



A detailed study on the Election Commission of India

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ABSTRACT

Election commission is permanent constitutional body comprising of three election commissioners having status similar to judge of Supreme Court. This makes it most powerful body as it is responsible for the proper conduct of election in the world's largest democracy, there are multitude of problems faced by election commission. Whether there is need to bring reforms in the structure or function of election commission for more efficient conduct. The object of this article is to understand the concept of structure and functioning of election commission, which is responsible for the foundation of the democracy to remain intact. Election Commission of India (ECI) have responsibility and obligation of not just maintaining but also to ensure the free and fair election process. Independence of election commission is *sin qua non* for the impartiality and unbiasedness. Although time to time there have been reforms to ensure that commission have sufficient independence and many committees have been formed giving various suggestions improvising the structure of the commission. It will enhance the understanding of the structure and also will try to understand the legal aspect and constitutional provisions which forms the basis of power as well functions of the commission.

Keywords: Election, Election Commission of India, India, Democracy



INTRODUCTION

Election Commission of India was set up on 25 January 1950, is a Constitutional Body created under the Article 324 of the Constitution of India. The first Chief Election Commissioner was appointed on 21st March 1950. It was a single member body except for a brief period from 16 October 1989 to 1 January 1990 afterwards since 1 October 1993, the Commission has been a three-member body, consisting of the Chief Election Commissioner and two Election Commissioners having equal say in the decision making of the Commission. Election Commission of India conducts elections to the offices of President & vice President of India, both Houses of Parliament, State Legislative Assemblies and State Legislative Councils. The President appoints Chief Election Commissioner and Election Commissioners. They have tenure of six years, or up to the age of 65 years enjoying the same status as the Judges of the Supreme Court of India. The Chief Election Commissioner can be removed from office only through impeachment by Parliament.

Registration of Political Parties and Symbols Registration of political parties is governed by the provisions of section 29A of the Representation of the People Act, 1951. Symbol system has become a permanent feature of elections and electoral system in India. Political parties have become identified with their symbols. Electoral system did not change with introduction of Electronic Voting Machines (EVMs). EVMs are only an electronic version of paper ballots with name and photograph of contestants and their symbols. Currently, 1841 (as on 13.12.2016) political parties are registered with Election Commission of India. Of these 7 are recognized national parties, 48 recognized state parties and 1786 unrecognized parties. The Election Commission of India has adopted Systematic Voters' Education and Electoral Participation (SVEEP) strategy to increase peoples' participation in the electoral process.

ELECTION COMMISSION OF INDIA

India is one of the largest democracy with such variety of ethnicities and cultures having largest population going for election as china being a communist country. Although in long past of servitude as a colony the electoral democracy was farfetched dream any one can imagine. The status of the kings was hereditary, and the Samitis and Sabhas (the assemblies and the councils of the kings) were aristocratic bodies, even in the republic earlier in early Vedic Period. In medieval time mostly empires whether Mughals or Maratha's were pretty much based on kinship there was



no free will for the people. In the modern era which was marked by incoming of British have removed the kinship from governance and introduces many administrative as well as political reforms. Formation of Indian national congress was the changing face of Indian power dynamics which marked that power doesn't lie only in the hands of royal blood. Although british aimed at introduction of western ideology and Christianity by imparting education it turns out that they handed over the power to the common Indians, an opportunity to work hard and come in power rather just born in it.

S. Laing have rightfully observed somehow India has never, within the period of history, been a nation. It has been an aggregate of various tribes, district communities, and petty despotism. British gave the opportunity to the Indians to unite as a nation choosing its own representatives. For the first time diarchy was established in 1920 on elective basis. They believed in trickled down theory not in case for the education but politics as well that was from elite to poor class. The father of Indian constitution were very much sure about the electoral democracy based on universal adult franchise, as only an healthy democracy can sustain the free will of the nation having variety of ethnicities. Election become the inherent feature of Indian democracy.

To hold such massive election a central authority was visualized who would be responsible for conducting election in the nation for parliament whereas each state have similar set up. The president have to appoint the commission for Centre whereas state have to opt for its own. This commission would have power to superintendence, direction and control of all elections to the parliament and inclusive of election of president and vice president.

STRUCTURE OF ELECTION COMMISSION

Indian preamble enshrined the principle of socialist, secular and democratic republic, republic where the leader off nation is chosen by free and fair election at regular basis. As previously discussed the history of election clearly signifies the there is a dire need for the independent and powerful authority to ensure just and regular election. Election commission of India is a permanent constitutional body formed on 25th January of 1950. The structure and powers of commission is such that it ensures supervision and superintendence for the free and fair election and impartial functioning of the electoral body so that the true mandate of the people could be implemented. It is the huge responsibility and sin qua non for successful and a long running nascent democracy.



Article 324 of Indian constitution provides that election commission may consist of chief election commissioners as fixed by the president for a term of six years or up to the age of 65 years¹. Chief election commissioner will be acting as the chairman of election commission². It is ensured by the constitution that the chief election commissioner shall performs his duty without the any influence of the political party or the interference of existing government³. Regional Election Commissioners (REC) should be appointed under Article 324 (4) of the Indian Constitution in order to assist the Election Commissioners in the performance of their functions on basis of recommendations of Joint Committee on Amendments to Election Law.

In first election, president of India have sanctioned four post of regional election commissioner although only two was filled later on post was converted into deputy election commissioner. This will increase the communication which will enhance co-ordination while conducting election. It have separate secretariat. The work is distributed on the basis of functional as well as territorial division. In order to ensure independence it have separate budget authorized by the commission and finance ministry of the union government. Chief Electoral Officer (CEO) supervise the election work at the State level under the direction and control of the Commission appointed by them from senior civil servants whereas Electoral Registration Officers (ERO), District Election Officers (DEO), and Returning Officers (RO) at district and constituency levels should perform their function on a full-time basis. Other than this there are many other persons that are require for the election for smoothly are appointed as proposed by state on deputation basis⁴. There is separate administrative structure for electoral roll management and a separate administration for the conduct of election.

FUNCTIONS OF ELECTION COMMISSION

The constitution of India provides for the independent election commission and article provide for the powers of superintendence and supervision with independent tenure and removal such that, once appointed can only be removed by the procedure followed for the removal of judge of supreme court. These powers are further supplemented and enhanced by the representation of people's act 1951 the Presidential and Vice- Presidential Elections Act, 1952, the Government of Union Territories Act, 1963, the Delhi Administration Act, 1966 and the Rules and Orders made

¹ Clause 2 of article 324 of *Constitution of India*,1950

² Clause 3 of article 324 of *Constitution of India*,1950

³ P.N Krishna Mani (1971). Elections, Candidates and Voters. New Delhi: Sterling Publishers. pp.19-20

⁴ Available at [https://www.google.com/search/organizational structure of Election Commission of India](https://www.google.com/search/organizational+structure+of+Election+Commission+of+India)



there under⁵. The constitutional provision is not law in itself rather it is the enabling provision that still require parliament's act for better working.

Commission is bound to conduct election at the completion of legislative assembly as soon as possible. It can utilize any required resources which seems necessary to conduct free and fair election. Although it is obligation on political parties to act within the limits or else any act or conduct which seems to be unfair means is itself an attempt against the very democratic procedure and it just blemished own responsibility also. If required to maintain law and order situations while conducting election it can appoint security forces as requisite on deputation.

Election commission will prepare a general electoral roll for every constituency without any bias of religion, race, caste or sex⁶. It became very essential feature to prepare and maintain the electoral roll for conducting free and fair election⁷. The electoral rolls should be prepared for all Parliamentary, Assembly and Council Constitution⁸. Another main duty is to maintain and update the electoral list, deletion of dead and addition of the new adults. Election commission have power to observe political parties, issue a code of conduct and scrutinize their every action that there is no involvement of any funny business which could hamper the electoral process and objective of free and fair election It have responsibility to hold bye-election, if in middle of the term there is a vacancy due to death or defection or some other reason.⁹ Although it have always accused with respect to these bye elections that it favors party at the center. It have power to conduct fresh election if there is any discrepancy or any unfair means have been used by any party to gain undue advantage such as the EVM's used for the election is rigged or unlawfully taken from the custody of officials and tempered or destroyed and damaged or it developed a problem where it fail to record votes and in recent scenarios there is a concept of booth capturing¹⁰. In all these situations election commission can suspend the election and reconduct fresh election of that constituency. It recognizes and register political parties as pan Indian or regional Political Parties depending on whether it get less than four percent or more respectively¹¹. They have to act in a quasi-judicial and follow principle of natural justice while registering of political parties.

⁵ ECI 2nd Annual Report on April 1984. p.2

⁶ Article 325 of *constitution of India*

⁷ Article 326 of *constitution of India*

⁸ Section 13-D, 15,27(2) and 27(4) of the *Representation of the People Act, 1950*

⁹ Section 30 of the *Representation of the People Act, 1951*

¹⁰ Sections 58, 58A and 64A of *R.P. Act, 1951*

¹¹ Section 29A of *R.P. Act, 1951*



The Election Commission authorizes and specify symbols which are chosen for elections¹². Some of them are classified as the reserved symbols and others as free symbol¹³. They also have power disqualifying of the candidate and voters , candidate is have to submit his/her election returns within a prescribed period¹⁴ and If doesn't return in proper time then they have power to disqualify candidate¹⁵ and voters as well¹⁶. It have advisory jurisdiction and quasi-judicial functions in the matters of post-election disqualification of sitting members of Parliament and State Legislatures. All those cases which came forward Supreme Court or high court will also be refer to the commission on the question of disqualification. The decision of the election commission is binding on president or governor if they are referred by them. they exercise quasi-judicial power¹⁷.

Election Commission appoints Electoral Personnel as well get the necessary staff for the conduct of elections in proper manner¹⁸. Moreover It have power to delimit the constituencies as provided under section 11 of the Delimitation Act.They exercise control over media as well, they are provided facilities to report the results. In recent years there have been trend od exit polls to which they were banned before the ending of election that it may not influence the voters. There have been excessive usage of the mass media by political parties to promote their propaganda but somehow it have been used to misguide the people or blemished the image of the opponent. So there are strict restrictions and guidelines to prevent any party to have an undue advantage.

The interference of executive is very less in order to have an impartial decision and conduct of election commission. It decides the location and schedules for the conduct of elections. Moreover takes decision on assignments of voters to the polling stations, the location of counting center and other matters incidental to it. They have power to impose limits on the election expenses. The very ground principle of free and fair election is that it should provide equal opportunity a level playing for everyone. It should not be like this that the richer the party is more chances it should have for winning than whole purpose of election is defeated rather the individual with richer ideology should be elected only then this will be a true democracy. So they have this inherent

¹² Under Rule (5) of the Conduct of Elections Rules 1961

¹³ Clause 5 of Section 29A of *the Representation of the People Act 1951*

¹⁴ Section 10 A of the *People's Representation Act, 1951*

¹⁵ Section 11 of *Representation of the People Act, 1951*

¹⁶ Under Section 11B of R.P. Act, 1951

¹⁷ Section 29A (7) of the Act of 1951

¹⁸ Section 13CC of R.P.Act, 1950



power to limit the expenses and if any person violate the guidelines the necessary punishment shall be imposed.

ROLE OF ELECTION COMMISSION

The role of election commission is very specific that is to conduct the free and fair election in which every individual have right to vote and every right to stand in election. It becomes very important that officials which head the commission should not do any unjust or favor anyone under any economic or political pressure. The service and condition of the election commissioners need to be very stable and permanent in order to maintain the independence of commission. It should be exclusive of the executive control so that there could be no possibility of impartiality or favoritism. There could be no change made to the service and condition which could adversely affect or disadvantage after his employment. The security of tenure of the election commissioner is same as that of judge of Supreme Court. Chief election commissioner is appointed by the president but he is not employed on good will him, the link with executive is in the part of appointment only. Although earlier there was single election commissioner but later on with supreme courts decided that too much power and immunities was given to a single person may corrupt him or act in dictatorial way which however beat the very object of the commission. Now there is enabling provision in constitution gives power to president who can appoint as many as commissioners. Usually there are three commissioners that are appointed with equal powers, the senior most is called chief election commissioner. There have been various committee mades till now suggesting many reforms, some were accepted and some were not. Tarkunde committee was set up jayaprakash Narayan on electoral reforms in 1975. It proposed that election commission should be a multi-member committee of persons having high integrity appointed by the board comprising of the chief justice of high court, prime minister and leader of opposition. It suggested that the election commission should be made an analogous institute of the UPSC. And further the recommendation of joint parliamentary committee shall be implemented which majorly give suggestions with respect to implementation of the ways which could reduce the conflict between government and election commission and bring smoothness to the conduct of the election process. Dinesh goswami committee was formed by prime minister V.P Singh in 1990 which suggested that transparency in appointment of chief election commissioner as well as election commissioners and once the term is expired they should be made ineligible for any post under the government. The Vohra committee was appointed in 1993 bring reform in electoral process ti



break the nexus of politics and crime. Indrajit Gupta Committee discussed the funding of elections in 1998. It made recommendations with respect to maintenance of accounts by political parties and their audit, ban on donations by companies to political parties, prohibiting inclusion of expenses of political parties in the election expenses of candidates and empowering of Election Commission of India to fix ceiling on election expenses before every General Election

The controversy of T.N sheshan have been the biggest highlight which have brought the majure structural changes in the election commission of India, it have put an end to the debate with respect to multi-membered commission, earlier there was one man show as only head position was of chief election commissioner after decision there will be three election commissioners and decisions will be taken by majority and the senior most will referred as chief election commissioner. The major issues involved in the case were with respect to constitutionality of Chief Election Commissioner and other Election Commissioner and their roles. The Supreme Court on the role of the Election Commission in India have maintained that no one is above the institution while holding CEC is merely a functionary, should be working on the teamwork rather than one man show. It was further held that Election Commissioners and Regional Commissioners once appointed cannot be removed from the office before the expiry of their tenure except on the recommendations of the Chief Election Commissioner only in compelling circumstances. Supreme court have laid that Commission have very important functions and have been given exclusive and uncontrolled powers to execute them not just to confirms but uphold ./the tenants of democratic rule¹⁹.

CONCLUSION

After discussion in aforesaid chapters, it is very clear that the role played by the election commission is very essential and is responsible for the maintaining democracy of vast 130 crores. The whole gamut of political parties have used the existing conflicts in the community such a way that it tries to polarize population specifically. The use of financial resources to woo the voters have given rise to many malpractices and even those candidates who won by using money then after winning try to recover the investment double or triple times. This corrupts the democracy to such an extent that it is difficult to conduct the free and fair election. The existence of election commission have instilled fears in the mind of political parties which have prevented politicians to

¹⁹ *S. S. Dhanoa V Union of India*



act in an arbitrary manner and even prevent the previous government regimes to use their resources at their will in wrong manner.

The independence and power given to the election commission is justified as it ensures that those political parties and persons in power could be prevented from exerting their influence and turn results in their favor and make democratic claims of our country hollow and malafide. Although the regulations imposed by Supreme Court is also justified as it ensures that the power do not corrupt the election commission. Election commission of India have envisaged a vision for the election so that there could be conduct of free and fair election while upholding democratic values enshrined in the Constitution maintaining and reinforcing confidence and trust of the people in the electoral system of the country. It have to develop the and build quality infrastructure for smooth conduct of electoral process while adopting technology for improvement in all areas of electoral process.

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