



Winning Elections Without Any Opposition

This editorial is based on [“Questioning the polls ‘rain washes out play’ moments”](#) which was published in The Hindu on 26/04/2024. The article explores the election of a contesting candidate from Surat Lok Sabha constituency in Gujarat without any opposition and its implications for electoral and democratic processes nationwide.

For Prelims: [Election Commission](#), [Electronic Voting Machines](#), [61st Constitutional Amendment Act of 1984](#), [Booth capturing](#), [Model Code of Conduct](#), [Voter-Verifiable Paper Audit Trail system](#), [CEC and Other ECs \(Appointment, Conditions of Service and Term of Office\) Act, 2023](#), [Lok Sabha](#), [Rajya Sabha](#), [State Legislative Assemblies](#).

For Mains: Consequences of ‘Getting Elected Unopposed’ and its implications for democratic processes.

The ruling party’s candidate from the Surat [Lok Sabha](#) constituency in Gujarat has been declared elected unopposed. This can happen when all other candidates withdraw their nominations or are disqualified, leaving only one candidate in the running. When this occurs, a single candidate is declared the winner without the need for a formal election. In such a scenario, there is a victor but there is no ‘vanquished’ party. There are only those who are ruled out under the Rules and those who decided to ‘voluntarily’ withdraw.

Getting elected unopposed is perfectly legal in the existing provisions of electoral laws and practice. One emerges as the unrivaled representative of the people without the people having chosen him/her because s/he is the only choice on the ballot. It is like achieving something without making the requisite effort. There have been at least 35 candidates who have been elected unopposed to the Lok Sabha. The majority of them were in the first two decades after independence with the last being in 2012.

Rule 11 of the **Conduct of Election Rules 1961** says: “(1) The **returning officer (RO)** shall... cause a copy of the list of contesting candidates to be affixed in some conspicuous place in his office and where the number of contesting candidates is equal to, or less than, the number of seats to be filled, he shall, immediately after such affixation, declare under sub-section (2) or as the case may be, sub-section (3) of section 53 the result of the election in such one of the Forms 21 to 21B as may be appropriate....”

Note:

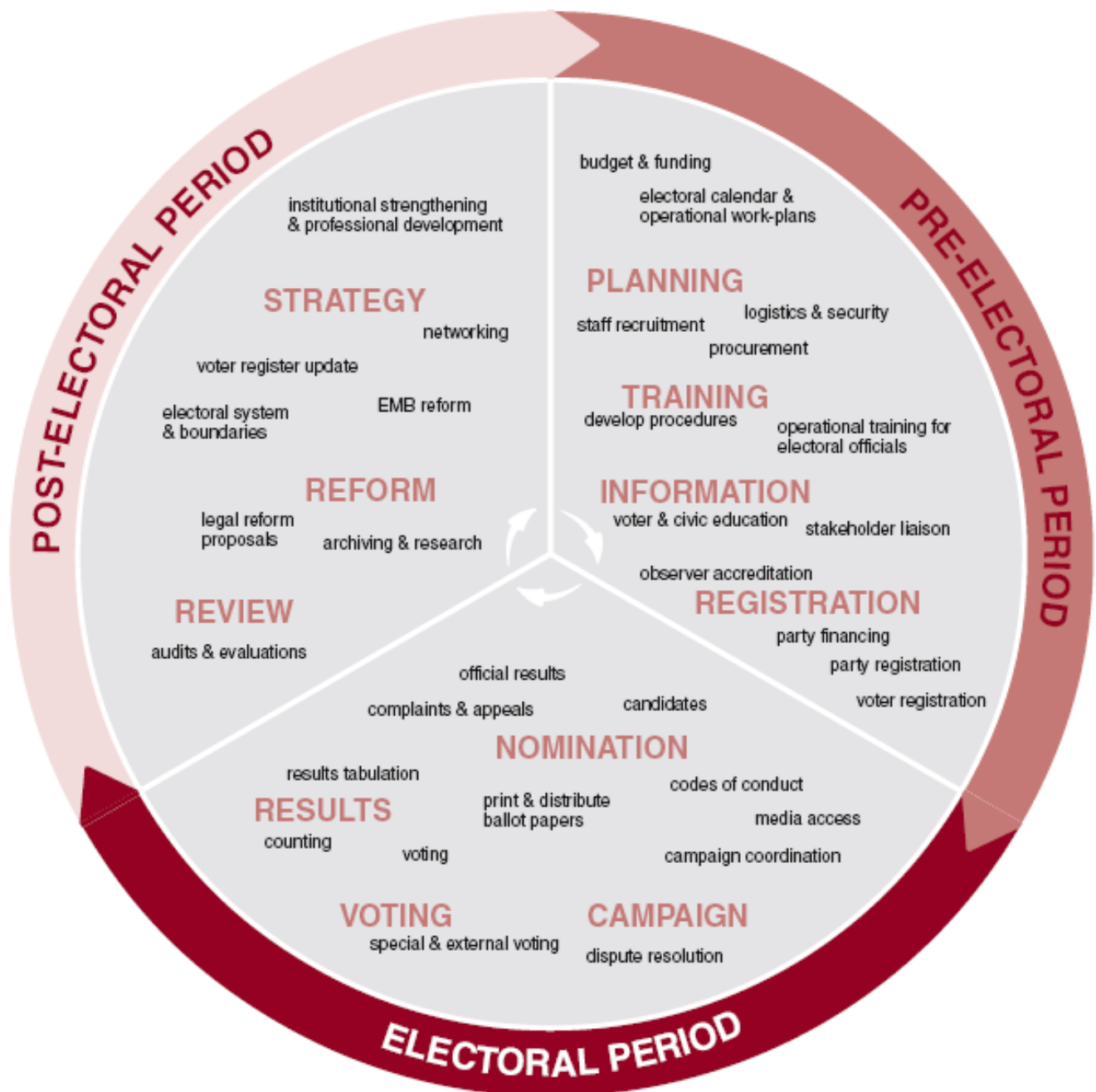
Conduct of Election Rules 1961:

- **Public Notice of Intended Election:** The public notice of an intended election referred to in section 31 shall be in Form 1 and shall, subject to any directions of the Election Commission, be published in such manner as the returning officer thinks fit.
- **Nomination Paper:** Every nomination paper presented under sub-section (1) of section 33 shall be completed in such one of the Forms 2A to 2E as may be appropriate:

- Provided that a failure to complete or defect in completing, the declaration as to symbols in a nomination paper in Form 2A or Form 2B shall not be deemed to be a defect of a substantial character within the meaning of subsection (4) of section 36.
- **Form of Affidavit to be Filed at the Time of Delivering Nomination Paper:** The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under subsection (1) of section 33 of the Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of the first class or a Notary in Form 26.
- **Symbols for Elections in Parliamentary and Assembly Constituencies:** The [Election Commission](#) shall, by notification in the Gazette of India, and in the Official Gazette of each State, specify the symbols that may be chosen by candidates at elections in [parliamentary](#) or [assembly constituencies](#) and the restrictions to which their choice shall be subject.

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Electoral Cycle



What is the Current Issue?

▪ **Opposition to Opposite Party's Candidate's Nomination:**

- In the present case, the candidate of the opposition party for the Surat constituency, had filed three sets of nomination papers. The proposers for these three nomination papers were his brother-in-law, nephew, and business partner. A ruling party's worker objected to the opposite candidate's nomination alleging that the signatures of his proposers were not genuine.

▪ **Rejection of the Nomination Papers:**

- The RO also received affidavits from the proposers claiming that they had not signed the nomination papers of the candidate. Reply/Clarification was sought from the candidate within a day on the objections raised. As the proposers could not be produced before the RO within the stipulated time for scrutiny, all three sets of nomination papers were rejected.

Note:

Returning Officers:

- Returning Officers (ROs) are responsible for overseeing the conduct of elections in a particular constituency. They are appointed by the Election Commission of India (ECI) and play a crucial role in the electoral process.
- Their duties include accepting nominations from candidates, scrutinizing nomination papers, allotting symbols to candidates, conducting the polling process, and counting votes. ROs ensure that elections are conducted fairly, impartially, and in accordance with the law.

▪ **Nomination Papers of Others Also Rejected:**

- The election rules allow for a substitute candidate to be fielded by a political party. The nomination of this substitute candidate would be accepted if the nomination of the original candidate is rejected. In this case, the opposition party had fielded its substitute candidate.
 - However, the nomination paper of the substitute candidate was also rejected for the same reason, that is of the proposer's signature not being genuine. The other nominations were either rejected or withdrawn paving the way for ruling party's candidate to be declared winner.

What is the Law for Nomination in India?

▪ **Section 33 of RPA, 1951:**

- Section 33 of the [Representation of the People Act, 1951 \(RP Act\)](#) contains the requirements for a valid nomination. As per the RP Act, an elector above 25 years of age can contest Lok Sabha election from any constituency in India.

▪ **Proposers for Recognised Political Parties:**

- The proposer(s) of the candidate should however be elector(s) from that respective constituency where the nomination is being filed. In case of a recognised party (national or State), the candidate needs to have one proposer.

▪ **Proposers for Unrecognised Political Parties:**

- Candidates set up by unrecognised parties and independents need to be subscribed by ten proposers. A candidate can file up to four nomination papers with different set of proposers. This is to enable the acceptance of nomination of a candidate even if one set of nomination paper is in order.

▪ **Scrutiny of Nomination Papers:**

- Section 36 of the RP Act sets out the law with respect to the scrutiny of nomination papers by the Returning Officer (RO). It provides that the RO shall not reject any nomination for a defect that is not of a substantial character.
 - However, it specifies that signature of the candidate or proposer found not genuine is grounds for rejection.

What are the Various Issues Prevalent in the Unopposed Election of Candidates?

▪ Concerns for NOTA Voters:

- The question being raised is that this process does not allow electors to exercise the **None of the Above (NOTA)** option. The NOTA option was not originally provided for in law but incorporated on court directions to 'enlighten' political parties and candidates about what some people thought of them.
- That NOTA does not impact the election process in any way might sound insulting to those who think that way. The pity is that it does not even seem to affect political parties in any way whatsoever.
 - Thus, what was conceived to be a progressive reform to influence the political culture hangs over the system in a manner that undermines its legitimacy.

▪ Learnings from the General Financial Rules (GFRs):

- General Financial Rules (GFRs), which is a compilation of rules and orders of Government of India to be followed by all while dealing with matters involving public finances speak about "a fair, transparent and reasonable procedure" for public procurement.
 - Rule 166, for instance, provides for a 'Single Tender Enquiry' that can be resorted to if the supplier is the original manufacturer, or in case of an emergency, or if there is a technical necessity for standardisation purpose.
- However, it does say in Rule 173(20) that lack of competition "shall not be determined solely on the basis of the number of bidders. Even when only one bid is submitted, the process may be considered valid provided the procurement was satisfactorily advertised and sufficient time was given for submission of bids, the qualification criteria were not unduly restrictive, and prices are reasonable in comparison to market values".

▪ Undermining the Relevance of Voters:

- In a sense, the "elector" (defined in the RPA as "a person whose name is entered in the electoral roll of that constituency for the time being in force and who is not subject to any of the disqualifications") is completely excluded from the process of choosing his representative.
 - A person who does not have even a single vote would sit in Parliament to legislate on behalf of the entire constituency. This is dichotomy that the present electoral process creates. It is designed to be pragmatic even if it appears not entirely fair. Unless there is a conflicting demand on their vote, the voters' choice is presumed because they have no choice.

▪ Assessing the Extreme Situation:

- In an extreme situation, all the candidates in 543 parliamentary constituencies (even if they are 10,000 representing different political parties or independents) could game the system and deny a billion electors their statutory right by complying with the process but seriously wounding the spirit of democracy.
 - It could be argued that voters could also be denied their right if there are no candidates to contest. The democratic process is fulfilled only when there is interest among the contestants and the voters. Someone has to seek one's vote for it to be cast.

▪ Ambiguous Provision Under Section 65, RP Act, 1951:

- The system is weighed in favour of the contesting candidates because the RPA provides that a complete boycott will be treated as everyone receiving zero vote and covered under Section 65 which deals with 'Equality of votes'.
 - It reads thus: "If, after the counting of the votes is completed, an equality of votes is found to exist between any candidates, and the addition of one vote will entitle any of those candidates to be declared elected, the RO shall forthwith decide between those candidates by lot, and proceed as if the candidate on whom the lot falls had received an additional vote".
- The will of the people is replaced by the expediency of the system in identifying who will represent the people who did not participate in the process. It is unavoidable considering that democracy is defined as a "government of the people, by the people and for the people".

What are the Different Recourses Available Against Rejection of Nomination Papers?

▪ Exploring Election Tribunal Options:

- RP Act, 1951 establishes Election Tribunals to resolve such disputes. Section 100 of the Act outlines the grounds for declaring a candidate's election void. Parties dissatisfied with the Election Tribunal's decision can appeal to the High Court and ultimately to the [Supreme Court](#). The Supreme Court has established significant precedents regarding election disputes through its judgments.

▪ Taking Recourse to Article 329 Read With RP Act, 1951:

- **Article 329(b)** of the Constitution read with RP Act, 1951 provides that no election shall be called into question except by an election petition before the concerned [High Court](#). One of the grounds on which such an election petition can be filed is improper rejection of nomination papers.
 - Hence, the legal recourse available is to file an election petition in the Gujarat High Court. The RP Act provides that High Courts shall endeavour to conclude such trials within six months, which has mostly not been followed in the past. Speedy disposal of election petitions would be a step in the right direction.

Note:

Article 329 in Indian Constitution-Bar to Interference by Courts in Electoral Matters:

- Notwithstanding anything in this Constitution the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 327 or article 328, shall not be called in question in any court;
- No election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

Trial of Election Petition- Section 86 of RP Act, 1951:

- As soon as may be after an election petition has been presented to the High Court, it shall be referred to the Judge or one of the Judges who has or have been assigned by the [Chief Justice](#) for the trial of election petitions under sub-section (2) of section 80A.
- The trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.
- Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial.

▪ Moving to Supreme Court:

- The aggrieved party can file an appeal to the [Supreme Court](#) within 30 days from the order of the High Court:
 - In the case of **Jagan Nath v. Jaswant Singh, 1954**, a significant ruling on election disputes, the Supreme Court established that the burden of proving that a candidate's election has been significantly impacted by corrupt practices lies with the petitioner. The court also clarified that an election petition's scope is confined to the grounds outlined in Section 100 of the RP Act, 1951.
 - In **Mohinder Singh Gill v. Chief Election Commissioner (1978)**, the Supreme Court ruled that elections must be conducted fairly, and any violation of this principle would nullify the election. The court also affirmed that the election tribunal can investigate allegations of corrupt practices, even if not explicitly raised in the election petition.

▪ Amending the First-Past-the-Post-System (FPTPS):

- The RPA, 1951 provides for issuing another notification if there are no candidates filing their nomination the first time but is silent if the same thing is repeated thereafter. However, it has a solution by completely excluding people if they abstain from elections and are deprived from the NOTA option because NOTA has no significance in the democratic exercise.
 - Candidates can nullify the process but people collectively cannot. There must be consideration for amending the **first-past-the-post system** by introducing a minimum percentage of votes for the winning candidates to be declared.
 - Similarly, if no candidate offers herself for elections the second time, that seat should be transferred to the nominated category where the **President of India** can nominate a person as per prescribed qualifications without consulting the government.

Conclusion

Ensuring a fair and transparent electoral process in India is crucial for upholding democratic principles, a goal compromised when candidates are declared elected without any opposition. Through comprehensive legal frameworks, robust institutions, and active citizen participation, India can strive towards elections that are free from malpractice and manipulation. It is imperative for all stakeholders, including political parties, electoral authorities, and the judiciary, to collaborate in maintaining the integrity of the electoral process. By upholding the values of fairness, transparency, and accountability, India can strengthen its democratic foundation and ensure that the voice of the people remains the cornerstone of governance.

Drishti Mains Question:

Discuss the significance of the Representation of the People Act, 1951, in ensuring free and fair elections in India. How has it evolved over time?

UPSC Civil Services Examination, Previous Year Questions (PYQs)

Prelims

Q. Consider the following statements: (2017)

1. The Election Commission of India is a five-member body.
2. The Union Ministry of Home Affairs decides the election schedule for the conduct of both general elections and bye-elections.
3. Election Commission resolves the disputes relating to splits/mergers of recognised political parties.

Which of the statements given above is/are correct?

- (a) 1 and 2 only
- (b) 2 only
- (c) 2 and 3 only
- (d) 3 only

Ans: (d)

Mains

Q. Discuss the role of the Election Commission of India in the light of the evolution of the Model Code of Conduct. (2022)

Q. To enhance the quality of democracy in India the Election Commission of India has proposed electoral reforms in 2016. What are the suggested reforms and how far are they significant to make democracy successful? **(2017)**

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