

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 3

2021

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The Election Commission of India: A Question on its Autonomy

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ABSTRACT

The Election Commission of India (the ECI) is envisioned as an autonomous body that represents the affirmed motivation behind seeking the goals of free and fair elections in the country. But due to various events in the upcoming years, this image of the ECI, being independent of the outside influences has been tarnished. This paper outsets by throwing some light on the history and purpose for establishing the ECI by our Constitutional makers. It also highlights how the ECI has emerged as the guardian of the Indian democracy by superintending, directing and controlling the election procedures. Despite this superior role, the ECI faces numerous challenges, one of which being the challenge of being independent and unbiased. There have been a lot of controversies on this subject that have been duly examined in the paper by citing appropriate illustrations. With the change in the governance, the Commission has also needed to adjust to the evolving conditions. Hence, it is vital to point out that the ECI has definitely proved to be flexible with the wide idea of its sacred system by adapting to various modern initiatives. What has arisen in the course of the last six-and-a-half decade, is an Election Commission that has significant powers, indeed, far more prominent than its counterparts in the other democracies. Lastly, the paper has put across the way forward for smooth conduct of the election process in the country.

Keywords: *Election Commission of India, Indian Constitution, Elections, Interference, Autonomy.*

I. INTRODUCTION

With the negligence for the past point of reference, India, following the British colonialists' flight, took the country's principal architect to a striking choice that is to set up a free republic that would comply with the Universal Franchise and other similar methodologies. This was a negligent decision because it was taken at the time when by far most of the nation was living in a miserable and indigent condition. As David Gilmartin and Robert Moog, the foremost

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scholars of elections have suggested, India's constitutional scheme indicates that the constitutional framers wanted to "centralize oversight" of elections in structural terms and unify "a highly disparate and divided population."³

But it also has to be said that the establishment of the Election Commission of India (*hereinafter referred to as* the ECI) by our Constitution makers served the purpose of the idea behind inculcating this foreign concept into our archaic system. As the decades passed, the ECI proved to be functioning exemplarily despite the considerable odds that the country had been facing. Truly, it is A PERMANENT, A ROBUST AND AN AUTONOMOUS Constitutional body of India. Despite serving as a bulwark of free and fair elections⁴, the ECI could not escape from the allegations and controversies of being influenced by money and muscle power. Therefore, the body is cautiously balancing the pressing factors of overhauling a situation where it could be staged as an accused of the system or a victim of the atrocious circumstances prevailing.

(A) History

India encountered the outset of the elections during its late colonial time period under the British. Although the Parliament in Britain had been 'gradually inching' towards constitutional reforms with regard to India's governance, the reforms it instituted were highly uneven, partial and extremely circumscribed with respect to the franchise.⁵ The partiality could be seen when the Right to Direct Election was not approved by **the Indian Councils Act, 1892**. It was a period of indirect elections in the country.

When India started its move towards attaining its own democratic government, **The Government of India Act 1935** (*hereinafter referred to as* Act, 1935) was enacted. This Act, 1935 was also deprived of provisions related to the establishment of an autonomous body for conducting elections. The **Schedule I** of the said Act, 1935 accorded the function of conditioning elections of the Federal Assembly to the Federal Government and the Governor-General was entrusted with drafting regulations for election procedures. Only once the election was held under this system in 1939⁶.

Thus, we see that there had been no precedent set by the Britishers about an autonomous body that could conduct free and fair elections. Therefore, in discussing the temperance of setting up such a body, the makers were guided by three cardinal standards: EQUALITY,

³ Gilmartin, David, and Robert Moog, *Introduction to Election law in India*, 11 ELJ, 136-148 (2012).

⁴ S.H. Rudolph and L.I. Rudolph, *New Dimensions in Indian Democracy*, 13 JoD, 52-66 (Jan. 2002).

⁵ RAMA DEVI AND MENDIRATTA, *HOW INDIA VOTES* 6 (4th ed. 2016).

⁶ 2 U.N.GUPTA (1986), *INDIAN PARLIAMENTARY DEMOCRACY*, NEW DELHI 326-327 (Atlantic Publishers and Distributors) (Jan. 2003).

INDEPENDENCE and REPRESENTATION⁷. The Constituent Assembly in India (1946-1949) set up a sub-committee called the Union Constitution Committee to augment the task towards this setup. There were two divergent proposals⁸ on the Constitution of the ECI before the Drafting Committee-

- (1) To have a permanent body of four or five members; and
- (2) To have an ad hoc body constituted at the time of peak electoral activity.

With fruitful debates about the ECI, it was decided to establish this body in 1950 that would superintend, direct, control and conduct elections in the country under **Article 324** of the Constitution of India. The first Chief Election Commissioner of India (*hereinafter referred to as the CEC*) was Shri Sukumar Sen an Indian Civil Service (ICS).

The ECI started functioning as a single member body and it continued this way till 1988 until the President of India passed an Ordinance on 1st, October 1993 converting the ECI into a multi-member by appointing two Election Commissioners (*hereinafter referred as the EC*) in addition to the CEC⁹.

Since then, the ECI is thriving to function diligently and conscientiously towards achieving a system wherein the trust in the democratic pillar strengthens and the people are secure to make legitimate decisions for the country.

(B) Constitutional Provision

There are various Articles in the Constitution of India and Parliamentary laws which mandate the Commission and its authorities and elaborates technical issues relating to the mode of election. Some important provisions of the Constitution (**Part XV**) are discussed-

The ECI derives its power from **Article 324(1)**¹⁰ of the Constitution of India that states the ECI to be the granting authority over the superintendence, direction and control of the preparation of the electoral rolls for the election to the National Parliament, the State Legislature, the President and the Vice President.

Article 324(2)¹¹ states the **composition** of the ECI, that is, it is led by the CEC as the Chairman (**Article 324(3)**¹²) and also the President appoints Additional Election Commissioners. The

⁷ Gilmartin and Moog, *supra* note 1, at 137.

⁸ 8 Constituent Assembly Debates C.A.D., 905 (Jun. 15, 1949).

⁹ RAISA ALI, REPRESENTATIVE DEMOCRACY AND CONCEPT OF FREE AND FAIR ELECTIONS 233 (New Delhi: Deep and Deep Publications) (1996).

¹⁰ INDIA CONST. art 324, cl. 1.

¹¹ INDIA CONST. art 324, cl. 2.

¹² INDIA CONST. art 324, cl. 3.

number of Additional Election Commissioners shall be fixed by the President from time to time as he deems fit. The CEC stands at the apex of the hierarchy of the ECI and enjoys a fixed tenure of office¹³. The Commission shall be appointed by the President (subject to the provisions of any law made by the Parliament) for a term of five years or up to 65 years of age - whichever is earlier. The tenure of the CEC is thus independent of the Executive discretion¹⁴. The Constitution does not provide any **qualifications** for the appointment of the CEC and the EC. But by Convention, only senior civil servants, either serving or retired, of the rank of the Cabinet Secretary or Secretary to the Government of India or of an equivalent rank have been appointed.

Article 324(5)¹⁵ states that in order to avoid the interference of the Legislature, Executive and external pressure, the CEC can only be removed from his office in a like-manner and on the ground similar to that of the removal of the Judge of the Supreme Court.

Article 325¹⁶ grants the Commission with an authority to prepare the electoral roll and it must ensure that the rolls must protect the equality guaranteed by the Constitution and does not discriminate on the ground of religion, race, caste, or sex.

Article 326¹⁷ states that the elections to the House of People and to the Legislative Assemblies of State should be on the basis of adult suffrage. Adult suffrage means every person who is a citizen of India and is not below the age of 18 years on such date as fixed on the behalf or under any law made by the appropriate legislature and is not otherwise disqualified under the Constitution or any law made by the appropriate legislature. (The grounds include- being a non-resident, having unsoundness of mind, being a criminal or engaging in corrupt or illegal practice).

Articles 327¹⁸ **and 328**¹⁹ empower the Parliament and the State Legislators to make provision with respect to the elections of Parliament and State Legislative respectively.

Article 329²⁰ prevents the Judiciary from gaining supremacy and intervening in electoral matters. Also, no Court can question the validity of any law related to the delimitation of

¹³ JK CHOPRA, POLITICS OF ELECTION REFORMS IN INDIA (1st ed., New Delhi: Mittal Publications) (1989).

¹⁴ S.Y.QURAIISHI, THE MAKING OF THE GREAT INDIAN ELECTION 39 (New Delhi: Rupa Publication) (2014).

¹⁵ INDIA CONST. art 324, cl. 5.

¹⁶ INDIA CONST. art 325.

¹⁷ INDIA CONST. art 326.

¹⁸ INDIA CONST. art 327.

¹⁹ INDIA CONST. art 328.

²⁰ INDIA CONST. art 329.

constituencies or the allotment of seats.

Article 103²¹ provides that when any question arises regarding disqualification of any member of the either House of the Parliament then it shall be referred for the decision of the President, who shall obtain the opinion of the ECI and shall act accordingly.

Apart from the various Articles enshrined in the Constitution of India, the Parliament also legislated two Acts named **The Representation of the Peoples Act 1950**²² and **The Representation of the Peoples Act 1951**²³ for the advancement of the free and fair election of India. They are considered to be the backbone of India's election laws in the present day.

The Representation of the Peoples Act, 1950 provides the following guidelines for the effective election process:

1. Preparation of the electoral rolls;
2. Periodic revision and updating of the electoral rolls;
3. Inclusion and exclusion of eligible and ineligible name respectively
4. Correction of particular;
5. Allocation of number of seat in the house of people (including states and Union territories);
6. Drawing electoral boundaries;
7. The qualification and eligibility of the voters.

The Representation of Peoples Act, 1951 which have been supplemented by **The Conduct of Elections Rules, 1961** framed by the Central Government provides the following guidelines for the effective election process:

1. Actual conduct of the election;
2. Regulation on the parties;
3. Campaign process;
4. Election administration;
5. Post-election disputes;
6. Appointment of the presiding officers and the polling officers;

²¹ INDIA CONST. art 103.

²² The Representation of Peoples Act, 1950, No. 43, Acts of Parliament, 1950 (India).

²³ The Representation of Peoples Act, 1951, No. 43, Acts of Parliament, 1951 (India).

7. Nomination of Observers for parliamentary and assembly constituency.

The Hon'ble Supreme Court of India has held that where the enacted laws are quiet or make inadequate arrangements to manage a given circumstance in the conduct of the elections then the ECI shall have the residuary powers²⁴.

These were certain Articles, laws and conventions that empower the ECI to function independently in the country.

II. GUARDIAN OF THE INDIAN DEMOCRACY

From the 1990s, the Hon'ble Supreme Court of India began enacting its statute of yielding in an arrangement of aggressive appointive diversified cases. Under this jurisprudence, the Hon'ble Court embraced a very explicit perspective on the Indian democracy, that is, in the light of the requirement for open-finished and an overall educated and general assessment development. This also included the election procedures that are the backbone for assuring democracy. Elections are a climax of the bigger rambling trade among the citizens that could definitely compromise the basic functionalities of a country.

Therefore, the ECI plays a crucial role as the guardian of the Indian democracy as it watches over the election process starting from the election of the President of India to the State Legislatures as per the principles enshrined in the Constitution of India²⁵. In the case of *TN seshan vs Union of India and ors. (JT 1995 (5) SC 337)*²⁶, it was held that the concept of democracy is considered as the basic feature of our Constitution. It is not alone sufficient that the Constitution guarantees free and fair election of the legislative bodies. Therefore, in order to achieve the purity of the election process, an independent body that is not influenced by political and executive interference or any kind of external pressure is required, that is, the ECI under **Article 324(1)** of the Constitution of India.

This becomes more prominent from the following points-

- The Commission plays a decent confidence exertion in guaranteeing that each qualified elector's name is found on the electoral rolls. It ensures that the citizens are not harassed to have their names in the rolls. Democracy is where all the citizens participate without any discrimination.

²⁴ VIPLAV, ENCYCLOPEDIA OF ELECTORAL REFORMS AND POLITICAL DEVELOPMENT 43 (New Delhi: Vista International Publishing House) (2010).

²⁵ *The Election Commission of India*, CLEAR TAX (Apr 27, 2021, 10:21 AM), <https://cleartax.in/s/election-commission-india-eic>.

²⁶ Varun Isani, *Election Commission of India*, LEGAL SERVICES INDIA, <http://www.legalservicesindia.com/article/246/Election-Commission-of-India.html>.

- The Commission devotes extensive assets to leading an exhaustive door-to-door campaign of qualified electors every five years (it likewise leads synopsis modifications on a yearly basis), making the subsequent records accessible for public scrutiny.
- In every election, it gives a Model Code of Conduct for political parties and their candidates to lead the elections in a free and reasonable way. In any case, if there are occurrences of infringement of code then that candidate or political party as the case may be shall be responsible to the ECI²⁷.
- All the political parties have to register under the ECI in order to be a part of the election. This helps in avoiding confusion for the administrative machinery to function as well as for the electorate. It guarantees that the political parties can be a part of the democracy by simply enrolling.
- To dispose of the developing impacts and profane demonstration of money power, the ECI has fixed a limit on the money that can be spent during the elections.
- The ECI upgraded the political system by introducing EVMs – Electronic Voting Machines and NOTA- None of the above. It is utilized with a view to decrease the acts of negligence and furthermore improving proficiency.

The case of *Smt. Indira Nehru Gandhi vs. Shri Raj Narain (1975 AIR 1590)*²⁸ quoted that “Where democracy exists, there is still a need to safeguard individuals and minorities against tyranny, both because tyranny is undesirable in itself, and because it is likely to lead to breaches of order.” Therefore, like a guardian, the ECI has the full control and power to decide what is best for its child that is the country, India. Apart from the above discussed safeguards to the democracy of the election procedure, the ECI performs other humongous and prodigious tasks to keep the aspirations of the democracy alive. In every democratic government, elections are important instruments of democracy. Without an election, the will of the people cannot be determined²⁹.

III. CHALLENGES

Conducting general elections in the country is considered as the one the toughest task especially in a democratic country like India. The ECI faces many challenges from the various spheres

²⁷ Dharani Kumar, *Election Commission of India (ECI) - Introduction, Its Function, Roles and Responsibilities*, VAKIL, <https://vakilsearch.com/advice/election-commission-of-india-eci-introduction-its-function-roles-responsibilities/>.

²⁸ INDIAN KANOON, <https://indiankanoon.org/doc/1240174/>.

²⁹ RAISA ALI, *supra* note 7.

such as:

1. Problem Relating to Personnel

The object of conducting free and fair elections depends on the effectiveness and efficiency of the Electoral Personnel under the Representation of Peoples Act, 1950 and 1951. During the time of elections, the ECI has to face the problem of shortage of employees and personnel in order to manage and control different election-related activities. The civil servants also come under the ECI but sometimes it leads to the non-coordination between the State governments in performing the tasks given by the ECI³⁰.

2. Lack of Awareness Among the Citizens

During the time of elections, the ECI faces a lot of problems due to the lack of instructions and awareness among the voters. Many remain unaware of the Model Code of Conduct issued by the ECI. Hence, it becomes important that the citizens are properly educated about the code, rules and regulations regarding how to exercise their political right. This would enable them to understand what to do and what not to do.

3. Criminalization in Politics

Criminalization in politics is a serious problem as it leads to the situation where the lawbreakers become the lawmakers. **Section 8**³¹ of the Representation of Peoples Act, 1951 provides that if any person is convicted for any offence and sentenced to imprisonment then he shall be disqualified to contest election for a period of 6 years since his release from the prison. The Hon'ble Supreme Court in *Association for Democratic Reforms vs Union of India and another (AIR 2003 SC 2363)*³², held that the contesting candidates have to disclose their criminal antecedents of candidates. Following this, the ECI issued order no. 3/ER/2003/JS-II³³, dated 27th March, 2003 that made it mandatory for the candidates to file affidavits in this regard. But in reality, the lawbreakers often escape these provisions³⁴. This raises serious questions on the fidelity of the ECI.

4. Money Power

By the use of money power, politicians try to mold and shape voters' choices. This is a very

³⁰ Lalsangzuala Khiangte, *Election Commission of India: Changing roles and functions*, <http://14.139.116.8:8080/js>

<http://bitstream/123456789/771/1/LALSANGZUALA%20KHIANGTE%20%20CPA.pdf>.

³¹ The Representation of Peoples Act, 1951, No. 43, Acts of Parliament, 1951 (India).

³² Indian Kanoon, <https://indiankanoon.org/doc/1655946/>.

³³ *Election Commission of India*, https://adrindia.org/sites/default/files/Election_Commission's_Order_27_March_2003.pdf.

³⁴ Dr. Bimal Prasad Singh, *Electoral Reforms in India – Issues and Challenges*, IJHSSI, Mar. 2013, 5.

common scenario that we come across through the media during the election period. The pernicious influence of big money in derailing the democratic process was noticed and documented as early as 1993 in what has come to be called **the Vohra Committee Report** (though not officially released)³⁵. Participation in the election is a very expensive and dreadful process that leads to the misuse of the money power such as corruption and generation of the black money. The use of black money happens in two perspectives- Firstly, the prospective candidates spend millions of rupees on transportation, advertising, or in other various election campaigns and secondly, the political party uses the money power to influence the voters just like one purchasing commodities. This affects the basic concept of a free and fair election. Vote buying is a serious threat for conducting free and fair elections which becomes a major problem for the ECI.

5. Muscle Power

Most people win elections by using unfair and illegal means such as violence, intimidation, booth capturing, victimization etc. All these methods are prevalent in different parts of the country so that votes can be obtained on the fears of the voters. By following the unlawful methods, the corrupt politician exploits the sentimental value of the people for their electoral gain and obstructs the voters from participating in the election process³⁶.

Apart from these challenges, there is one more important challenge that the ECI faces. It often finds itself in the midst of the controversy of being a bias institute. It is called for being in favor of some political parties in which it has a vested interest. If an independent and constitutional body like the ECI comes under the suspicion of being prejudiced then it shall raise a question on the entire working system of the country. This challenge has been discussed in brief.

IV. AUTONOMY IN QUESTION

Has the notion of democracy changed to-

*Government **off** the people; **Buy** the people; and **Far** the people?³⁷*

The boat of the democratic system in India is afloat in rough waters. Grave dangers hide in general. Except if it is controlled with extraordinary consideration and the fitting way, it could possibly hit a stone of an icy mass and crumble the sink. Nothing is incomprehensible in the

³⁵ Association for Democratic Reforms (ADR) and National election Watch (NEW), *Recommendation for Electoral Reforms*, https://adrindia.org/sites/default/files/ADR_and_NEWs_recommendations_for_electoral_and_political_reforms_Final_April_20_2011.pdf.

³⁶ ELECTIONS CANADA, *Comparative Assessment of Central Electoral Agencies*, <https://www.elections.ca/content.aspx?section=res&dir=rec/tech/comp&document=p5&lang=e>.

³⁷ Nagnath Borphalkar, *Indian Democracy and Role of Election Commission*, *LEGAL SERVICES INDIA*, <http://www.legalservicesindia.com/article/108/Role-Of-Election-Commission.html>.

unstable world in which not every person is glad to see India thrive. In this system, the ECI works to give its people a democratic government through elections. But the controversy on its autonomy has often become a roadblock in yielding a positive result from its performances. There are two broad criticism on the ECI about its autonomous powers, that are-

1. Autonomy affected by giving the ECI unlimited powers; and
2. Autonomy getting affected by the interference of the other affiliated government bodies.

(A) Autonomy: Unlimited Powers

The Commission is equipped with such limitless and subjective forces that if in any event, it happens that the people manning the commission shares or is inclined to a specific philosophy, it could by giving odd headings cause political destruction or bring a constitutional crisis. This would set nothing but untrustworthiness and no freedom in the system of democracy. Evidently, this way to deal with the ECI's forces is in strain with its position and powers.

The absence of particularity with respect to the extent of the ECI's role has brought about an enlarging of its scope, capacities and control of authority during elections. It has played a quasi-judicial role in the guideline of designations and application; interceding in the arrangement and posting of civil servants and the police; and focusing on people who are engaged with upsetting the election procedures³⁸. The Commission has progressively been associated with the guideline and control of the political groups, from a changed circumstance, where the principal role of the ECI was to distribute electoral symbols, to one where party constitutions must be approved by it.

Therefore, with such an enlarged role of the ECI, there have been instances where questions have been raised on its unlimited powers and petitions have been filed to curb it. This is also because it is generally perceived as if the ECI is biased. Such instances are-

1) **THE JAMMU AND KASHMIR ASSEMBLY (2019)**³⁹: The ECI had to hold the Jammu and Kashmir Assembly elections alongside the Lok Sabha decisions in April-May 2019. The State had been under the President's rule since November 2018. Hence, it was commonly expected that the elections should take place. The ECI chose not to hold it citing certain security issues. And soon thereafter, the decision to abrogate **Article 370** was

³⁸ LALSANGZUALA KHIANGTE, *supra* note 27.

³⁹ *Rajya Sabha approves extension of President's rule in Jammu and Kashmir*, THE ECONOMICS TIMES (Jul. 01, 2019, 10:01 PM), <https://economictimes.indiatimes.com/news/politics-and-nation/rajya-sabha-approves-extension-of-presidents-rule-in-jammu-and-kashmir/articleshow/70029941.cms?from=mdr>.

implemented. Therefore, it can be easily perceived that what was then seen as a choice dependent on security imperatives, now, shows up looking back to be a choice that filled a bigger need of the government. This raised severe questions on the autonomy powers of the ECI.

2) **THE KERALA EPISODE (2021)**-⁴⁰The ECI's stand on the elections for the three empty seats from Kerala in the Rajya Sabha had drawn out the unmistakable reality that the Commission is adapting to the desire of the government in power. Nothing else can clarify the weird conduct of the Commission with respect to what is a standard political decision for topping off the opening to the Upper House from a State. The ECI initially reported that decisions would be hung on April 12. Yet, after seven days, it declared that it was putting the election measure in suppression to consider a reference sent by the Ministry of Law and Justice.

The secretary of the Kerala Legislative Assembly and the CPI (M) MLA at that point moved to the Kerala High Court moving the choice of the ECI to place the elections in suspension. They contended that the privilege of MLAs of the current Assembly can't be checked. The Hon'ble High Court dismissed the ECI's stand and guided the ECI to hold the political decision before the outcomes are proclaimed on May 2. This tampered with the image of the ECI and showed the public that how far the ECI could go in conforming to a particular government's desires.

3) **WEST BENGAL ELECTIONS (2021)**- In this election procedures too, the conduct of the ECI was controversial due to numerous events like- Firstly, in the Sitalkuchi (Community development block in West Bengal), guarded by the CISF staff outside a surveying corner that prompted four young fellows being executed, the ECI, in light of a deceptive report put together by its state spectators, had absolved the focal powers. The Commission didn't want to find out what really occurred on the ground. Secondly, none of the top BJP political party had been reserved for infringement of the Model Code of Conduct whereas on the other hand the opposition party was charged with it.

These are very few examples where the image of the ECI was tarnished and its autonomy came into question. The Commission, which had established a noteworthy standard in this matter throughout the long term, currently stands at risk for losing it.

⁴⁰Prakash Karat, *Election Commission bending to diktats of the government spells peril for parliamentary democracy itself*, NATIONAL HERALD (Apr. 15, 2021, 9:00 PM), <https://www.nationalheraldindia.com/opinion/election-commission-bending-to-diktats-of-the-government-spells-peril-for-parliamentary-democracy-itself>.

But on the other, these powers are necessary for the demonstration of the ECI's fairness, being independent of the political exertions and conducting peaceful elections⁴¹. With these powers, the ECI has expanded its International participation and cooperation with several countries like the USA, Russia, Sri Lanka, Nepal, Indonesia, South Africa, Bangladesh, Thailand, Nigeria, etc. To share this expertise on Electoral Management and Administration, many officials have visited India and gained insightful knowledge about the procedures of elections in the country⁴².

This expansion in the powers of the ECI is required as now there are more citizens in the electorate, more ideological groups, bigger spending plans, and therefore, more cases to the jurisdictional position. Second, the organization has kept on appreciating public authenticity. Accessible proof of popular assessment proposes that in any event until as of late, there is a relatively serious level of public trust in the ECI's ability and non-partisanship⁴³.

(B) Autonomy: Interference

"The ECI occupies the pivotal place in the scheme of the Indian Constitution. But during the recent years, it has willingly or unwillingly abdicated its independence, supra governmental authority and accepted for itself the rule of a mere official department charged with the conduct of the election⁴⁴."

-Mr. L.K. Advani

There has been constant intervention in the functioning of the ECI that may have led to undermining its functions. If this continues it would lead to the sucking out of the powers from the ECI (an independent body) to other institutes that may have some other outside influences. But this interference has been depicted as a positive solution in many situations. Respected Krishna Iyer J⁴⁵., enrolled the contention against the broad translation of the ECI's power: This will make *"a protected autocrat too awful to even speak of a responsibility"*, a *"Frankenstein's beast whose framework chose despotism."* In reaction, he possibly said: *if the power is abused, the court would "challenge the false front, suppress the activity and carry the request into the process."*

⁴¹ N.S. Gehlot, *Elections and Electoral Administration in India*, 302 (New Delhi: Deep and Deep Publications) (1992).

⁴² Rajendra Vora & Suhas Pulsikar, *Indian Democracy- Meanings and Practices*, 24-27 (New Delhi: Sage Publications) (2004).

⁴³ Katju, Manjari, *Election Commission and functioning of democracy*, EPW (2006).

⁴⁴ Fadia, B. L., *Reforming The Election Commission*, The Indian Journal of Political Science, https://www.jstor.org/stable/41855597?read-now=1&seq=11#page_scan_tab_contents.

⁴⁵ INDIAN KANOON, <https://indiankanoon.org/doc/1831036/>.

In the case of *Mohindar Singh Gill v. The Chief Election Commissioner (1978 SCR (3) 272)*⁴⁶, the Supreme Court made two important observations. Firstly, it observed that “*functions are referred to in Article 324(6) include powers as well as duties.*” Therefore, a body needs to have the power to discharge its function but importantly it has some duties inflicted upon it too. “*The CEC has to pass appropriate orders on receipt of reports from the returning officer with regard to any situation arising in the course of an election and powers cannot be denied to him to pass appropriate order.*” Hence, the source of powers enjoyed by the EC is the duties cast on it. But all such powers and duties are also restrictive in nature and the ECI is bound to follow them. If encroached then it needs a check.

Similarly, the Hon'ble Supreme Court in *Election Commission of India v. State of Haryana (1984 AIR 1406)*⁴⁷, while dealing with the order of the High Court of Punjab and Haryana staying the notification issued by the EC, held that “*It is not suggested that the EC can exercise its discretion in an arbitrary or mala fide manner. Arbitrariness and mala fide destroy the validity and efficacy of all orders passed by public authorities*⁴⁸.”

In the case of *AC Jose v Sivan Pillai and Ors. (1984 SCR (3) 74)*⁴⁹, it was 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 thereunder, 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 rules⁵⁰. Therefore, from this case, it is understood that the Commission is not superior to the Legislature. It has restrictions on its autonomous powers and to an extent an intervention from the Legislators.

The Constitution has provided provision to control this intervention as the ECI derives its authority directly from it. The provision of **Article 324(5)**⁵¹ stating that the CEC shall not be removed from his office except in the like manner and on the like grounds as a judge of the Supreme Court; **Article 324(5)** stating that his conditions of service would not be altered to his disadvantage after he took over as the CEC and providing residuary powers. These are some provisions that safeguard the ECI. But it should be reminded that the aforesaid provisions do not make the CEC superior to the courts. Similarly, the difference in the matter of removal

⁴⁶ *Id.*

⁴⁷ INDIAN KANOON, <https://indiankanoon.org/doc/1953806/>.

⁴⁸ Adab Singh Kapoor, *Election Commission's apathy as citizens gasp for breath*, LIVE LAW.IN (Apr. 29, 2021, 11:23 AM), https://www.livelaw.in/columns/election-commissions-apaty-as-citizens-gasp-for-breath-173304_

⁴⁹ INDIAN KANOON, <https://indiankanoon.org/doc/390634/>.

⁵⁰ Varun Isani, *supra* note 24.

⁵¹ INDIAN KANOON, <https://indiankanoon.org/doc/950881/>.

from service is not an indication for conferring higher status on the CEC. (*T.N.Seshan, C E C of India vs. Union of India (1995)4 SCC 61*⁵².)

Some interference by the government and the court at certain times is required to keep a check on the ECI from the backdoor. It is appropriate to review that back in 2009, the then CEC N. Gopalasawmi suggested, to the president, that EC Navin Chawla be eliminated from office on account of his connections to the Congress party. Indeed, the Commission of Inquiry comprising J.C. Shah, retired Chief Justice of India, had deduced in an inquiry against Chawla that he was "*ill-suited to hold any open office which requests a disposition of reasonable play and thought for other people*". Regardless of this, Chawla was selected as the EC⁵³.

In *Mohindar Singh Gill v. The Chief Election Commissioner 1978 SCR (3) 272*⁵⁴, the constitutional provision I.e. **Article 329(b)** of the Constitution of India was described as the "*Great Wall of China*" which no Court would ordinarily breach.

Hence, it is intended to say that there ought to be a close connection between the Election Commission and the Central Government to fix this political race but this connection should not turn into tampering and intruding on the autonomy of the ECI.

V. WAY FORWARD

The Commission over the course of the years has directed a number of excellent electing changes to reinforce the election procedures and upgrade it while protecting the principles of democracy. The Commission has found the most ideal ways to stop the acts of neglect during elections by utilizing advanced innovations. Every one of these endeavours taken by the ECI will assist the development of the democratic government and its trust among the people. The Hon'ble Supreme Court consistently analysed the lawful and different issues of decisions and consistently underlined the essentials of the democratic government to secure it, which are very well reflected through its decisions. The Commission ought to be engaged to rebuff the insatiable government officials for the infringement of code, laws and orders of the courts. The authors have put down some suggestions-

1. The **National Commission to review the working of the Constitution (NCRWC)** noted in one of its Consultation Papers⁵⁵ that political parties oversee huge scope in the

⁵² INDIAN KANOON, <https://indiankanoon.org/doc/1890680/>.

⁵³ Snehil Kunwar Singh, *How can we constitute a more impartial, non-partisan Election Commission?*, THE WIRE (May 09, 2019), <https://thewire.in/government/election-commission-independence>.

⁵⁴ INDIAN KANOON *supra* note 44.

⁵⁵ Devesh Kapur, Pratap Bhanu Mehta and Milan Vaishnav, *Rethinking Public Institutions in India*, (Oxford University Press) (2017).

enlistment of counterfeit citizen's name and also cancels names of unfriendly voters from the list. **The Goswami Committee on Electoral Reforms**⁵⁶ expressed that inconsistencies in electoral rolls are exacerbated by intentional altering. Therefore, this can only be checked upon if the ECI is empowered to make whatever strides important to guarantee- precise, refreshed and correct electoral rolls and provide options to every citizen to register her/his vote at any place based on his personal preference.

2. It is time for the Legislators to enact the laws and the Executive to implement them as there have been various crucial points given by some Committees and Reports that are required to be executed. For example, the use of different electoral rolls for elections to Parliament, State Assemblies, Panchayats and the Local bodies should be made a common one. If this is done then it would eliminate the problems of unnecessary duplication of data, extra expenditure, and confusion in the minds of the voters. This would also make the task of the ECI to govern the elections smoothly.

3. The ECI should be empowered to take strong action on the report of Returning Officers, election observers, or civil society in regards to booth capture or the intimidation of voters. In this way, it would set an example for the predators to not to repeat the actions.

4. This also could be done that the political parties may be declared as Public Authorities under **the Right to Information Act, 2005**. This would enable the citizens to acquire information about their activities as a right. Everything would come into the limelight.

5. The ECs should be prohibited to acquire positions after they retire, that is, for a period of at least 5 years after their retirement they should not be allowed to take hold of any office. Also, they should not join any political party for the same time period. This would help in reducing the problem of biasness in the system.

6. There should be some restrictions on the opinion polls as it influences the outcome of the elections. The present restrictions on them do not suffice to control the malafide activities.

7. **The Goswami Committee on Electoral Reforms**⁵⁷ was the first one to moot about the misuse of religion for gaining votes by the political parties. This was included in a Bill introduced in the Rajya Sabha in May 1990. The bill was withdrawn with the government saying that a revised Bill would be introduced. Nothing happened after that till the Liberhan Commission of Inquiry on Ayodhya recommended, in its report in June 2009, that complaints

⁵⁶ Government of India, Ministry of Law and Justice, Legislative Department, *Report of the Committee on Electoral Forms* (May, 1990), <https://adrindia.org/sites/default/files/Dinesh%20Goswami%20Report%20on%20Electoral%20Reforms.pdf>.

⁵⁷ *Id.*

of misuse of religion for electoral gain should be speedily investigated by the EC. The EC invited the attention of the government to the Representation of the People (Second Amendment) Bill, 1994, whereby an amendment was proposed providing for provision to question acts of misuse of religion by political parties before a High Court, but nothing concrete has happened so far⁵⁸. In the present century, when such sensitive issues become reasons for political mishap in the country, it becomes crucial to act upon it. The Representation of the People Act, 1951 should be suitably amended to give the EC powers to take deterrent actions against those candidates and political parties who resort to it.

8. According to the law, the election petitions can only be filed in the respective High Courts (**Section 80 and 80-A** of the Representation of Peoples Act, 1951). But the problem here is that there is already a backlog of cases in the High Court, therefore, it would take too long to settle the election related disposition before the election term is over. Therefore, a special kind of court or tribunal is required to be set up. The NCRWC, the Election Commission, and the Second Administrative Reforms Commission, all have recommended setting up of Special Election Benches or Special Election Tribunals.

Democracy and elections are the two sides of the same coin that is safeguarded by the ECI. The accomplishment of political decisions in our nation incredibly relies upon powerful and deliberate collaborations and the blend of the electorates, the political groups and the constituent apparatus. Therefore, to achieve this, an independent body like the ECI is crucial for conducting free and fair elections in a democratic country like ours, India.

⁵⁸Association for Democratic Reforms (ADR) and National election Watch (NEW), *Supra* note 32.