

THE ROLE OF THE ELECTION COMMISSION IN INDIAN POLICY

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ABSTRACT

The Election Commission of India is a free body that aims to provide free and fair conduct of elections throughout the country. It's the body responsible for India's state and union elections is the election commission. The election commission is a very important body as it enhances the value of the constitution as equality, impartiality, equity, etc, it supervises and controls the government. "Election Commission of India (ECI) has been criticized not for its "democratic deficit" but also for allowing the executive to interfere directly or indirectly in its functioning for the last many elections", the power of the election commission of India is given under article 324 of the Indian constitution. The body administers elections to the Lok Sabha, Rajya Sabha, and State Legislative Assemblies in India, and the offices of the President and Vice President in the country. Article 324 provides for the composition of the election commission, election commission consists of the chief election commissioner and several other election commissioners as the president may fix, they have the same status, and salaries are given as available to that of judges of the Supreme Court of India constitution has not laid down any guidelines to stop a retiring election commissioner from being appointed again by the government and there is an executive influence in electing the members of election commission which is leading to corrupt individuals to work in the election commission.

Keywords: Election Commission, Article 324, Chief Election Commissioner, Free and fair. Constitution

INTRODUCTION

The body which is responsible for India's state and union elections is the election commission of India. It is an independent constitutional body that conducts free and fair elections. The power of the election commission of India is given under article 324 of the Indian constitution. The article tells the power of the election commission. "General Elections of the country to elect the government at the center, the voting process based upon the

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principle of universal adult franchise, is a display of the democratic nature of governance in the Republic of India. The Election Commission of India (from herein onwards ECI), a constitutional body”¹

According to Article 324² of the Indian Constitution, the Election Commission of India is in charge of supervising, directing, and controlling the entire process of holding elections for the offices of President and Vice-President of India, as well as for Parliament and Legislature (state legislative assembly and state legislative council) in each state.

The only Indian parliament has the power to remove the chief commissioner from his office. Removal requires 2/3rd members to be present and vote. The election commission is a very important body as it enhances the value of the constitution as equality, impartiality, equity, etc, it supervises and controls the government. In addition to holding elections that are impartial and free, it also serves as a quasi-judicial function between the various political groups and the present government. Election Commission is considered to be an institution where political branches as powerful as Parliament and Cabinet have “ceded pride of place”³.

This research deals with various factors of the election commission of Indian polity, the researchers aim to mainly focus on the roles of the election commission. The research comprises different views on different literature and writings, the problems regarding the electorate body, and the challenges faced by it. The functions, importance, objectives, and assumptions of the election commission.

COMPOSITION OF ELECTION COMMISSION

The election commission is a constitutional body governed under “Article 324 of the constitution of India which provides for the conduction of the election role of the election commission. Article 324 provides for the composition of the election commission, election commission consists of the chief election commissioner and several other election commissioners as president may fix”⁴. In this Election commissioner and chief election, the commissioner is appointed by the president of India. The Election Commission also contains regional commissioners which he appoints after consulting the election commission.

¹ Constitution of India, Art. 324.

² Constitution of India, Art. 324.

³ Vani Kant Borooah, *Votes, Parties, and Seats : A Quantitative Analysis of Indian Parliamentary Elections, 1962-2014* (Palgrave Macmillan, 2016).

⁴ Constitution of India, Art. 324.

“The superintendence, direction, and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and the Legislature of every State and of elections to the offices of President and Vice President held under this Constitution shall be vested in an Election Commission”⁵. The powers, salary, and other perquisites are some of the chief election commissioner and other election commissioners. The chief election commissioner can also act as the chairman in the absence of the chairman. Their tenure is six yrs or until they reach the age of 65yrs, they can be removed and also can resign from the post. They can be removed because the Supreme Court Judge is removed

HISTORICAL BACKGROUND

The Election commission of India was established in the year 1950 with only a single chief election commissioner the roots of it can be traced back to the *Sabhas* and *Samitis* referred to in the Rig Veda in the second millennium BC⁶. After the independence, there was a dire need for elections to elect a representative of the country. Article 324⁷ came into effect on 26th November 1949 which made the election commission a separate independent constitutional body.

India adopted the idea of parliamentary democracy with the universal adult franchise and the idea of direct election which gave a blow to separate electorates; these ideas were adopted after India's Independence. “The constitution of the Election Commission of India was a significant departure from the Westminster model of parliamentary democracy and was constituted on 25 January 1950.”⁸

After the formation of the election commission, India's first Chief election commissioner Shri Sukumar Sen was appointed on 21st march 1950, after the first general election was conducted of vidhan sabha and lok sabha by the order of the president. In yr 1950 and 51 the two representatives of people act were passed by the parliament highlighting the procedure of conduct of election of Lok Sabha, Rajya Sabha, and Vidhan Sabha. Till the first, till today India has adopted and witnessed many changes and faced multiple challenges, organizing

⁵ <http://www.sconline.com.eu1.proxy.openathens.net/DocumentLink/S5Aa0EAq>

⁶ S.C. Kashyap, *Our Parliament* (National Book Trust, 1989).

⁷ Constitution of India, Art. 324.

⁸ S.Y. Quraishi, *An Undocumented Wonder : The Making of the Great Indian Election* (Rupa Publication, 2014) 32-33.

direct elections on the idea of universal franchise and maintaining free and fair elections, and keeping itself an independent body without any interference.

FUNCTIONS OF THE ELECTION COMMISSION

Elections at regular intervals are a very important feature of the democratic policy in India. Conducting periodic, free, and fair elections is the basic principle of the democratic system and is the basic structure of the constitution. The election commission acts as a guardian of elections in the country. For free and fair elections the election commission issues a code of conduct to the political parties, this code of conduct was first issued in the year 1971 for the 5th Lok Sabha elections and since that time it has been revised periodically. The code of conduct contains every single guideline that the parties have to follow. Just like this election commission plays several functions to ensure free and fair elections. The functions of the election commission are mainly divided into three parts named- administrative, quasi-judicial, and advisory. These three functions are discussed further in detail-

1. Administrative Functions

The administrative function deals with different aspects of elections which are mostly done at the initial stage of elections. Some of the functions are-

- The delimitation commission act of parliament is used to determine the territorial areas for election in different parts of the country. This act was introduced in the year of 2002.
- The preparation of electoral rolls is done by the election commission; it is responsible for the preparation as well as revision of electoral rolls. Also, all the eligible voters are registered.
- The responsibility to notify the important dates related to elections and schedules of elections lies with the election commission which also includes an examination of nomination papers.
- Granting recognition to political parties and symbols to each party is also an administrative function of the election commission.
- To make a roster regarding the political parties policies on radio and tv for publicity..as politicians advertise their propaganda by visiting, and talking with the

voters and addressing them about their party but this is not enough as nowadays people are more interested in technology so radios and televisions are of good use.

- Requisition of staff that are necessary for elections is done, a request shall be made by only the election commission to the president or governor for this.
- The election commission also supervises the electoral machinery to ensure that there is a free and fair election going on all over the country.
- Registration of political parties for elections and granting them the status of national and state.

2. Quasi-Judicial Functions

The quasi-judicial function deals with adjudicating certain disputes. Some quasi-judicial functions are-

- Resolving conflicts by acting like a court in matters related to the allotment of election symbols to political parties and granting recognition to them.
- For inquiries about disputes related to electoral arrangements, an officer is appointed by the election commission. This is also a quasi-judicial function of the election commission.
- The code of conduct which is to be followed by the political parties and candidates during the election is determined by the election commission.
- When a candidate fails to submit the accounts of election expenses at due time, the election commission has the authority to disqualify that candidate. For example- a candidate of village panchayat was disqualified by the state election commission of Maharashtra for five years as he presented the accounts of election expenses 15 days late from the date of submission.
- In case of events like booth capturing or any fraudulent activity done by the politicians or any irregularities happening in the process of election, the election commission has the power to cancel the polls.

3. Advisory Functions

Under this, the election commission mainly has the role of advising the president or governor, some of the advisory functions of the election commission are-

- In case of disqualification of any member of the parliament, the election commission plays a very important role by advising the president. Also, the advice given by the election commission is binding so the president has to abide by their decisions.
- In matters related to the disqualification of members of the state legislature, the election commission advises the governor and in this case also the election commission's decision is binding and the governor has to follow it.
- In any state where the president has declared an emergency for more than one year, whether elections should be conducted or not is decided by the election commission and this is advised to the president.

PROCEDURE TO CONDUCT ELECTION

The election commission of India is an electoral body formed to conduct the election of parliament, state legislature, and president and vice-president. There are different types of elections conducted in India, the election of state legislative assembly and council, village panchayats, and By-elections this election are conducted if a member dies, resigns, or is disqualified. The election commission ensures election is conducted in a timely and fair manner. The process of election involves the following process in India:

Voters list: The first thing in a democratic election is to prepare a list of the candidate who is eligible to vote or not. This decision is made before a list of candidates who are eligible to vote is prepared. No party in this process is allowed to bribe the candidates for votes.

Election Notification: The Process of the election begins when the notification is issued by the governor and president by recommendation of the election commissioner, within which candidates have to file for nomination within seven days of the issue of notification except Sunday. The election is held on the twentieth day after the withdrawal.

Nomination: Any person who wants to run in the election has to file for nomination by the due date, which is fixed by the election commission. The form should contain his name, address, age, and number in electoral rolls. A candidate who wishes to run for election should be backed up by two voters. The candidate has to take an oath then his nomination is delivered to Election Commission. Every candidate in this process has to keep some money as a security deposit. A deposit of Rs 10,000 for Lok Sabha and Rs 5,000 for the state assembly. For Schedule cast and Tribe a deposit of Rs 5,000 for Lok Sabha and Rs 2,500 from Vidhan Sabha.

Withdrawal and Rejection: The Election commission has got the authority to reject any candidate for nomination because is below the age of 25yrs, has not paid the security deposit, and is registered as not fit to vote in the country and office of profit. Candidates can also withdraw from the election the day when they can withdraw is the second day before the scrutiny of nomination papers.

Election Campaign: The election campaign is a process by which a candidate constitutes a campaign or uses various techniques to persuade the voters to vote for him, it takes place for two weeks between the date of polling and the announcement of candidates this camping comes to an end 42 hrs before elections take place. During the period of the campaign, candidates travel through their constituency to persuade voters and ask for support from political parties, and political leaders to address election meetings. There is a code of conduct laid down by the election commission which has to be followed by political parties during the election campaign. It laid downs that: there should be no campaign in religious places, no speech which creates hatred or points to a particular religious community should not be given, and once the date of elections is announced no new projects or schemes should be launched by parties or candidates.

Polling, Counting of votes, and declaration of result: Polling booths in large numbers are formed to conduct voting, a voter cast his vote in polling which is enclosed so no one knows whom did they vote for. The counting of votes takes place in presence of the candidate and the candidate with the most votes is selected.

CONSTITUTION AND ELECTION COMMISSION

The election commission under the Indian constitution is an independent body that derives its power from article 324⁹. From that, they get "superintendence, direction, and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and the Legislature of every State and of elections to the offices of President and Vice President".¹⁰ Under the Indian constitution some power is given to the election commission to make it an independent body as the election commission has direct control over national and state-level elections in the country it also gives roles to the state during state elections. "ECI is equally empowered to issue an executive order in the discharge of its duties."¹¹ But

⁹ INDIAN CONST. art. 324

¹⁰ INDIAN CONST. art. 324.

¹¹ Kanhiya Lal Omar v. R.K. Trivedi, (1985) 4 SCC 628, (17)

Election Commission under Indian Constitution is a free body and its doubted as “Election Commission has failed to demonstrate its independent credibility beyond reasonable doubts”¹².

Under Indian Constitution there are also some problems prescribed such as there is no limit or qualification prescribed for the selection of a member of the election commission, there is also the influence of executives or outside interference in the appointment of the members of the election commission and there is not debarred in retired officers from further appointment. The election commission as seen in the recent news and articles also failed to provide safe and fair conduct of the election.

As the constitution aims to provide a credible framework for the working and environment in which free and fair election can be conducted, “established to prevent the electoral process being corrupted by interests who sought to subvert the democratic process and as such is caught between the roles of democratic protector and being part of the institutional establishment”¹³. But in this context election commission has failed to establish this role of it. The claim that the Indian Election Commission is not only failing the criteria of being essential to electoral democracy but also breaking the expectations of millions of voters by failing to conduct elections in a free and fair way has enough empirical evidence to back it up. The urge to manipulate the constitutional framework with an authoritarian mindset needs to be restrained. But the Constitution is powerless to protect itself. The impending threat of presidential meddling in the operation of the Election Commission won't go away until the Supreme Court decides to preserve the institution.

CONCLUSION

By looking at the above study it is clear that the election commission is a very important body in the democracy of India. It has acquired a significant place in the constitution of India. Since 1952, the election commission has been conducting elections at both national and state levels. The body has got several praises from many people like our former president Late

¹² Elections and Election Commission of India : A Contemporary Evaluation by Afroz Alam, <http://www.scconline.com.eu1.proxy.openathens.net/DocumentLink/o9al22Z1>

¹³ Alistair McMillan, “The Election Commission of India and the Regulation and Administration of Electoral Politics” in Niraja Gopal Jayal and Pratap Bhanu Mehta (eds.), *The Oxford Companion to Politics in India* (Oxford University Press, 2010) 98.

K.R. Narayanan appreciated the election commission for its active role, he said: “The Commission very quickly adapted itself to the changed political milieu that came about in the country. From a relatively passive role that it had played in the earlier years following our independence, it quickly responded and acquired center stage to play a vigorous, proactive role to ensure that the democratic process in the country remains, as was envisaged by all at the time of independence, free and fair in both character and content.”

But as envisaged above, the analysis of functions of the election commission shows that functions relating to pre-election activity are more as compared to post-election. When elections are over the representatives are not under any control of the commission. As per the changing political trends, the election commission should have the power to not only check the pre-election criminalization of politicians but also have power for post-election so that the representatives can be made accountable to the people. And it will help Indian democracy to grow..only when the political parties are in opposition do they praise the election commission, the judiciary, the auditor general, and other constitutional authorities and forget about how these institution has served our country.

These trends should change. We need to understand that if people start doubting the bodies of government like the election commission then it will lose its legitimacy. Also on the records of the election commission, one cannot be unsatisfied with the way that it conducts elections. It has many challenges to face like ensuring to ensure free and fair voting in 543 Parliamentary constituencies by managing 2354 political parties, 8040 candidates, lakhs of polling booths, 7 phases of elections spanning more than a month, 800 million voters, appointing observers, deploying personals, addressing complaints and so on it did face this challenges in a very good manner but also failed on certain terms like the delay in counting and declaration of result. Also if the election commission wants the people’s trust it has to be more transparent. I would like to recommend that only if such institutions are protected and cherished, the survival of our democracy is there.