

## A CRITICAL ANALYSIS OF THE RISE AND FALL OF THE ROLE OF ELECTION COMMISSION OF INDIA

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### ABSTRACT

India prides itself as the biggest democracy in the world that ensures the representation of people in every form and manner. This is achieved through one of the most fundamental features of democracy – elections. Elections are a mechanism through which individuals can select their preferred candidate and choose them to implement laws and regulations that govern them. Elections also stand for the suffrage movement and how many people had to fight for their rights to secure the right to vote. Voting, although now accessible to every individual above the legal age, in the colonial era was restricted to high-ranking officers of the society who ensured that people experiencing poverty and commoner would have no say in the making of the government and the powers would lie in the hands of a few. Not to allow history to repeat itself, our constitution makers set forward the provision for a free and fair election regulated by an Election Commission of India (ECI), which would be unbiased and independent from the influence of political parties. However, the ECI, in recent years, has seen a change in its policy, often taking a turn for the worst when the question of fairness in elections is involved. This paper aims to explain the various articles criticizing the role of the ECI and providing suggestions on its improvement.

**Keywords** – Election Commission of India (ECI), electoral process, disqualification, politicization, voting

### INTRODUCTION

It can be challenging to conduct elections for a nation with over 1 billion citizens, all hailing from different castes and cultures and differing in political opinion. An Election Commission was set up under Article 324<sup>1</sup> of the constitution to perform the mammoth task of conducting elections in India.

After its inception in 1950, the first-ever elections for 489 Lok Sabha were held nationwide; however, out of 35 eligible voters, only 17 crores cast their votes.<sup>2</sup> During those times, the suitable voting age was over 21, and few people cared about politics. This was disappointing mainly after India fought for over two centuries to regain their freedom from foreign invaders. The General Election didn't just provide a mechanism for selecting the government and symbolized equality and freedom.

#### • History

Historically, voting rights were only granted to the zamindars, money lenders, and high-ranking officers, hence denied to the standard class. Women were traditionally deprived of voting rights in various countries after attaining independence. Switzerland is among the first countries to grant voting rights to men and women above 18.<sup>3</sup> Fortunately, ever since its first election, India has guaranteed the Universal Adult Franchise to every individual irrespective of caste, gender, or religion under Article 326<sup>4</sup>. During the first election, the Election Commission was a single body consisting of a Chief Election Commissioner (CEC). The first Chief Election Commissioner of India during the first elections was Sukumar Sen, who fervidly overlooked the entire election process lasting 1951 and 1952. Since then, elections in India have been held regularly every five years for nominating the representatives of the state and centre. The ECI is deemed to practice complete autonomy throughout the electoral process, ensuring free and fair elections<sup>5</sup>. However, with the rise of corruption in the contemporary world of politics, it'd be safe to assume that his power is gradually fading into the shadow of a puppet. At the same time, his strings are in the hands of the wealthiest and most politically influential candidate, putting to shame the years and years of efforts by the erstwhile CEC and honest and responsible leaders who sincerely toiled towards the nation's welfare.

#### • Composition of ECI

The EC has observed differences in numbers, starting as a single body at its inauguration, which lasted till 1988. The 61<sup>st</sup> Amendment of 1988 lowered the Universal Adult Franchise, reducing the voting age from 21 to 18 to increase public turnout.<sup>6</sup> This led to appointing two election commissioners to cope with the growing number of voters. The number was again changed back to a single body in 1989 and restored in 1990 to the trio of two election commissioners,<sup>7</sup> with the Chief Election

<sup>1</sup> India Const. Art 324

<sup>2</sup> World Policy Journal, Spring, 2002, Vol. 19, No. 1 (Spring, 2002), pp. 95-103

<sup>3</sup> Abrams, B.A. and Settle, R.F., 1999. Women's suffrage and the growth of the welfare state. *Public Choice*, 100(3-4), pp.289-300.

<sup>4</sup> India Const. Art 326

<sup>5</sup> Katju, M., 2009. Election commission and changing contours of politics. *Economic and Political Weekly*, pp.8-12.

<sup>6</sup> GN, P., 2020. Election Commission of India. Available at SSRN 3942547.

<sup>7</sup> Khiangte, L., 2018. Election Commission of India: Changing Role and Functions (Doctoral dissertation, Mizoram University).

Commissioner at the apex, with a permanent tenure and their salary set to that of a Supreme Court Judge.<sup>1</sup> A delimitation and state commission also exist, each performing specific tasks as the Election Commission guides.

Sukumar Sen was the first ever Chief Election Commissioner, appointed in 1950 for the first elections. However, no commissioner has yet replaced the unforgettable impact on the conduct of elections left behind by TN Seshan, set for the tenure of 1990 – 1960; he successfully put the corrupt politicians into handcuffs, often transgressing the authority of his chair. The current Chief Election Commissioner is Sh. Rajiv Kumar, alongside election commissioners Arun Goel and Anup Chandra Pandey. He is the 26<sup>th</sup> Chief Election Commissioner, while TN Seshan was the 9<sup>th</sup> Commissioner.

#### • **Corruption of the ECI**

Political parties, although expected to be pious and honest, make several promises before elections to secure their seats. Bribing the masses residing in poorer urban and rural areas by distributing utensils, grains, pulses, cash prizes, and other amenities practiced by politicians to secure votes into their pockets is not unheard of. These practices, although immoral, do not amount to a significant breach of the moral code of conduct. However, this can also take a gruesome turn if these politicians instead resort to more violent means that critically tarnish the model code of conduct. This could include intimidating or assaulting the other candidates of their constituency, bribing election officers into manipulating the vote counts, defaming other rival parties, and using religion to incite enmity. Communal conflict is some of the standard practices. Hence election commissions are set up to ensure compliance with these codes, and violations are duly punished. The removal of various Members of Parliament holding a conviction record in the past six years displays the immense power of the ECI<sup>2</sup>.

This necessitated the importance of the election commission in curbing such immoral practices and helping ensure a free and fair electoral system in India<sup>3</sup>. But this aim remains a dream, given the heavy influence of corruption on the Election Commission itself. The correct analogy would be if a medicine used to treat an infection got infected in the process of treating it. It is high time that the Election Commission stages up to its position as the watchdog of our democracy.

### LITERATURE REVIEW

#### **1. Role of Election Commission in Ensuring Fair Polls<sup>4</sup>**

##### **A K Roy**

It is simple yet most important in ensuring a free and fair process of election to the largest democracies in the world. Various tasks need to be He serves to eliminate the domination of money power. Although elections had taken place since the 1950s, the authority of the election commissioner required to be given more cognizance; it represented a meek and submissive commission that was flexible with implementing laws. TN Seshan changed the election commission's status, leaving a permanent mark on govt parties and people, a model code of conduct to operate firmly and absurdly unraveling the latent power of ECI. Patna elections declared were henceforth declared null and void. He Shocked the whole administration as the head of the govt had changed overnight. He introduced strides in the authority of the ECI, launching a nationwide 'Sheshan effect.' Politicians henceforth abided by the rules of the code. ECI worked neither as a government authority nor as a tool of social welfare. In 2001, to discourage unserious candidates, the proposition was to increase the security deposit from 500 to 10,000 and expenditure from 4.5 to 15 lakh. But this had the devastating effect of feeding into the fire of money politics as the richest of the rich could purchase such a high rate of tickets.

##### **Research Gaps**

Although the paper highlights the need for an election commissioner, it overtly appreciates the legacy of TN Seshan, who often overpassed his authority to get his way. He tried to put BJP on trial for misappropriate actions, which, although noble, was way out of his jurisdiction.

#### **2. Criminalisation of Politics and Election Commission<sup>5</sup>**

##### **BV Kumar**

This paper highlights the case of AIMMK wherein the leader of the party, Jayathaila, was barred from contesting in elections in two constituencies due to her past arrest for corruption under the Prevention of Corruption Act. (*Jayalalitha and Smt. N. Sasikala v. Union of India*).<sup>6</sup>

Although after conviction, a stay order was put in, deeming her conviction non-operative by the Madras High Court. Section 8(3) of the Representation of Peoples Act<sup>7</sup>, 1951, states that any person convicted of an offense imprisoned for more than two years is disqualified from contesting elections for the next six years. Before the election commission, the question was whether or not to disqualify her, not willing to rule in her favor fearing public scrutiny more than Jayalalitha's candidature. Madras Reporting Officer settled the dispute stating that the same candidate can't stand in elections for two constituencies. Under

<sup>1</sup> JK Chopra (1989). Politics of Election Reforms in India. New Delhi: Mittal Publications.p.2

<sup>2</sup> Akshayaa, M., 2018. *Indira Gandhi v. Raj Narain-A Critique on the Issue of Air Force Dealt by the High Court of Allahabad*. Int'l J.L. Mgmt. & Human., 1, p.135.

<sup>3</sup> Singh, U.K. and Roy, A., 2018. Regulating the Electoral Domain: The Election Commission of India. Indian Journal of Public Administration, 64(3), pp.518-530.

<sup>4</sup> Roy, A.K., 1999. Role of Election Commission in ensuring fair polls. Economic and Political Weekly, pp.2633-2634.

<sup>5</sup> Kumar, B.V., 2001. Criminalisation of politics and election commission. Economic and Political Weekly, pp.2119-2121.

<sup>6</sup> *Jayalalitha and Smt. N. Sasikala v. Union of India* - (1961) 1 SCR 933.

<sup>7</sup> The Representation of People's Act, 1951, § 8, No. 43, Acts of Parliament (1951)

section 33(7) <sup>1</sup> Act, the excess nomination was a cause of debarring from elections. Provisions were subsequently made by the Supreme Court to include corruption as a criterion for disqualification. Angered by this situation, the residing CEC wrote a letter to the then Prime Minister, Atal Bihari Vajpayee, explaining his concern over the election being contested by a man convicted of rape six years ago, who was contesting elections from the prison cell. According to him, even those out on bail or stayed by the court should not be allowed to compete in elections for up to 6 years. Innocent until proven guilty maxim should only be valid for citizens, not those holding government offices. Further, all candidates were

### Research Gaps

- This paper paints the election commission positively, portraying him as the savior of our nation's democracy. However, the author appears to have overlooked that all institutions involved in the above situation were more concerned with their own office candidature than with the humanitarian law. It is a widespread belief that 'An accused is innocent until proven guilty.' The same applies to officeholders, as wrongful imprisonment cases are uncommon. Many innocent persons are arrested daily and put behind bars for crimes they haven't committed. The act of the election commissioner of getting Jayalaitha disqualified from the elections further puts democracy years back. Even after a stay order was issued upon her candidature, the electoral office deemed her guilty, thus barring her from contending in her respective constituencies.

- Further, the election commissioner stepped outside his jurisdiction by introducing a new provision to allow for the debarring of the electioneers. However, this is not in the true spirit of the doctrine of separation wherein every institution has its jurisdiction, which shall not be transgressed to prevent tyranny of power. Further introducing a new clause of not allowing representation from two constituencies was a hoax, taken up by the Reporting Officer to further suppress Jayalaitha's candidacy without valid reasons indicating abuse of power.

### 3. Elections and Election Commission of India: A Contemporary Evaluation<sup>2</sup>

**Afroz Alam**

This article underlines the democratic function of the ECI, which acts as a 'watchdog' for ensuring free and fair elections, a luxury for a nation like ours that fought the colonial powers several decades ago. The ECI was hence initiated to guard the constitutional spirit of our country and protect it from the horrors that Winston Churchill predicted in the coming future of our democracy. The issue, however, arises when the EC, meant to conduct free and fair elections, confuses its responsibilities by allowing the interference of the Executive with the electoral process, the two of which shall remain segregated to ensure the fairness of elections. The ECI repeatedly fails to appear when it is answerable to the public for its actions. This undermines its spirit as an accountable and transparent institution meant to implement rules and regulations to ensure a smooth and corruption-free electoral process.

The three areas where most executive interruption can be witnessed are the composition, appointment, and removal of the ECs. The President is the one who appoints the EC; the executive decides the appropriate members for it. But as we saw in the composition of EC, it underwent several changes during the elections of the 1980s and 1990s, further undermining its stability. The executive further declares the law for the working and functioning of the EC before, during, and after elections. This further draws a question mark upon the alleged autonomous independence of the ECI as per Article 324 of the Constitution.

Thirdly, the removal of the CEC is at the level of impeachment of a supreme court judge. But the fate of other ECs lies in the hands of the CEC. This leads to a usurper of power lying with the CEC, who can remove any EC at his discretion without being answerable to any branch of democracy.

### Research Gaps

- Although the paper successfully establishes the unfair influence that the executive has over the ECI, it is wrong to assume that the reason behind this can be accorded to the established law. If not, the Executive, the Parliament, or the Judiciary would've taken control over the mechanism of the EC, owing to the system of checks and balances. And as the author himself pointed out, had the complete power of appointment, composition, legislature, and removal been bestowed with the CEC, it would've led to undue influence, not allowing the members to work cooperatively in a stable environment.
- Further, he assumes that the executive is evil and would force the EC to act according to its rules. However, the system of checks and balances had been installed in the first place to prevent this abuse of despotic power.

### 4. Election Commission and Functioning of Democracy<sup>3</sup>

**Manjari Katju**

This paper puts forwards two points of argument. The first commending the work of the EC, putting it up to a high stature of importance and, further, going as far as calling the EC the 4<sup>th</sup> institution of democracy after the legislative, executive, and judiciary as it is entrusted with the most important task of conducting elections for the largest democracy of the nation. It has to carry out various functions like setting up voting booths, setting the constituencies for the candidates, placing restrictions on campaigning and donations for the parties, implementing a model code of conduct, and other vital functions.

The second point paints the EC in a grim light mentioning how the EC needs to regulate its actions according to the established law, to manage the disquiet criticism by the citizens, who claim that it has failed in upholding the democratic spirit and needs to rise to the occasion and adapt to the changing trends. These trends result from politicizing the election process, which has

<sup>1</sup> The Representation of People's Act, 1951, § 33 (7), No. 43, Acts of Parliament (1951)

<sup>2</sup> Elections and Election Commission of India: A Contemporary Evaluation, 7 NLUO LJ (2020) 9

<sup>3</sup> Katju, M., 2006. Election Commission and functioning of democracy. Economic and Political weekly, pp.1635-1640.

divided people into different groups and classes without any sense of individuality. People are now treating elections as a portrayal of the primordial communities divided based on caste, gender, sect, religion, etc. Women now wish to enter the political arena, not as individuals but as politicized community members.

The percentage of voters has also increased, adding to the importance of the EC and enhancing its role as the number of candidates has increased. Further, voting has become more accessible to people of all classes, including the rich and poor, in the election process. Hence the EC has had to double up to ensure that the rich do not impose uncalled influence over the other candidates. However, this mannerism is more ad hoc than most of the time, wherein decisions are taken impulsively at the moment, not allowing for proper deliberation and collaboration of thoughts before arriving upon the final decision. Further, politicization is an unpreventable and unfortunate consequence of a multi-party system of elections in India. Hence, there exists a need for change in reforms of the EC.

### Research Gaps

- Although this paper highlights the politicization of the electoral process, it fails to include the role played by the other branches (Judiciary, Executive, legislative) in promoting the same. EC is meant for conducting elections and not for educating the masses or imposing new laws upon the citizens; those functions are meant for the other branches.
- Further, while highlighting the need for new changes for adaptability, the author omits to include institutions such as Delimitation Commission (Marks out the boundary and territories for constituencies) and State Limitation Commission (Responsible for conducting elections in Municipalities and Local authorities).

### 5. Violations of the Model Code of Conduct and Accountability of the Election Commission of India<sup>1</sup>

#### Neelesh Shukla and Hartej Singh Kochher

This paper refers explicitly to the violations of the model code by the members of the BJP party in the last elections of 2019, where BJP won by a vast majority of 37.36% of votes prior witnessed over four decades ago. In his capacity, the EC reported the violations to the CEC, who in turn gave a clean chit to both the Prime Minister and President of the BJP, disregarding the views of the EC. Further, he failed to be answerable for his actions under the Right to Information Act. This was one of many instances where the CEC could have lived up to the expectations of implementing and ensuring free and fair elections. The Supreme Court further supported CEC and stood by its decisions, much to the dissent of those witnessing. However, the paper explains that knowing the rationale behind such decisions is necessary for the accountability of the ECI to remain under scrutiny. It is time for the ECI to make a change in its decision-making process to ensure fairness and responsibility on its part.

### Research Gaps

Although this paper vividly highlights the lacking points of the EC, it would be wrong only to place accountability on the part of the ECI and not bring under criticism the parties and persons involved, who are just as guilty, if not more, concerning the malpractices of democracy.

This article only considers the last election and fails to mention the other polls, as this is an age-old practice of the ECI, especially the CEC, to partake in such malpractices.

Further, it doesn't mention the selfish intent of the CEC to ensure good relations with the up-and-coming government to secure its position and comfort for the next five years.

## CRITICAL ANALYSIS

Before diving into the criticism of the role of the CEC, it is necessary first to note the factors that led to the same. Besides limiting expenditure and candidacy, the ECI also performs different functions, including the direction, superintendence, and control over all matters about the elections of President, Vice – President<sup>2</sup>, Parliament assemblies, and State legislative assemblies.<sup>3</sup> He accomplishes this with the help of various other authorities, such as the Delimitation Committee, the State Election Commission, and other electoral bodies. It also performs a variety of functions to aid the process of elections, such as :

### • Regulatory expansion of Administration of the Electoral Process

This governs the various regulatory functions of the ECI that allow it to conduct elections freely and fairly. <sup>4</sup>These include the tiring tasks of drawing up polls, setting up booths, deciding upon the constituencies, counting the number of votes, releasing the list of eligible voters, and so on.<sup>5</sup> Further, it is tasked with determining the members for nomination, ensuring that they all conform to the process's rules and regulations.<sup>6</sup> The willing candidates must also submit an affidavit stating whether or not they were convicted of a crime in the last two years, as per the provision of section 8 of the Representation of People's Act<sup>7</sup>.

### • Accountability

An accountable ECI is an essential feature of a true democracy. This is especially so considering its autonomous nature, where it acts at its discretion without being bound by any obligations. However, there has to be a limit to the autonomy of the CEC to

<sup>1</sup> Violations of Model Code of Conduct and Accountability of Election Commission of India, 7 NLUO LJ (2020) 113

<sup>2</sup> The Constitution of India, 1975, § 66, No. 309, Acts of Parliament, 1975 (India)

<sup>3</sup> The Presidential and Vice-Presidential Elections Act, 1952, No. 31, Acts of Parliament, 1949 (India)

<sup>4</sup> S. Chatterjee and S. M. Roychoudhury, "Institutions, democracy and 'corruption' in India: Examining potency and performance," Japanese Journal of Political Science. 2013, doi: 10.1017/S1468109913000169

<sup>5</sup> McMillan, A., 2012. The election commission of India and the regulation and administration of electoral politics. Election Law Journal, 11(2), pp.187-201.

<sup>6</sup> Bhat, A.M. and Ranaut, A., Role of Election Commission in India.

<sup>7</sup> *Supra*. Note 14

prevent unchecked power in his hands. This would also help decrease political influence over the mechanism of the ECI, leading to more accountability on his part.<sup>1</sup> Responsibility, while in a negative connotation to autonomy, is equally essential to ensure the existence of democracy and prevent the exercise of unbridled power at the hands of a few.<sup>2</sup>

- **Implementation of Model Code of Conduct**

There exists a code for the successful and fair conduct of elections. This involves various rules and regulations implemented by the Election Commission starting from the date of the declaration of elections. These codes prescribe the multiple steps and methods to follow from the campaigning stage. The electioneers are subject to disqualification upon violation of these rules. These rules on paper don't hold much validity unless the Election Commissioner duly implements the same. By introducing penalties and fines and by setting off the standard fees to be paid to filter non-serious candidates, the ECI ensures that the elections are taken seriously by everyone, including the politicians themselves.<sup>3</sup>

- **Relevant Case Laws**

**1. Sachindra Nath Tripathi v. Doodhnath**<sup>4</sup>

In this case, the petitioner – Sachindra Nath Tripathi, a member of the UP Legislative Assembly, was disqualified from his position on account of his conviction under section 302 and section 307 of IPC, to which the plaintiff admitted, claiming he was granted bail for the same and hence should not be revoked from his position. However, the Supreme Court found concrete evidence to declare his election null and void.

**2. TN Seshan v. Union of India**<sup>5</sup>

In this case, the size of the ECI was sought to be increased to two more members wherein the Election commissioners would have the same power as the CEC in pursuance of provisions prescribed in the Representation of People's Act. In cases of dispute, the majority decision would be final. This was done to prevent arbitrary power at the hands of CEC and help ensure the principles of the constitution.

## CONCLUSION

Only a single commission exists for conducting elections in a vastly populated country like ours. This can often result in much burden upon the shoulders of these members to plan and organize elections, even with the help of subordinate authorities.<sup>6</sup> Commissions should be involved at every state and constituency level to ensure compliance with election guidelines. Although this does not register as an excusable reason, it is the main reason for elections to become warfare rather than a mechanism of representing their ideologies. The monopolizing of the people and manipulating the politicians remove the people's focus from the natural matter. The only way to prevent our democracy from approaching destruction is to ensure that the ECI duly implements the procedures and code laid down by the executive. Henceforth, its violation is punished by the judiciary. All these organs together have to contribute towards the making of a true democracy where every individual reserve the right to vote and stands up for elections without fearing imposition by the more affluent parties.

- **Suggestions for Changes**

The following are suggestions for making the ECI more efficient

- Establish different state and center levels bodies to conduct elections and decentralize power between the two. In this way, the state and center can operate individually, and the polls would be more efficient as states have better knowledge of their constituencies and territory.<sup>7</sup>
- To make elections a more severe procedure, there should be a National Commission to review the working of the Constitution, oversee the ECI's work, and keep a check on the eligible voters.<sup>8</sup>
- Similar to the Goswami Committee on Electoral Reforms was the first instance of restriction of misuse of religion to secure party votes, a similar reform should be enforced throughout the nation for public benefit.<sup>9</sup>
- A committee should be established on the national level to keep a check on the unbridled power of the ECI.
- Lastly, the commission size should be increased significantly to divide the work across the members, ensuring efficiency and timeliness.

<sup>1</sup> Election Commission Controversy, (2010) 9 SCC J-35

<sup>2</sup> Bhat, M. M. A. (2021) "Governing Democracy Outside the Law: India's Election Commission and the Challenge of Accountability," Asian Journal of Comparative Law. Cambridge University Press, 16(S1), pp. S85–S104. doi: 10.1017/asjcl.2021.30

<sup>3</sup> Role of Election Commission in Upholding Democracy, (2007) 3 LW (JS) 55

<sup>4</sup> Sachindra Nath Tripathi v. Doodhnath, 1987 All LJ 667

<sup>5</sup> T.N. Seshan v. Union of India, 1995 4 SCC 611

<sup>6</sup> Fadia, B.L., 1992. Reforming the Election Commission. The Indian Journal of Political Science, 53(1), pp.78-88.

<sup>7</sup> Meghna Buchasia & Alric Tirkey, The Election Commission of India: A Question on Its Autonomy, 4 INT'L J.L. MGMT. & HUMAN. 770 (2021).

<sup>8</sup> Devesh Kapur, Pratap Bhanu Mehta and Milan Vaishnav, Rethinking Public Institutions in India, (Oxford University Press) (2017).

<sup>9</sup> Government of India, Ministry of Law and Justice, Legislative Department, Report of the Committee on Electoral Forms (May, 1990),

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