



ROLE OF THE ELECTION COMMISSION IN INDIA

***D. C. Chauhan, Associate Professor of Political Science, Govt. College, Nagina, Nuh (Haryana)India**

ABSTRACT

The Election Commission of India is a sole authority to hold free and fair election in the country. The Commission has successfully hold President, Vice President, eighteen Lok Sabha and State Assembly elections, although, some Chief Election Commissioner played partisan role. It is inconsistent with and a negation of the Constitutional institution and democratic governance. Hence, eminent and impartial persons should be appointed in the Commission so that the Commission may play a vital role in the electoral process.

KEY Words

Free and Fair election, constitutional democracy, Partisan role, Democratic Governance, Electoral Process

India has a democratic political system. The free and fair election is an essential feature of a democratic political system like India. The Election Commission of India is a sole authority to hold free and fair election in the country. The Commission is a constitutional and autonomous body which has uses all the powers that derived from the Constitution under Article 324, Representation of People Act, 1950 and 1951 and the Rules made there under or any other statue to the ensure the free and fair election. Usually, the Election Commission played a vital role in the elections to the Lok Sabha and the State Legislature Assemblies, except of some cases. Thus, the partisan role of Election Commission has negative consequences on the impartiality of the Commission, electoral system and democratic government in the country. This scenario provides the relevance of this research paper. This paper critically analyses the role of Election Commission since 1952, its consequences on the impartiality of the Election Commission, the electoral system and the democratic government. Also, this paper suggests remedial measures in this regard.

We can critically analyse the role of Election Commission under the following categories:-

1. **Administrative Role**
2. **Quasi-judicial Role**
3. **Advisory Role**

1. **Administrative Role**

The administrative role of the Commission may be analyse under the following heads.

- I. Registration of Political parties:

The Election Commission has registered all political parties e.g. National level party and State level parties. This

registration is a compulsory and mandatory in nature. No political party get recognition without registration of the Election Commission. The Commission has registered seven national level parties and state level party. In All Party Hill Leaders Conference case (1977), the Supreme Court held that the Election Commission exercises judicial power while adjudicating the dispute with regard to the recognition of political party. The Supreme Court made it clear that there are three exceptions where the Commission can review its order registering a political party. Firstly, where a political party obtained its registration by playing fraud on the Commission. Secondly, it arises out of s.29 A (9) of the Representation of Peoples Act and Thirdly, any like ground where no enquiry is called for on the part of the Election Commission for example where the political party concerned is declared Unlawful by the Union Government under the provision of Unlawful Activities (Prevention) Act ,1967 or any other similar law.¹

II. Allotment to Election symbols to political parties:-

The Election Commission has power to allot election symbols to the political parties by following a certain process. It is the duty of the Commission to ensure that no symbol which has the character of a religions symbol or national symbol, is included in the list of election symbols since proviso to Ss (3) of s. 123 of the Act (Corrupt Practice of Appeal in the Name of Religion, Caste etc) declares that no symbol allotted to a candidate under the Act shall be deemed to be a religions or a national symbol for the purpose of that sub-section.

III. Preparation of Electoral Rolls:

The Election Commission has prepared electoral rolls for every constituency under his superintendence, direction and control (Representation of People Act, 1950 S 15). The Commission has also authorised to direct a special revision of electoral roll for any constituency or part of a constituency in such manner as if may think fit (S 21 (3) of the Representation of People Act, 1950). Further, the Commission issue directions, general or special, to the Electoral Registration Officer regarding the correction of entries in electoral rolls (S 22 of the Representation of People Act 1950). Thus, the Commission has been deputing the employee for preparation and revision of electoral rolls since 1952.

IV. Delimitation of Constituencies:

The Election Commission has constituted a Delimitation Commission under the chairmanship of the Chief Election Commissioner to delimit the Lok Sabha and the State Legislative Assemblies constituencies after every ten years. Thus, the Commission played a vital role in the delimitation of the constituencies.

V. Conduct of Elections:

The Election Commission issues notification for conduct of the election to the President, the Vice President, the Lok Sabha and the State Legislative Assemblies. The notification included the following dates,

1. Nomination of candidates
2. Scrutiny of nomination
3. Withdrawal of candidatures
4. Polling
5. Counting of votes etc.

It is noteworthy that the Commission decide the dates regarding election and by-election to the Lok Sabha and State Legislative Assemblies in view of law and order situation, weather, examinations, festivals, cultivation of crops etc. Thus, it is the duty and responsibility of the Commission to hold free and fair elections within the time. The Hon'ble Supreme Court held that matters which need discretionary actions like postponement of poll,

cancellation of notification, ordering of repoll etc. according to circumstances present during election process, on the part of Election Commission, should not be interfered with during election process of except where exceptional circumstances of a particular matter requires to do so². The Commission has successfully conducted sixteen general election and by-election to the Lok Sabha and the State Assemblies since 1952.

VI. Appointment of Officers and Employees on Election Duty:

The Election Commission appoints the officers, observers and employees on election duty. Hence, these officers, observers and employees work under the control and supervision of the Commission. The Commission gives them direction from time to time according to the circumstances.

VII. Issuing Orders and Directions:

The Election Commission has issued orders and directions time to time to conduct free and fair elections. The Commission as issued orders to the State governments to provide the photo identity card to the voters in 1993. The Chief Election Commissioner, T.N. Seshan, has issued orders to check on poster on the walls during the election campaign. The Commission made compulsory for the candidate to submit their educational qualification, liability, property and criminal record with their nomination since 2004. These orders and direction made the election process more effective.

VIII. Educate the Peoples:

The Election Commission has educated the citizens regarding right to vote, importance of their vote in democratic government and chose the genuine candidate. The Commission make aware the people through Radio, Television, Newspapers, Posters, Debates, and EVM training for increasing the awareness in the voters. Also, the Commission provide the platform on Radio and Television telecast to political parties for their election propaganda.

2. Quasi-Judicial Role:

The Election Commission playas Quasi -judicial role in the following matters-

I. Model Code of Conduct

The Election Commission has evolved the model code of conduct for the guidance of political parties and candidates in 1984, which prescribes certain do's and don'ts required to be followed by political parties and candidates during elections. Thus, the Commission ensures that no transfer or posting of employees can be made by government, no foundation stone of construction work would be laid down, ministers cannot use official machinery, official telephone and circuit house during the elections, etc. However, such code of conduct is actually ineffective and this code of conduct has no legal sanction.³ Although, the Commission has empowered to suspend or withdraw recognition of a recognised political party for its failure to observe Model Code of Conduct or follow directions and its instructions of the Commission (Para 16A, Article 324 (1) of the Constitution). The Commission has enforced the model code of

conduct, but the ruling party, opposition parties and candidates has been of violating it. Hence, the Commission could not effectively enforce it without punishable power.

II. Order for Fresh Poll:

The Election Commission has declared the poll at a polling station void and order fresh poll after taking all material circumstances into account on the report of the Returning Officer in any complaint (S 58 of the Representation of Peoples Act, 1951). In Mohinder Singh Gill case (1978), the Hon'ble Supreme Court made it clear that the Election Commission can declare a poll void and order fresh poll even in the entire constituency.⁵

The Commission has passed order or bi-election in many cases.

III. Action Against Officers and Employees :

The Commission has taken action against such officers and employees who failed to perform their duties, negligence to duty, indiscipline, indulging in any unlawful activity and partisan role in the elections.

IV. Disqualification of Candidates:

The Commission has disqualified such candidate who has failed to lodge an account of his election expenses within time and in the manner prescribed by law (S 10^A of the Representation of Peoples Act, 1951). Also, The Commission can recommend for a disqualification if the candidate found guilty of commissioning of any corrupt practice defined under S.123 of the Representation of Peoples Act, 1951.

V. Derecognition of Political Parties:

The Election Commission has suspended or withdrawn the recognition of a recognised political party for its failure to observe Model Code of Conduct or follow directions and instructions of the Commission. Also, the Commission has suspended or withdrawn recognition of a recognised political party for its failure to submit their annual income and expenditure record within time.

3. Advisory Role:

The Election Commission plays the following advisory role.

I. Advice Regarding Qualification of Members:

The Election Commission gives advice to the President of India and the State Governor concerned in the question of qualification of the Member of Lok Sabha and State Legislative Assembly respectively. The advice of the Commission plays crucial role in such matters.

II. Proposal of Electoral Reforms:

The Election Commission suggests several electoral reforms.

a. Check on Criminalization of Politics :

The Commission issued an order in 1997 to all candidates for election to the Lok Sabha and State legislatures were required to file affidavit regarding their conviction in Court cases. The Hon'ble Supreme Court upheld⁶ the direction issued by the Commission and later the Parliament also introduced this requirement in the provisions of the Representation of Peoples Act, 1951.

b. Women Empowerment:

The Commission advised to all recognised political parties for giving 1/3 seats to the women candidates in the Lok Sabha and State legislature elections and in their organization.

c. Inner –Party Democracy:

The organisational election of all recognized party should be held within time. The political parties should submit their annual income and expenditure details before the Commission and audit their annual income and expenditure. The Commission advised that politicians should be retired beyond a certain age.

d. Defection:

The Commission has advised that the question of disqualification of members on the ground of defection should be decided by the President or Governors on the recommendation of the Election Commission.

e. Proxy Voting :

The Commission should be empowered to allow proxy voting to armed personnel, paramilitary forces personnel etc. forming a separate class known as “service voters.”

f. Negative Voting:

The Commission advised the right of voter to cast a negative vote. Thus, the Election Commission played a crucial role in providing an option of NOTA to the voters in EVM.

g. More Powers to Election Commission:

The Election Commission advised the government that a secretariat for the Election Commission should be established. The Commission should be empowered to ban the transfer of election officers on the eve of elections. The Commission should have a disciplinary power over the officials/employees who employed in elections.

The Election Commission has plays a vital role to hold free and fair elections in the country. The Commission is the heart of Indian democracy. The Chief Election Commissioner, T. N. Seshan, took some strict actions and he enforced the orders and directions given by the Election Commission. He is the pioneer of electoral reforms in the contrary. He successfully banned on election posters on the walls, checked on the nuisance of loudspeakers during election campaign, checked on big size hoardings, controlled over expense on elections and so on. His successors M.

S. Gill, H. Y. Kureshi, Krishna Murthy and B.B. Lingdoh followed him. They played a major role in the electoral reforms in the country. Although, some Chief Election Commissioners, like Sunil

Arora and Rajiv Kumar have been alleged their partisan role. They have tilt towards the ruling Bharatiya Janata Party and its allies. The Opposition parties criticised their arbitrary working and discriminatory behaviour towards opposition parties and their working in favour of ruling Bharatiya Janata Party and its allies as they have been avoid the genuine complaints of opposition parties against ruling BJP and its allies regarding violation of model code of conduct and so on. However, in some of the cases, the political parties leveled the baseless and politically motivated allegations against the Commission and the ruling party. The institution has not been working independently. It seems that it has been turned into political instrument of the ruling party. The use of such constitutional and democratic institution by the ruling party to fulfill its political interests is a dangerous trend in the country. Both the tendencies have negative consequences on the Constitution, rule of law, electoral process and democratic governance in the country. It is inconsistent with and a negation of the impartiality and dignity of the Commission and democratic governance in the country. Hence, there should be check on such partisan role.

Remedial Measures:

The following remedial measures should be used for the impartial and effective role of the Election Commission

- (1) The clear provisions regarding the qualifications for the Chief Election Commissioner and the Election Commissioner should be included in the Constitution.
- (2) The President of India should appoint the Chief Election Commissioner and the Election Commissioners on the advice of Committee consists Prime Minister, Minister of Law and Justice, Speaker of Lok Sabha,

Chairperson of Rajya Sabha and Leader of opposition or single largest party in the Lok Sabha and Chief Justice of India.

(3) The eminent, honest, impartial and qualified persons like retired bureaucrats, Judges and educationists should be appointed in the Commission.

(4) A separate Secretariat and employees should be provided to the Election commission.

(5) The Election Commission should be legally empowered to give punishment to political party and candidates on the violation of the model code of conduct during the election.

(6) The proposal regarding electoral reforms given by the Election Commission may be implemented by the government.

(7) The Chief Election Commissioner and Election Commissioners should work honestly and impartially so that the Election Commission may play a vital role in constitutional democracy in the country.

Conclusion:

It may be concluded that India has a plural and multicultural society. it led the political democratic system in the country. The Election Commission of India plays a vital role in successful working of democratic government in the country. The Election Commission has successfully hold eighteen Lok Sabha and State Legislative Assemblies elections since 1952. The Commission has played an impartial role under the chairmanship of Chief Election Commissioners like T.N Seshan, M. S. Gill, H. Y. Kureshi, Krishna Murthy and B.B. Lingdoh etc. Although, some Chief Election Commissioner played partisan role and it has negative consequences on the impartiality and dignity of the Commission. Hence, the above mentioned remedial measures should be used so that the Commission should play an impartial and vital role in the successful working of vibrant democracy and electoral process in the country.

References:

1. *All Party Hill Leaders Conference, Shillong v. W.A. Sangma*, AIR, 1977, SC 2155.
2. *Indian National Congress (I) v. Institute of Social Welfare*, AIR, 2002, SC 2158.
3. *Election Commission of India v. State of Haryana*, AIR 1984, SC 1406.
4. *Vidadala Harinadhababu v. N.T. Ramarao*, AIR 1990, AP 20 F(8).
5. *Mahinder Singh Gill v. Chief Election Commissioner*, AIR 1978, SC 851.
6. *Union of India v. Association for Democratic Reforms* (2002), 5 SCC 294.