

# ROLE OF THE ELECTION COMMISSION OF INDIA IN REFORMING POLITICAL PARTIES

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The Election Commission of India, a powerful non-partisan permanent constitutional body, conducts the largest electoral exercise in the world. It is the responsibility of the Election Commission of India to organize free and fair election in this land of 814.5 million voters with diverse socio-political and economic backgrounds. In recent years, the role being played by the Election Commission of India ensures greater participation of people in political affairs. The Commission is also deeply concerned about criminalization and communalization of politics.

India today is considered as the largest democratic country in the world. The success of democracy in India has attracted the attention of almost everyone around the world. "Conventional wisdom has it that India is the world's largest democracy, but few have recognized that it is so against the odds".<sup>i</sup>

For more than six decades democracy in India has succeed against considerable odds. Many factors seem to have contributed to the success of democracy in India over the last 67 years. Periodic national and assembly elections, under the supervision of Election Commission of India, are a strong indicator of the success of a functioning democracy. During these decades the elections have been by and large free and fair. There has been peaceful transfer of power from one political party to another. This is a crucial test for the functioning of liberal democracy.

"Democratic institutions and practices came to be more firmly rooted in Indian politics in the era of periodical elections based on adult franchise" writes Rajendra Vora and Suhas Pulsikar adding that "Democracy has evolved in independent India basically through representative politics, mobilization of masses and power-sharing".<sup>ii</sup>

Democracy rests on the will of the people that is manifested more effectively at the time when representatives of the people are selected or elected. In a representative type of democracy, will of the people is temporarily transferred to their representatives for a specific period of time, with the consent of the people. Montesquieu wrote in 1748 that since it was not possible in a large state for the people to meet as a legislative body, they must choose representatives to do what they could not do themselves.<sup>iii</sup>

The representatives are selected by holding regular elections. Modern representative democracy would not be possible without periodic elections. In fact, the very idea of representative system cannot be conceived without regular elections.

Competitive nature of elections is identified as one of the major requirements for functioning democracy.<sup>iv</sup> Elections create a sentiment of popular consent and participation in public affairs and provide for orderly succession in government by peaceful transfer of authority to new rulers.<sup>v</sup>

The Constitution of India has vested in the Election Commission of India the superintendence, direction and control of the entire process for conduct of elections to Parliament and Legislature of every State and to the offices of President and Vice-President of India.

## **1.0 Election Commission and the Preparation of Electoral Rolls**

To maintain an accurate and up-to-date record of all eligible voters is the essential prerequisite of every functioning democracy, without which no free and fair election can be possible. The electoral rolls being the determinate of whose votes shall form the government are the foundation of modern democracy.

As mandated by Article 324 of the Constitution and Representation of People's Acts, the primary function of the Election Commission is to superintend, direct and control the preparation of Electoral Rolls. Thus, Electoral Rolls of every Constituency, as desired by the Constitution makers, is prepared under the superintendence, direction and control of the Election Commission. The Commission plays an 'activist's role' to root out the bogus voters and enlist the genuine ones as it knows that more than two per cent error makes voter lists unacceptable. In the recent election to the Legislative Assembly of West Bengal the Commission considered the task of cleaning the electoral rolls as a "high priority" job. The names of 13 lakh "dead and shifted" voters have been removed and 21 lakh new voters added to the list.<sup>vi</sup>

The Commission has also taken bold initiative to ensure deletion of names of those voters against whom non-bailable warrants have been pending execution for over six months. It considers that if a warrant cannot be executed for more than six months, it should be presumed that the person is no longer residing in that place and so his name should not figure in the voters' list. Based on a communication from the Election

Commission, controversial RJD MP from Siwan (Bihar) Mohamad Shahabuddin's name was deleted from the voters' list in 2005.<sup>vii</sup> In total 1.5 lakhs names were deleted from the voters' list in Bihar alone.<sup>viii</sup>

In order to protect the genuine voters, the Commission has been insisting since 1993 on photo identity cards to be issued to all eligible voters. The former CEC, T.N. Sheshan issued a warning by invoking Rule 37 of Representation of People's Act that the Commission would not notify elections after January 1, 1995 in those places where photo identity cards were not issued. The CEC's dictate of 'no identity cards-no elections' became slightly controversial. The order of the Commission was challenged in the Supreme Court saying that right to vote is an essential component of democracy and procedural provision cannot be constructed to deny the substantive right to vote. The matter was finally resolved when the Commission gave an undertaking before the Court that it would not withhold elections. The present Chief Election Commissioner is also insistence on photo identity cards. B.B. Tandon made it clear before the recent Assembly election in West Bengal, Assam and Tamil Nadu that "those without photo identity cards will not be allowed to cast their votes in Assembly election".<sup>ix</sup>

## **2.0 Election Commission and Model Code of Conduct**

Model code of Conduct emerged out of a political consensus when in 1968 the Election Commission formulated, in consultation with political parties, the code that was intended to regulate the conduct of political parties and candidates for a healthy and peaceful election campaign. Election Commission of India defines Model code of Conduct as a set of guidelines to govern the conduct of political parties and candidates in the run-up to an election. It is intended to provide a level playing field for all political parties, to keep the campaign fair and healthy, avoid clashes and conflicts between parties, and ensure peace and order. The main aim of the Model Code is to ensure that the ruling party, either at the Centre or in the states, does not misuse its official position to gain an unfair advantage in an election. Unfortunately the code of conduct does not have statutory sanction.

It was T.N. Sheshan who strictly enforced the code after taking over as the Chief Election Commissioner. Before that the code remained just on paper as the Commission did not realise that it had the power to enforce the code. T.N Sheshan forced the parties and candidates to take the EC's code of conduct seriously and succeeded to a good extent in containing violence. Rudolph and Rudolph say that the most visible success of the Election Commission "has been getting India's parties and candidates ..... comply with its code of conduct".<sup>x</sup>

Sheshan's tradition continued and the successive Election Commissioners took serious note of any violation of the code. The present Commission has pulled up a host of politicians, bureaucrats and even a Governor for violating the code. Governor of Bihar, Buta Singh Singh was indicted by a two-member Election Commission team for violating model code of conduct as he made various appointments to constitutional bodies prior to Assembly election in Bihar in 2005.<sup>xi</sup>

Human Resource Development Minister Arjun Singh's announcement about the government's plans for reservation in elite educational institutions for Other Backward Classes was found to be a violation of the model code of conduct. The Commission said this "amounts to new concessions to certain sections of the electorate" in the five states where Assembly elections are being held.<sup>xii</sup> R. Natraj, the then Chennai Police Commissioner was ordered to be transferred by the Election Commission in the wake of his praising Tamil Nadu Chief Minister when the model code of conduct was in force.<sup>xiii</sup>

The Election Commission had issued a notice<sup>xiv</sup> to Arvind Kejriwal for violation of Para 1(4) of the Model Code of Conduct by making certain statements to the effect of promoting/ abatement of the offence of bribery to the electors in a public meeting held at Mapusa, Bardez taluka, Goa on 08 January, 2017. Kejriwal had, at an election rally in Goa, reportedly appealed to the electors not only to refuse to accept this time Rs 5000/- but ask for Rs. 100001/- when BJP workers come to distribute money in election time, citing price hike and to take new currency notes. The Commission was of the view that the impugned statements fall within the ambit of abatement of offence of bribery as defined in the Section 171 B of IPC and thus violative of MCC. Moreover, for the similar misconduct at the time of the General Election to the Delhi Legislative Assembly in 2015, the Commission had warned him to be careful in future and had also told him to take note of stern action which may be taken against him under the electoral law in case of repeat violation of MCC.<sup>xv</sup> In his reply, Kejriwal had made unqualified promise to the Commission that he would not make any appeal to voters/ or make statement of the nature stated above during the period when MCC is in force. The Commission is anguished to note that Kejriwal, Chief Minister of Delhi and a star campaigner of his party and thus expected to conduct in an exemplary manner in election campaigns in a law abiding way for others to emulate, have again violated MCC breaking his assurance to ECI given during Legislative Assembly election of Delhi 2015. Now, therefore, the Election Commission hereby, Censures him for violating the aforesaid provisions of MCC and expects that he shall be more circumspect in his public utterances during election time. He may also note that in case of similar violation of MCC in future, the Commission shall take stern action against him and his party, using all powers available to it including action under Para 16 A of the Election Symbols (Reservation and Allotment) Order 1968.

**3.0 Election Commission on Criminalization of Politics**

Criminalization of politics and politicization of crime very badly affect social and political life of the people. Presence of criminals in politics, many believe, stands on the way of democracy in India. The National Commission to Review the Working of the Constitution (NCRWC) has also recognized the fact that criminalization has become a worrisome characteristic of India's politics and electoral system. The Commission notes that one possible explanation for the rapid criminalization of the polity is that criminals have understood the mechanics of the electoral process and have themselves become contenders for power. Earlier, politicians used to patronise criminals and provided them protection from the law-enforcement agencies in exchange for the use of their muscle power during elections. Quoting unofficial studies the National Commission cited that in 1996 as many as 39 members of parliament, including four ministers, faced criminal charges, which included murder, rape, dacoity, abduction, assault and breach of peace. An investigation into the record of 500 persons who were candidates in the Lok Sabha elections of 1998 revealed that 72 of them had criminal proceedings pending against them.<sup>xvi</sup>

As per the estimate of G.V.G. Krishnamurthy, the former CEC some 700 of the 4000 odd MLAs in the country are "history-shatters" or had been charged in criminal cases.<sup>xvii</sup>

The former Chief Election Commissioner, G.V.G. Krishnamurthy, strongly pleaded for a new legislation to arrest criminalization of politics and political corruption with an aim that "no law breaker should ever be law maker"<sup>xviii</sup>

The Committee to Review the Working of the Constitution has recommended that candidates convicted of offences with a sentence of six months or more be barred from contesting elections for six years *plus* the length of their sentence, which would mark a change from the existing system where a six year ban might expire before a seven or eight year sentence.<sup>xix</sup>

The Election Commission taking serious view of the increasing role of criminals in politics gave criminal un-friendly interpretation to Section 8 of Representation of People Act, 1951. The Commission ordered that no convicted person will be allowed to contest elections even if an appeal against the conviction was pending in a high court or the person was on bail. The exception was, however, given to sitting members of Parliament and State Legislatures. Accordingly, the Commission directed the returning officers to obtain sworn affidavits from candidates detailing whether the contestant had ever been convicted, nature of offence, punishment imposed, period of imprisonment and other relevant details. The returning officers were ordered to take note of the new legal position and decide about the validity of the candidature of contestants.<sup>xx</sup>

The Commission also recommended that when a person is accused of serious crimes and a court is *prima facie* satisfied about his involvement in the crime, he should be kept out of the electoral arena as it would be a reasonable restriction in the interest of the public. And those accused of criminal offences carrying a sentence of five years or more be automatically disqualified from fighting elections.

**4.0 Election Commission on Inner Party Democracy**

The centrality of the parties in a democratic system demands that some policing of their internal process of selecting leaders and representatives should definitely take place which will ensure that the exercise of authority within the party is based on a democratic culture and not an authoritarian one.<sup>xxi</sup>

India being a democratic country it is only expected that the Political Parties must function in a democratic manner. Political parties are registered with the Election Commission under Section 29A of Representation of People Act, 1951. The registered political parties are granted recognition at the State and National levels by the Election Commission on the basis of their poll performance at general elections according to criteria prescribed by it. Although the Act of 1951 does not specifically mention about the power of the Commission to impose directives for the purpose of establishing inner party democracy of the political parties, the successive Election Commissioners have shown interests to restrict parties from moving away from democratic path. Since parties are so central to the democratic system some policing of their internal process of selecting leaders and representatives should definitely take place. This ensures that the exercise of authority within the party is based on a democratic culture and not an authoritarian one.<sup>xxii</sup>

The former CEC, T.N. Sheshan ordered in 1994 that political parties which had not constituted governing bodies according to their constitution would be derecognized. Later, he realized that the Parliament has not given the EC any power to scrutinize a party's constitution. The Commission, under M.S. Gill issued a direction to all those parties which conduct their internal business in "an entirely undemocratic manner" to ensure that the organisational elections are held regularly as per the party constitution. He, however, ruled out any "interference" by the commission in the internal political process of parties.<sup>xxiii</sup>

J.M. Lyngdoh, the former Chief Election Commissioner agrees that a constitutional amendment that would make political parties adopt inner-party democracy could be one of the ways to ensure the effective functioning of democracy in the country.<sup>xxiv</sup>

To conclude, it must be acknowledged that the Election Commission of India has played a very significant role in conducting periodic elections essential for the survival of Indian democracy. The role of the

Commission in recent years has often been perceived as renewed “activism”. The previous Assembly elections in Bihar is seen as the fairest election held so far in the country. The Election Commission and its special observer K.J. Rao has created conditions for the Dalits and the poor to vote freely and without fear.<sup>xxv</sup>

K.J. Rao was appointed as the special observer by the Election Commission to oversee elections in Jammu and Kashmir and Bihar. The main concern of the Commission before Legislative Assembly election in West Bengal was to get to the bottom of “scientific rigging by Left Front”.<sup>xxvi</sup>

However, the Election Commission still have long way to go. The former CEC, M.S. Gill believed that the Commission must “assert its constitutionally guaranteed independence more fiercely than ever” if India is going to hold free and fair elections.<sup>xxvii</sup>

The Government of India has to act urgently on the 44 recommendations for poll reforms by the Election Commission so that the Commission is equipped to cleanse Indian polity of criminals and corrupt politicians.

In brief, it could be acknowledged that the Election Commission of India has been playing an active role in realizing the dreams and visions of the founding fathers of the Constitution. The role of the Commission in recent years has often been perceived as renewed “activism”.

The Commission had initiated various electoral reform measures. It is deeply concerned about criminalization of politics and participation of criminals in the electoral process as candidates. The Commission had gone to the extent of disciplining the political parties with a threat of de recognition if the parties failed in maintaining inner party democracy.

However, the Election Commission still have long way to go and more is needed to be done. In order to conduct free and fair elections the Commission must assert its constitutionally guaranteed independence more fiercely than ever.

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