

# Adoption of Election Commission in India

## Abstract

The Indian Independence Act of 1947 provided the transfer of power, from the British Crown and the British Parliament, to the Constituent Assembly and it took place on August 15, 1947. Accordingly, the Constituent Assembly met at the midnight of August 14-15, 1947 under the Chairmanship of Dr. Rajendra Prasad for assumption of power for the governance of free India. The Constituent Assembly was formally called into session by Governor General and it met on December 9, 1946 for its inaugural session. 210 members attended the session (this included the representatives of all sections of the population of British India). The enforcement of the Indian Independence Act of 1947 resulted into significant changes in the situation, and the Constituent Assembly became vested with sovereign political constituent power.<sup>1</sup> On August 29, 1947, the Constituent Assembly appointed a Drafting Committee, under the Chairmanship of Dr. B.R. Ambedkar. It was an expert committee<sup>2</sup> 'embodied the decisions of the Assembly with alternative and additional proposals in the form of Draft Constitution of India' which was published on February 21, 1948. The Constituent Assembly again sat in November 1948, to consider the provisions of the draft clause by clause. After several sessions the consideration of the clauses or second reading was completed by October, 17, 1949. The Constituent Assembly again assembled on November 14, 1949 for the third reading of final draft and finished the task on November 26, 1949 on which date the Constitution received the signature of the President of the Assembly and was declared as passed.<sup>3</sup>

As soon as the Constitution was formally signed and authenticated by the President, the task assigned to the Constituent Assembly was completed and it went into dissolution. Certain Article of the Constitution came into force with immediate effect, that is, from November 26, 1949. These Articles included the provisions to the citizenship, elections, oath of the office of the President of free India and formation of the Election Commission<sup>4</sup> and the rest came into force on January 26, 1950<sup>5</sup> The Election Commission of India comprises some notable features that make it a unique election body.

**Keywords:** Constitution, Election, Commission of India, The Indian Independence Act, Constituent Assembly.

## Introduction

One of the important features of the Election Commission is that it is an independent body absolutely free from any kind of control and interference from political parties, be it ruling party or opposition. The striking feature of the Election Commission lies in its uniqueness in having Constitutional Provisions for a national Election Commission with jurisdiction for the election of Central and State Legislatures and of the office of the President and Vice-President, for no other country, barring South American countries like Equador, Nicaragua, Chili, Brazil and Canada, has such Constitutional provisions. The Federal Election Commission of the United State of America, unlike the Election Commission of India, is limited to federal elections only. Most of States of the United States have their own bipartisan Commissions and members of those commissions are appointed on the recommendation of two major parties. They are, however, controlled by the State Government.<sup>6</sup> But the Federal Election Commission of the United States of America is full-time partisan body. It consists of two members, each appointed by the President of the United State, the speaker of the House of Representatives and the President of the Senate. The members of the Commission cannot be employees or officials of any branch of the Government.<sup>7</sup>

In France, the National Supervisory Commission is set-up first before elections. It has limited responsibilities, that is, to ensure

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fairness and proper observation of the rules for the election of the President.<sup>8</sup> It has nothing to do with other elections. The Election Commission consists of the Vice-President of the Couseil d' Etate (the highest administrative court), who acts as the Chairman of the Commission, the first President of the Court of Cessation and the First President of the Audit Court; and two active or honorary members of one or the other three Courts, appointed by three Statutory members.<sup>9</sup> In Britain, "elections to the House of Commons are conducted by the Clerk of the Crown in Chancery. In Australia, the Commonwealth Electoral Branch, under the control of the Chief Electoral Officer of the Commonwealth, is a part of the Department of Interior, which is administered by the Minister of Interior"<sup>10</sup>

Another important feature of the Election Commission of India is that it is a multi-member body. Although Article 324, Clause (2) of the Constitution provides for the appointment of Chief Election Commissioner and other Election Commissioners by the President, the Election Commission for a long time remained a single member body. But in the regime of the Prime Minister Mr. Rajeev Gandhi, two Election Commissioners, Mr. S.S. Dhanoa and Mr. V.S. Seigal were appointed by the President before the ninth Lok-Sabha elections, and thus, for the first time the Election Commission became a multi-member body. But soon after the elections when Mr. V.P. Singh's Government came into power, these two members were reverted and the Election Commission once again became single member body.<sup>11</sup> However, on October 1, 1993, the President passed an ordinance and the Election Commission, once again, became a multi-member body, fixing the number the members of the Election Commission to three, in which the Chief Election Commissioner was included. Consequently, Dr. M.S. Gill and Mr. G.V.G. Krishnamurthy were appointed as Election Commissioners by the President in addition to the Chief Election Commissioner Mr.T.N. Seshan.<sup>12</sup> The Ordinance took the form of an Act in the same year, and the Act placed the Election Commissioners at par with the Chief Election Commissioner. Now, being equal in authority, 'they may overrule the Chief Election Commissioner by a majority of two to one, if they so desire.'<sup>13</sup>

The most significant and striking feature of the Election Commission is, its powers, functions and role. The Election Commission is the only body vested with powers for the conduct of elections to the Central and State Legislatures and the office of the President and Vice-President. In the case of Mohinder Singh Gill versus Chief Election Commissioner, the Supreme Court of India had observed that the powers or duties vested in the Election Commission under Article 324 are, "essentially administrative and marginally even judicative or Legislative."<sup>14</sup>

Again, "the marginal Legislative power of the Election Commission was recognised in the case of Sadique Ali versus Election Commission of India and others also. The Apex Court had held that the Election Symbols (Reservation and Allotment Order), 1968 issued by the Commission in exercise of its powers under Article 324 was valid. Subsequently,

Commission's Legislative power was accepted by Parliament as well, though indirectly.<sup>15</sup>

The Election Commission, from the very beginning, remained associated with process of delimitation of constituencies. 'The first general election under the Constitution took place in the winter of 1951-52<sup>16</sup> in the constituencies as delimited by the Election Commission. 'Thereafter, on the recommendation of the Commission, an independent Delimitation Commission was set up by the government under the Delimitation act passed by Parliament. In the three Delimitation Commissions set up in 1953, 1963 and 1973, the Chief Election commissioner has been ex-officio member.'<sup>17</sup> One more noteworthy feature of the Election Commission is that it is the authority to adjudge the disqualification of sitting members of Parliament and the State Legislatures under Article 103 and Article 192 of the Constitution.<sup>18</sup> 'These two Articles provide that if any question regarding qualification of a sitting member of Parliament or a State Legislature arises, the matter should referred to the President or as the case may be to the Governor of the State concerned. The President, or the Governor shall obtain the opinion of the Election Commission and shall act according to the opinion. While deciding such dispute, the Election Commission enjoys the power of a civil court.'<sup>19</sup> This is, indeed, very significant feature of the Election Commission. 'In England, the question of disqualification is decided by each House of Parliament.'<sup>20</sup> In India, the ultimate decision in this regard, is of course, expressed in the name of the President, 'but the President is bound with the opinion of the Election Commission.'<sup>21</sup>

#### **Organisation of the Election Commission**

The first important task of the framers of the Constitution was to maintain the democratic structure of the Constitution through elections. That is why they entrusted the superintendence, direction and control of elections to an independent body appointed by the President of India, called the Election Commission. There were two divergent proposals, as we have already seen, on the adoption of the Election Commission before the Drafting Committee, and the Committee decided to adopt a middle course.<sup>22</sup> The Committee decided that the Election Commission would have one Chief Election Commissioner permanently in office. The Election Commission would be permanent body entrusted to organise and conduct elections. The office of the Chief Election Commissioner was to be expanded temporarily with the appointment of Regional Commissioners and officers as well as other public servants in large numbers added for electoral duties during elections. This proposed scheme of the Drafting Committee received acceptance of the Constituent Assembly and it enshrined in Article 324 of the Constitution of India.<sup>23</sup> Article 324 clause (2) provides : "The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix..."<sup>24</sup>

On October 1, 1993 the Election Commission was enlarged through a Presidential Ordinance. Two Election Commissioners Dr. M.S. Gill and Mr. G.V.G. Krishnamurthy were appointed and

given position and status at par to the office of Chief Election Commissioners. On October 27, 1993 the Chief Election Commissioner Mr. T.N. Seshan, challenged the ordinance of October 1, 1993 in the Supreme Court, urging to declare the Ordinance arbitrary, unconstitutional and void. Mr. Seshan's main contention was that the framers of the Constitution did not intend to equate the office of the Chief Election Commissioner with those of the other Election Commissioners. Therefore, Section 9 and Section 10 of the Ordinance is wholly ultra vires of the Constitution, as well as spirit of the Article 324 of the Constitution of India as envisaged by the Constitution makers.<sup>25</sup> The aggrieved Chief Election Commissioner in his petition, submitted that the entire independence of the Election Commission can be fractured by the decision arrived at by two Election Commissioners who are appointed and removed at the will of the government.<sup>26</sup> The Supreme Court, passed an interim order on November 15, 1993 and ruled that the Chief Election Commissioner shall remain in overall control of the Commission's work and he may ascertain the views of other Commissioners but these will not be binding on him.<sup>27</sup> Again, the Supreme Court confirmed on December 15, 1993, in its interim order of November 15, 1993. But at the same time the Court referred the Chief Election Commissioner's plea challenging the Ordinance equating the status of the newly appointed Election Commissioners to him, to a Constitutional bench. The Judges, in their brief order said that since the points raised in the petition were related to the interpretation of Article 324 of the Constitution, it was their view that matter be referred to the Constitutional bench for authoritative opinion.<sup>28</sup>

The Lok Sabha, on December 13, 1993, passed an amendment bill, "The Chief Election Commissioner and other Election Commissioners (Conditions of service) Amendment Bill 1993 replacing the Ordinance issued on October 1, 1993 in this regard, making the Election Commission a multi-member body and equating the Chief Election Commissioner and other Election Commissioners."<sup>29</sup> The Bill was passed by the Rajya Sabha and after the assent of the President it became Law.

One the other hand, the five judge Constitutional bench of the Supreme Court, comprising Mr. Chief Justice A.M. Ahmadi, Mr. Justice J.P. Verma, Mr. Justice N.P. Singh, Mr. Justice S.P. Bharucha and Mr. Justice M.K. Mukherjee finally passed verdict on July 14, 1995, upholding the legislation, making the Election Commission a multi-member body and equating the powers of Chief Election Commissioner with other Election Commissioners. The unanimous judgement delivered by the Chief Justice of India has finally settled that the Constitutional scheme envisages that the principle of consensus and majority rule must be applied even in the working of the Election Commission.<sup>30</sup> What emerges from the verdict of the Apex Court is that by Article 324, clause (1), the framers of the Constitution entrusted the task of elections to the Election Commission and not to an individual. It may be that if it is single-member body the decisions may have been taken by the Chief Election Commissioner, but still the decisions will be of the Election Commission. It would be wrong to project the individual and eclipse

the Election Commission. Mr. Chief Justice A.M. Ahmadi in his judgement observed: "No body can be above the institution which he is supposed to serve. He is merely the creature of the institution, he can exist only if the institution exists. To project the individual as mightier than the institution would be a grave mistake."<sup>31</sup> The Chief Election Commissioner and other Election Commissioners were advised by the Court to work in spirit of camaraderie for sustaining democracy in the country.<sup>32</sup>

#### **Aim of the Study**

India is the largest and most popular democracy in the world with universal adult suffrage. Democracy and elections go hand in hand. Elections are essential part of modern representative democracy, through them notions of consent and representative are translated into reality. The framers of our Constitution made elaborate arrangement vide article 324 to article 329 of the Constitution of India that deals with elections. These articles are really codes in themselves providing the entire ground work for enacting appropriate laws and setting up machinery for the conduct of elections.

#### **Conclusion**

There was, virtually, an outcry to convert the Election Commission into a multi-member body for quite a long time. Many political parties were persistently demanding conversion of the Election Commission into a multi-member Commission. Joint Parliamentary Committee on amendment to Election Law gave unanimous recommendation in its report in 1972 that the Commission should be a multi-member body. The view expressed by the Committee was that "an enlarged Commission will be able to discharge more effectively the responsibilities related to elections and in exercise of its quasi-judicial functions, a broad based Commission is likely to reach generally acceptable decision and command respect."<sup>33</sup> This report sought support of subsequent committees and Commissions appointed to suggest electoral reforms. Tarkunde Committee on Electoral Reforms held the same view and recommended that, "A Commission consisting of a body of the three members can arrive at a consensus on major controversial problems of organising elections which is decidedly a superior method of ensuring impartially to the individual decision of a single Chief Election Commissioner."<sup>34</sup> Goswami Committee also recommended in its Report in 1990 for the conversion of the Election Commission into a multi-member body. Gadgil Commission on electoral reforms also favoured a multi-member Election Commission.<sup>35</sup>

Most of the Chief Election Commissioners have opposed the idea of a multi-member Election Commission, since the talk of its conversion began. But Mr. Seshan, as we have already seen, went to the extreme while opposing induction of two additional Commissioners in the Election Commission.

The Parliament passed a Bill that converted the Election Commission into a multi-member body, and the Supreme Court- a Constitution bench of the Apex Court- held the Legislation, the Election Commission is now functioning as a multi-member body and the controversy in this regard has been finally settled.<sup>36</sup>

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