

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



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Peer Reviewed

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# **AN ANALYSIS OF EVOLUTION OF ELECTION COMMISSION IN INDIA.**

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## **Abstract:**

Election Commission of India is a permanent constitutional body to ensure fair elections. This paper discusses the evolution of Election Commission of India and how it has managed to overcome difficulties in the superintendence, directions and control of elections in various parts of the country. This paper concludes by discussing the lacunae of the management system, which is still to be dealt with.

**Key words: Election Commission of India, evolution**

## **1. Introduction**

The E.C.I was established on the 25th January 1950 with an objective of supervising all elections to the Parliament of India, state legislatures and to the office of the President and the Vice-President of India. In the first few decades of its existence, the commission was led by a Chief Election Commissioner. Sukumar Sen was the first CEC of India. It was only in the year 1989 that two additional commissioners were appointed to the commission for the first time. However, they remained in office for a brief period. The Election Commissioner Amendment Act (1993) made the E.C.I a multi-member body. Till date the E.C.I is a three member body with the C.E.C and two other E.Cs.

## **Committee Recommendations on E.C.I**

India being a "Socialist, Secular and Democratic Republic"<sup>1</sup> the success of democracy depends upon free and fair elections. Upon Independence India opted for Parliamentary Democracy based on the British model.

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<sup>1</sup> Preamble, Constitution of India

From the year 1952, the country has witnessed elections to the legislative bodies at the national as well as state levels. The electoral system of India has been plagued by many problems that have encouraged anti-social elements to jump into the electoral fray. Our system was largely free from any major flaw till the fourth general election (1967). The distortions in its working appeared, for the first time, in the fifth general election (1971) and these got multiplied in the successive elections, especially those held in the eighties and thereafter<sup>2</sup>. The E.C.I has frequently expressed its concern and anxiety for removing obstacles in the way of free and fair polls. It has made a number of recommendations and repeatedly reminded the government the necessity so change existing laws check the electoral malpractices. Several Committees were constituted by the Government in matters relating to the electoral reforms. Number of new initiatives have been taken by the E.C.I to cleanse the electoral process. Some of the important recommendations among these are discussed below.

#### ***The Tarkunde Committee (1974)***

Jayprakash Narayan (JP) appointed a Committee in 1974 under the chairmanship of Justice V.M. Tarkunde to consider electoral reforms.<sup>3</sup> Tarkunde Committee's Report (1975) mentioned that E.C.I. shall be an independent body, not only in theory but it should exercise its power of organizing and conducting elections fairly.<sup>4</sup>

The Committee recommended that "the members of the E.C.I should be appointed by the President on the advice of a Committee, consisting of the Prime Minister, the Leader of the Opposition (or a Member of Parliament selected by the Opposition) in the Lok Sabha, and the C.J.I."<sup>5</sup>

#### ***Dinesh Goswami Committee (1990)***

Mr. Dinesh Goswami, Law Minister was appointed as the chairman of the Committee on Electoral Reforms on January 9, 1990, by the Prime Minister Mr. V.P. Singh.<sup>6</sup>

There were certain recommendations made by the committee regarding the appointment:

(a) the appointment of the C.E.C should be made by the President in consultation with the Chief

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<sup>2</sup>R. Ramesh, HISTORICAL PERSPECTIVES OF THE ELECTORAL REFORMS IN INDIA, Proceedings of the Indian History Congress, Vol. 72, PART-II (2011), pp. 1325-1336

<sup>3</sup>Anand Ballabh Kafaltiya, Democracy and Election Laws, New Delhi, 2003, Pg 187

<sup>4</sup>Tarkunde Committee, Report of the Committee on Election Expenses,

<sup>5</sup> Dinesh Goswami Report 1991

<sup>6</sup>The Representation of People (Amendment) Act, 1996

Justice of India and the Leader of the Opposition

(b) the consultation process should have a statutory backing

(c) the appointment of the other E.C.s should be made by the committee in consultation with the C.E.C

(d) on expiry of the term of Office, the C.E.C and the E.C.s should be ineligible for any appointment under the Government, including the post of Governor.<sup>7</sup>

The recommendations resulted in the enactment of the C.E.C and other E.Cs (Conditions of Service) Act, 1991 and the Representation of the People (Amendment) Act, 1996.<sup>8</sup> The Representation of the People Amendment Act, 1998 was to enhance the proper functioning during the elections by making certain changes in the section 159 of the Representation of the People Act, 1951. This gave power to E.C.I. to employ personnel from public sector undertakings and autonomous bodies which is wholly or partially funded by the government for election duties. The United Front government was considering proposal to bar criminals from contesting elections u/s 8 of ROPA, 1951. But till date no final decision has been taken.<sup>9</sup>

#### ***The Vohra Committee (1993)***

Vohra Committee aimed to protect politics from the criminals. It mentioned that the entry of criminals in politics is a matter of grave concern. The reports mentioned that how these mafia network are running parallel government in states like Bihar, Haryana and Uttar Pradesh by the support of local politicians.<sup>10</sup>

#### ***Indrajit Gupta Committee on State Funding of Elections (1998)***

The Government introduced this committee to fulfill the unimplemented recommendations of Dinesh Goswami Committee, in the form of set of 24 proposals.<sup>11</sup> Shri. Indrajit Gupta, Member of Parliament, was appointed as chairman to suggest measures for providing State funding to recognised political parties.<sup>12</sup> The Committee also examined related proposals of maintenance of accounts by political parties and their audit, ban on donations by companies to political parties such as prohibiting inclusion of expenses of political parties in the election expenses of candidates and empowering of E.C.I of India to fix a cap on election expenses before every

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<sup>7</sup> Supra 9, Pg 9

<sup>8</sup>S.R. Sen, 'Electoral System: Urgency of Basic Reforms', Economic and Political Weekly February 9, 1991

<sup>9</sup>Id

<sup>10</sup>Id

<sup>11</sup>Sanjay Kumar, 'Reforming Indian Electoral Process, Economic and Political Weekly , 24, 2002

<sup>12</sup>Anand Ballabh Kafaltiya, o

General Election<sup>13</sup>"

### **E.C.I of India and the Proposed Electoral Reforms (2004)**

The E.C.I of India gave its detailed views on the set of proposals which were also discussed by various political parties. The E.C.I also made certain other proposals to strengthen the S.8 of the ROPA, 1951 by disqualifying those from the date of conviction till the further period of six years of the release. If the person is Member of Parliament, the conviction will not take effect till three months have elapsed. Within these three months an appeal in respect of the conviction should be brought. The Nomination paper of a candidate may seek details of previous convictions/pending charges /pending cases, etc. in respect of the Candidate.<sup>14</sup> Other proposals were taken from the report of the Indrajit Gupta Committee. Members of Armed Forces have so far choice to vote either in person or through postal ballot.<sup>15</sup> The proposal also shortened the campaign period from 20 days to 14 days.<sup>16</sup> The government has facilitated the armed forces to make choices of proxy voting.

### **2. Historical Evolution of steps taken by E.C.I**

#### **Model Code of Conduct**

The E.C.I. is an authoritative body to organize free and fair elections. The EC lays down the code of conduct every elections to abide by. The first model code of conduct was laid down in 1971.<sup>17</sup> It stated that after the announcement of elections there will be no announcements regarding financial grants for projects, scheme, etc. by the commission, ministers or authorities, so that it cannot influence the voters.<sup>18</sup>

In 2002 an order was issued by the E.C. under the guidance of Supreme Court, that each candidate is required to submit an affidavit regarding their criminal records<sup>19</sup> and total assets held by the dependants. The political parties were against the decision and considered judiciary and E.C.I. was overstepping. In 2003, the Supreme Court again acted as the guardian and held that previous decisions regarding complete and true disclosures of assets with an affidavit

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<sup>13</sup>Global Dimensions of Electoral Democracy , E.C.I of India, New Delhi, p.34.

<sup>14</sup>Model Code of Conduct , 1971.

<sup>15</sup>C. Agarwal and N.K. Chowdhry, Lok Sabha Elections 1999 , New Delhi, 2000, p. 142.

<sup>16</sup>A.K. Rajan, op.cit., p. 13

<sup>17</sup>Wilkinson, I. Steven, Votes and Violence: Electoral Competition and Communal Riots in India , London, 2004, p. 193.

<sup>18</sup>Anand Ballabh Kafaltiya, op.cit., p. 148.

<sup>19</sup>Elections in India, Major Events and New Initiatives 1996-2200, E.C.I of India, New Delhi, 2000, p.311.

should be fulfilled otherwise failing to do so will be inviting penal consequences.<sup>20</sup> The 2004 General Elections were conducted under these rules.<sup>21</sup> It was a step taken to make democracy healthy and corruption free.

### **Registration of Political Parties**

The party system represents essential feature of parliamentary democracy. But there is no clear mention of political parties mentioned in the constitution. Thus, the implemented statutory laws in 1989 were quite liberal resulting in faulty functioning of political parties.<sup>22</sup> The E.C. took rigorous steps to eliminate such parties. At present, only those parties are registered by the Commission which has at least 100 registered electors as its members and is also charging a nominal processing fee of Rs. 10,000 to cover the administrative expenses. E.C. mandated to hold elections in the party organization to ensure proper internal and democratic functioning.

### **Prevention of Criminalization of Politics**

Criminalization of politics has been a grave problem in India. As there are many politicians with criminal records. It is an embarrassing moment for a democratic country like India. As per reports, 12 candidates in Bihar and 17 in Uttar Pradesh had criminal cases against them during the 13<sup>th</sup> Lok Sabha elections.<sup>23</sup> The E.C. is trying to control these menace from bring various new norms from time to time. It has been urged by the E.C.I that no political party should give a ticket to the persons with a criminal background. The candidates are required to submit an affidavit regarding their past and present criminal records.<sup>24</sup>

### **Multi-Member E.C.I**

Due to certain faulty decisions take by the E.C.I., Supreme Court in the S.S. Dhanoa versus Union of India case<sup>25</sup> had observed: "When an institution like the E.C.I is entrusted with vital functions and is armed with exclusive and uncontrolled powers to execute them, it is both necessary and desirable that the powers are not exercised by one individual "<sup>26</sup>. The 1993 Constitutional amendment act mandated to make E.C.I as multi member body.<sup>27</sup> The Act

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<sup>20</sup> Anand Ballabh Kafaltiya, op.cit., p. 191 .

<sup>21</sup> . Ibid., p.90.

<sup>22</sup>Elections in India, Major Events and New Initiatives 1996-2200, E.C.I of India, New Delhi, 2000, p.311.

<sup>23</sup>Anand Ballabh Kafaltiya, op.cit., p. 191 .

<sup>24</sup> Id at Pg 90

<sup>25</sup> Infra 68

<sup>26</sup>Anand Ballabh Kafaltiya, op.cit., p. 186

<sup>27</sup>www.eci.pov.in

provided for appointment of three member body, but in case there is an issue in arriving a decision, a 4<sup>th</sup> member will be appointed to give majority decision.

### **Booth Capturing and Rigging**

Goswami Committee recommended that E.C. should implement more stringent actions to curb booth capturing and rigging. U/S 58A ROPA, 1951, gives power to take decisions on the question of booth capturing, rigging and intimidation of the voters. The E.C. can order fresh poll and held the earlier poll void. Video cameras shall be used in the sensitive areas.<sup>28</sup>

### **Electoral Photo Identity Card**

The E.C.I. in August, 1993 ordered the issuance of Electors photo identity cards (EPICs) for all the voters to prevent electoral fraud.<sup>29</sup>

### **Computerization of Rolls**

The major problem faced by the E.C.I. was regarding the large size of electorate which led to improper functioning. The manual system was replaced by the computerized system. The year 2002 was the beginning of a new era when the process of the computerization of the electoral rolls started.<sup>30</sup> At that time there was lack of skilled professionals in the system, which was the major drawback. E.C.I. made appointments from the I.T. sector. The Commission with the help of field officers and the I.T. professionals developed prototyping and adopted ISCII (International Standard Core for Information of Interchange and the INSCRIPT Keyboard, as both are standards of the Bureau of Indian Standards (BIS). The Commission also introduced for comprehensive coding.

### **Issues of the Booth Slips**

Since 2011, the booth slips were issued by the political parties to the electorates for the voters in general election as well as in some part of the country in local elections, too.<sup>31</sup>

### **Electronic Voting Machines (EVMs)**

Shri Kumar Sen was the first Chief Election Commissioner to introduce ballot boxes and symbol system in the elections. The commission tried their best to curb malpractices in the

<sup>28</sup>Representation of People Act, 1951,

<sup>29</sup>Elections in India , Major Events and New Initiatives 1996-2200 , E.C.I of India, New Delhi, 2000, p.321.

<sup>30</sup>M. Bhuvaneshwaran, Electoral Participation of Rural People , New Delhi, 2009, p.32.

<sup>31</sup>Dhinamani , Daily News Paper, Tiruchirappalli, 20.09.2011.

general elections and hold free and fair election. For the first time E.V.M.'s were discussed by the Goswami Committee to bring new innovation and advancements in the election procedures.<sup>32</sup> It was assured by several electronic experts of the Government of India that the EVM's are safe option to hold elections and prevent rigging in voting. For the first time the State of Kerala tested during the 1982 Legislative Assembly Elections on an experimental basis.<sup>33</sup> After the success, it the EC took decision to use EVM's for general elections in all the states. It made the counting easy and elections hassle free. 2004 onwards it was used throughout the country. But these days, political parties and some social activists are alleging that the EVMs can be easily manipulated.

### **3. Composition of the E.C.I**

#### **Constitutional Provision relating to the E.C.I.**

Article 324(2) of the Indian Constitution mentions E.C.I. and its constitution. A/c to the constitution there is shall be one C.E.C. and any number of E.C.'s as per the discretion of the president. Chief Election Commissioner shall act as the Chairman of the Election Commission.<sup>34</sup>

#### **Appointment of the C.E.C and E.C.s**

The C.E.C. and E.C. shall be appointed as per the constitution subject to the laws made by the parliament.<sup>35</sup> No laws has been made in this regard thus leaving the discretion of the appointment of E.C's and C.E.C. on the president with the help of the council of ministers. In the case, Bhagwati Prasad Dixit vs. Rajeev Gandhi<sup>36</sup> it was held that C.E.C. should possess the qualifications of a Supreme Court Judge. However, an independent body is looking into the matter regarding transparency in appointment of C.E.C.<sup>37</sup>

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<sup>32</sup>Anand Ballabh Kafaltiya, op.cit., p. 18

<sup>33</sup>J.C. Chatturvedi, Political Governance , Vol.2, Delhi, 2005

<sup>34</sup>*The E.C.I shall consist of the C.E.C and such number of other E.Cs, if any, as the President may from time to time fix and the appointment of the C.E.C and other E.C.s shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President*

<sup>35</sup>Supra 4

<sup>36</sup> AIR 1986 SC 1534

<sup>37</sup> Krishnadas Rajgopal, Constitution Bench to decide an 'independent mechanism' to appoint E.C.s, The Hindu, New Delhi, 23rd Oct, 2018

#### **4. Position of Election Commissioners vis-a vis Chairman of the Election Commission - S.S Dhanoa and T.S Seshan**

##### ***S.S Dhanoa vs. Union of India***<sup>38</sup>

The Supreme court held in this case:

a. It is necessary that more than one person is appointed for the proper functioning of the Election Commission. But a/c to Article 324(2), the appointment or abolition of the post falls in the purview of administrative body. It is the discretion of the president to appoint any no. of members from time to time as required.

b. Article 324(2) mentions that it is obligatory to appoint Chief Election Commissioner. The appointment for other positions such as Election Commissioners and Regional Commissioners was upto the president.

c. If abolition of post was done on the recommendation of the C.E.C., the court cannot held the decision was wrong if there is no evidence to prove it.

Supreme Court made an important observation in this case, held that the Chief Election Commissioner holds higher position than Election Commissioners.

##### ***T.N Seshan vs. Union of India***<sup>39</sup>

The Supreme Court in this case held that :

a. The decision of appointment of E.C.'s is not questionable as constitution has mentions provisions for multi member body under Article 324.

b. It was held that C.E.C does not hold superior positions to E.C.'s, however they might have special protection in some regard, such as salary and the process of removal is similar to Supreme Court Judges.

c. The C.E.C. shall act as a functionary of commission and cannot take arbitrary actions against other members of Election Commission.

##### ***E.C.I of India vs. Subramanian Swamy***<sup>40</sup>

In this case, Supreme Court agreed by the decision of the Madras High Court that the decision should be taken by the two Election Commissioner. But doctrine of necessity would require the decision of the acting Chief Election Commissioners.

Thus, it was concluded that a multi member body is required to lessen the scope of bias in

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<sup>38</sup> (1991) 3 SCC 567,

<sup>39</sup>[1995]Supp(2)SCR106

<sup>40</sup> 1996 SCC (4) 104

decision taken by the Commissioners in majority.

### **5. Conclusion and Suggestions**

This paper has made an attempt to analyze the electoral reforms in our country. Three suggestions are proposed in this paper in order to make the voting system, more effective. Though EVMs are useful for voting in our electoral system. The E.C.I of India still has to ensure the transparency in voting. Some political parties and social activists have requested strip votes in the EVM. This system may be very useful to reconcile the differences between manual and EVM votes. Internet voting can be considered as an effective way of voting. In this connection, the EVMs should be connected to the internet of every polling booth on the day of polling. The voters have the right to vote their respective candidate or party in EVM. Simultaneously, voters respective vote is registered with the E.C.I Website. The Commission should block their website during the time of polling. The vote will be registered in EVM, Internet and later a printout can be obtained. After polling, the E.C.I's should open its website. The result will be available in a few minutes. This system may be helpful in preventing booth or EVM capturing in also help in maintaining law order. The E.C.I should take effective steps for preventing proxy voting behavior. Hence, EC introduced the identity cards and the list system. However, 40 percent of the people does not register their votes as they claim to be in grants. Hence, the Commission may consider the introduction of the Bio-Metric Identity Card System for every voter. Polling booths should be easily accessible and can be places of frequent public use like bus stands, railway stations and other public meeting places. Each of these polling booths in these place should have one polling officer and one police man.

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