

Role of Election Commission in India

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Abstract: *One of the most important features of the democratic polity is elections at regular intervals. Elections constitute the signpost of the democracy; these are medium through which the attitudes, values and beliefs of the people towards their political environment reflected. Elections are the central democratic procedure for selecting and controlling leaders. Elections grant people a government and the government has constitutional right to govern those who elect it. Elections symbolize the sovereignty of the people and provide legitimacy to the authority of the government. Thus, free & fair elections are indispensable for the success of the democracy. In order to ensure free & fair elections the Constitution establishes the Election Commission. In January 25, 1950, the Election Commission has established in India. The secretariat of the Commission has 300 officials, and is located in New Delhi. This is a body autonomous in character and insulated from political pressures and executive influence.*

1. Introduction

After independence from British imperial rule, free India chose to adopt the system of parliamentary democracy and democratic practices are sustained as well as strengthened through elections. Elections were also conducted during British rule. These elections to the Provincial and Central Legislatures, did not fulfil the aspirations of the people of India and were anything but fair and democratic.

Elections in independent India are conceived to be both the commencement and culmination of its parliamentary democratic process.

The idea of parliamentary and electoral democracy was an exotic plan, when it was conceived in colonial India. However, it received sustenance and strength in the course of the national freedom movement in the country. In ancient India, the method of governance was entirely different. Except the early Vedic period, the status of the kings was hereditary, and the Samitis and the assemblies and the councils of the kings were aristocratic bodies, even in the republic. The village councils and caste panchayats on the other hand comprised village elders and notables and derived their authority from consensus rather than through a mode of election. Monarchical regimes were, therefore, the mainstay in ancient and medieval India. It was left to the British rulers to introduce the electoral idea in the country with the setting up of representative institutions.

The final shape of the Election Commission has been a result of the original thinking visualized a sort of central electoral authority - one body to conduct election to the Parliament and each state to have its own set-up for similar purposes. The President of India was to appoint the Central Election Commission and the Governor to appoint a similar body for his state. The Draft Constitution of India had such a conception of the apex level body. The superintendence, direction and control of all elections to Parliament and of elections of the offices of the President and Vice-President held under this constitution, including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with the elections to Parliament, was to be vested in a Commission to be appointed by the President. His authority vested with the

conduct of election is none, but a constitutional body, that is, the Election Commission of India.

D.D. Basu writes : "In order to supervise the entire procedure and machinery for election and for some other ancillary matters, the Constitution provides for an independent body, namely, the Election Commission, Article 324. [1]

1.1 Organisation of the Election Commission

The first important task of the framers of the Constitution was to maintain the democratic structure of the Constitution through elections. That is why they entrusted the superintendence, direction and control of elections to an independent body appointed by the President of India, called the Election Commission. There were two divergent proposals, as we have already seen, on the adoption of the Election Commission before the Drafting Committee, and the Committee decided to adopt a middle course. [2]

The Committee decided that the Election Commission would have one Chief Election Commissioner permanently in office. The Election Commission would be permanent body entrusted to organise and conduct elections. The office of the Chief Election Commissioner was to be expanded temporarily with the appointment of Regional Commissioners and officers as well as other public servants in large numbers added for electoral duties during elections. This proposed scheme of the Drafting Committee received acceptance of the Constituent Assembly and it enshrined in Article 324 of the Constitution of India. Section 9 and Section 10 of the Ordinance is wholly ultra vires of the Constitution, as well as spirit of the Article 324 of the Constitution of India as envisaged by the Constitution makers. [3] The aggrieved Chief Election Commissioner in his petition, submitted that the entire independence of the Election Commission can be fractured by the decision arrived at by two Election Commissioners who are appointed and removed at the will of the government.

The Lok Sabha, on December 13, 1993, passed an amendment bill, "The Chief Election Commissioner and other Election Commissioners Amendment Bill 1993 replacing the Ordinance issued on October 1, 1993 in this regard, making the Election Commission a multi-member body and equating the Chief Election Commissioner and

other Election Commissioners. [4] The Bill was passed by the Rajya Sabha and after the assent of the President it became Law. The Parliament passed a Bill that converted the Election

Commission into a multi-member body, and the Supreme Court- a Constitution bench of the Apex Court- held the Legislation, the Election Commission is now functioning as a multi-member body and the controversy in this regard has been finally settled.

1.2 The Original structure of the Election Commission of India

The structure and powers of the Election Commission and its supervisory arrangements for ensuring efficient and impartial functioning of the electoral machinery are crucial importance to the working of the electoral system that any scheme of electoral reform would be largely ineffectual without certain essential changes in the Commission's structure and powers and more adequate system of supervision over the electoral machinery. [5]

Article 324 Clause 2 of the Constitution of India envisages that Election Commission may consist of the Chief Election Commissioner and such member of other Election Commissioners as may be fixed from time to time to be made by the President for a term of six years, or up to the age of 65 years, whichever is earlier. Under clause 3 of Article 324, it is further provided that when any other Election Commissioner is appointed, the Chief Election Commissioner will act as the Chairman of the Election Commission. The Constitution has ensured that the Chief Election Commissioner shall perform his duty uninfluenced by a party or political consideration and free from executive interference. [6]

The territorial work is distributed among separate units responsible for different Zones into which the 36 Constituent States and Union Territories of the country are grouped for convenience of management. At the State level, the election work is supervised, subject to overall superintendence, direction and control of the Commission by the Chief Electoral Officer (CEO) of the State, who is appointed by the Commission from amongst senior civil servants proposed by the concerned state government.

At the district and constituency levels, the District Election Officers (DEO), Electoral Registration Officers (ERO) and Returning Officers (RO) who are assisted by a large number of junior functionaries perform election work.

1.3 Types of Elections followed in India

Elections form the backbone of Indian democracy wherein people elect their political representatives and decide the composition of the government. Holding free and fair elections on a state and national level is integral to upholding the principles of democratic set up in India. From parliamentary elections to the presidential polls, India goes through the electoral process at regular intervals.

The Parliament of India is the supreme legislative authority in the country and it is bicameral. It is divided into two houses – the Rajya Sabha, which is the Council of States, and the Lok Sabha, which is the House of the People.

The Lok Sabha is referred to as the Lower house and the Rajya Sabha is referred to as the Upper house. The members of the Parliament are either elected by the people of India or nominated by the President of India. The union legislature or Parliament is headed by the President of India.

The term of Rajya Sabha is six years and the term of Lok Sabha is five years. The Lok Sabha can be dissolved. In Rajya Sabha, 238 members are elected by the State and 12 members are nominated by the President for their contribution in the fields of art, literature, science and social services.

In Lok Sabha, 543 members 16 are elected by the voting population of India and two Anglo Indians are nominated by the President of India. The Speaker, who is the Presiding Officer of the Lok Sabha, is elected by its members. The Vice President of India, who is the ex-officio Chairman of Rajya Sabha, is elected by the members of an electoral college consisting of the members of both the Houses of Parliament.

1.4 Role of Election commission in Electoral Administration

Election is a device which a modern State creates amongst its citizens a sense of involvement and participation in public affairs. It is through popular elections that the authority of government is clothed with legitimacy with elections; peaceful transfer of authority is possible to the new leaders. So, a good electoral system is therefore, the basic principle of genuine representative government.

However, it depends on how the electoral system operates i.e., whether elections are conducted efficiently and impartially by competent administrators free from political bias. If there exists no confidence over the verdict of the ballot box, it may destroy the faith of the public in the democratic process and may tend to bring it into discredit.

1.5 Chief Election Commission and other Election Commissioners

The existing Constitutional provisions are silent on the position of the Chief Election Commissioner with respect to the Election Commissioners. The Committee decided that the Election Commission would have one Chief Election Commissioner permanently in office. The Election Commission would be permanent body entrusted to organise and conduct elections. The office of the Chief Election Commissioner was to be expanded temporarily with the appointment of Regional Commissioners and officers as well as other public servants in large numbers added for electoral duties during elections. This proposed scheme of the Drafting Committee received acceptance of the Constituent Assembly and it enshrined in Article 324 of the Constitution of India

Article 324(5) of the Constitution states that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and his conditions of service shall not be varied to his disadvantage after his appointment and the other Election Commissioners shall not be removed from his office except on the recommendation of the Chief Election Commissioner.

1.6 Powers and functions of Election Commission of India

The powers and functions of the Election Commission of India are derived from Article 324 of the Indian Constitution, the legislation relating to the elections and the rules and orders issued under the Constitution or under the legislation enacted by the Parliament.

The most essential requisite of free and fair elections is that the elections should be conducted by an independent and impartial authority who can act as a guardian of the entire election machinery. [7] Clause (1) of art. 324 of the Constitution of India vests extensive functions in the Election Commission, that is, "Superintendence, direction and control", for the conduct of elections. These powers of the Commission are prompted by supplementation of the Representation of the People Act, 1950, the Representation of the People Act, 1951 and Rules and Orders made there under.

The plenary powers of the Election Commission under Article 324 of the Constitution are of recommendatory value. The Governor can still issue the notification under Section 15 of the Representation of the People Act, 1951 if the recommendation of the Election Commission is not in conformity with the political scenario of the State concerned. In such a contingency, if the Governor considers the elections to be imminent, it would be supplanting the provisions of Section 15 of the Representation of the People Act, 1951 and the powers of the Election Commission under Article 324 cannot be stretched so far. [8]

Under Article 174(1) of the Constitution, the Governor is required to summon the House of the Legislature of the State to meet at such time and place as he thinks fit, but 6 months should not intervene between its last sitting in one session and the date appointed for its first sitting in the next session. If the elections are postponed, compliance with the provisions of Article 174(1) of the Constitution of India would become impossible.

The Election Commission is under a constitutional duty to conduct the election at the earliest on completion of the term of the Legislative Assembly on dissolution or otherwise. If there is any impediment in conducting free and fair elections it can draw upon all the requisite resources of the Union and the State within its command to ensure free and fair election. Any man-made attempt to obstruct free and fair election is the antithesis to democratic norms. [9] If and when the Election Commission finds the law and order situation difficult, it can only require a sufficient number of security forces to be deployed, but postponement of elections is hardly a remedy for that. It would be better if a mechanism

is devised to settle such disputes which may arise between the Election Commission and the State Government or the Central Government. [10] Besides preparation and revision of electoral rolls, the significant power of the Election Commission is to superintend, direct and control the conduct of elections. It is the solemn duty of the Commission to conduct elections in a free, fair and peaceful manner. In order to achieve this end, the Election Commission discharges multiple functions. The function of the Commission regarding conduct of elections begins from the day of the notification of election and runs upto declaration of results and during the entire process of elections the Commission remains vigilant and sees that the conduct of election is going on according to rules. Accordingly, the Election Commission is empowered to issue certain notification. But for the elections to the Lok Sabha and State-Legislature and Councils of Union Territories, the notification is issued by the President, or Governors or Administrators respectively. [11]

According to the Registration of Election Rules, 1960 and the conduct of Election Rules, 1961, the Election Commission of India has performed the following functions to discharge its duties freely and fairly:-

1) Preparation of electoral rolls

Article 325 of the Constitution lays down that there shall be one general electoral roll for every territorial constituency, the preparation of electoral rolls based on religion, race, caste or sex is forbidden. The preparation and maintenance of complete and accurate electoral rolls are essential prerequisites for holding elections. Under Article 326 of the Constitution, the electoral rolls must be prepared correctly for all eligible voters irrespective of their religion, race, caste and sex to hold free and fair elections.

2) Conduct of Poll

Under section 30 of Representation of the People Act, 1951, the Election Commission is empowered to issue certain notifications in the official Gazette to fix the last date for making notification, date for the scrutiny of nominations, the last date for the withdrawal of candidatures, the date or dates on which a poll shall be taken and the date before which the election shall be completed and declaration of results.

3) Recognition of Political Parties

The Election Commission has to register the political parties in accordance with the Provisions of Section 29A of R.P. Act, 1951. The final decision regarding the registration of political party shall be based on Sub- Section 29A of R.P. Act, 1951. The Election Commission has to act quasi-judicially and has to follow principles of natural justice while registering the political parties.

4) Allotment of Symbols

Under Rule (5) of the Conduct of Elections Rules 1961, the Election Commission is authorized to specify symbols that may be chosen by candidates at elections in parliamentary and assembly constituencies and the restrictions to which their choice shall be subject, by publishing a notification in the Gazette of India and in the Official Gazette of each State. The power to issue Symbols Order is comprehended in the power of superintendence,

direction and control of elections vested in the Commission. [12]

5) Disqualifying of the Candidate and Voters

Under Section 10 A of the People's Representation Act, 1951, after every general election, each candidate is informed to submit his/her election returns. If the candidate does not file election returns within a prescribed period, the Election Commission has the power to disqualify such candidate. Section 11 of Representation of the People Act, 1951 empowers the Election Commission to remove any disqualification list. Under Section 11B of R.P. Act, 1951, the Election Commission also has the power to remove disqualification of voter list.

6) Counting of Votes and Declaration of result

The votes may be counted either at one place for all the Assembly segments of a Parliamentary Constituency or at different places for the various Assembly segments under the supervision of the Assistant Returning Officer (ARO). The final result is collected by the Returning Officer at his headquarters and declared the results on the approval of the Election Commission. [13]

7) Powers with regard to Electoral Personnel

Representation of the People Acts, 1950 and 1951 empowers the Election Commission to appoint Electoral Personnel and to get the necessary staff for the conduct of elections. Section 13CC of R.P. Act, 1950 provides that the Chief Electoral Officers of the States take Disciplinary action against the Erring Officials. It has also the power to issue instructions on the transfer of officials connected with election work during the period of elections. [14]

8) Delimitation of Constituencies

Under section 11 of the Delimitation Act of 1972, the Election Commission is empowered to correct any printing mistake in any of the orders made by the Delimitation Commission.

1.7 Limitations on the Powers of the Election Commission

The Election Commission has the Constitutional responsibility of superintendence, direction and control of the preparation of electoral rolls for elections and conduct of elections. This responsibility covers administrative powers, duties and functions depending on the circumstances. The Supreme Court has emphasized that there are certain limitations on the powers of the Election Commission. [15] It has been held by the Supreme Court that the powers of the Election Commission under Article 324 of the Constitution are subject to any Act passed by the legislature and any rule or orders made there under. [16] We have seen in Mohinder Singh Gill vs. Chief Election Commissioner Case that the Supreme Court held that the Commission is bound to act in conformity with the provisions of law. [16] In view of the statutory provisions, Mr. K. Ganesan, former Secretary to the Election Commission observed: "It is dangerous to claim any extraordinary and plenary powers under Article 324 to deal with matters already covered in the law even if

provisions are found inadequate". The Election Commission cannot overlook its obligation to preserve and maintain the rule of law, act bona fide and be amendable to the norms of natural justice. The Commission is, therefore, bound to act in accordance with rules of natural justice but the application of the rules of natural justice depends on circumstances and the matter is incapable of generalization. [17] In the case of postponement of elections as we experienced in Assam and Jammu & Kashmir by the Election Commission, the Supreme Court has made it clear that the orders of the Election Commission are subject to judicial review and its powers are not "Unbridled". The judicial powers enjoyed by the Election Commission should depend on the facts and circumstances of each case. [18]

1.8 Electoral reforms

Electoral reform is nothing but a revolutionizing change in electoral systems to improvise the process and progression of election as to fulfill the modern public desires are expressed in election results. That can include reforms of: Electoral constituencies and election district borders, Ballot design, voting equipment, Scrutinizing, election monitoring by candidates, political parties, etc. The elections at present are not being held in ideal conditions because of the enormous amount of money power and muscle power needed for winning the elections. In addition, there are many other factors on the basis of which election is fought like poverty, casteism, communalism, criminalization of politics, poll violence, booth capturing, non-serious independent candidates, unemployment, etc.

The politics of communalism and religious fundamentalism during post-independence has led to a number of separate movements in various states and regions of the country. Communal polarization has posed a serious threat to the Indian political ethos of pluralism, parliamentarianism, secularism and federalism. One of the most important issue is caste, there are cases of certain castes lending strong support to particular political parties. so political parties make offers to win different caste groups in their favour and caste groups also try to pressurize parties to give tickets for its member's elections. Caste based politics are effected the "unity" principle in the name of regional autonomy. Thus, caste as become a prime factor in winning elections and Candidates are selected not in terms of accomplishments, ability and merit but on the appendages of caste, creed and community. There are so many types of candidates like some are serious and some are non serious, these Non-serious candidates are largely floated by serious candidates either to cut sizeable portion of votes of rival candidates or to split the votes on caste lines or to have additional physical force at polling station and counting centers. The misuse of official machinery takes different forms, such as use of government vehicles for canvassing, advertisements at the cost of government and public exchequer highlighting their achievements, disbursements out of the discretionary funds at the disposal of the ministers, etc. which gives an unfair advantage to the ruling party at the time of elections.

1.9 Reasons for electoral reforms

There are number of reasons may be discussed under this head. Out of those some are given below:

- 1) To make qualitative improvement in the legislator at all levels.
- 2) To provide for political stability which is very much threatened due to the era of coalition politics.
- 3) To promote values like democracy, secularism, morality, nonviolence, etc. and to keep out corrupt & selfish and inefficient leaders out of the race for power.
- 4) To check booth capturing, snatching of ballot papers, intimidation of voters & violence in elections.
- 5) To checkmate 3 "M"s – money, muscle and mafia power which has been in the increase in election after elections.
- 6) To prevent the 4 "C"s – criminalization, corruption, communalism & casteism in electoral politics.
- 7) To attend problems like defections and electoral rolls, etc.

2. Conclusion

Under the provisions of Article 324 of the Indian Constitution, the Election Commission of India has been established on 25th January 1950 with a single member or one Chief Election Commissioner. The study reveals that many changes were made in the administrative set up of the Election Commission of India by introducing new steps and initiatives to ensure free and fair elections in the country. Democracy may be studied and analyzed from two different angles. First, it is a way of life in which different types of individuals live together, that is, rich and poor, urban and rural, educated and illiterate, etc. Secondly, it is also a form of government in which the common people participate in the decision making process. In political and administrative discourse, the second aspect of democracy is taken into consideration. The present study has also covered on the gradual changes that have taken place in the Election Commission in relations to its origin, structure, responsibilities, role, initiatives as well as the links and expectations of all the stakeholders such as the government, the political parties and the voters in general in the context of electoral administration. The present study traces not only the electoral process but also the election machinery up from the Centre to the State levels. The study also focuses on the various issues, problems and challenges being faced by the Election Commission while conducting general elections to Parliament and State legislatures. Elections are conducted according to the constitutional provisions, supplemented by laws made by Parliament. The major laws are Representation of the People Act, 1950, which mainly deals with the preparation and revision of electoral rolls, the Representation of the People Act, 1951 which deals, in detail, with all aspects of conduct of elections and post election disputes. The Supreme Court of India has held that where the enacted laws are silent or make insufficient provision to deal with a given situation in the conduct of elections, the Election Commission has the residuary powers under the Constitution to act in an appropriate manner. [19]

References

- [1] Basu, D.D. Introduction to the Constitution of India, p.386

- [2] Constituent Assembly Debates, Vol VII, June 15, 1949, p. 905.
- [3] The Times of India, New Delhi, October 29, 1993, p. 1.
- [4] The Hindustan Times, New Delhi, December 05, 1993, p. 6.
- [5] L. P. Singh (1986). *Electoral Reform- Problems and Suggested Solutions*. New Delhi: Utpal Publishing House. p.11
- [6] P.N Krishna Mani (1971). *Elections, Candidates and Voters*. New Delhi: Sterling Publishers. p.19-20
- [7] N.S.Gehlot (1992). *Elections and Electoral Administration in India*. New Delhi: Deep and Deep Publications. p.45
- [8] W.J.M. Mackenzie (1958). *Free Elections*. London. George Allen and Unwin. p. 13-14
- [9] Ramashray Roy (1971). „Elections, Electorate and Democracy in India“ in *Indian Journal of Public Administration*. October-December New Delhi:p.19
- [10] T.N. Seshan (1995). *A heart full of Burden*. New Delhi: UBS. p.130
- [11] Section 14 and Section 15, The Representation of the People Act, 1950
- [12] Narendra Chapalgoankar (1997). *Law of elections*. New Delhi: An AIR publication- All India Reports . p.13
- [13] *Rule 51, Conduct of Elections Rule, 1961*
- [14] *Section 13CC of Representation of the People Act, 1950*
- [15] Raisa Ali (1996). *Representative Democracy and Concept of Free and Fair Elections*. New Delhi: Deep and Deep Publications. p.271
- [16] Ibid.
- [17] Ibid.
- [18] Ibid.
- [19] <https://www.quora.com/What-is-the-election-system-in-India-Each-and-every-aspect-detailed-as-if-for-someone-who-knows-nothing-about-Indian-elections> visited on April 12, 2019.