

Role of Election Commission: An Analysis

Sukriti Yagyasen

Assistant Professor, School of law, Galgotias University

Abstract: A general election in India is a gigantic exercise. It is equal to holding polls in Europe, the United States, Canada and Australia all put together. General elections to Lok Sabha and State Legislative Assemblies in India are held under the supervision, direction and control of a constitutional body - the Election Commission of India. Elections to local bodies – Panchayats and Nagarpalikas – are the responsibility of State Election Commissioners..

Keywords: Election Commission.

1. Introduction

Nearly fifty years of experience has brought to fore many distortions, some very serious, that have crept into the conduct of India's elections generating a deep concern in most quarters. There are constant references to 3 Ms, viz. money power, muscle power and mafia power and to 4Cs, viz. criminalisation, corruption, communalism, and casteism. Also, majority of our representatives are elected by a minority of votes cast thereby making their representative credentials doubtful. The result is that the legitimacy of our political process gets seriously compromised.¹

The preamble to the constitution declares India to be Democratic Republic. Democracy is the basic feature of the Indian Constitution.² Democracy is sustained by free and fair elections in country. It is well established that only free and fair election to legislative bodies in country can guarantee the growth of democratic polity. It is the cherished privilege of citizen to participate in electoral processes which place person in the seats of power.

India has been characterized as the biggest democracy in the world because of colossal nature of the elections held in country. Free and fair election is being held as basic feature of the constitution of India.

During the long struggle for freedom and British rule, the people of our country had nourished within their hearts and cherished the dream of *Swaraj*. With independence we proceeded to consolidate our gains, so that freedom that was obtained with so much sacrifice was not frittered away. Therefore, when the constitution was adopted, we gave to ourselves, the constitution of India which proclaimed India as Sovereign, Socialist, and Democratic Republic. Founding fathers of our constitution studied various forms of government prevalent in other parts of the world and choose

¹ National commission to review the working of Constitution, 2001.

² M. P. Jain, *Indian Constitutional Law* (Wadhwa and Company Law Publishers, New Delhi, 2005)

democratic form of government for our country. to strengthen this aspect of democracy they made provision for elections and these elections are to be conducted by the election commission of India. This election commission is entrusted with the duty to conduct free and fair elections. Later on, it was added that free and fair election is a part of basic structure; whenever anything becomes part of basic structure then state becomes duty bound to ensure that characteristic to its people. Hence,, this responsibility lies on the election commission.

2. Election commission and its role in sustaining parliamentary democracy

The preamble to our constitution declares India to be "Sovereign , Democratic Republic". The word democratic has been assigned to many meanings but we must ascertain what "Democratic" means in our Constitution. Speaking of Parliamentary form of representative government prevailing in the United Kingdom, which was also adopted in the federal constitution of Canada and Australia. The preamble to our constitution, as reflected in its provisions, particularly part III (Fundamental Rights), shows that our democracy is that of a free and open society as opposed to an unfree and closed society. Free and fair elections are a basic postulates of free democratic society and under our constitution elections are held on the basis of adult universal suffrage for every citizen who is not disqualified.

The constitution establishes the Election Commission, a body autonomous in character and insulated from political pressures or executive influence. Care has been taken to ensure that commission functions as an independent agency free from external pressure from the party in power, or the executive of the day.³ It is constitutionally established federal authority responsible for administering all the electoral processes in the Republic of India. Election commission is entrusted

³ S. S. Jaswal, " Election Commission of India: It's role in sustaining parliamentary democracy" 22-30 *Banglore Law Journal* 1(3) (2006)

with lot many power and one of the most important power could be said as it has power of superintendence, direction and control of all elections to the parliament of India and state legislatures and of elections to the office of President of India and the vice president of India. The power of superintendence, direction and control of all elections to the Local Government/Municipal Corporation by the State Election Commission.

The commission is set up as a permanent body under article 324(1). It is an all India body having jurisdiction over election to parliament, state legislature, office of the president and vice president as discussed earlier.

The reason for having an all India body to supervise and conduct elections, rather than separate bodies to organize elections in each state, is that some states have a mixed population as there are native people as well as others who are racially, linguistically or culturally different from native people. A state government could discriminate against outsiders by so managing things as to exclude them from electoral rolls and thus to deprive them of their franchise which is the most basic right to democracy. In order to prevent injustice being done to any section of people, it was thought best to have one central body which would be free from local influences and have control the entire election machinery in the country.⁴

3. Election commission and electoral reforms -As Proposed By Commission

(i) Preventing criminalization of politics:

It is well known that conviction can take a lifetime in many Indian courts, sufficient to enable a criminal to enjoy a full political career or even try to influence the process in his or her favor by acquiring power through ballot. In this scenario, greater activism from the country's highest constitutional bodies against criminalization of politics would be extremely pertinent. Thus keeping all this mind as discussed earlier it was made compulsory to file an affidavit about their convictions in cases covered by s.8 of the Act, which disqualifies a person convicted of criminal offence for a certain period of time according to the nature of the offence mentioned therein.

(ii) More powers to Election Commission

Election commission shall be entrusted with more powers so that it may work efficiently. Certain other powers like it should be authorised to make certain recommendations for referring any matter of investigation to any agency specified by it for prosecution of any person who has committed any electoral offence and for trial of any offence under the Act. The commission also proposed to ban the transfer

of election officers on the eve of elections. It adversely affects the elections.

Whenever election commission will be given more powers then it would be beneficial for conducting election in fair manner. Election commission should be independent in its functioning and its independence shall be safeguarded by laws. It shall be made such so that the party in power could not affect the election procedure and the fairness of elections is maintained.

(iii) Women Empowerment

It is also one of the recommendations of election commission for electoral reforms. Reservation of seats for women in union and state legislatures has been perceived to be an important tool for women empowerment in India. There has been a legislation for this pending in parliament. There is growth of many non serious parties and for that election commission has suggested that s. 29A (Registration of Political Parties) of the Act, be amended so as to authorize the commission to issue orders regulating registration and de-registration of political parties.

(iv) Inner party democracy

The National Commission to Review the Working of the Constitution recommended that there should be comprehensive legislation regulating the registration and functioning of political parties or alliances of parties. The proposed legislation should provide for compulsory registration of every political party or pre poll alliance. It should lay down conditions for the constitution of a political party or alliance and for its registration, recognition, deregistration and derecognition.

One of the recent achievement of the commission is to achieve inner party democracy and it has given directions on the above lines. In this regard it can be suggested that politicians should retire beyond a certain age.

(v) On defection

The decision of Hon'ble Speaker relating to defection has attracted controversies. In that regard Election Commission has suggested that the question of disqualification should be decided by President and Governors on the recommendation of the Election Commission of India like recommendation for disqualification under s. 8A of the act (disqualification on the ground of commission of corrupt practice). The commission also made it clear that it is not making such a recommendation to enlarge its jurisdiction but is merely clarifying that it would not shrink its responsibility of tendering opinion to the President/Governors in such matters, if such a duty is cast upon it.

⁴ See Dr. Ambedkar's speech, VIII CAD, 905-7.

(vi) *Negative Voting*

The election commission has also supported the view that there should be conferment of right on the voter to cast a negative vote so as to enable him to say that none of the candidates is worth of his vote.

The commission has said that providing such an option for negative voting would be in interest of promoting democracy. Every person will be able to show that whether he wants any party to come in power or the person does not have any faith in any of the parties. It would definitely send clear signal to political party that what the electorate thinks about them. It would in a way help the political parties to be construed in such a way that people start reposing their faith in them. Further, it said that it will serve two purposes, the first being that the electoral will be able to convey his dissent against contesting candidates and the second one that it will incidentally reduce bogus voting.

These are the electoral reforms as suggested by the election commission and to ensure healthy election and better democracy these recommendations should be made a part of the system. This will provide an effective framework for elections and the people chosen for governing the country a better one.

4. Election commission and changing contours of politics

Election commission at the past era worked calmly because then there was existence of one party system. It was comparatively as an easy task for the election commission to conduct the election. Now, the scenario has been changed and it is no more a single party system in our country. There is multi party system in country and the load on election commission will definitely increase then. Aspirations by multi parties to attain or hold on to power have hugely increased rule-bending, rule floating and aggressiveness. These transformations in politics demand not only an altered approach to electoral work, but perhaps a reform in setting up of election commission itself.

Election commission has started performing the dual role. In recent years, especially since the onset of coalition era, the election commission has had to expand its spread much beyond its conventional role. It has had to perform twin task of (i) conducting elections and (ii) ensuring unhindered participation in election.

As the time has changed there has been an increase in number of voters also. The number of parties has increased and with that increase in number of parties the number of voters have also been increased. This has then now become as an important task of election commission to handle this. As there are many parties there will be frictions among the parties itself. Then the state institutions will be open to internal cleavages and tensions. The election commission as an institution

which has to go with handling one of the most crucial process of a democracy, namely, the elections, cannot escape this conflict. It is well established that they will also be affected by such a conflict. Thus in such a complicated situation it is required that the state institution should not become the beholden of politics and shall not stop functioning fairly and impartially. The independence of the election commission should be maintained and the election commission should be reformed accordingly. The recommendations of the electoral reforms should be given a heat to.

As there is growing political competition, the model code of conduct and Representations of People's act shall be adhered to by the political parties. The process of reform of the Election Commission to further raise its trust levels is something which should be carried out. It can be easily carried out as it is not a complicated process to carry out reforms in election commission. The possibility of any major political friction over this reform looks very slim.

It is nevertheless, a matter of pride that democracy has taken firm roots in India. As there has been increase in number of voters and number of parties since inception it has made a point that the democracy has been strengthen in the country, to a large extent the election commission has faithfully discharged its function of conduction elections. This onerous responsibility to the election commission was entrusted on them by the founding fathers of our constitution and people of India. Change of governments, both at the centre and state levels, more than once in the past, by means of ballot, rather than bullet is grand manifestation of democratic values to which the people of India has shown firm commitment. That is why supreme court has described India as an "oasis of democracy". Hence, the election commission though is functioning in a well prescribed manner but the point is that as there have been the starting of the era of coalition parties and the friction in politics will definitely increase, so then, the election commission may perform all its duties in the required fashion, that is a task. So to achieve that task it is required that the election commission shall be reformed, the independence of the election commission shall be maintained so that they can perform their duties effectively and elections in the country are conducted peacefully in future also.

5. Conclusion

Election commission truly has become an independent body. It has acquired a respectable status and position among the citizens of the country. Besides supplying marker ink to Afghanistan where former election officials from India were in charge of ensuring free and fair elections, India left an indelible mark on that country's elections and all that could be made possible

due to efforts of these officials.⁵ This proves that Election Commission has earned an incredible credit not in India but also abroad and it is a good signal.

However, on several occasion election commission has been criticized for the fact that it has taken certain decisions which are 'out of jurisdiction'. Later on, it was justified that it is required for the election commission to perform its functions in that manner so that they can conduct the election in free and fair manner. This is one of the gigantic tasks in a country like India. Whenever election commission has issued notifications to the political parties for violating Model Code of conduct it has been an argument of the political parties that they have issued notifications 'out of their jurisdiction'. Though such a power is conferred by the election commission by themselves by inserting a new para 16A to Election Symbols (Reservation and Allotment) order, 1968. The order was amended by invoking s 29A of the Act. It is submitted that commission has no such power firstly because the Model Code of Conduct has no legal sanction and secondly commission has usurped the legislative power which is beyond its jurisdiction since it is only Parliament which can amend s.29A. Therefore it can be said that para 16A is void in law. However one cannot deny the fact that such a measure taken by election commission has helped in the process of elections. It has also helped in preventing the undesirable activities taking place during elections. Ultimately it is the voters who take cognizance of each and every activities of election commission.

Furthermore, election commission has suggested series of steps so that it can stop criminalization in politics; like filing of declarations by political parties with commission that they would neither field candidates nor give tickets to those who have been connected with criminals, even if imprisoned for a period less than five years. Another suggestion that would have enabled the commission to crack the whip was the power, after giving them reasonable opportunity to be heard, of derecognizing political parties, who were found fielding convicts imprisoned for five years or more as candidates for parliament or assemblies. The commission was also of the view that nomination form should contain a column seeking information that whether the candidate has been ever jailed or not and if so then the duration and all. They in fact wanted that if any of the candidate provided the false information then his election shall be cancelled and he shall be given punishment of five years or fine or both. The commission's order has had a notable effect on political parties who have become more cautious in nominating candidates. So this has been one of the achievements of the Election Commission to conduct elections in free and fair way. It could be also suggested that when the judiciary and Election Commission are vindicating their role sincerely

and effectively, it would be commendable if the civil society also asserts its responsibilities and act more consciously while casting their ballot, so that these efforts find fruition in validating a vivacious democracy.

Some changes in the constitution and electoral reform is required if we want not only to save strengthen parliamentary democracy, but also to have a strong and stable clean efficient and accountable government. The aims of electoral reforms should be to tackle criminalization of politics, communalism corruption and casteism

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⁵ The Indian Express (Lucknow), Sept 30,2004.