (n 7) para 101.
[122] ibid.

a. Domination of broadcast media by pro-BJP actors

Several experts have noted that India's broadcast media landscape is dominated by pro-BJP actors.[123] A Reporters Without Borders (RSF) study in 2019 noted that the production of media content and distribution is increasingly concentrated in the hands of a few, and that many leading media outlets at both the national and regional levels, are controlled by individuals with direct political ties to the BJP, or by corporate conglomerates who have been openly supportive of the BJP.[124] A particularly telling example is Republic TV, co-founded by a businessman and BJP-supported parliamentarian who later relinquished his stake and formally joined the BJP (and was later appointed the Minister of State for Electronics and Information Technology). [125] Arnab Goswami, a news anchor who is also the managing director and chief editor of the Republic network, frequently attacks critics of the BJP and has been reportedly caught touting his access to the Prime Minister's office and to other senior BJP ministers.[126] Republic TV has, since its inception in 2017, consistently been the most-watched English-language news channel in the country. In 2022, NDTV, seen by many as India's last major independent TV broadcaster, was subject to a hostile takeover by a conglomerate led by Gautam Adani, a businessman known for his close ties to PM Modi.[127] RSF described the NDTV takeover as 'the end of pluralism in India's leading media'.[128]

Apart from ownership, an Oxfam study in 2019 revealed that Indian newsrooms have minuscule-to-non-existent minority representation in managerial and editorial positions.[129] This was found to be particularly acute in Hindi and English television news, where 'upper-caste' Hindus accounted for 100% and 89%, respectively, of such positions.[130]

Experts have also highlighted the financial incentives sustaining this system of open partisanship in favour of the BJP, noting that with advertising and sponsorships from privately-owned organisations

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[123] Paranjoy Guha Thakurta, 'Media Helps Rules While Election Commission Looks the Other Way', *Are Elections in India Free and Fair?*, vol 2 (Citizens' Commission on Elections) 52.

[124] Reporters Without Borders, 'Media Ownership Monitor: Who Owns the Media in India?' (2019) <https://rsf.org/en/news/media-ownership-monitor-who-owns-media-india> accessed 26 April 2021.

[125] ibid.

[126] Rakshitha R, '"All Ministers Are With Us": Arnab Goswami's Alleged WhatsApp Chat With Ex-BARC CEO Reveals Cozy Relations With Govt' (*The Logical Indian*, 15 January 2021) <https://thelogicalindian.com/trending/all-ministers-are-with-us-republic-tv-arnab-goswami-on-trp-scam-26162> accessed 26 April 2021.

[127] Benjamin Parkin and Chloe Cornish, 'Asia's Richest Man Gautam Adani Reveals Global Media Ambitions' *Financial Times* (25 November 2022) <https://www.ft.com/content/d6c5ffa0-0b9b-436f-8c8b-ef4170bedfe3> accessed 26 October 2023.

[128] 'NDTV Takeover Signals End of Pluralism in India's Leading Media' (*Reporters Without Borders*, 1 February 2023) <https://rsf.org/en/ndtv-takeover-signals-end-pluralism-india-s-leading-media> accessed 3 March 2024.

[129] Nithya Subramanian, 'In Charts: India's Newsrooms Are Dominated by the Upper Castes – and That Reflects What Media Covers' (*Scroll.in*, 3 August 2019) <https://scroll.in/article/932660/in-charts-indias-newsrooms-are-dominated-by-the-upper-castes-and-that-reflects-what-media-covers> accessed 22 October 2021.

[130] ibid.

declining, particularly after the COVID-19 pandemic, the dependence of media outlets on advertising support from the government has grown commensurably.[131]

A sting operation in 2018 by a non-profit news organisation revealed that senior journalists and media executives at 23 leading media organisations were, in the lead-up to the 2019 national elections, willing to accept bribes and propagate content to ensure that the BJP remained in power, agreeing to attack the BJP's political rivals and publish anti-minority incendiary and divisive content.[132]

Other studies have confirmed that Indians who consume more news media are significantly more likely to vote for the BJP.[133]

b. *Domination of social media networks by pro-BJP actors*

Parallel to the rise of television news, India has also seen a sharp rise in access to internet services. Online social networking platforms such as Facebook and X (formerly known as Twitter) and instant messaging services such as WhatsApp, all of which have hundreds of millions of Indian users, have also become important channels through which political propaganda and disinformation is spread.

While all major Indian political parties now have dedicated social media operations, the BJP's 'IT Cell' has been reported to be the most sophisticated, well-funded and organised.[134] Former leaders and members of the BJP IT Cell have been reported detailing how it deliberately stokes communal flames by producing and disseminating disinformation. In 2015, one of the founders of the IT Cell resigned citing the 'madness' that had gripped the party.[135] In 2018, a data analyst who formerly worked as a political consultant for the BJP revealed how fake videos and graphics are edited and spliced together before being sent to hundreds of WhatsApp groups, from which they are spread more widely by people who believe the content to be true.[136]

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[131] Paranjoy Guha Thakurta (n 123) 52.

[132] 'Cobrapost Sting: Big Media Houses Say Yes to Hindutva, Black Money, Paid News' (*The Wire*, 26 May 2018) <https://thewire.in/media/cobrapost-sting-big-media-houses-say-yes-to-hindutva-black-money-paid-news> accessed 22 October 2021.

[133] Rukmini S, 'How India Votes: The News Media Is Helping BJP Win Elections – and the Public Does Not Mind' (*Scroll.in*, 14 January 2019) <https://scroll.in/article/909195/how-india-votes-the-news-media-is-helping-bjp-win-elections-and-the-public-does-not-mind> accessed 26 April 2021.

[134] 'Nationalism a Driving Force behind Fake News in India, Research Shows' *BBC News* (12 November 2018) <https://www.bbc.com/news/world-46146877> accessed 22 October 2021.

[135] Bhavna Vij Aurora, 'BJP IT Cell Founder Prodyut Bora Quits Party; Attacks PM Modi, Amit Shah's Style' (*The Economic Times*, 19 February 2015) <https://economictimes.indiatimes.com/news/politics-and-nation/bjp-it-cell-founder-prodyut-bora-quits-party-attacks-pm-modi-amit-shahs-style/articleshow/46294834.cms> accessed 26 April 2021.

[136] Siddhartha Mishra, 'How Is The Fake News Factory Structured?' (*Outlook*, 17 December 2018) <https://magazine.outlookindia.com/story/how-is-the-fake-news-factory-structured/300965> accessed 26 April 2021.

The top leadership of the BJP has appeared to openly endorse such tactics. In the lead-up to the 2019 national elections, Amit Shah – then the President of the BJP and now India's Home Minister – boasted about the presence of over 3 million people on its WhatsApp groups, and the party's capability to 'spread any message among people, whether sour or sweet, real or fake'.[137] In the months leading up to the 2019 elections, an investigative journalist analysed the contents of over 60,000 messages on such BJP-run WhatsApp groups, and found that political propaganda accounted for 36% of the content analysed, while inflammatory anti-Muslim content accounted for 24%.[138] The investigation also revealed that phone numbers of government critics were shared on these groups, with members encouraged to call and harass them. [139]

c. *Patterns in political messaging on broadcast and social media*

The domination of mainstream and social media networks by pro-BJP actors has meant that the average Indian users of these services is now subject to a daily and carefully constructed barrage of pro-BJP, anti-opposition and anti-minority content, including disinformation, with a wide range of actors pushing the same narratives from different sources and through different channels.

The portrayal of opposition politicians and minorities, particularly Muslims, on broadcast and social media networks has been found by independent researchers to be overwhelmingly negative and provocative.[140] Patterns in political messaging that have persisted include the portrayal of minorities as violent, existential threats to India, by terming them disloyal 'anti-nationals' and 'traitors', as demographic expansionists, and as members or sympathisers of armed extremist and separatist groups. Opposition politicians, particularly the Congress Party, have been portrayed not only as corrupt, elites, and dynasts, but also as terrorists and 'anti-nationals'.

In 2019, researchers at the London School of Economics (LSE) highlighted the 'trans-medial' nature of this messaging, and noted how the synchronicity of hate content between mainstream media and social media has resulted in a mutually reinforcing mechanism, where even Indians who may want to verify some hateful disinformation they encounter on social media, would find confirmation for the same on mainstream media. Conversely, the preponderance of hateful, sensationalist and

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[137] National Herald, 'Amit Shah's Poll Plans: Spread Fire, Make Even Fake Messages Go Viral' <https://www.nationalheraldindia.com/india/bjp-president-amit-shah-poll-plans-tells-cyber-warriors-to-spread-fire-make-even-fake-messages-go-viral> accessed 26 April 2021.
[138] Soma Basu, 'Manufacturing Islamophobia on WhatsApp in India' (*The Diplomat*, 10 May 2019) <https://thediplomat.com/2019/05/manufacturing-islamophobia-on-whatsapp-in-india/> accessed 30 April 2021.
[139] ibid.
[140] Onaiza Drabu, 'Who Is the Muslim? Discursive Representations of the Muslims and Islam in Indian Prime-Time News' (2018) 9 Religions 283.

stereotypical content on mainstream media means that the content on social media is more likely to be believed and shared further.[141]

4.3 Cracking down against Opposition members and dissenters

Where they cannot win over, BJP seeks to control. In the lead up to the 2024 elections, BJP-led government appears to be intensifying its muzzling of critical and independent media voices and fact-checkers and extending its control over the free flow of information. Its targeting of journalists and human rights defenders has already resulted in India's ranking in the World Press Freedom Index falling to 161 (out of 180 countries).[142] In August 2023, the Parliament passed the Digital Personal Data Protection Act, which gives the government the power to seek information from firms and issue directions to block online content, while exempting state agencies from its purview.[143] In December, 2023, the government introduced a new Telecommunications Bill, widely criticised for enabling further surveillance and cementing its powers to enforce blanket internet shutdowns.[144] India already tops the list of democracies with the highest number of internet shutdowns, earning itself the dubious title of the 'internet shutdown capital of the world' for the past five years running. As of March 2024, the Software Freedom Law Center has documented 809 internet shutdowns across the country since 2012, with 535 (66%) of these reported since 2019.[145] During the general elections of 2019, internet shutdowns were reported from at least 3 states.[146] The fear of reprisal has reportedly caused even global social-media companies to comply with government diktats instead of working to strengthen the space for free dialogue.[147] Facebook and X (formerly known as Twitter) routinely fail to censor or take down pro-BJP accounts spreading dangerous disinformation

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[141] Shakuntala Banaji and Ram Bhat, 'WhatsApp Vigilantes: An Exploration of Citizen Reception and Circulation of WhatsApp Misinformation Linked to Mob Violence in India' (London School of Economics and Political Science 2019) <https://www.lse.ac.uk/media-and-communications/assets/documents/research/projects/WhatsApp-Misinformation-Report.pdf>.

[142] 'India Slips in World Press Freedom Index, Ranks 161 out of 180 Countries' *The Hindu* (3 May 2023) <https://www.thehindu.com/news/national/india-slips-in-world-press-freedom-index-ranks-161-out-of-180-countries/article66806608.ece> accessed 25 August 2023.

[143] Anirudh Burman, 'Understanding India's New Data Protection Law' (*Carnegie India*) <https://carnegieindia.org/2023/10/03/understanding-india-s-new-data-protection-law-pub-90624> accessed 3 March 2024.

[144] Srinivas Kodali, 'Telecommunications Bill Lays the Ground for Totalitarian Control of the Internet' *The Wire* (20 December 2023) <https://thewire.in/tech/telecommunications-bill-lays-the-ground-for-totalitarian-control-of-the-internet> accessed 3 March 2024.

[145] 'Internet Shutdowns Tracker' (*SFLC.in*) <https://internetshutdowns.in/> accessed 2 March 2024.

[146] James Griffiths, 'India Is Cutting People off from the Internet in the Middle of Its Election' *CNN* (8 May 2019) <https://www.cnn.com/2019/05/08/tech/india-election-internet-shutdowns/index.html> accessed 2 March 2024.

[147] Jeff Horwitz and Newley Purnell, 'Facebook Executive Supported India's Modi, Disparaged Opposition in Internal Messages' *Wall Street Journal* (30 August 2020) <https://www.wsj.com/articles/facebook-executive-supported-indias-modi-disparaged-opposition-in-internal-messages-11598809348> accessed 22 October 2021; Jeff Horwitz and Newley Purnell, 'In India, Facebook Fears Crackdown on Hate Groups Could Backfire on Its Staff' *Wall Street Journal* (13 December 2020) <https://www.wsj.com/articles/in-india-facebook-fears-crackdown-on-hate-groups-could-backfire-on-its-staff-11607871600> accessed 22 October 2021.

and incitement targeting minorities, while complying with government orders to take down the accounts and posts of critical journalists and fact-checkers.[148]

At the same time, political parties are already reported to be using AI-powered deepfake technology in their outreach activities, including using visuals and audio of deceased political leaders.[149] Multiple private vendors across the country are reportedly providing voice cloning services that are allowing political leads to deliver 'personalised messages' to on-ground party workers, with one expert describing AI-facilitated content marketing as a $60 million market opportunity during the upcoming elections. [150]

4.4 Communal polarisation, hate speech and disinformation as electoral strategy

While virtually all Indian political parties flout electoral guidelines and appeal to communal and caste sentiments while seeking votes, the BJP has been at the forefront of this trend.

Religious polarisation – and all too often, violence – has been widely acknowledged by scholars to have played a crucial part in the BJP's rise to national prominence, and in how it has sustained power.[151] Researchers of state-level elections in India have found that a BJP election victory increases the chances of ethnic strife in a constituency by 10 %, as opposed to a 32 % reduction in probability in the case of an opposition victory.[152] Researchers have also found that 'religious riots' – which are rarely spontaneous and are usually 'produced'[153] with the aim of Hindu mobilisation – occurring in the year leading up to an election, leads to a 5-7% increase in the BJP's vote share.[154]

In recent years, the BJP has appeared to double down on this strategy. In February, 2019, in the lead-up to General Elections, after a suicide bombing in Kashmir killed 40 paramilitary personnel, a deluge of false and hateful online content led the head of Facebook India's disinformation team to publicly remark that he had 'never seen anything' like it before.[155] During the official nine-week

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[148] Raqib Hameed Naik [@raqib_naik], 'Twitter Has Unfairly Suspended the Account of Hindutva Watch (@HindutvaWatchIn), a US-Based Research and News Org Reporting on Indian Minorities. This Ban Must Be Revoked Immediately! Please Look into It: @elonmusk @ellagirwin @TwitterSupport @verified @TwitterSafety' <https://twitter.com/raqib_naik/status/1636367647058034688> accessed 10 January 2024.

[149] Nilesh Christopher, 'How AI Is Resurrecting Dead Indian Politicians as Election Looms' *Al Jazeera* (12 February 2024) <https://www.aljazeera.com/economy/2024/2/12/how-ai-is-used-to-resurrect-dead-indian-politicians-as-elections-loom> accessed 2 March 2024.

[150] ibid.

[151] Christophe Jaffrelot, *Modi's India: Hindu Nationalism and the Rise of Ethnic Democracy* (Princeton University Press 2021) 75.

[152] Gareth Nellis, Michael Weaver, and Steven C. Rosenzweig, 'Do Parties Matter for Ethnic Violence? Evidence from India' (2016) 11 Quarterly Journal of Political Science 249.

[153] Paul R. Brass, *The Production of Hindu-Muslim Violence in Contemporary India* (University of Washington Press 2005).

[154] Sriya Iyer and Anand Shrivastava, 'Religious Riots and Electoral Politics in India' (2018) 113 Journal of Development Economics 104.

[155] Aria Thaker, '"Never Seen Anything like This," Says Facebook India's Fake News Buster after Pulwama Attack' (*Quartz India*, 18 February 2019) <https://qz.com/india/1552882/never-seen-anything-like-this-before-says-facebook-indias-fake-news-buster-after-pulwama-attack/> accessed 26 April 2021.

campaigning period, researchers recorded at least 40 instances of hate speech by top politicians.[156] And in December, 2019, the BJP's response to the anti-CAA protest movement – which coincided with the election campaign for assembly elections in Delhi, and culminated in targeted violence against Muslims in February 2020 – centred around branding protesters and other government critics as 'urban Naxals' and 'traitors' deserving of 'bullets'.[157]

Since then, the tone and tenor of such messaging has become even more strident – powerful Hindu religious leaders, including some with close ties to the BJP, have made open genocidal calls, to 'like Myanmar', undertake a 'cleanliness drive' against Muslims and kill 'at least 2 million of them', and rape and impregnate Muslim women.[158] Hate speech has also been directed at Christians and Sikhs, as well as Dalits.[159]

International human rights bodies and analysts have warned that such incitement to violence has moved from the fringe to the mainstream, due to senior political leaders remaining silent, and impunity for perpetrators becoming the norm.[160] Senior UN officials who have publicly expressed concerns about this escalation of anti-minority hate speech have included the UN High Commissioner for Human Rights, the Special Adviser on Prevention of Genocide, and over a dozen Special Procedures mandate-holders.[161]

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[156] Vindu Goel and Sheera Frenkel, 'As India Votes, False Posts and Hate Speech Leave Facebook Perplexed' (*The New York Times*, 1 April 2019) <https://www.nytimes.com/2019/04/01/technology/india-elections-facebook.html> accessed 21 October 2021.

[157] '"Urban Naxals, Cong Lying on Detention Centres for Muslims": PM Modi on CAA' (*Hindustan Times*, 22 December 2019) <https://www.hindustantimes.com/india-news/pm-modi-on-citizenship-act-urban-naxals-congress-lying-on-detention-centres-for-muslims/story-tr7I5tGFG9ayTNodSruXqO.html> accessed 3 May 2023; Jeffrey Gettleman, Suhasini Raj, and Sameer Yasir, 'The Roots of the Delhi Riots: A Fiery Speech and an Ultimatum' (*The New York Times*, 26 February 2020) <https://www.nytimes.com/2020/02/26/world/asia/delhi-riots-kapil-mishra.html> accessed 21 October 2021.

[158] 'India: Hindu Event Calling for Genocide of Muslims Sparks Outrage' (*Al Jazeera*) <https://www.aljazeera.com/news/2021/12/24/india-hindu-event-calling-for-genocide-of-muslims-sparks-outrage> accessed 1 February 2022; 'Hindu Extremists in India Escalate Rhetoric with Calls to Kill Muslims' *NBC News* (18 January 2022) <https://www.nbcnews.com/news/world/hindu-extremists-india-escalate-rhetoric-calls-kill-muslims-rcna12450> accessed 2 March 2024; 'Sadhvi Vibhanand's Call to "Rape" Muslim Women With Impunity Shows Hindutva's Politics of Fear' *The Wire* (12 February 2022) <https://thewire.in/communalism/sadhvi-vibhanands-call-to-rape-muslim-women-with-impunity-shows-hindutvas-politics-of-fear> accessed 2 March 2024.

[159] Open Doors, 'Destructive Lies: Disinformation, Speech That Incites Violence and Discrimination against Religious Minorities in India' <https://media.opendoorsuk.org/document/pdf/Destructive%20Lies-Executive-Summary.pdf>; Equality Labs, 'Facebook India - Towards a Tipping Point of Violence Caste and Religious Hate Speech' (2019) <https://www.equalitylabs.org/facebookindiareport> accessed 26 April 2021.

[160] Human Rights Watch, 'India: Events of 2023', *World Report 2024* (2023) <https://www.hrw.org/world-report/2024/country-chapters/india> accessed 2 March 2024; 'European Parliament Recommendation of 17 January 2024 to the Council, Commission and the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy Concerning EU-India Relations (2023/2128(INI))'; Cecilia Jacob and Mujeeb Kanth, '"Kill Two Million of Them": Institutionalised Hate Speech, Impunity and 21st Century Atrocities in India' (2023) 15 Global Responsibility to Protect.

[161] 'Global Update: Bachelet Urges Inclusion to Combat "Sharply Escalating Misery and Fear"' (*OHCHR*) <https://www.ohchr.org/en/speeches/2022/03/global-update-bachelet-urges-inclusion-combat-sharply-escalating-misery-and-fear> accessed 2 March 2024; United Nations Special Adviser on the Prevention of Genocide, 'Note to Media

Despite these warnings, the BJP has appeared to continue to use religious polarisation as a core element in its electoral strategy. The consecration ceremony of a Hindu temple at the site of the illegally destroyed Babri Masjid mosque in Ayodhya, Uttar Pradesh, in January, 2024, was widely seen by political analysts as kicking off BJP's campaign ahead of upcoming elections. The ceremony, which was presided over by Prime Minister Narendra Modi, sparked anti-Muslim violence in at least eight states across India.[162] Christians and Dalits too were targeted. BJP has also continued to patronise and reward political leaders engaging in hate speech and incitement – for instance, ahead of provincial elections in Telangana in November, 2023, BJP revoked the suspension of a legislator who had briefly been suspended from the party for hate speech, and named him as one of its candidates.[163]

It is thus obvious that India's voters are heading to the upcoming national elections in a highly communally charged atmosphere. The Election Commission's attempts to regulate online hate speech and disinformation was described by experts as feeble and ineffective.[164] In 2024, the risks appear to be significantly higher.

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on   India'   (18   May   2020) <https://www.un.org/en/genocideprevention/documents/18052020_SA%20note%20to%20media%20on%20India_fi nal.pdf>.

[162] 'India: Violence Marks Ram Temple Inauguration | Human Rights Watch' (31 January 2024) <https://www.hrw.org/news/2024/01/31/india-violence-marks-ram-temple-inauguration> accessed 3 March 2024.

[163] 'Only Non-AIMIM MLA in Hyderabad LS Seat, Reinstated BJP Leader T Raja Singh Retains Support Base' *The Indian Express* (24 October 2023) <https://indianexpress.com/article/political-pulse/t-raja-singh-hyderabad-goshamahal-supporters-8997217/> accessed 3 March 2024.

[164] Paranjoy Guha Thakurta (n 123).

5. Is Conduct of Elections in India Independent and Objective?

5.1 Introduction

As an extension of the international legal obligation of States to respect, protect, and fulfil human rights, electoral management bodies (EMBs) are obligated to ensure the integrity of the electoral process.[165] EMBs must be able to function independently, and to ensure that the electoral process is conducted fairly, impartially and in accordance with established laws that are compatible with the ICCPR.[166] Their decision-making must be open, transparent and maximally consultative, and all stakeholders must be provided access to relevant information.[167] Further, in accordance with the rights to a fair trial and to an effective remedy, States are obligated to ensure independent judicial review or other complaints and appeals procedures.[168] Remedies must be prompt, adequate, effective, and enforceable within the context of the electoral calendar.[169]

In India, the Election Commission of India – the constitutional body tasked with overseeing the conduct of free and fair elections – has historically enjoyed a strong international reputation. In recent years, however, it has been accused of failing to ensure a level playing field for all political parties, and of being biased or subservient towards the BJP.

5.2 Election Commission of India – The arbiter of elections

The ECI derives its authority from the Constitution of India (Article 374), which vests in it powers to supervise, direct and control elections to Parliament and to all state Assemblies, as well as the Representation of People's Act, which specifies corrupt practices and electoral offences and prescribes penalties for them. The Model Code of Conduct (MCC), a non-statutory set of guidelines that come into effect as soon as the ECI announces the schedule for an election, is meant to act as a code of conduct to be followed by all political parties during elections. Key among the eight parts of the MCC is Part VII, which addresses parties in power, and prescribes rules relating to issues such as campaign visits of government ministers, the use of government transport and accommodation, and restrictions on the announcements of government schemes and projects. The ECI has the power

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[165] Office of the High Commissioner for Human Rights (n 7) para 114.
[166] UN Human Rights Committee (n 12) para 20.
[167] Office of the High Commissioner for Human Rights, 'Guidelines for States on the Effective Implementation of the Right to Participate in Public Affairs' (United Nations 2018) A/HRC/39/28 para 45.
[168] Office of the High Commissioner for Human Rights (n 7) paras 128–129.
[169] Office of the High Commissioner for Human Rights (n 167) para 46.

to censure parties and candidates for violating the MCC. Certain provisions of the MCC can also be enforced by invoking criminal laws to prosecute offenders.

The Supreme Court (SCI) has further clarified that when extant laws are silent or insufficient to deal with a situation in the conduct of elections, the ECI has plenary powers to act as it finds appropriate, thus giving ECI much authority. Yet the ECI has been seen as being wanting in its enforcement of its own laws and rules and model codes.

5.3 ECI's performance of its constitutional mandate

The Citizens Commission on Elections (CCE) have highlighted numerous allegations made by opposition political parties and by other civil society actors against the ECI in recent years, accusing it of bias and partisanship before, during and after the conduct of elections.[170]

a. *Criticism of the ECI's pre-election functioning*

Allegations of partisanship in announcement of dates: On multiple occasions in recent years, the ECI has been accused of delaying the announcement of election dates, and hence the coming into effect of the MCC, to enable BJP-led governments to announce last-minute development schemes:

- Ahead of the Gujarat assembly elections in 2017, the ECI was criticised for delaying the announcement of voting and counting dates for BJP-ruled Gujarat, despite announcing the dates for opposition-ruled Himachal Pradesh. Opposition parties alleged that the ECI's delay – and the resultant delay in the MCC coming into effect – allowed the BJP governments in the state and the centre to announce a slew of Gujarat-focused development schemes and projects ahead of the elections.[171]
- Ahead of assembly elections in five states including Rajasthan in October 2018, the ECI was accused of delaying its press conference announcing election dates and enabling Prime Minister Modi to attend a public rally with the state Chief Minister, where a free electricity scheme was announced for the state's farmers.[172]
- The ECI was also accused of delaying the announcement of dates for the Lok Sabha elections of 2019 and paving the way for the BJP-led central government to announce to announce

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[170] Sanjay Kumar, 'Election Commission's Partisan and Controversial Functioning', *Are Elections in India Free and Fair?*, vol 2 (Citizens' Commission on Elections).
[171] ibid 60.
[172] ibid 61.

and inaugurate development projects in several electorally crucial states, and to promulgate six last-minute emergency ordinances in Parliament.[173]

Defiance in addressing allegations of voter list irregularities: The ECI has been accused of mounting an 'aggressive posture' in its response to allegations of irregularities in voter lists. For instance, after opposition leaders approached the Supreme Court (SCI) alleging the presence of duplicates in voter lists in Madhya Pradesh and Rajasthan, the ECI was reported to have accused one of the leaders of using fabricated documents to malign its image.[174]

b. *Criticism of the ECI's enforcement of the Model Code of Conduct (MCC)*

CCE experts have highlighted several recent examples from recent years of the ECI failing to use its plenary powers and keep a check on political parties, particularly the BJP, from violating the MCC.

- During the 2019 Lok Sabha elections, in potential violation of the MCC, a free-to-air TV channel named after PM Modi and broadcasting his rallies and other promotional materials live continued to air throughout the election period. The ECI was reported to have merely asked for a clarification from the central government. The channel remained live till a day after voting had concluded.[175]
- During the 2019 Lok Sabha elections, the ECI concluded that PM Modi had not violated the MCC during his repeated invocation of military operations and army personnel during his election speeches. This was despite an earlier ECI advisory to all parties to desist from referring to armed forces while campaigning.[176] The ECI also separately concluded that PM Modi had not violated MCC provisions for the party in power when he made a televised address announcing the test-firing of an anti-satellite missile.[177] When UP CM Yogi Adityanath referred to India's armed forces as 'Modi's soldiers' in a speech, the ECI merely warned him against making such statements.[178]
- While it temporarily barred three top leaders, including two from the BJP, from campaigning during the 2019 Lok Sabha elections for flouting MCC provisions prohibiting communal election speeches, the ECI gave a clean chit to PM Modi, who had also made similar speeches.[179]
- The ECI was also found to have 'failed miserably' at regulating online propaganda, political campaigning and disinformation during the 2019 Lok Sabha elections, particularly during the

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[173] ibid 62.
[174] ibid 63.
[175] ibid 65.
[176] '"Stop Using Photos of Defence Personnel in Poll Campaigns": EC to Parties' *Hindustan Times* (9 March 2019) <https://www.hindustantimes.com/india-news/don-t-use-photographs-of-defence-personnel-for-poll-campaign-ec-tells-political-parties/story-bW67GnViRp3SXYPLVyLJ6M.html> accessed 9 March 2024.
[177] Sanjay Kumar (n 170) 66.
[178] ibid 66.
[179] ibid 68.

48-hour 'silence period' before polling when electoral advertising on all media is barred.[180] During the 2019 Assembly elections in 2019, the ECI was reported to have contracted a BJP office-bearer to conduct voter awareness campaigns.[181]

The ECI's failure to act decisively against communal election speeches by top BJP leaders was also evident during the Delhi assembly elections in 2020. For instance, Anurag Thakur, then a junior minister in the central government, was reported to have called upon the crowd at an election rally to 'shoot the traitors' – in reference to Muslims and government critics who were engaged in mass protests at the time against the Citizenship (Amendment) Act (CAA).[182] The ECI merely imposed a temporary campaigning ban on him, instead of invoking provisions from criminal laws and filing a First Information Report (FIR) with the police.

c. *Criticism of the ECI's post-election functioning*

ECI has also drawn criticism for appearing to engage in partisanship outside of election periods. For instance, in January 2018, the ECI recommended the disqualification of 20 MLAs, all belonging to the opposition Aam Aadmi Party (AAP), from the Delhi Assembly. In September 2019, the ECI faced further criticism for reducing the period of disqualification (from contesting elections) it had previously imposed on the CM of Sikkim. Two days earlier, the BJP had entered into a pre-poll alliance with the same leader.[183]

5.4 Electoral Remedy and Electoral Justice

ECI's public stance recently – and lack of meaningful engagement with all stakeholders – on many of the key issues highlighted in previous sections of this report, appear to lend further credence to allegations that it is failing to ensure free and fair elections in India. Some of these failures of electoral remedy include:

   a. **False exclusions from voter rolls:** CCE experts have alleged that the ECI rarely responds to or acknowledges feedback from citizens and civil society organisations on improving the quality of electoral rolls.[184](detailed in Chapter 4.1)

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[180] Paranjoy Guha Thakurta (n 123) 53.

[181] ibid 56.

[182] Aishwarya Paliwal, 'EC Slaps Campaign Bans: Anurag Thakur out of Action for 3 Days, Parvesh Verma for 4' (31 January 2020) <https://www.indiatoday.in/elections/delhi-assembly-polls-2020/story/ec-campaign-ban-anurag-thakur-parvesh-verma-1641613-2020-01-30> accessed 9 March 2024.

[183] Sanjay Kumar (n 170).

[184] Harsh Mander and Venkateshan Ramani (n 16) 28.

b. **Delimitation:** ECI is alleged to have directly overseen a delimitation exercise in Assam that critics say is politically motivated and bound to disenfranchise many of the state's Muslim residents. (detailed in Chapter 4.1) The Supreme Court was reported to have rejected pleas to stay the Assam delimitation and had also upheld the constitutional validity of the Delimitation Commission appointed by the central government to conduct delimitation in Kashmir.[185]

c. **EVMs and VVPAT end-to-end verifiability:** Indian civil society organisations are currently reported to be engaged in litigation seeking to ensure 100% cross-verifiability with VVPATs of all votes. (detailed in Section 4.2) In response to one of these petitions, the ECI was reported to have called the demand for 100% verifiability a 'regressive thought', and to have submitted that Indian voters to not have a 'fundamental' right to get their vote verified through VVPATs that their vote has been recorded as cast and counted as recorded.[186] The ECI has also continued to steadfastly defend EVMs from persistent claims that they may be prone to tampering. In February, 2024, the Supreme Court was reported to have rejected pleas seeking urgent hearings on several issues relating to EVMs, instead chastising the petitioners for being 'oversuspicious'.[187]

d. **Electoral bonds:** When the contentious electoral bonds scheme (detailed in Section 4.2) was first introduced in 2017, it had been reported that the ECI had opposed the instruments, warning that they would have a 'serious impact on transparency of political finance/funding of political parties.' By 2021, when civil society organisations sought a stay on the release of fresh electoral bonds ahead of assembly elections, it appeared that the ECI had changed its stance, opposing the plea and underlining that it was not opposed to electoral bonds.[188] In February, 2024, the Supreme Court struck down electoral bonds for being in violation of the fundamental right to privacy.

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[185] The Hindu Bureau, 'Supreme Court Declines to Stay Delimitation Exercise under Way in Assam' *The Hindu* (24 July 2023) <https://www.thehindu.com/news/national/other-states/supreme-court-refuses-to-stay-ongoing-delimitation-of-lok-sabha-assembly-seats-in-assam/article67115634.ece> accessed 9 March 2024; Krishnadas Rajagopal, 'SC Upholds the Constitution of the J&K Delimitation Commission, Extension of Tenure of Its Chairperson' *The Hindu* (13 February 2023) <https://www.thehindu.com/news/supreme-court-dismisses-plea-challenging-delimitation-in-jammu-kashmir/article66503117.ece> accessed 7 March 2024.
[186] Tripathi (n 115).
[187] '"No End To Your Suspicion": SC Rejects Urgent Hearing On EVMs, Snubs Doubters' *TimesNow* (9 February 2024) <https://www.timesnownews.com/india/no-end-to-your-suspicion-sc-rejects-urgent-hearing-on-evms-snubs-doubters-article-107561093> accessed 9 March 2024.
[188] Tamanna Naseer, 'Election Commission Has No Comments on Landmark Electoral Bonds Verdict: How It Changed Its Stance' *The Wire* (16 February 2024) <https://thewire.in/politics/election-commission-has-no-comments-on-landmark-verdict-on-electoral-bonds-how-it-changed-its-stance> accessed 9 March 2024.

5.5 Election Commission of India – The arbiter, compromised?

A great deal of the criticism about conduct of elections in India, by political parties as well as civil society groups has been about the partisan role of election authorities, favouring political party in power at the expense of the opposition. Observers have explained this poor performance on the lack of independence of the ECI, despite the significant power and authority enjoyed by the ECI protected by the constitution, thus abdicating its responsibilities.

Key weaknesses relating to the ECI's powers and independence that have been identified by experts include:

- The system of appointment and removal of the Chief Election Commissioner (CEC) and other Election Commissioners (ECs). In December 2023, the Parliament enacted a law mandating that the CEC and the ECs would be appointed by a selection consisting of the Prime Minister, a minister in the central cabinet, and the leader of opposition, effectively giving the government of the day the veto over who would oversee elections. The law was passed following a Supreme Court order holding ghat the appointments committee should include the PM, the leader of the opposition, and the Chief Justice of India.[189]
- The lack of authority to de-register political parties found to be in violation of election laws.

It is instructive to see how the ECI compares with election authorities elsewhere in the world, especially on the criterion of independence. Table 2 provides a snap comparison of the Election Commission of India to national electoral bodies of South Africa and Brazil, on key factors of method of appointment and tenure of members, and their implications for the independence of the electoral authorities. India stands alone, with ECI's set up limiting the independence enjoyed by its members.

Table 2: Comparison of Election authorities – their autonomy   .

Country	India	South Africa	Brazil
Electoral Body	Election Commission of India (ECI)	Electoral Commission of South Africa (IEC)	Superior Electoral Court (TSE)
Members	3 members (Chief Election Commissioner, 2 Election Commissioners)	6 members (1 Chairperson – President of the Constitutional Court, 1	5 members (3 Supreme Federal Court (STF) Judges, 2 Superior Court of Justice (STJ) Judges, 2 lawyers)

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[189] Sanjay Kumar (n 170).

		Chief Electoral Officer, 4 Commissioner)	
Appointment	Search Committee headed by the Minister of Law and Justice prepares a panel of five persons for consideration. The Selection Committee consisting of the PM (head), Union Minister (nominated by the PM), Leader of the Opposition in Lok Sabha recommends candidates to the President who appoints them (The Chief Election Commissioner and other election commissioners Act, 2023)	Recommended by majority of the National Assembly, selected by an independent panel and nominated by a committee, proportional of the National Assembly, appointed by the President (Electoral Commission Act 51, 1996, Art. 6)	3 STF Judges elected secretly among all STF Judges, 2 STJ judges elected secretly among all STJ Judges, 6 Lawyers nominated by STF of which 2 are appointed by the President (Constitution of Brazil, Article 119)
Tenure	6 years or reaching the age of 65	7 years	2 years
Responsibilities	Approves parties, decides the legitimacy of elections, transparency, can call for elections, party symbols, Superintendence, direction, and control of elections to parliament, state legislatures, the office of the president of India, and the office of the Vice-president	Oversight and conduct of elections, voter education	Electoral management and electoral justice rules
Independence	Appointment not independent as the government has the dominant voice, Originally ECI as an autonomous constitutional body	Independent and subject only to constitution and law	Independent, non-partisan

6 Conclusion: Free and Fair Elections and the Future of India's Democracy

Elections lie at the intersection of three distinct but overlapping processes, involving political, technical, and human rights considerations. Genuine democratic elections are one means of facilitating the fundamental right to participate in public affairs. They are also one mechanism by which the will of the people, as the basis of the authority of government, is expressed. With due regard to diversity and pluralism, an election must reflect the freely expressed choice of the people, who must have confidence that the outcome of the election reflects their choice.

[Human Rights and Election Standards – A Plan of Action, December 2017, Office of the United Nations High Commissioner for Human Rights; The Carter Center]

The First Past the Post (FPTP) electoral system practised in India – where a candidate with the most number of votes from a constituency wins the seat - whilst being relatively simple, does not always allow for a truly representative mandate, as the candidate could win despite securing less than half the votes in a contest. Observers have noted how FPTP mostly manufactures majorities by exaggerating the share of seats of the leading party, while it simultaneously penalises smaller parties. In 2019, BJP with 37.4 % of votes cast, had 56 % of seats. In 2014 with 31 % pf votes, BJP's share of seats was 52 %. The system is rewarding BJP, the dominant party in power today.[190] But the electoral distortion has also rewarded the Congress in the past, when it was the dominant party. For twenty years, between 1951 and 1971, Congress never once won a majority of votes – average vote share during the period was 45 % - yet it enjoyed even bigger parliamentary majority, with some 70% of the seats.[191] With BJP consolidating its hold, the FPTP system could further create the grounds for BJP, at the national level, to further marginalise the opposition, to drive home its majoritarian agenda.

For a large country like India, FPTP is also considered unrepresentative of its diverse identities, failing to ensure representation of minorities commensurate with their population share. From 1980 to 2015, in the time that BJP gained its foothold, Congress lost its dominance, and the proportion of Muslims in population rose from 11.1 % to 14.2 %, the number of Muslim MPs in LS decreased by more than half (from 49 to 25, in a house of 534).[192] Researchers blame the BJP for this, which has never endorsed more than a few Muslim candidates. Notably, on the heels of the BJP, other parties, including the Congress, too are ceasing to nominate Muslim candidates except

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[190] Sanjay Kumar (n 170).

[191] Perry Anderson, *The Indian Ideology* (Three Essays Collective 2012) 108.

[192] Christophe Jaffrelot (n 151) 413.

in areas of high Muslim concentration.[193] All parties, taken together, nominated only 8.9 % Muslim candidates in 2019 elections. Muslims make up only 4.2 % of elected representatives in LS. Political representation of Muslims in India, never very rosy, is fast haemorrhaging. The political representation of women, making up half the population and of the electorate, is even worse – the figure among those nominated, and elected, again at dismal levels.[194]

These fundamental weaknesses of the Indian electoral system notwithstanding, our review of the health of electoral democracy in India shows that in letter, India fulfils many of the international standards on free and genuine elections. There are legal safeguards in India consistent with international human rights that allow Indian citizens to freely express their political choice. Domestic laws and procedures, including the Model Code of Conduct (MCC) if enforced, can ensure the conduct of free and fair elections.

Yet, as the review demonstrates, authoritarian propensities driving a majoritarian Hindu nationalist political order are rapidly replacing the fabric of political competition that gave voice to the diversity of India's religions and cultural moorings since independence in 1947. The report describes some of the authoritarian propensities already in place. For example, opposition politicians and the civil society defending the constitution have been targeted by the government's enforcement agencies.[195] It details how the Supreme Court has ruled that electoral funding through Electoral Bonds favoring the incumbent party violates the promise of free and fair elections. And India's media freedoms have slipped precipitously in a manner that the electoral opposition stands to lose. If further erosion were to occur in the constitutional commitment to the free choice of the voter, India may turn into a full blown majoritarian and authoritarian state.

The trend is confirmed by statistical analysis. According to Freedom House and V-Dem, the state of Indian democracy is now deemed only 'partly free'[196], to the point it is being characterised as 'electoral autocracy' - due to attacks on 'substantive democracy', including on basic freedoms and the civic space. India's key electoral and democracy indices, compared to other BRICS nations, South Africa and Brazil, (Table 3) show how far back India stands, and how the slide continues.

Table 3: Key electoral and democracy indicators, by states

| Indicators	Year	India	South Africa	Brazil

[193] ibid 415.

[194] Trishali Chauhan and Christophe Jaffrelot, 'In Politics and Bureaucracy, Women Are Severely under-Represented' *The Indian Express* (12 March 2023) <https://indianexpress.com/article/opinion/columns/in-politics-and-bureaucracy-women-are-severely-under-represented-8492805/> accessed 12 March 2024.

[195] Rahul Mukherji, 'NGOs and Civil Society' in Sumit Ganguly, Larry Diamond, and Dinsha Mistry (eds), *The Troubling State of India's Democracy* (University of Michigan Press 2024); Rahul Mukherji and Aditya Shrivastava, 'Civil Society under Siege, in India' *The Hindu* (4 January 2024) <https://www.thehindu.com/opinion/lead/civil-society-under-siege-in-india/article67706998.ece> accessed 13 March 2024.

[196] Sumit Ganguly, 'India's "Electoral Autocracy" Hits Back' [2021] *Foreign Policy* <https://foreignpolicy.com/2021/03/19/electoral-autocracy-india-modi-democracy-rankings-freedom-house/> accessed 13 March 2024.

V-Dem Liberal Democracy Index Rank	2023	104	49	32
	2022	97	51	58
V-Dem Electoral Democracy Index Rank	2023	110	53	36
	2022	108	55	58
V-Dem Clean Elections Index	2023	0.51	0.77	0.84
	2022	0.53	0.72	0.86
V-Dem Electoral Management Body (EMB) Capacity	2023	1.42	1.34	2.99
	2022	1.73	1.34	2.96
V-Dem EMB autonomy	2023	0.98	2.17	3.49
	2022	0.83	2.17	3.45
Electoral Integrity Project Score (2023)		59	69	69
Free and fair elections Bertelsmann Transformation Index (2022)		8 out of 10	9 out of 10	9 out of 10

Graph 1 shows the how sharp the decline has been of V-Dem Electoral Democracy Index of India (compared again to South Africa and Brazil), since 2014.[197]
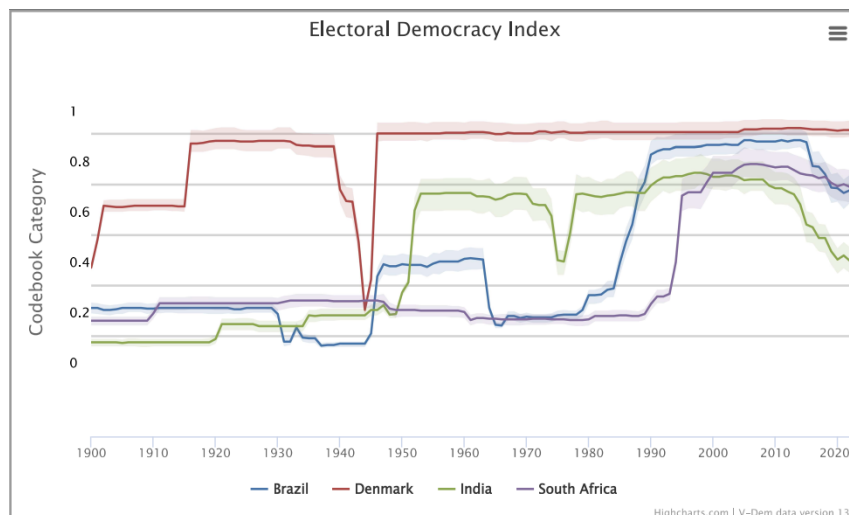
India is at an inflexion point from where, there can be a healthy recovery towards liberal democratic values. Otherwise, India will renege on its constitutional commitment, and descend towards a majoritarian-authoritarian order.

The work of the IPMIE is cut out, then.

Once the General Election 2024 is notified, IPMIE will begin monitoring all aspects of the elections, through to announcement of results. It will also highlight any irregularities or malpractices inherent in the process and advocate for their immediate rectification. The goal is to observe

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[197] 'Variable Graph – V-Dem' (*Varieties of Democracy*) <https://v-dem.net/data_analysis/VariableGraph/> accessed 12 March 2024.

elections as they unfold, publish reports and raise concerns in order to ensure that these elections remain free, fair, transparent, reflect the principles of democracy and safeguard the electoral rights of Indian citizens.

In the same breadth, IPMIE urges all Indian citizens to actively participate in these elections and exercise their right to vote responsibly. By working together, it believes that the democratic ideals enshrined in the Constitution of India will be upheld and the foundation of Indian democracy strengthened.

7 Call to Action

The Report has highlighted how India's electoral system whose democratic characteristics can ensure reasonably free electoral choice is being overtaken by majoritarian policies, legislations, and governmental actions. These authoritarian characteristics make it easier for the political incumbent to retain power. The right of the average Indian voter, especially those who belong to the minority and the disadvantaged communities, to make a free choice, is being constrained. India could be at a turning point, from where it can recover its democratic character. If, however, the institutions of democracy, such as the Election Commission of India and the Supreme Court fail to deliver during the GE 2024, authoritarian propensities favouring majoritarianism can drive the country in the opposite direction. Such an electoral slide could impact the "basic structure" of the Indian constitution and the polity itself.[198] It is for these reasons that we urge the ECI to safeguard the constitutional mandate, in accordance with the country's best traditions.

It is imperative that the ECI attends to the specific challenges raised in this Report.

1. The ECI should ensure that India does not get divided into two India's – one populated by the majority community, generally belonging to the upper classes and castes, and members of the minority community and the socially and economically disadvantaged caste groups and classes:

    *   Inclusive voter registration is essential in a country where the vast majority is poor and disadvantaged, and 15% to 20% of the 1.4 billion citizenry belong to minority communities. The Report highlighted how the right of every voter to free choice is hampered by ethnic minority status (NRC and notification of the Citizenship Amendment Act), economic disadvantage and gerrymandering. Robbing a vote is the best way for the democracy to slide. The ECI must safeguard against this possibility.

2. We noted that the ECI somehow lost its scepticism for Electoral Bonds (EBs). Instead, it began to defend the EB scheme. Now that the Supreme Court has ruled that EBs are a disadvantage for the political opposition in no uncertain terms, the ECI should publish the information as per the ruling of the Supreme Court. It must ensure that financial advantage as an arbiter of election results is substantially curbed.

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[198] Other countries in this electoral situation have been labelled as competitive authoritarian regimes. See: Steven Levitsky and Lucan A. Way, 'The Rise of Competitive Authoritarianism' (2022) 13 Journal of Democracy 51 See also: ; Steven Levitsky and Lucan A. Way, 'The New Competitive Authoritarianism' (2020) 31 Journal of Democracy 51; Rahul Mukherji and Seyed Hossein Zarhani, 'India's Democracy: The Competitive Authoritarian Propensity?' (2023) 96 Pacific Affairs 747.

3. We noted the ECI's lack of attention to the persistent demands of civil society groups and the political opposition towards ensuring the integrity of Electronic Voting Machines (EVMs). The problem of stolen and malfunctioning EVMs, and challenges arising out of the possibility of tampering results, have not been addressed by the ECI. These are genuine concerns. Even advanced industrialized countries such as Germany cannot protect these machines from getting hacked. Germany has banned EVMs. Others, have stricter verifiability standards. There should be the possibility of verifying at least 50% of all the EVM generated results with the paper trail left behind by the VVPAT. The ECI must recognize that the current verifiability standards of EVM/VVPATs are woefully inadequate and should heed to the public demand for substantially enhancing it or return to paper ballot system.

4. We noted that opposition politicians and civil society fighting for the more inclusive constitutional promise have been attacked in no uncertain terms by law enforcement agencies. Legislations and agencies such as the Foreign Currency Regulation Act, the Enforcement Directorate of the Department of Revenue and the Central Bureau of Investigation have been deployed to choke the space for opposition politicians and civil society. Often, opposition politicians attacked by these agencies shift allegiances in favour of the ruling party. Such intimidation strengthens the ruling party. The ECI and the Supreme Court should check such propensities to reduce incumbent advantage.

5. We noted how media freedoms have collapsed in India. Access to information is essential for free and fair electoral choice. Not only has the mainstream media been taken over, The Digital Data Protection Act (2023), the Telecommunications Bill (2023) coupled with the largest number of global Internet shutdowns, signal information control that can destabilize electoral choice and competition. The ECI must devise ways to see that the diversity of views can be freely expressed in a manner that does not disadvantage any political party.

6. Last but not the least, the ECI needs to regulate itself:

   • It must ensure that its officers do not compromise the election in favour of the incumbent, as was pointed out by the Supreme Court in the mayoral elections in Chandigarh in February 2024.
   • It should be attentive to complaints from political parties, civil society groups and citizens regarding all the above-mentioned issues, which include voter registration, election expenditures, performance of EVMs, intimidation by enforcement agencies, and media and information control.
   • The ECI must be fair, and it should also appear to be fair.

Annex – I: Free and fair (and genuine) elections: International and domestic benchmarks

In this section, we explore the human rights basis for elections, reviewing international law, as well as provisions in domestic law that cohere with international standards. We also look more closely at electoral system, relevant laws and norms, on elections in India, to review whether they are adequate.

An overview of international standards on elections

Participation in public affairs, including through elections, is a human right protected by international human rights law instruments. It is guaranteed by the Universal Declaration of Human Rights (UDHR) and treaty provisions, principally International Covenant on Civil and Political Rights (ICCPR). UDHR states that the will of the people shall be the basis of the authority of government. Respect for human rights is essential for the will of the people to be respected in electoral processes. As stated by the Human Rights Committee (of the ICCPR), "article 25 lies at the core of democratic government based on the consent of the people".[199] More specifically, "elections lie at the heart of democracy, and remain the primary means through which individuals exercise their right to participate in public affairs.[200] Underlining the importance of the right to participation is that they may only be subject to limitations that are established by law, are non-discriminatory and are based on objective and reasonable criteria.[201]

These rights are also reflected in Indian law, including the Constitution, whose Preamble attests to the people of India making the republic, and securing for all citizens, freedom and equality besides justice. Equality (Art 14) and non-discrimination (Art 15) are further reinforced as Fundamental Rights, under part III of the Constitution. Basic freedoms, including freedom of speech (Art 19) and freedom of life and personal liberty (Art 20) make up the other key fundamental rights, along with guarantee of remedies for enforcement of fundamental rights (Art 32). Fundamental Rights lie at the heart of free and fair elections.

International human rights norms and standards contain a number of fundamental criteria for free and genuine elections. In the following sections, both 'free elections' and 'genuine elections' will be further evaluated using a human rights perspective.

Free elections

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[199] UN Human Rights Committee (n 12) para 1.
[200] Office of the High Commissioner for Human Rights (n 167) para 25.
[201] UN Human Rights Committee (n 12) paras 3–4.

Fundamentally important to free elections is that they represent 'the will of the people' (UDHR Art. 21 (3)). Further it should be open for everyone to take part in the government directly or indirectly through vote, which lies at the heart of the 'right to self-determination'. (UDHR Art. 21 (1), ICCPR Art. 25 (a)). People expressing their will and political opinion should be central to free elections.

For the will of the people to be represented in the elections, there needs to be an environment in which human rights are respected and no harm is committed to any individual who participates. Eight prerequisite rights need to be implemented to guarantee the upholding of human rights to free elections.

- First, there should not be any discrimination involved against the people and equal access to participation should be provided (UDHR Art. 2,7; ICCPR Art. 2 (1), 3, 26). For instance, voter exclusion should be avoided and information material for elections should also be provided in minority languages. States also have an obligation to provide guarantee against discrimination against protected groups such as women, minorities, the homeless and migrants, and people with disabilities, among others.
- Second, freedom of opinion and expression (UDHR Art. 19, ICCPR Art. 19) must be upheld. While the right to opinion is absolute without exemption, there are moments where freedom of expression can be limited when it hurts the rights of others. In these cases, it is important that the state acts proportionally. The right to freedom of expression goes beyond the individual since it also describes freedom of communication, media, art, culture and other forms of expression.
- Third, a further prerequisite right for free elections is the freedom of peaceful assembly (UDHR Art. 20, ICCPR Art. 22), for parties, their candidates and voters to engage in.
- Fourth, the freedom of association (UDHR Art. 20, ICCPR Art. 22) grants the right to form and participate in political parties.
- Fifth, the freedom of movement (UDHR Art. 13, ICCPR Art. 12) offers the opportunity to access polling stations, information where the elections take place and that the candidates can carry out their campaigns without movement restrictions.
- Sixth, the right to security and freedom from intimidation (UDHR Art. 3, ICCPR Art. 6, 9) assures a protection from election-related violence.
- Seventh, the right to a fair trial (UDHR Art. 10, ICCPR Art. 14) and an effective remedy (UDHR Art. 8, ICCPR Art. 2 (3) (a)) provides access to independent and impartial tribunals and grievance redressal bodies, for the voters combined with a right for reparation for the harm suffered.
- Eighth, the right to education is the basic necessity knowing and practicing the other human rights. To further increase political participation the state has the task to empower its citizens through political education.

Genuine elections

International standards which make an election genuine are divided into three procedural and three outcome-oriented standards, which ensure that certain minimum amount of political influence of the people is accepted and implemented.

Procedural standards

- The procedural standard of periodicity and electoral time frame mentions that regular elections need to be held so that there is no disconnect between the will of the people and the current government (UDHR Art. 21 (3), ICCPR Art. 25 (b)). Elections should only be postponed in public emergencies and any change in the democratic procedure needs to happen through dialogue with everyone involved.
- Universal and equal suffrage (UDHR Art. 2, 21(3), ICCPR Art. 2, 25 (b)) mean that every adult citizen's vote should be valued equally. Although the age of voters should be connected to people in their adulthood, the required age for office seekers can be higher according to the Human Rights Committee.
- Secret ballot vote (UDHR Art. 21 (3), ICCPR Art. 25 (b)) which relates to protection from coercion and intimidation based on how the person voted. It should also remain secret throughout the counting process.

Outcome oriented standards

- The first outcome-oriented standard is the genuine effect that the election should have. If the people have voted for it, a regulated transfer of power should be possible and the elected authorities should be able to exercise the power that was transmitted to them by law.
- Real choice in the election through political pluralism should be offered for the voter who can then decide across the political spectrum.
- Lastly, informed choice for the election needs to be offered through access to non-partisan information for everyone about the party programmes, the candidates and the electoral process. Furthermore, the press should be free to seek, receive and report information with no censorship and thereby safeguarding against disinformation.

The Infrastructure for FFE in India: Guarantees, laws, procedures and norms

In this section we examine laws, procedures and norms that guide the conduct of elections in India, and whether this infrastructure for conduct of free and fair elections, measures up to the international norms.

The system for electing representatives to the Lok Sabha and state assemblies is the first-past-the-post (FPTP) system of elections, otherwise known as 'simple majority' where a candidate with the most number of votes from a constituency wins the seat. Art 81 of the Constitution, on the composition of the lower house of Indian parliament, states that members shall be chosen by direct election from territorial constituencies in the States, with those first past the post, being victors.

Universal suffrage guaranteed by Constitution

Part XV of the Constitution covers elections, Art 324 vesting the Election Commission of India with the authority to conduct and control elections. The right of all citizens, without discrimination, to inclusion in the electoral rolls is protected by Art 325. Art 326 confirms that adult suffrage, or equal vote, shall be the basis of elections, and Art 327 and 328 empower the Parliament and Stater legislatures to make laws on elections to the bodies respectively. Notably, civil courts are barred from interference in electoral matters (Art 329).

Representation of People Act, 1951.

The law governing elections in India is the Representation of People Act, 1951 (RPA), that, in India's federal system, governs elections both to the national parliament as well as the state assemblies.[202] RPA Act itself draws its authority from the Constitution, especially Art 324.[203] RPA Act provides for guidelines on qualification (and disqualification) of candidates (part II), process for notification of elections (Part III), the structure of the administrative machinery for the conduct of elections (part IV), from the Election of Commission of India down to the Presiding Officer of individual polling booth; besides guidelines for registration of political parties (party VA). Part V deals with the conduct of elections, including nomination of candidates (Chapter I), rights and responsibilities of candidates and their agents (Ch. II), guidelines for polling of votes (Ch IV), including manner of voting at elections (Sec 59), and the use of voting machines (Sec 61A), their counting (Ch. V) and the publication of results (Ch. VII). There are rules for declaration of assets and liabilities of candidates, (Ch. VIIA) and election expenses (Ch. VIII). Rules for addressing disputes regarding elections are contained in Part VI of RPA Act, with original jurisdiction lying with the High Courts (Ch. II/III) and appeals to the Supreme Court of India (Ch. IVA), jurisdiction of civil courts being barred in electoral disputes. Part VII of RPA provides for guidance on Corrupt Practices in Election, (Ch. I) and those on Electoral Offences (Ch II). Finally, Part VIII covers disqualification of elected members.

Model Code of Conduct

The final element of the infrastructure for elections in India is the Model Code of Conduct (MCC) – that is especially relevant to the conduct of free and fair elections.[204] MCC was first adopted by the ECI with the agreement of all political parties in 1968, to provide a level-playing field to all contesting political parties and to ensure that the ruling party does not get undue advantage because it happens to be in office at the time of the election. MCC was consolidated and re-issued in its present form in 1991.

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[202] The Representation of the People Act 1951.
[203] The Constitution of India 1950 art 324.
[204] Election Commission of India, 'Model Code of Conduct for the Guidance of the Political Parties and Candidates' <https://ceoharyana.gov.in/Website/ELECTIONCOMMISSION/Images/1d29246e-82e1-457f-b202-85f6903ff2bc.pdf>.

MCC contains eight parts. Part I provides for certain minimum standards of good behaviour and conduct of political parties, candidates and their workers and supporters during the election campaigns. Parts II and III deal with the holding of public meetings and taking out processions by political parties and candidates. Parts IV and V describe how political parties and candidates should conduct themselves on the polling day. Part VI urges political parties and candidates to bring their complaints to the notice of the observers appointed by the ECI. Part VII deals with the parties in power and is pivotal for enabling a level playing field for all candidates, to realise the goal of free and fair elections. It deals with several issues relating to Government and its Ministers, such as visits of Ministers, use of Government transport and Government accommodation, announcements of various schemes and projects etc. A new section, Part VIII, added in 2013, based on guidelines given by the Supreme Court, regulates the issue of election manifestos, demanding that they be consistent with principles enshrined in the Constitution, and abide by the letter and spirit of the MCC as a whole.

MCC does not have any legal sanctity, although the Supreme Court has, on occasions, referenced it to call for free and fair elections. Despite attempts by election watch bodies, there has been   little progress in giving it statutory authority. It has remained but is a code of conduct, for election authorities to enforce. This has had mixed results. Yet, the Supreme Court in its judgment of 2013 that are reproduced in Part VIII of the MCC, cited Article 324, and directed political parties and candidates to adhere to the MCC guidelines. As it stands today, MCC comes into force from the date the Election Commission of India announces the schedule for any election, with the caveat that such announcement shall not ordinarily be made more than 3 weeks in advance of the date of notification of that election.

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