

Election Commission of India : At A Glance

Abstract

The framers of the Constitution have vested sovereignty in the 'People of India' and it is exercised through their elected representatives to Parliament and State assemblies. The people of India can only be governed by the Laws enacted with the consent of their elected representatives. This mandatory requirement leads to periodical election.¹

Keywords: Constitution, 'People of India', The Election Commission, Superintending, Directing and Conducting Elections, Constituency.

Introduction

The Election Commission, is responsible to conduct free and fair elections, and plays important role in sustaining and strengthening the democratic structure of the country by superintending, directing and conducting elections with competence and impartiality so as to inspire confidence of the political parties, the candidates and above all the electorates. Consequently the Election Commission of India is vested with manifold functions in the form of duties and powers of different nature which evidently express the role of the Commission in dealing with elections effectively. Article 324, Clause (1) of the Constitution of India vests extensive functions in the Election Commission, that is, "Superintendence, direction and control", for the conduct of elections. These powers of the Commission are prompted by supplementation of the Representation of the People Act, 1950, the Representation of the People Act, 1951 and Rules and Orders made there under. In the case of Mohindra Singh Gill, the Supreme Court held that the words "Superintendence, direction and control" as used in Clause (1) of Article 324 are of wide amplitude and would include the powers to make all provisions necessary for smooth conduct of elections, subject, however, to any Law made by Parliament or State Legislatures under Article 327 and Article, 328 of the Apex Court, respectively. In the words of the Apex Court, Article 324 is "a reservoir of powers" for the Election Commission.² If it is silent on any electoral matter or is not sufficient to deal with a particular situation 'the Election Commission has the inherent and plenary power to act in such a vacuous area within its allowed domain without looking to any outside authority for conferment of powers.'³ Thus, the powers of the Election Commission, as observed by the Supreme Court, 'are essentially administrative and to some extent adjudicative or Legislative.'⁴ The Court also held that the power under Clause (1) of Article 324 of the Constitution is in the nature of residuary power to deal with any situation which is not dealt with a law of Parliament or State Legislature.⁵

The primary function of the Election Commission, under the provisions of the Constitution and the Representation of the People Act, 1950, the Representation of the People Act, 1951 and Rules as well as Orders made there under is 'the superintendence, direction and control of the preparation of the electoral roll of all elections to Parliament and the State Legislatures and office of the President and Vice-President.'⁶ It is the foremost duty of the Election Commission to prepare the electoral rolls in accordance with the provision of the Representation of the People Act, 1950 and the Registration of Electors Rules, 1960. 'Registration of voters in the Registers of the constituencies, in advance of the poll, is mandatory in almost all democratic countries, with a difference in registration system and procedure adopted. In England, the registration is semi-mandatory and permanent registers of electors are maintained and updated annually.

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Registration of electors in Australia is compulsory, and the provincial governments prepare and revise the register of electors each year.⁷

In India, the framers of the Constitution felt it necessary that the electoral roll should be prepared by the Election Commission, which is the authority to conduct a free and fair elections. Article 325 of the Constitution of India makes provision for electoral roll for every territorial constituency irrespective of religion, caste, race, sex of an elector.⁸ Further, Article 326, as amended, stipulates that electoral rolls must contain all adult citizen, not less than eighteen years of age on a date fixed by law and not otherwise disqualified.⁹ Thus, the electoral rolls of all the constituencies are prepared in accordance with the provisions of the Representation of the People Act of 1950, under the 'superintendence, direction and control' of the Election Commission.¹⁰ The Election Commission prepares the electoral rolls with reference to the first day of the year of preparation or revision. The condition of registration of an elector is that he,

1. Must be a citizen of India.
2. Must be eighteen years of age.
3. Must be ordinarily resident in the constituency in which the elector seeks registration and,
4. Should not suffer any disqualification for corrupt practices or offences related with the elections.¹¹

The Election Commission also issues orders revisions of electoral rolls for any constituency or part of a constituency in such manner as it may think proper.¹² The Commission is also authorised to issue direction, general or special to the Electoral Registration Officer to make necessary corrections of the entries in electoral rolls.¹³ The electoral rolls of every constituency is to be prepared in such a form and in such a language or languages as the Election Commission deems fit. The Commission can issue instruction regarding the order of names of electors in voter lists.¹⁴ The Election Commission also invites claims for the inclusion of the names in the electoral rolls and objection to the entries in it within thirty days from the publication of rolls in draft, but if the Commission thinks proper, can reduce this period to fifteen days and it can also extend the period by notification in the Official Gazette in respect of the constituency as a whole or in respect of any part thereof.¹⁵

Besides preparation and revision of electoral rolls, the significant power of the Election Commission is to superintend, direct and control the conduct of elections. It is the solemn duty of the Commission to conduct elections in a free, fair and peaceful manner. In order to achieve this end, the Election Commission discharges multiple functions. The function of the Commission regarding conduct of elections begins from the day of the notification of election and runs upto declaration of results and during the entire process of elections the Commission remains vigilant and sees that the conduct of election is going on according to rules. Accordingly, the Election Commission is empowered to issue certain notification. But for the elections to the Lok Sabha and State- Legislature and Councils of Union Territories,

the notification is issued by the President, or Governors or Administrators respectively.¹⁶ These notifications are issued accordingly to the recommendation by the Election Commission. In case of by-election, the Commission has the power to issue notification. According to section 149 and section 150 of the Representation of the People Act, 1951, it is incumbent upon the Election Commission to fill up the vacant seat of a constituency as early as possible. In 1997, keeping in view the suggestion of the Election Commission, Parliament passed a Law making it mandatory to fill the vacant seats within six months.¹⁷

1. Further, Section 30 of the Representation of the People Act of 1951 vests powers in the Election Commission in case of general elections and by-elections to fix by notification in the Official Gazette (a) The date of making nomination.¹⁸
2. The date for scrutiny of nominations.¹⁹
3. The last date for withdrawal of candidates.²⁰
4. Date or dates on which a poll shall be taken.²¹
5. The date before which the election shall be completed.²²

Further, 'Section 64A of the Representation of People Act, 1951 empowers the Election Commission to order a fresh poll if any irregularity is detected at the counting stage, before the counting of votes is completed. It makes provision that if at any time before the counting is completed, any ballot paper used at a Polling Station or at a place fixed for the poll are

1. Unlawfully taken out of the custody of the Returning Officer, or
2. (Accidentally or intentionally destroyed or lost, or
3. (Damaged or tampered with to such an extent that the result of the Polling Station or place cannot be ascertained, the Returning Officer shall forthwith report to the Election Commission and thereupon the Commission may, after taking all material circumstances into account, declare the poll at a Polling Station or place to be void and order fresh poll.²³

Again, Section 58A, inserted by Act of 1989, authorises the Election Commission to declare a poll null and void and make order for fresh poll on the ground of booth capturing.²⁴ The decision of the Supreme Court in the Mohinder Singh Gill versus Chief Election Commissioner case²⁵ makes it clear that the Election Commission has power to countermand the polls at a particular polling station or in the whole constituency, under Section 58A of the Representation of the people Act of 1951, if there is large scale booth capturing vitiating the poll in the whole constituency. Although Section 58 and Section 64A of the Representation of the People Act, 1951 mention 'a polling station or place fixed for the poll', it may embrace multiple polling stations.²⁶

Thus, under Section 58, 58A and 64A of the Representation of the People Act of 1951, the Election Commission is the authoritative body to declare a vitiated poll void and order re-poll. However, it is submitted that the Election Commission should exercise its power to countermand an election only if all other options possible under law are exhausted, for a re-poll is a lengthy and expensive device causing

irreparable punishment not only to the candidates but inconvenience to the voters too.

Aim of the Study

Lok Sabha Elections have been very interesting gala in India and it has always intrigued for western observers. Elections in India are events involving political mobilization and organizational complexity on an amazing scale.

The Primary function of the Election Commission, under the provision of the Constitution and the Representation of the people Act, 1950, the Representation of the people Act, 1951 and Rules as well as Orders made there under is the superintendence, direction and control of the preparation of the electoral roll of all elections to Parliament and the state Legislatures and office of the President and Vice – President.

Conclusion

The Election Commission has always made efforts to halt the malpractices of booth capturing, rigging and violence during polls. However, sometimes under grave situations the Commission had no option but to resort to use its constitutional and legal powers and countermanded elections in the entire constituency in the interest of free, fair and peaceful polls as well to ascertain correct verdict of the people.

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