

A genuine representative government requires a good electoral system, viz. a system of choosing representatives of the people and a suitable machinery for the purpose. Part XV (Articles 324 - 329) of our Constitution lays down basic provisions regarding elections to the legislatures of the country, which shall be on the basis of adult suffrage. The Constitution has also removed the system of communal electorates established by the British Raj but has provided reservation of seats, as a temporary measure, for Scheduled Castes and Scheduled Tribes, the most backward and exploited segments of the Indian society. To make elections free and fair, the Constitution has also provided for an independent body called the Election Commission to conduct elections. The constitutional provisions, plus the Representatives of the People Act, enacted by Parliament in accordance with the power granted by the Constitution form the structure of the electoral system of the country.

1 The Election Commission

The superintendence, direction and control of preparation of electoral rolls for, and the conduct of, all elections to Parliament and State Legislatures and to offices of President and Vice-President are vested in a Commission. This Commission is called the Election Commission [Article 324(1)].

Composition. Clause (2) of Article 324 provides that the Election Commission shall consist of Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix. The Chief Election Commissioner and other Election Commissioners are appointed by the President.

Until 1989 the Election Commission was a single member body. On 7 October 1989, the President fixed the number of Election Commissioners (other than Chief Election Commissioner) at two until further orders. Thereafter, S. S. Dhanoa and V. S. Seigell were appointed Election Commissioners on 16 October 1989. However, on 1 January 1990, President rescinded his earlier notification and order, thereby making Election Commission single member body as

before.) But in October 1993 two Election Commissioners were appointed and they were given by an ordinance the same position and status as the Chief Election Commissioner. Further, the Commission was to act as a body taking decisions unanimously or by majority. The appointment of two Election Commissioners was aimed to "clipp the wings" of the Chief Election Commissioner, T. N. Seshan, who proved to be troublesome to the Government. The Ordinance was challenged by the Chief Election Commissioner. Though the Supreme Court, in its interim orders, maintained the *status quo* in the matter of the Chief Election Commissioner's position and powers, the court finally upheld the Ordinance. Thus the Election Commission at present consists of the Chief Election Commissioner and two other Election Commissioners who are equal in powers and status.

Before each general election, the President also appoints in consultation with the Election Commission such regional commissioners as he considers necessary to assist the Election Commission.

Independence of the Election Commission

Independence of the Election Commission is protected by a specific provision under Article 324(5) of the Constitution to the effect that—

- (i) The Chief Election Commissioner cannot be removed from his office except through a process of impeachment as in the case of a judge of the Supreme Court;
- (ii) Other Election Commissioners cannot be removed from office without the recommendation of the Chief Election Commissioner;
- (iii) The conditions of service and tenure of office of the members of the Commission cannot be changed to their disadvantage after their appointment. The term of office of the Chief Election Commissioner is 6 years, from the date he assumes office or till the date he attains the age of 65 years whichever is earlier.

Thus the Election Commission is conceived as a constitutional authority independent of all political and bureaucratic interference. However, critics have found some flaws in the composition and working of the Election Commission. First, the Chief Election Commissioner who heads the Election Commission is appointed by the President on the advice of the Prime Minister. But the Constitution is silent about the eligible qualifications—educational, legal, judicial or administrative—for this high post. This leaves much scope "for the exercise of political influence". Such fears were

expressed by some important members in the Constituent Assembly like Pandit Hirday Nath Kunzru and Shibanal Saxena. Second, the Constitution is also silent about the number of Regional Election Commissioners to be placed under the control of the Chief Election Commissioner and their qualifications, terms and conditions of service, etc. As a result the Chief Electoral Officer of a State is an officer of the State Government. In recent times the impartiality of Electoral Officers of some States has been questioned from some quarters. Third, there is no bar to the retiring Election Commissioner to a further appointment by the Government. Thus in 1986 the former Chief Election Commissioner, Mr. R. K. Trivedi, was appointed Governor of Gujarat. It is argued that the hope of future award is likely to prejudice the functions of the Election Commission. However it depends on the personality and integrity of the occupant of the office. We had P. Shastri and T. N. Seshan as Chief Election Commissioners who did not hesitate to perform their constitutional duty, without fear or favour.

Functions of the Election Commission

The duty of the Election Commission, as stated in Article 324 of the Constitution, is to superintend, direct and control the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to State Legislatures and of elections to the offices of the President and Vice-President of India. In the discharge of this constitutional duty the Election Commission performs a number of functions.

1. The preparation of the electoral roll is one of the major tasks of the Election Commission. Unlike the practice in Western democratic politics like the United States, the registration of voters is not the responsibility of the individual voter but of the Central Government, and especially of the Election Commission. After every decennial census and before a General Election, the Commission's function is to suitably revise electoral rolls, to correct errors and include the names of new voters as they reach the minimum age of 18, delete the names of those who are dead or who became ineligible to vote. In short, its task is to keep the electoral rolls accurate and up-to-date.

2. The Commission appoints a Chief electoral officer (always a State Government official) for each State, and electoral registration officers and returning officers and assistant returning officers for each Assembly and Parliamentary constituency. The Chief Electoral Officer of a State, under the direction and control of the Election Commission, supervises the preparation including revision of

electoral rolls and the conduct of all elections in the State. The Commission is to supervise the entire electoral machinery throughout the country to ensure free and fair election.

3. The Commission issues notification specifying the timetable for filing nominations, scrutiny, withdrawals and polling.

4. It appoints officers for inquiring into disputes relating to electoral arrangements.

5. It registers political parties for purpose of elections, grants them the status of "national" or "State" parties on the basis of their previous poll performance and allots a symbol for electoral purposes. In case a party splits and two or more rival groups claim to be the original party and the rightful heir to its symbol, the Election Commission settles such disputes. Such a dispute first came to the Election in 1969 after the Congress split in 1969. Mrs. Indira Gandhi claimed her Congress to be the rightful heir to the original party and hence to the original party's election symbol of a pair of bullocks. The Election Commission rejected the claim and allotted Mrs. Gandhi's Congress the symbol of a cow and a calf. A similar decision was made by the Commission in 1973 after the split of the National Conference in Jammu and Kashmir.

6. The President of India or the Governor of a State makes available to the Election Commission, on its request, such staff as may be necessary for the discharge of its functions.

7. In the event of booth capturing or other irregularities, the Commission on the basis of a report from the Returning Officer may either declare the poll at a particular polling station void and appoint a date for fresh poll or countermand election in that constituency (Sec. 58A inserted in the Representation of the People by Act 1 of 1989).

8. The Commission can also issue a code of conduct to be observed by political parties and people at the time of elections. The Chief Election Commissioner T. N. Seshan, during his tenure, issued such a code and threatened to take action against any candidate for violation of a code.

9. In case of disputes relating to disqualifications of a legislator, the Commission has to advise the President or the Governor, as the case may be, to take a decision.