

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 6

2023

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Election Commission of India: A Constitutional Body

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ABSTRACT

India is a Socialist, Secular, Democratic Republic and the largest democracy in the World. The modern Indian nation state came into existence on 15th of August 1947. Since then, free and fair elections have been held at regular intervals as per the principles enshrined in the Constitution, Electoral Laws and System. The Constitution of India has vested in the Election Commission of India the superintendence, direction and control of the entire process for conduct of elections to Parliament and Legislature of every State and to the offices of President and Vice-President of India. This paper is an attempt to explore the democratic role played by the election commission of India by explaining the organisational set up, powers and functions.

Keywords: *Constitution of India, Democracy, Election Commission, Powers, Functions.*

I. INTRODUCTION

Election Commission of India is a Constitutional Body which is permanent in nature. The Election Commission was established in accordance with the Constitution on 25th January 1950. Golden Jubilee was celebrated by the Commission in the year 2001. Originally the commission had only a Chief Election Commissioner. It currently consists of Chief Election Commissioner and two additional Election Commissioners. For the first time two additional Election Commissioners were appointed on 16th October 1989 but they had a very short tenure till 1st January 1990. Later, two additional Election Commissioners were appointed on 1st October 1993. The change in the concept of single-member Commission to multi-member Commission has been in operation since then, with decision making power by majority vote.

(A) Appointment & Tenure of Commissioners

Chief Election Commissioner and the other Election Commissioners are appointed by the President of India. They have tenure of six years, or up to the age of 65 years, whichever is earlier. They enjoy the same status and receive salary and perks similar to Judges of the Supreme Court of India. The Chief Election Commissioner can be removed from office only through impeachment by Parliament.

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The Commission transacts its business by holding regular meetings at such interval and also by circulation of papers. All Election Commissioners of the election commission have equal say in the decision making. From time to time, the Commission delegates some of its executive functions to its officers in its Secretariat.

(B) Office of the Election Commission:

The Commission has a separate Secretariat at New Delhi, consisting of officials, in a hierarchical set up. Deputy Election Commissioners and Director Generals who are the senior most officers in the Secretariat assist the Commission. They are generally appointed from the National Civil Service of the country and are selected and appointed by the Commission with tenure. Directors, Principal Secretaries, Secretaries, Under Secretaries and Deputy Directors support the Deputy Election Commissioners and Director Generals in turn. There is functional and territorial distribution of work in the Commission. The work is organised in Divisions, Branches and Sections; each of the last-mentioned units is in charge of a Section Officer. The main functional divisions are Planning, Judicial, Administration, Systematic Voters' Education and Electoral Participation, SVEEP, Information Systems, Media and Secretariat Co-ordination. The territorial work is distributed among separate units responsible for different Zones into which the 35 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 of the State, who is appointed by the Commission from amongst senior civil servants proposed by the concerned state government. He is, in most of the States, a full time officer and has a small team of supporting staff.

At the district and constituency levels, the District Election Officers, Electoral Registration Officers and Returning Officers, who are assisted by a large number of junior functionaries, perform election work. They all perform their functions relating to elections in addition to their other responsibilities. During election time, however, they are available to the Commission, more or less, on a full-time basis.

The gigantic task force for conducting a countrywide general election consists of nearly five million polling personnel and civil police forces. This huge election machinery is deemed to be on deputation to the Election Commission and is subject to its control, superintendence and discipline during the election period, extending over a period of one and half to two months.

II. ORGANIZATION – POWERS AND FUNCTIONS OF ELECTION COMMISSION OF INDIA

The Constitution of India ushered in a democratic republic for the free people of the country. The founding fathers of the Constitution took solemn care to devote a special chapter to elections niches safely in Part XV of the Constitution. The draft of Art 289 of the Constitution of India (which on adoption later became the present Art 324 in Part XV of the Constitution) was introduced in the Constituent Assembly on 15 June 1949 by Dr BR Ambedkar, Chairman of the Drafting Committee of the Constituent Assembly and one of the chief architects of the Indian Constitution.

Article 324 says that the Superintendence, direction, and control of elections to be vested in an Election Commission.

The Supreme Court in *TN Seshan v Union of India* and Ors observed that:

Democracy being the basic feature of our constitutional set up, there can be no two opinions that free and fair elections to our legislative bodies alone would guarantee the growth of a healthy democracy in the country. In order to ensure the purity of the election process, it was thought by our Constitution-makers that the responsibility to hold free and fair election in the country should be entrusted to an independent body which would be insulated from political and/ or executive interference.

It is inherent in a democratic set up that the agency which is entrusted the task of holding elections to the legislatures should be fully insulated so that it can function as an independent agency free from external pressures from the party in power or executive of the day. This objective is achieved by the setting up of an Election Commission, a permanent body, under Art 324(1) of the constitution. The Constituent Assembly of Jammu and Kashmir also reposed faith in the Election Commission, created as aforesaid under Art 324 of the Constitution of India, and entrusted the task of holding elections to the State Legislature of Jammu and Kashmir to the same Commission, instead of creating a separate State commission which it could do under its own constitution.

(A) Functions of the Election Commission:

The primary function of the Election Commission entrusted to it by the Constitution is the superintendence, direction and control of the preparation of the electoral rolls for, and conduct of elections, to Parliament and to the legislature of every State, and also of elections to the offices of the President and Vice-President of India . Originally, the Constitution also vested in

the Election Commission the responsibility of appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections to Parliament and to the legislatures of the States [Art 324(1), as originally enacted]. However, on the recommendation of the Election Commission in its Report on the third general elections held in 1962, the trial of election petitions was entrusted to the High courts and the institution of election tribunals was abolished, as the experience showed that the disposal of election petitions was getting inordinately delayed because even the interlocutory orders of the tribunals were subject to appeal to the High Courts. Accordingly, Art 324(1) was amended to relieve the Commission of the function of appointing election tribunals.

(B) Amplitude of Powers of Election Commission:

What is the amplitude of powers and width of functions of the Election Commission under Art 324 came to be considered by the Supreme Court in *Mohinder Singh Gill and Anr v. Chief Election Commissioner and Ors*. In this case, the Election Commission had declared the poll taken in Ferozepur parliamentary constituency in the State of Punjab at the time of the 1977-general election to the House of the People as void, on the basis of certain complaints. The petitioners contended that the Election Commission under the enacted law could only direct fresh poll at the polling stations where the poll was allegedly vitiated, and not in the entire parliamentary constituency. The Supreme Court rejected the contention of the petitioners. A Constitution Bench of the Supreme Court held that Art 324 is a plenary provision vesting the whole responsibility for National and State elections in the Election Commission and the words 'superintendence, direction and control' used in Art 324 are the broadest terms.

The responsibility of superintendence, direction and control of the conduct of elections may cover powers, duties and functions of many sorts, administrative or other depending upon the circumstances. Article 324, on the Face of it, vests vast functions in the Commission which may be powers or duties, essentially administrative, and marginally, even judicative or legislative.

Two limitations are at least are, however, laid on its plenary character in the exercise of its powers. Firstly, when parliament or any State legislature has made valid law relating to or in connection with elections, the commission shall act in conformity with, not in violation of, such law. But where such law is silent, Art 324 is a reservoir of power for the Commission to act for the avowed purpose of pushing forward, but not divorced from, a free and fair election with expedition. Secondly, the Commission shall be responsible to the rule of law, act bona fide and be amenable to the norms of natural justice in so far as conformance to such canons can reasonably and realistically be required of it as fair play-in- action in a most important area of

the constitutional order, namely; Elections. The Supreme Court also observed in that case that Arts 327 and 328 which empower Parliament to make laws with regard to electoral matters are subject to the provisions' of the Constitution which include Art 324.

The Court observed that the framers of the Constitution took care to leaving scope for exercise of residuary power by the Election Commission in its own right, as a creature of the Constitution, in the infinite variety of situations that may emerge from time to time in such a large democracy as ours. Every contingency could not be foreseen or anticipated with precision. That is why there is no hedging in Art 324. The Commission may be required to cope with some situation which may not be provided for in the enacted laws and the rules. Where the existing laws are absent and yet a situation has to be tackled, the Chief Election Commissioner has not to fold his hands and pray to God for divine inspiration to enable him to exercise his functions and to perform his duties or to look to any external authority for the grant of powers to deal with the situation. He must lawfully exercise his power independently, in all matters relating to the conduct of elections, and see that the election process is completed properly in a free and fair manner.

The nature and scope of the powers and functions of the Election Commission also came to be considered by the Supreme Court in *Kanhiya Lal Omar V RK Trivedi and Ors* . In that case, the validity of the Election Symbols (Reservation and Allotment) Order 1968, promulgated by the Election Commission providing for the recognition of political parties as national or State parties, determination of disputes between the splinter groups of such recognised political parties, allotment of symbols to candidates, etc was called in question. It was contended that the symbols order was legislative in character and could not have been promulgated by the Commission, as the Commission is not empowered by law to issue such a legislative order.

The Supreme Court rejected the above contention, holding that the power to issue the Symbols Order is comprehended in the powers of superintendence, direction and control of elections vested in the Commission under Art 324. If any of the provisions in the Symbols Order could not be traced to the Representation of the People Act 1951, or the Conduct of Elections Rules 1961, it could easily be traced to the reservoir of power under Art 324(1), which empowers the Commission to issue all directions necessary for the purpose of conducting smooth, fair and free elections.

In *AC Jose v Sivan Pillai and Ors*. the Supreme Court, however, held that when there is no parliamentary legislation or rule made under the said legislation, the Commission is free to pass any order in respect of the conduct of elections, but where there is an Act and express rules

made there under, it is not open to the Commission to override the Act or the rules, and pass orders in direct disobedience to the mandate contained in the Act or rules.

The powers of the Commission are meant to supplement rather than supplant the law in the matter of superintendence, direction and control as provided by the Art 324. Where a particular direction by the Commission is submitted to the government for approval as required by the rules, it is not open to the Commission to go ahead with implementation of it at its own sweet will even if the approval of the government is not given. In *Common Cause v Union of India and Ors*, the Supreme Court held that the expression 'conduct of election' in Art 324 of the Constitution is wide enough to include in its sweep, the power of the Election Commission to issue in the process of the conduct of elections, directions to the effect that the political parties shall submit to the Commission for its scrutiny, the details of the expenditure incurred or authorised by the political parties in connection with the election of their respective candidates.

Summing up the amplitude of powers of the Election Commission under Art 324, the Supreme Court held in *Union of India v Association for Democratic Reforms and Another*,

(1) The jurisdiction of the Election Commission is wide enough to include all powers necessary for smooth conduct of elections and the word 'elections' is used in a wide sense to include the entire process of election which consists of several stages and embraces many steps.

(2) The limitation on plenary character of power is when the Parliament or State Legislature has made a valid law relating to or in connection with elections, the Commission is required to act in conformity with the said provisions. In case where law is silent, Art 324 is a reservoir of power to act for the avowed purpose of having free and fair election. Constitution has taken care of leaving scope for exercise of residuary power by the Commission in its own right as a creature of the Constitution in the infinite variety of situations that may emerge from time to time in a large democracy as every contingency could not be foreseen or anticipated by the enacted laws or the rules.

(C) Budget & Expenditure:

The Secretariat of the Commission has an independent budget, which is finalised directly in consultation between the Commission and the Finance Ministry of the Union Government. The latter generally accepts the recommendations of the Commission for its budgets. The major expenditure on actual conduct of elections is, however, reflected in the budgets of the concerned constituent units of the Union - States and Union Territories. If elections are being held only for the Parliament, the expenditure is borne entirely by the Union Government while for the elections being held only for the State Legislature, the expenditure is borne entirely by the

concerned State. In case of simultaneous elections to the Parliament and State Legislature, the expenditure is shared equally between the Union and the State Governments. For Capital equipment, expenditure related to preparation for electoral rolls and the scheme for Electors' Identity Cards too, the expenditure is shared equally.

(D) Free from Executive Interference:

In the performance of its functions, Election Commission is insulated from executive interference. It is the Commission which decides the election schedules for the conduct of elections, whether general elections or bye-elections. Again, it is the Commission which decides on the location of polling stations, assignment of voters to the polling stations, location of counting centres, arrangements to be made in and around polling stations and counting centres and all allied matters.

(E) The Election Commission & the Political Parties:

Political parties are registered with the Election Commission under the law. The Commission ensures inner party democracy in their functioning by insisting upon them to hold their organizational elections at periodic intervals. Political Parties so registered with it are granted recognition at the State and National levels by the Election Commission on the basis of their poll performance at general elections according to criteria prescribed by it. The Commission, as a part of its quasi-judicial jurisdiction, also settles disputes between the splinter groups of such recognised parties.

Election Commission ensures a level playing field for the political parties in election fray, through strict observance by them of a Model Code of Conduct evolved with the consensus of political parties. The Commission holds periodical consultations with the political parties on matters connected with the conduct of elections; compliance of Model Code of Conduct and new measures proposed to be introduced by the Commission on election related matters.

(F) Advisory Jurisdiction & Quasi-Judicial Functions

Under the Constitution, the Commission also has advisory jurisdiction in the matter of post-election disqualification of sitting members of Parliament and State Legislatures. Further, the cases of persons found guilty of corrupt practices at elections which come before the Supreme Court and High Courts are also referred to the Commission for its opinion on the question as to whether such person shall be disqualified and, if so, for what period. The opinion of the Commission in all such matters is binding on the President or, as the case may be, the Governor to whom such opinion is tendered.

The Commission has the power to disqualify a candidate who has failed to lodge an account of his election expenses within the time and in the manner prescribed by law. The Commission has also the power for removing or reducing the period of such disqualification as also other disqualification under the law.

(G)Judicial Review

The decisions of the Commission can be challenged in the High Court and the Supreme Court of the India by appropriate petitions. By long standing convention and several judicial pronouncements, once the actual process of elections has started, the judiciary does not intervene in the actual conduct of the polls. Once the polls are completed and result declared, the Commission cannot review any result on its own. This can only be reviewed through the process of an election petition, which can be filed before the High Court, in respect of elections to the Parliament and State Legislatures. In respect of elections for the offices of the President and Vice President, such petitions can only be filed before the Supreme Court.

(H)Election Commission of India and the Media:

The Commission has a comprehensive policy for the media. It holds regular briefings for the mass media-print and electronic, on a regular basis, at close intervals during the election period and on specific occasions as necessary on other occasions. The representatives of the media are also provided facilities to report on actual conduct of poll and counting. They are allowed entry into polling stations and counting centres on the basis of authority letters issued by the Commission. They include members of both international and national media. The Commission also publishes statistical reports and other documents which are available in the public domain. The library of the Commission is available for research and study to members of the academic fraternity; media representatives and anybody else interested.

The Commission has, in co-operation with the state-owned media - Doordarshan and All India Radio, taken up a major campaign for awareness of voters. The Prasar Bharti Corporation which manages the national Radio and Television networks, has brought out several innovative and effective short clips for this purpose.

(I) Voter Education and the Election Commission:

Voters' Participation in the democratic and electoral processes is integral to the successful running of any democracy and the very basis of wholesome democratic elections. Recognising this, Election Commission of India, in 2009, formally adopted Voter Education and Electoral participation as an integral part of its election management.

(J) International Co-operation

India is a founding member of the International Institute for Democracy and Electoral Assistance (IDEA), Stockholm, Sweden. In the recent past, the Commission has expanded international contacts by way of sharing of experience and expertise in the areas of Electoral Management and Administration, Electoral Laws and Reforms. Election Officials from the national electoral bodies and other delegates from the several countries - Russia, Sri Lanka, Nepal, Indonesia, South Africa, Bangladesh, Thailand, Nigeria, Namibia, Bhutan, Australia, the United States and Afghanistan etc. have visited the Commission for a better understanding of the Indian Electoral Process. The Commission has also provided experts and observers for elections to other countries in co-operation with the United Nations and the Commonwealth Secretariat.

(K) New Initiatives by the Election Commission:

The Commission has taken several new initiatives in the recent past. Notable among these are, a scheme for use of State-owned Electronic Media for broadcast/telecast by Political parties, checking criminalisation of politics, computerisation of electoral rolls, providing electors with Identity Cards, simplifying the procedure for maintenance of accounts and filling of the same by candidates and a variety of measures for strict compliance of Model Code of Conduct, for providing a level playing field to contestants during the elections.

III. CONCLUSION

The Election Commission of India, from its inception, has conducted a good number of elections and there have been many electoral reforms brought in to strengthen the democracy and the electoral system in India. Conducting Elections throughout the nation is not an easy task. Proper planning and execution plays a vital role in conducting free and fair election. In recent elections, it has made tremendous efforts to make the electoral process more participatory. More than 900 million people were eligible to vote in the Indian parliamentary elections of 2019. In addition to the conventional ways of spreading voter awareness, the Election Commission tried to reach out to voters through previously untried means to persuade them to come to the polling booths and vote – reflecting an institutional enthusiasm for popular mobilisation.

The Election Commission of India tries its level best to wipe out the virus of malpractices from its roots. This is done through the usage of the new and improved technology which is ever growing and developing every day. No doubt, the election commission is facing infinite hindrances and challenges while conducting elections, but by introducing various reforms with

the help of technology in the electoral process, they can able to conduct flawless elections successfully.
