

# Independence of Election Commission of India

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*Democracy being the basic structure of our Constitution, fair elections to legislative bodies would guarantee the growth of a healthy democracy. Thus, independence of the Election Commission of India is of seminal importance to ensure the fairness of the entire election process. The most effective way to influence the Election Commission is by controlling its officers by way of their removal and having a say in its budget. Reforms on these aspects were suggested by the Election Commission in its report on proposed reforms 2016 – 17 which will be reviewed in this article.*

## Introduction

Constitution envisages Election Commission, under Art.324 of the Constitution, for conducting elections to Parliament, the legislature of every state and of elections to the offices of President and Vice – President. It is entrusted with the task of superintendence, direction, and control of the preparation of electoral rolls for the same and as well the conduct of these elections. It is very important for the democracy that these elections be fair. To ensure this, it is necessary to protect the Election Commission from any political, executive interference or otherwise. It is with this view that the Constitution provides for protection of its members through various mechanisms. Under Art.324 (5) of the Constitution (hereinafter Art. refers to articles in the Constitution), Chief Election Commissioner (hereinafter referred to as CEC) can be removed from his office only on like grounds as Judge, Supreme Court and the conditions of the service of CEC cannot be varied to his disadvantage after his appointment. However, Election Commissioners (hereinafter referred to as ECs) are protected under the umbrella of CEC and Art.324 (5) mandates that ECs cannot be removed from office except on the recommendation of the CEC. The administrative expenses of the Election Commission for carrying out its constitutional function is a voted expenditure.

The working of the Election Commission can be affected by influencing ECs and varying the budget of the Election Commission. These aspects of the Election Commission which were considered by Election Commission of India in its report on Proposed Reforms 2016 will be reviewed in this article.

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## Constitutional Protection to All Members

Election Commission in its 2016 – 17 proposed Reforms Report (hereinafter referred to as Reform Report) recommended that ECs should be given same constitutional protection, as CEC in terms of removal,<sup>1</sup> by means of a constitutional amendment to Art. 324. Election Commission referred to 255<sup>th</sup> Report, Law Commission of India in its Reform Report where Law Commission in its 255<sup>th</sup> report which advocated following changes to be brought in Art. 324:

- In sub-section (5), delete the words “The Election Commissioners and” appearing after the words “tenure of office of”.
- In the first proviso to sub-section (5), after the words “Chief Election Commissioner” appearing before “shall not be removed”, add the following words, “and any other Election Commissioner”; also, after the words “conditions of service of the Chief Election Commissioner”, add the following words, “and any other Election Commissioner”.
- In the second proviso to sub-section (5), after the words “provided further that”, delete the words “any other Election Commissioner or” occurring before “a Regional Commissioner”.

These recommendations need to be analyzed in the backdrop of the judgment of Supreme Court in *S.S. Dhanoa v. Union of India*<sup>2</sup> and *T.N. Seshan, Chief Election Commissioner v. Union of India*.<sup>3</sup>

Art.324 (2) provides for the appointment of ECs to the Election Commission. However, they do not enjoy the same constitutional protection as Chief Election Commissioner when it comes to their removal and they can be removed from their office only on the recommendation of Chief Election Commissioner.<sup>4</sup>

However, in *S.S. Dhanoa* case, an indirect method of removal came into light when rescission of the post of ECs by the President lead to the termination of service of ECs.<sup>5</sup> This has far-reaching implications on the independence of the Election Commission. It was held by the Supreme Court in *T.N. Seshan* case<sup>6</sup> that ECs have the same decision-making authority as CEC and CEC is only first among equals. Therefore, when Election Commission functions as a multi-member body, CEC merely acts a chairman of the Election Commission<sup>7</sup> having

<sup>1</sup> Election Commission of India, Election Commission of India Proposed Electoral Reforms, *Election Commission of India Official Website* available at [http://eci.nic.in/eci\\_main/Electorallaws/HandBooks/PROPOSED\\_ELECTORAL\\_REFORMS\\_2017.pdf](http://eci.nic.in/eci_main/Electorallaws/HandBooks/PROPOSED_ELECTORAL_REFORMS_2017.pdf), accessed on 1 April 2018.

<sup>2</sup> *S.S. Dhanoa v. Union of India*, SCC, 1991, SC, p.567.

<sup>3</sup> *T.N. Seshan, Chief Election Commissioner v. Union of India*, SCC, 1995, SC, p.611.

<sup>4</sup> The Constitution of India, 1950, art. 324 (5).

<sup>5</sup> *S.S. Dhanoa* (n 2) p.567.

<sup>6</sup> *T.N. Seshan* (n 3) p.611.

<sup>7</sup> The Constitution of India (n 4) art 324 (3).

no superior authority to ECs. According to The Chief Election Commissioner and Other Election Commissioners (Conditions of Service) Amendment Act, 1993, in case the CEC differs in opinion on any matter, the decision shall be taken by the opinion of the majority.<sup>8</sup>

*S.S. Dhanoa* case notes an interesting attempt of the Executive to influence the decisions of the Commission:

...”Barely 24 hours after the appointment of the Election Commissioners, the Principal Secretary to the Prime Minister called on Respondent 2 [Chief Election Commissioner] in the afternoon of October 17, 1989 and conveyed to him the desire of the Prime Minister that the general elections to the Lok Sabha should be held on a particular date and that the announcement in that behalf should be made by the Commission forthwith and before 2 p.m. on that day, in any case.”<sup>9</sup>

This attempt of the Executive to influence Election Commission highlights the importance to insulate the Commission from Executive. Not having the same constitutional protection to ECs would mean that their service can be terminated by rescinding the post by President. Since President acts on the advice of Council of Ministers, the post of ECs could be rescinded by the Council of Ministers which would effectively mean termination of their service.

Also, conditions of service of ECs after their appointment could be varied to their disadvantage as there is no constitutional protection available to them. This means that ECs who are not liked by the government or whose decision leads to loss to the ruling party can be acted against by the government. This would serve as an element to influence ECs. Therefore, as the Election Commission transacts its business by the majority in case of difference of opinion,<sup>10</sup> ECs could be influenced which could be used by the Executive to get a favorable decision for them.

The element of independence sought to be achieved in the Constitution is not exclusively for CEC but for the entire institution which gets effected under the existing provisions. Also, not affording similar protections to ECs is not explicable. The independence sought in the Constitution for the entire Election Commission, thus, can get affected in such circumstances. Therefore, in order to strengthen the independence of the Election Commission, it is necessary to make necessary Constitutional amendments as proposed by the Law Commission in its 255<sup>th</sup> report which is reiterated by the Elected Commission in its Reform Report.

<sup>8</sup> The Chief Election Commissioner and Other Election Commissioners (Conditions of Service) Amendment Act, 1993, s 10(3).

<sup>9</sup> *S.S. Dhanoa* (n 2), p.581 para. 22.

<sup>10</sup> The Chief Election Commissioner and Other Election Commissioners (Conditions of Service) Amendment Act (n 8).

## **The budget of the Election Commission**

The administrative expenses of the Election Commission is a voted expenditure. This means that their expenditure budget needs the approval of the government. This is not in line with the expenditure of other independent constitutional bodies like the Supreme Court, High Courts, Comptroller & Auditor General, Union Public Service Commission, which are charged/ non-voteable expenditure on the Consolidated Funds of India. These expenditures are deemed to be guaranteed by the state and hence they are not subject to voting. Further, it is also a symbol of independence of the constitutional bodies and secures unconstrained functioning of these bodies. Therefore, the budget of the Election Commission should be charged/ non-voteable on the Consolidated Funds of India to bring the expenditure in consonance with the independence of the Election Commission as envisaged under Art. 324.

To achieve this end, the government moved The Election Commission (Charging of Expenses on the Consolidated Fund of India) Bill, 1994 in the 10<sup>th</sup> Lok Sabha with the objective of providing for the salaries, allowances and pension payable to the Chief Election Commissioner and other Election Commissioners and the administrative expenses including salaries, allowances and pension of the staff of the Election Commission to be expenditure charged upon the Consolidated Fund of India. However, the bill lapsed without being passed, on the dissolution of that House in 1996.

Therefore, the Election Commission recommended in its Reform Report that The Election Commission (Charging of Expenses on the Consolidated Fund of India) Bill, 1994, which lapsed with the dissolution of the 10<sup>th</sup> Lok Sabha in 1996, needs reconsideration and the expenditure of the Election Commission, should be charged on the consolidated fund.

## **Conclusion**

The fairness of the entire election process is vital for the functioning of democracy. However, the fairness has been under question quite often on the grounds of independence of Election Commission. To ensure healthy functioning of our democracy and to stop questions from arising on the fairness of election process, independence of the Election Commission needs to be strengthened by making the Election Commission more autonomous to conduct fair elections as foreseen by the fathers of our Constitution. For achieving this aim, constitutional protection needs to be given to all members of the Election Commission as proposed in its Reform Report. Further, its budget should not be voteable and be charged on the Consolidated Fund of India. These steps would help in achieving the declaration of us being democratic as laid down in the preamble to the Constitution.