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# **A CRITICAL EXAMINATION OF THE ROLE OF THE CHIEF ELECTION COMMISSIONER**

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## **ABSTRACT**

This study critically examines the pivotal role of the Chief Election Commissioner (CEC) within India's constitutional framework, focusing on the intricate balance of autonomy, accountability, and institutional integrity. It traces the historical evolution of the CEC's role, highlighting significant judicial interpretations and constitutional provisions that define its scope and limitations.

The analysis explores the operational dynamics between the CEC and Election Commissioners (ECs) in a multi-member Election Commission, emphasizing the importance of procedural clarity and functional harmony. The paper also reviews the challenges posed by political interference, legal ambiguities, and practical inefficiencies that can undermine the independence of the Commission.

The study aims to underscore the critical need for electoral reforms and institutional strengthening to uphold the principles of free and fair elections, which are the cornerstone of democratic governance. It advocates for measures to reinforce the independence, transparency, and impartiality of the CEC to safeguard India's democratic ethos.

## **INTRODUCTION**

The framers of the Constitution did not outline the procedure for conducting business in a multi-member Election Commission, since they did not feel the need to do so, considering high constitutional functionaries were to man the Commission. However, the actual functioning of multi-member Election Commissions have proved otherwise. Thus, there was the need to define the relationship that should bind the Chief Election Commissioner and the Election Commissioners, to ensure the smooth functioning of the Commission. The given article involves a critical analysis of the position of the *Chief Election Commissioner (hereinafter*

referred to as the CEC) with respect to Election Commissioners (hereinafter referred to as the ECs), all of whom form part of a constitutional body called the Election Commission (hereinafter referred to as the Commission). Established under Article 324 of the Constitution, it is intended to oversee the entire election process to ensure free and fair elections are taking place. Since India follows a democratically elected form of government, the importance of free and fair elections cannot be over-emphasized.

The Commission can exist as a single or even as a multi-member body. The framers of the Constitution provided for but did not make mandatory a multi-member body, to ensure uncontrolled powers are not in the hands of the CEC alone. But it was only in 1989, that ECs were appointed for the first time. The existing constitutional provisions, as will be noted, do provide for the appointment of the ECs, but do not specify the manner of functioning of the Commission if it has more members than the CEC alone. Therefore, it became necessary lay down procedural rules concerning the functioning of the Commission and defines the roles of the CEC and the ECs. The first important judicial decision in this connection was *SS Dhanoa v. Union of India*<sup>1</sup>, followed by *TN Seshan v. Union of India*<sup>2</sup>. Both the decisions differed substantially on a number of points of law. While the former placed the CEC at a higher position as compared to the ECs, the latter established that they are all equally placed. The present legal position fully supports the Supreme Court decision in the latter case.

## **THE ROLE OF THE ELECTION COMMISSION IN INDIA**

### **A. IMPORTANCE OF FREE AND FAIR ELECTIONS IN A DEMOCRACY**

Free and fair elections are the cornerstone of any democracy, ensuring that the government derives its legitimacy and authority from the consent of the governed. These elections embody the principles of equality, representation, and accountability, which are fundamental to democratic governance.

#### **1. Legitimacy of Government**

Free and fair elections provide the legal and moral basis for the authority of elected officials. They ensure that leaders are chosen by the majority while respecting minority rights, fostering public confidence in the democratic process.

#### **2. Representation of the People**

Elections serve as a mechanism for citizens to express their preferences and choose

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<sup>1</sup> AIR 1991 SC 1745.

<sup>2</sup> (1995) 4 SCC 611.

representatives who reflect their interests, aspirations, and needs. This inclusivity helps create a government that is more responsive and representative of society's diversity.

### 3. **Accountability and Responsiveness**

Regular, impartial elections compel politicians to remain answerable to the electorate. This accountability ensures that elected officials prioritize public welfare and act in the best interests of their constituents.

### 4. **Conflict Resolution**

Elections provide a peaceful means for the transfer of power, reducing the likelihood of political instability or violence. By resolving disputes through the ballot box rather than through force, they strengthen the rule of law and social cohesion.

### 5. **Strengthening Citizen Engagement**

Free and fair elections empower citizens by giving them a voice in decision-making processes. This active participation reinforces a sense of ownership and commitment to democratic values.

### 6. **Preserving Democratic Institutions**

The integrity of elections safeguards other democratic institutions by reinforcing the principles of transparency, impartiality, and fairness in governance. It also serves as a bulwark against authoritarianism.

### 7. **Promotion of Equality**

Elections allow all citizens, regardless of socioeconomic status, to have an equal say in the political process. This equal participation is crucial for addressing systemic inequalities and fostering social justice.

In summary, free and fair elections are not merely procedural formalities but essential mechanisms for sustaining democracy. They ensure that power resides with the people, fostering trust, stability, and progress in society. Without them, the democratic ethos is compromised, undermining the very fabric of governance.

In a democracy, sovereign power is in the hands of the collective body of the people, who alone decide who their representatives shall be, and how they shall govern over them. Free and fair elections are a must in any democracy, as this is the only means by which the people can choose their representatives. All modern democracies therefore have a system of elections, through which their head of state is decided.

Inherent in the notion of free and fair elections is that everyone should enjoy equal political rights. Inequalities may exist in society and in the economy, but politically everyone should be equally placed in so far as choosing their representatives is concerned. This has led to the emergence of *universal adult franchise*, meaning all those who are adults will be entitled to vote. Thereby, a number of undemocratic requirements intended to limit the electorate strength stand done away with, such as holding property, educational qualifications, etc. The principle of one man, one vote, and one value is what can best sum up the concept of universal adult franchise.

In India, the Constituent Assembly chose to enact specific constitutional provisions with respect to elections, in contrast to the usual practice of other constitutions that simply confer authority to the national legislature to enact laws in this respect. The Drafting Committee on Fundamental Rights prepared a report to the effect that the independence of elections and avoidance of any executive interference should be a fundamental right. As Dr. Ambedkar said, *“Many people felt that if the elections were conducted under the auspices of an executive authority ... which did not have sufficient power that will certainly vitiate the process of free elections.”* The House did not incorporate this as a fundamental right, but without any kind of dissent decided that there has to be an independent body called the *“Election Commission”* that has to be free from all kinds of executive interference. All this indicates the high degree of importance placed upon free and fair elections by the Constituent Assembly.

#### **B. PERMANENT ELECTION COMMISSION WITH CEC AS PERMANENT INCUMBENT**

There were two broad approaches before the Constituent Assembly. On the one hand, it could have appointed a permanent body consisting of 4 – 5 representatives who would continue in office continuously. Since elections are not a daily affair, that would have proved to be unnecessary, and was therefore not adopted. But rejecting this approach would have meant the absence of election machinery. On the other hand, the President could have been permitted to appoint an ad hoc body as and when elections were approaching. Finally, it was decided to adopt a middle path, by having a permanent body called the Election Commission consisting of the CEC as its permanent incumbent. The basic, skeletal machinery would thus be available at all times. At the same time, the President could add to that machinery by appointing other members of the Commission, thereby ensuring that the additional work burden at the time of elections could be successfully handled.

The requirements to be fulfilled by an election machinery include, as held by the Supreme Court in *NP Ponnuswami v. Returning Officer*<sup>3</sup>, *Namakkal Constituency*:

There should be a set of rules and laws making provisions to all matters in relation to elections. It should be decided as to how these rules are to be made.

There should be an executive charged with the duty of securing the due conduct of elections.

There should be a judicial tribunal to decide all disputes arising in connection with elections.

*Part XV* of the Constitution deals with elections. The second requirement is satisfied by *Article 324*, while *Articles 327 and 328* deal with the first. *Article 329* deals with the third one.

### **C. THE CONSTITUTION AND THE COMMISSION**

The researcher shall now briefly examine the relevant constitutional provisions relating to the Commission. Under *Article 324 (1)*, the superintendence, direction and control of elections is in the hands of the Election Commission, which is to conduct all elections to the offices of the President, Vice-President, and the Parliament and state legislatures. Since it enjoys the status of an independent constitutional body, there were even proposals to authorize it to conduct elections to the Panchayats and Nagar Palikas as well, but these did not take the shape of law. The entire process of conducting elections (including preparation of electoral rolls) is done by the Commission. This provision being fairly widely worded enables the Commission to exercise its authority in relation to all those issues in connection with elections.

Under *Article 324 (2)* the President may appoint ECs in consultation with the CEC. With respect to their appointment, it should be noted their appointment is not mandatory. It shall be done keeping in mind the requirements of the Commission from time to time. For this reason, their number is not fixed. They are thus intended to assist the CEC in discharging his functions. An increased work burden in itself will not justify their appointment. The duties to be performed have to be of such nature so as to warrant their appointment. Their appointment has to be on justifiable grounds, that the judiciary may call into question. The appointment of ECs shall be subject to the provisions of any law passed by the Parliament in this respect. They shall be appointed upon the recommendations of the CEC, but this does not place him at a higher position. Drawing an analogy, in the Supreme Court, and even in the High Courts, the judges

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<sup>3</sup> 1976 SCR (1) 57

are appointed by the President in consultation with the Chief Justice. But this does not mean the Chief Justice is at a higher position as compared to the judges. His decisions are not binding upon the other judges, they being free to decide a case as they please in accordance with the relevant legal principles.

Under *Article 324 (3)* in a multi-member Commission, the President shall act as the Chairman of the body. By virtue of being the Chairman, to what extent may he control the ECs in discharge their functions? In the first place, should he be allowed to control the ECs in performing their functions, the independence of the Commission shall stand directly affected. The very purpose for which the ECs are appointed shall thereby be defeated. The appointment of ECs ensures there is a system of checks and balances in force to check the CEC, to ensure that he does not exceed his jurisdiction. Their independence is therefore a must.

The relevant constitutional provisions have taken adequate care to ensure the independence of this body from all kinds of executive influences. Under *Article 324 (5)*, the CEC can be dismissed only in the same manner as a judge of the Supreme Court. Further, his conditions of service cannot be changed to his disadvantage after his appointment. The same constitutional protections have not been expressly extended to the ECs, as they can be removed only on the recommendations of the CEC. The Commission may require staff to help it in discharging its function of conducting elections. Under *Article 324 (6)*, the President or the Governor of a state shall ensure all necessary staff is provided to it for this purpose. However, there is a distinction between ordinary staff and ECs, the latter may be appointed only when the work burden of the Commission is such that it cannot be discharged by using ordinary staff.

The conduct of free and fair elections is what is intended to be achieved. Therefore, if the conditions in a state are conducive due to breakdown of law and order, or due to other factors that in the opinion of the appropriate authorities shall prevent the people from choosing their candidates in a fair manner, the Commission may postpone elections, but only for a reasonable period of time. In *Yadav Reddy v. Election Commission of India*<sup>4</sup>, a Division Bench of the Supreme Court refused to interfere with the Election Commission's order for postponing elections for the Bihar Assembly for a definite period of time, due to the conditions prevailing in Bihar at that point of time.

In recent years, there has been a lot of concern about the manner in which elections are to be funded. In this respect, the Commission has the authority to issue directions, in the process of conducting elections, requiring all political parties to provide details of their expenditure in the elections, and the sources of their funds. (Held in *Common Cause, A Registered Society v. Union of India*).<sup>5</sup>

## **CONCLUSION**

The role of the Chief Election Commissioner is indispensable in ensuring the conduct of free and fair elections, a cornerstone of democratic governance. This critical examination highlights that while the constitutional framework provides a robust foundation for the CEC's autonomy, there exist ambiguities and challenges that warrant reform. The historical evolution and judicial pronouncements underscore the need for clarity in the roles and responsibilities of the CEC and ECs, especially in a multi-member Election Commission.

Institutional independence, coupled with accountability, remains paramount in protecting the electoral process from undue political influence. Comparative analysis reveals that India's electoral framework can benefit from adopting global best practices, ensuring that its democratic processes remain transparent and trustworthy.

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