



A STUDY ON THE CONTRIBUTION OF THE ELECTION COMMISSION OF INDIA IN SHAPING A DEMOCRATIC FRAMEWORK, FOCUSING ON ITS OPERATIONAL ACCOUNTABILITY AND JUDICIAL INTERVENTIONS

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Abstract

India is a Socialist, Secular, and Democratic Republic and holds the distinction of being the largest democracy globally. Since the establishment of the modern Indian nation-state, elections have been conducted periodically in a free and fair manner, in tune with the principles laid out in the Constitution, electoral laws, and the system. The Election Commission of India is entrusted with the authority to oversee, guide, and manage the entire electoral process. India opted for itself the model of Parliamentary democracy based on the concept of Universal Adult Franchise. Transparency of the electoral process is very instrumental for the successful functioning of the said model. Now a days, election is considered as one of the most important means in participating and exerting control over the political power. Through the process of election the states ensure the participation of the masses in the formation of the Government. Purity and sanctity of the electoral process under the supervision of the Election Commission is sine quo non for the existence of the Democracy. This mode of accountability of the Commission in the case of India is vulnerable and there is a pressing need for legal reforms to secure the independence of the Election Commission and enable it to effectively conduct the election.

Key words: *Election, Democracy, Government, Accountability, Reforms.*

Introduction

When India gained independence over fifty years ago, it adopted the political system of parliamentary democracy, grounded in the principle of universal adult franchise. The integrity of the electoral process is vital for the effective operation as well as smooth functioning of this system.¹ Many political analysts and observers of the Indian political landscape have often highlighted that elections in India are generally conducted with a significant degree of fairness, ensuring that the process reflects the will of the people. Over the past few decades, there has been a noticeable rise in the participation of the electorate, particularly among marginalized and disadvantaged groups. One possible explanation for this growing involvement is the gradual decline of other democratic institutions and norms that once served as the channels for political engagement and the transfer of demands and allegiances. As these institutions weakened or became less effective, elections have increasingly emerged as the primary, if not the only, mechanism through which various social groups—especially those historically excluded from power—can communicate their needs, grievances, and political loyalties to the state.

In this context, elections have acquired greater significance, especially among the poor and ordinary masses, who now view voting as their most accessible and effective means of participation in the democratic process. For these individuals, elections are seen not just as a civic duty, but as an opportunity to influence the political system, make their voices heard, and potentially exert some form of control over political power. This growing importance of elections has led to an increase in voter turnout, especially in rural areas, where the poor and marginalized populations are more likely to be

¹ Vivek Yadav, —Constitution Review and Election Commission| Mainstream 16, 41(44), (October, 2003).



concentrated.² Holding general elections to Indian Lok Sabha is a massive exercise. Through elections the states ensures its citizens participation in the making of government. Purity and sanctity of electoral process is an essential part for the existence of the democracy.³ Pollock observed, —Unless public elections are conducted with accuracy and efficiency, not only the public services are discredited but the whole democratic system is endangered.

The Committee of the Constituent Assembly on Fundamental Rights had put forward the recommendation that the independence of elections should be considered a fundamental right of every citizen. This proposal reflected the Committee's strong belief that the fairness and integrity of elections were of utmost importance in a democratic society. The Constituent Assembly, while agreeing with the Committee's view on the significance of fair elections, ultimately decided against incorporating the right to free and fair elections directly within the chapter on Fundamental Rights. Instead, the subject of elections and electoral processes was placed in a distinct section, which was later formalized as Part XV of the Indian Constitution. This section specifically addresses the subject of elections, empowering the Election Commission with the responsibility of supervision and ensuring the reliability of the electoral process in India.⁴ The founding fathers of the Indian Constitution established the Election Commission with the primary objective of ensuring the conduct of free and fair elections. This provision was included into the Constitution to fulfill the long-cherished objective of maintaining a democratic electoral system, where every citizen's vote is respected and the integrity of the election process is upheld.⁵ The overall responsibility for overseeing, managing, and regulating all elections to the Parliament, the Legislatures of the States, and elections to the offices of the President and Vice President, as prescribed under this Constitution, shall lie with a Commission. This includes the authority to appoint election tribunals to resolve any doubts or disputes arising from or related to elections to Parliament or the State Legislatures.⁶ In this context, Dr. Ambedkar advocated for the consolidation of election-related functions under the authority of a central Election Commission.⁷ To ensure fairness and prevent any section of the society from being disadvantaged, it was considered as the most effective to establish a single central authority. This body would be independent of local pressures and have oversight over the entire electoral system across the nation.⁸

The Election Commission's Role in Preventing 'Corrupt Practices' and Addressing 'Election-Related Offenses'

The integrity and sanctity of the electoral process can only be upheld if the oversight of the electoral system is entrusted to an independent body, ensuring its efficient and unbiased operation.⁹ Therefore, the Constitution provides for an independent Election Commission.¹⁰ It possesses extensive executive, legislative, and quasi-judicial powers, often being referred to as a central authority endowed with substantial power. It also oversees the entire electoral system in the country and holds comprehensive

² Yogendra Yadav, —Reconfiguration in Indian Politics: State Assembly Elections, 1993-95], *Economic and Political Weekly* (January 13-20, 1996).

³ R.P. Bhatta, —Electoral Mechanism in India in Virender Grover (eds.), *Political System in India 11*, Vol. 6 (New Delhi, 1988).

⁴ V.N.Shukla, *Constitution of India*, 989(EBC, 2020).

⁵ *The Constitution of India*, Art. 324.

⁶ *Ibid.*

⁷ *Constitutionally Assembly Debate* 905, Vol. VII, June 15, 1949 .

⁸ B. Shiva Rao, *The Framing of India's Constitution* 460 (New Delhi, 1968).

⁹ *Article 324 of the Constitution of India.*

¹⁰ K.C. Sunny, *Corrupt Practices in Election Law* 241(Eastern Book Company, Lucknow, 2012).



authority to take necessary actions to maintain the integrity and fairness of the election process.¹¹ The only restriction on its legislative authority is that the exercise of this power must not conflict with the explicit provisions of the Constitution or any statute.¹² The Commission should act at par with the philosophy of natural justice when it is exercising executive or quasi-judicial power.¹³ As the election is a fight for winning power to carry on the affairs of the most powerful human association, namely, the State, the candidates and parties sometimes do not hesitate to have recourse to any means and methods however illegal, immoral, foul or nefarious they may be out that some devices such as the taking away of ballot boxes, the impersonation of voters, etc, have been made almost impossible by the enactments. But, other less direct forms of electoral corruption and offences as gifts in money of kind, promises of employment and various forms of pressure and intimidation are very difficult to penalize, though special provisions to deal with them is made, in most countries. It may be pointed out that all the forms of electoral corrupt practices and electoral offences are almost universally forbidden. And India is not an exception to it. The statute has made elaborate provision to make sure that the electoral process is not vitiated by the corrupt practices.¹⁴

Chapter IXA, titled "Offences Relating to Election,"¹⁵ was incorporated into the Indian Penal Code through the Indian Election Offences and Inquiries Act of 1920. The aim was to establish penalties for election-related malpractices, marking a step toward safeguarding the integrity and fairness of the electoral process and protect the purity of franchise.

In addition to the provisions in the Indian Penal Code, Chapter I, Part VII of the Representation of the People Act, 1951, outlines various 'corrupt practices.' Whether these legal provisions have effectively prevented such practices is another issue. It is commonly believed that many of the activities deemed illegal continue to occur in various regions across the country.¹⁶ The Representation of the People Act, 1951 simply says that —corrupt practices means any of the practices specified in Section 123 of the Act, which includes Bribery, Gift, Gratification, Undue influence, etc.¹⁷ According to Sub-section (3) of Section 123 of the Representation of the People Act, 1951, "Appealing to vote or not to vote for a candidate based on their religion, race, caste, community, or language" is considered a corrupt practice.¹⁸ Additionally, Section 125¹⁹ of the Act makes it a criminal offense to incite hostility between different groups in the context of an election. The penalty can include up to three years of imprisonment, a fine, or both. A conviction under this section also leads to disqualification as per

¹¹ *Mohinder Singh v. Chief Election Commissioner* (1978) 1 SCC 405.

¹² *A.C. Jose v. Sivan Pillai*, (1984) 2 SCC 656.

¹³ *Supra* Note 11.

¹⁴ *Supra* Note 10.

¹⁵ *Indian Penal Code*, 1860, secs. 171-A to 171-I.

¹⁶ Raisa Ali, *Representative Democracy and Concept of Free and Fair Elections* 297 (Deep & Deep Publications, New Delhi, 1996).

¹⁷ *The Representation of People Act, 1951*, s. 2(c).

¹⁸ Anshuman Mishra, *Election Laws with Special Reference to Corrupt Practices* 64 (Central Law Publications, Allahabad, 2012).

¹⁹ *The Representation of People Act, 1951*, Section 125 states that:

Promoting enmity between classes in connection with election.—Any person who in connection with an election under this Act promotes or attempts to promote on grounds of religion, race, caste, community or language, feelings of enmity or hatred, between different classes of the citizens of India shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.



clause (i) of sub-section (1) of Section 8 of the Act. The Election Commission of India plays a crucial role in preventing actions that undermine the principles of the Constitution and violate electoral laws.

Publication of false statements

Election law permits political criticism during elections; however, to maintain the integrity and spirit of the electoral process, character assassination and defamation of any candidate are not allowed. Consequently, the dissemination of false statements about a candidate through election speeches, pamphlets, booklets, handbills, posters, or media such as press or television is classified as a corrupt practice under Section 123(4) of the Representation of the People Act, 1951.²⁰

Free Conveyance of Voters

Section 123(5) of the Representation of the People Act, 1951 prohibits the hiring or use of vehicles or boats to transport voters to and from polling stations, as this could influence voters and interfere with the free voting process. Section 133 outlines the penalty for the illegal use of transportation during elections. It states that anyone found guilty of this corrupt practice can face up to three months of imprisonment and a fine. Political parties and candidates must maintain accurate records of vehicle usage during elections. If this rule is violated, the Election Commission can take prompt action against the concerned political party or the candidate.

Incurring Unauthorized Expenditure

Section 123(6) of the Representation of the People Act, 1951 addresses the prohibition of unauthorized expenditures by candidates and political parties. Any spending that exceeds the specified limit or authorizes expenditure in violation of Section 77 of the Act is considered a corrupt practice. Section 77 mandates three requirements: (i) accurate records of election expenses must be maintained, (ii) the records must include prescribed details, and (iii) the total expenditure must not exceed the prescribed limit.

In the case of *L.R. Shivaramagowde v. T.M. Chandrashekar*,²¹ the Supreme Court stated that the Election Commission has the authority to examine the accuracy of the election expense accounts submitted by a candidate. If the account is found to be false or inaccurate, the Commission can disqualify the candidate under Section 10A of the Representation of the People Act, 1951.

Obtaining Services of Government Servant

Section 134-A of the Representation of the People Act makes it illegal for government employees to serve as election agents, polling agents, or counting agents. It stipulates that if a government servant acts in any of these roles for a candidate during an election, they may face imprisonment for up to three months, a fine, or both. Additionally, incidents of 'booth capturing' and 'voter impersonation' during elections are classified as corrupt practices.

²⁰ The Representation of People Act, 1951, Section 123(4) reads as under:

—The publication by a candidate or his agent or by any other person 9[with the consent of a candidate or his election agent], of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate or in relation to the candidature, or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.¶

²¹ AIR 1999 SC 252.



The Election Commission's Role in Preventing 'Electoral Offences' under the Representation of the People Act, 1951.

In addition to corrupt practices during elections, several actions of commission and omission are classified as "electoral offences." While proving a corrupt practice may result in the disqualification of a candidate, committing an electoral offence can lead to legal penalties for the individual involved. Furthermore, a person who commits an electoral offence can be punished regardless of whether the act was carried out with the candidate's consent. Electoral offences are outlined in sections 125 to 136 of the Representation of the People Act. Some offences under sections 125, 133, and 135-A are also considered corrupt practices under section 123 of the Act.

The Election Commission is responsible for ensuring free and fair elections. Its duty is to organize elections in a way that builds trust among political parties, candidates, and the public. To achieve this, the Commission carries out a variety of tasks. Article 324(1) of the Constitution grants the Election Commission the authority to oversee, guide, and manage the election process. These powers are supported by the Representation of the People Act, 1950 and 1951, along with the rules and orders made under these laws. The Supreme Court in the case of *M.S. Gill v. Chief Election Commissioner*²² was of the opinion that the terms 'superintendence, direction, and control' used in clause (i) of Article 324 of the Constitution are broad in scope and encompass the authority to take all necessary actions to ensure the smooth conduct of elections. However, this power is subject to any laws enacted by Parliament or State Legislatures under Articles 327 and 328. According to the Supreme Court, Article 324 serves as "a reservoir of powers" for the Election Commission.

Implementation of Model Code of Conduct

The Representation of the People Act, 1951 outlines various corrupt practices that may undermine the electoral process. However, it is not feasible to account for all potential activities that could disrupt the smooth conduct of elections. To address this gap, the Election Commission (EC) introduced the Model Code of Conduct (MCC) in 1984, developed in consultation with political party representatives. The MCC aims to ensure fair competition between political parties and candidates, maintaining a level playing field during elections.

The MCC lays out guidelines that regulate several aspects of electoral conduct, which include: (i) the general behavior of political parties and candidates, (ii) the organization of election meetings and processions, (iii) the actions of all involved on polling day, (iv) the entry protocols into polling booths, and (v) the conduct of the ruling party, whether at the central or state level.

The Election Commission of India plays a crucial role in implementing the MCC to uphold the integrity of the election process. It appoints election observers and issues relevant instructions to political parties and candidates to ensure that elections are conducted fairly and transparently.

Judicial Response Regarding Corrupt Practices and Electoral Offences and other Malpractices

Judiciary has a crucial role to play in relation to prevention of corrupt practices during the election process due to Article 329 (b) of the Constitution. In *N.P. Ponnuswami v. Returning Officer*,

²² AIR 1978 .



Namakkal Constituency,²³ it was held that: The purpose of Part XV was to establish that any issue that could be grounds for challenging an election, including the rejection of a nomination paper, should not be raised at an earlier stage in court. Instead, such matters should be addressed in the specific manner and at the stage outlined in Article 329(b). This is the logical consequence of Article 329(b), as allowing challenges to be made earlier would render the provision meaningless and lead to a conflict of jurisdictions.²⁴

In the case of **Trilochan Singh v. Karnail Singh**,²⁵ a full bench of the Punjab and Haryana High Court was tasked with determining whether a gift or promise made for a public purpose falls under the definition of bribery as outlined in Section 123(1). The court noted that the answer to this question would depend on several factors, including: (i) whether the gift provides satisfaction or pleasure to an individual or group, (ii) whether the gratification holds some value, even if not directly measurable in monetary terms, and (iii) whether the gift or promise is made by a candidate with the corrupt intent to directly or indirectly influence the recipient's vote or to sway other voters to vote in their favour.

In the case of **Iqbal Singh v. Gurdas Singh**,²⁶ the allegation was that a significant number of gun licenses were issued to influence electors to vote for the winning candidate. The Supreme Court ruled that licenses that provide tangible benefits, such as those for exporting, importing, or supplying fertilizers, would be considered as "gratification" and seen as compensatory. In contrast, the issuance of firearm licenses, being primarily regulatory in nature, would not fall under Section 123(1).²⁷

In **Shiv Kirpal Singh v. V.V. Giri**,²⁸ the Supreme Court elaborated on the meaning of the phrase "free exercise of his electoral right" by stating that it does not imply that a voter should remain unaffected by influence. The court explained that this expression must be understood in the context of an election within a democratic society, where candidates and their supporters are naturally entitled to seek support through all legal and legitimate means. Such activities by candidates or their supporters do not disrupt or attempt to interfere with the voter's free exercise of their electoral rights.

In **Janak Sinha v. Mahant R.K. Das**,²⁹ it was alleged that voters were intimidated and threatened at various locations on the day of voting, as well as prior to it, which interfered with their ability to freely exercise their electoral rights. The High Court concluded that these actions were carried out by the supporters of the appellant and consequently annulled his election. The Supreme Court upheld the High Court's decision, stating that when a candidate's supporters prevent voters from casting their votes in the candidate's presence, it can only be concluded that this was done with the candidate's consent, amounting to direct interference.

In the case of **Ram Singh v. Col. Ram Singh**,³⁰ the allegations involved the respondent, who, accompanied by his associates, entered the polling booths armed with a gun. They threatened the

²³ AIR 1951 SC 64.

²⁴ Ibid.

²⁵ AIR 1968 Punjab 416 at 426.

²⁶ AIR 1976 SC 27(3JJ).

²⁷ Ibid.

²⁸ AIR 1970 SC 2097.

²⁹ AIR 1972 SC 359.

³⁰ AIR 1986 SC 3 (3JJ).



polling officers, forcibly took around 50 ballot papers, marked them in favor of the respondent, and then placed them in the ballot box. Additionally, voters were intimidated and coerced, causing them to flee without casting their votes. The Supreme Court considered these actions to be corrupt practices, acknowledging the severe impact on the electoral process.

Conclusion

From the preceding discussion, it is clear that the Election Commission of India plays a significant role in maintaining the integrity of the electoral process by ensuring that elections are conducted in a free, fair, and transparent manner. The Election Commission is responsible for overseeing the entire electoral process, including the implementation of the Model Code of Conduct, enforcing rules, and ensuring that political parties and candidates adhere to legal and ethical standards during elections.

In addition to the Election Commission's role, the judiciary also plays an essential part in safeguarding the democratic process. The courts ensure the accountability of the Election Commission through various mechanisms, such as judicial review, which allows them to examine the actions of the Election Commission and its adherence to the law. The judiciary can hear writ petitions challenging the decisions or actions of the Election Commission, resolve election disputes, and initiate contempt proceedings against the Commission or its officials for failing to comply with court orders.

Furthermore, the judiciary plays an important role by entertaining public interest litigations (PILs) and exercising judicial oversight to ensure that the Election Commission's conduct is transparent, fair, and aligned with the law. Through these legal avenues, the judiciary ensures that the Election Commission upholds the highest standards of fairness, which ultimately preserves the credibility of the electoral system in India. Thus, both the Election Commission and the judiciary work in tandem to protect the integrity of the election process, ensuring that elections are conducted without bias and in strict adherence to democratic principles.