

# LEGALFOXES LAW TIMES

## ELECTION COMMISSION OF INDIA: THE WATCHDOG OF FREE & FAIR ELECTIONS

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### INTRODUCTION

Constitution of India devolves in a sovereign constitutional authority with the function of conduct of free and fair elections, namely the Election Commission. Elections are deliberated to be a process to accomplish democracy and as an essential element in the establishment and furtherance of any democracy. The Election Commission of India is a perpetual constitutional body, established on 25 January 1950 as per Article 324(1) of the constitution. Article 324(1) of the constitution delivers that the superintendence, path and control of the groundwork of the electoral rolls for, and the conduct of, all elections to Parliament and the Legislature of every State and elections to the offices of President and Vice President held under the Constitution shall be assigned in a Commission referred to in the Constitution as the Election Commission.

### ROLE OF ELECTION COMMISSION OF INDIA

Election commission plays an important role in organizing elections. The most serious challenge before the Election Commission of India is to contrivance norms and the Model Code of Conduct to safeguard free and fair elections in the country. Its being and independence are needed by history, which has exposed that self-governing elections are not free from disruption. Towards this end, it has been authorized to supervise political parties and candidates and take suitable action in case of violations.

### KEY MALPRACTICES DURING THE ELECTIONS

Any action infuriating present differences or forming mutual hatred or instigating tension between different castes and communities, spiritual or linguistic, is an immoral practice under the Representation of the People Act. Making an appeal to caste or collective feelings to secure votes and using places of worship for activism are offenses under the Act. Paying off to voters is both a corrupt practice and an electoral offense under the Act and Section 171B of the Indian Penal Code. Intimidation of voters is also an electoral offense, while impersonating them is punishable under the IPC. Helping or allocating liquor on Election Day and during the 48 hours preceding it is an electoral offense. In public meetings during the 48-hours ending with the hour fixed for the concluding of the poll is also an offense.

#### CONSTITUTIONAL PROVISIONS RELEVANT TO ELECTION COMMISSION

1. Art. 324: generally speaks of the purposes of the Election Commission and its configuration.
2. Art. 325: there shall be one overall electoral roll for every local constituency for election to either Houses of Parliament or State legislature. It creates equality among citizens by confirming that no person shall be unqualified for inclusion in the electoral roll on the grounds of religion, race, caste, or sex.
3. Art. 326: lays down adult suffrage as the base of elections to the Lok Sabha and to the Legislative Meetings of States.
4. Art. 327: discusses on Parliament the power to make provisions concerning for elections to central and State Legislatures
5. Art. 328: talks on State Legislature the power to make laws concerning for elections to such legislature
6. Art. 329: bars interfering by courts in electoral matters. Anyhow anything said in the constitution i.e. the legitimacy of any law concerning to the demarcation of constituencies or the allotment of seats to such electorates shall not be called in question in any court

No election to one or the other House of Parliament or either one House of the Legislature of a State shall be called in question but by an election petition. Any candidate can file an election petition on grounds of misconduct during the election. In reverence of elections to the Parliament and State Legislatures, they can simply be filed before the High Court, and in respect of elections for the offices of President and Vice President, such applications can only be filed before the Supreme Court.

#### CASE LAWS:

- In *Indira Nehru Gandhi v. Raj Narain*<sup>1</sup>, Raj Narain was the political candidate against Indira Gandhi for Rae Bareilly Constituency in 1971 Lok Sabha General Elections. Mrs. Gandhi won the election & congress won the house with the comprehensive majority. However, after the results of the polls, Raj Narain filed a petition before the High Court of Allahabad opposing that Indira Gandhi has accomplished Election misconducts. On 12 June 1975, The High Court of Allahabad communication under Justice Jagmohanlal Sinha found Indira Gandhi guilty of misusing government machinery u/s-123(7) of Representative of Peoples Act, 1951. Therefore, the court held that Indira Gandhi cannot endure as the Prime Minister of the nation, in addition to this, she cannot fight elections for the next six years. Injured by this decision Indira Gandhi went to plea this ruling of Allahabad High court in the Supreme Court. Though, SC was in a break at that point of time granted a provisional stay on execution on 24 June 1975.

Afterward, a state of emergency was acknowledged by the then President Fakhrudeen Ali Ahmad mentioning internal worry but the real reason that led to the emergency was the High court judgment in *Raj Narain v. Uttar Pradesh*.

The SC while permitting provisional stay ordered the parties to present before it on 11 August 1975 however on 10 August 1975 the President of the emergency – concerned India passed the 39<sup>th</sup> Constitutional (Amendment) Act, 1971 by presenting Article 329-A to overall bar the jurisdiction of Supreme Court from entertaining the issue. This amendment made the elections of President, Prime Minister, Vice-President, and the Speaker of Lok Sabha indefensible in the

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<sup>1</sup>AIR 1975 SC 2299

courts of law. Consequently, this 39<sup>th</sup> Amendment was contented in Supreme Court in Indira Gandhi v. Raj Narain.

#### Issue

The constitutional validity of 39<sup>th</sup> Constitutional (Amendment) Act, 1975

#### Respondent's Arguments

1. The respondent contended that the said amendment is violative of basic features of the Constitution. The respondent replied on 7 judge bench verdict in Kesavananda Bharti
2. The respondent is determined by above 1973 verdict opposed that the Parliament under Article 368 is only accomplished to lay down general principles prominent the arrangements of the state.
3. Since the purpose is valid or not is a judicial pleasure under Article 329 & 136 respectively, the questioned amendment inclines to take away the democratic part of the nation.
4. The said amendment is illegal because during its passage in the house a large number of opposition M.P.s were malevolently detained under detention laws.
5. The 39<sup>th</sup> Amendment is irrational & doesn't pass the classification test as to why classification between members holding higher/lower post is important. This amendment violates Article 14 of the constitution.
6. The said amendment not only eliminates basic arrangement, but it also threatens the rule of law & separation of power.

#### Judgment

The court passed its verdict on November 7, 1975. It must be kept in the awareness that this was the first case when the landmark decision of Kesavananda Bharti<sup>2</sup> was applied by the peak court. The apex court upheld the argument of the petitioner and declared questioned Clause 4 of Article

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<sup>2</sup> AIR 1973 SC1461

329A unconstitutional. In the words of Mathew J the said clause demolished a vital democratic feature of the Constitution viz. the resolution of an election dispute by determining the adjudicative facts and applying the relevant laws. He was of the estimation that a healthy democracy can only purpose when there is an opportunity of a contest of free & fair elections. The questioned amendment demolished that possibility therefore it is violative of the Basic feature of Constitution.

Chandrachud J. found the said amendment violative of the principle of *Separation of Power* as it fixedly relocated a purely judicial function into the hands of the legislature. Further, he was confident that the said amendment is also violative of Article 14 as it creates an unsatisfactory position for specific members against others. Ray C.J. found additional basic features violated by the said amendment i.e. rule of law however Justice Khanna found the destruction of rules of free & fair elections. The court also found the amendment destructive of the principles of natural justice

I.e. Audi Altrem Partem since it repudiates the right of fair hearing who is challenging the election of the members cited under the amendment. Democracy is a basic feature of the Indian Constitution. The amending body i.e. Parliament is not authorized to pass a retrospective law validating an invalid election. This exercise is nothing but an example of the despotic use of uncontrolled and unencumbered power.

The said amendment should transfer such decisive powers to the Parliament. However, a legislative body cannot find adjudicative facts like a judicial body therefore, in the belief of bench the questioned amendment is a nail in the coffin of democracy. Therefore, on the diverse reasons the court collide with down the 39<sup>th</sup> (Amendment) Act, 1975 finding it unconstitutional and violative of the Basic Structure of the Constitution.

- In Mohinder Singh Gill v. Chief Election Commissioner<sup>3</sup>, The Election Commission has to imitate the principles of natural justice and rule of law, but in certain cases, the application of rules be subject to upon Circumstances and cannot be indiscriminate.

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<sup>3</sup> AIR 1978 SC 851

- IN T. N Seshan, Chief Election Commissioner of India v. Union of India<sup>4</sup>, the court held that Article 324 envisions a permanent body to be headed by enduring members, the chief election commissioner, therefore to the reservation and safeguard his independence; he has to be treated differently because there cannot be an election commission without a Chief Election Commissioner.

### ELECTORAL REFORMS

- Model Code of Conduct

EC first allotted a Model Code of Conduct for political parties at the time of the fifth general elections, held in 1971. Since then, the Code has been reviewed from time to time and lays down rules as to how political parties and contenders should conduct themselves during elections.

A provision was made under the Code that from the time the elections are acknowledged by the Commission, Ministers and other consultants cannot declare any financial grant, make promises of construction of roads, and carry out any activities in government and public undertakings which may have the effect of manipulating the voters in favor of the ruling party. Notwithstanding the receipt of the Code of Conduct by political parties, cases of its violation have been on the rise. It is a general grievance that the party in power at the time of elections misappropriations the official machinery to further the electoral prospects of its aspirants.

The embezzlement of official machinery takes diverse forms, such as the issue of posters at the cost of public exchequer, misappropriation of official mass media during the election period for partisan coverage of political news and promotion regarding their accomplishments, misappropriation of government transport including aircraft/helicopter, vehicles.

- Disclosure of Antecedents by Aspirants

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<sup>4</sup> AIR 1995 SCC 611

In June 2002, the EC on the way of the Supreme Court issued an order under Article 324 that each aspirant must submit an affirmation regarding the information of his/her criminal antecedents; assets (both movable and immovable) of self and those of spouses and dependents as well; and qualifications at the time of filing his/her appointment papers for election to the Lok Sabha, the Rajya Sabha, and the State Legislative Assemblies. But political parties assumed that the EC and the judiciary were exceeding their powers. The-all-party meeting held on July 8, 2002, councils of 21 political parties decided that the EC's order should not be permissible to be executed. The Supreme Court again came out as a guardian of the citizen's right to information. The Supreme Court made it clear that failing to furnish the appropriate affirmation shall be considered as a violation of the Supreme Court's order and as such the appointment papers shall be liable to be rejected by the Returning Officer. Providing of wrong or incomplete information shall result in the denunciation of appointment papers, apart from engaging penal penalties under the Indian Penal Code. The 2004 General Elections were directed under these rules.

The above order is an effective step to make democracy healthy and uncontaminated. People have every right to know about the persons whom they wish as their representatives. The EC has directed all Returning Officers to display the copies of nomination papers and confessions filed by aspirants to the general public and representatives of print and electronic media, free of cost.

- Registration of Political Parties

The party system is an indispensable feature of parliamentary democracy. However, there is no direct orientation to political parties in the Constitution of India. The constitutional law relating to registration of political parties was enacted in 1989 which was quite generous. As a result, a large number of non-serious parties burgeoned and got registered with the Commission. Many of them did not fight elections at all after their registration. It led to the misperception among electors as to whom to vote. To eradicate the escalating of parties, the EC had to take some rigorous steps: The Commission now registers a party which has at least 100 registered electors as its members and is also incurring a nominal processing fee of Rs 10,000 to cover the directorial expenses which it will have to acquire on correspondence with the parties after their

registration. To ensure that the registered political parties exercise democracy in their internal operational, the Commission requires them to hold their administrative elections regularly in accordance with their constitutions. The measures taken by the EC to rationalize the registration of political parties have shown actual results.

- Checking Criminalisation of Politics

The EC has communicated its serious concern over the entry of anti-social and criminal persons into the electoral arena. It has set down rules and made references to the government to curb the threat of criminalization of politics. The Commission has directed all political parties to influence an agreement that no person with an unlawful background will be given the party ticket. The aspirants to an election are also obliged to submit an affirmation in a prescribed form declaring their criminal records, including convictions, charges pending and cases initiated against them. The information so furnished by the candidates is spread to the public, and to the print and electronic media.

- Limits on Poll Expenses

To get rid of the growing influence and uncouth show of money during elections, the EC has fixed legal limits on the amount of money that an aspirant can spend during the election campaign. These limits are reviewed from time to time. The EC, by appointing spending observers keeps an eye on the individual accounts of election expenditure made by a candidate during the election campaign. The competitors are also required to give details of spending within 30 days of the announcement of the election results. Apart from this, the EC is also in favor of holding the Lok Sabha and the Assembly elections at the same time, and to reduce the campaign period from 21 to 14 days. This, they feel, will lead to trim down the election spending.

**METHODS ADOPTED BY ELECTION COMMISSION TO SAFEGUARD FREE AND FAIR ELECTIONS:**



The Election Commission had tried to bring enhancements in election processes by the introduction of Electronic voting machines or EVMs. It was thought that these would decrease misconduct and improve competence. It was first tried out on a trial basis in the state of Kerala for the 1982 Legislative Assembly Elections. After a positive testing and legal inquiries, the commission decided to begin the use of these voting machines.

The Election Commission developed a website of its own on 28 February 1998 in order to offer detailed information, management, administration, and immediate results of the elections. In an exertion to avoid electoral fraud, in 1993, EPICs or Electors Photo Identity Cards were delivered, which became obligatory by the 2004 elections. Though ration cards have been permissible for election determinations in certain circumstances. In 1998, the commission decided on a plan for the 'computerization' of the electoral rolls.

The overview of the Voter-verified paper audit trail (VVPAT) in eight Lok Sabha electorates in the 2014 Indian General Elections was a big achievement for the Election Commission. This Voter-verified paper audit trail (VVPAT) system was first used with EVMs in a by-poll in September 2013 in Noksen (Assembly Constituency) in Nagaland and finally in all elections from September 2013 onwards in numerous Legislative elections in the country.

In 2014, none of the above symbols or NOTA was also added as an option on the voting machines which is now an obligatory option to be provided in any election. The precise symbol for NOTA, a ballot paper with a black cross across it, was introduced on 18 September 2015. The symbol has been intended by the National Institute of Design, Ahmedabad. With the Bihar Legislative Assembly election, 2015, the state developed the first to have photo electoral rolls, with photographs of the candidates on the EVMs.

#### RECENT DEVELOPMENTS ON ELECTION COMMISSION OF INDIA:

- The Election Commission of India has proclaimed its newly designed website<sup>5</sup> <https://eci.gov.in>. The website features improved content areas which will help visitors to make well-informed decisions regarding their election-related matters.

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<sup>5</sup>[www.eci.gov.in](https://eci.gov.in)

- The Election Commission of India amended the Representation of People Act 1951 to avoid print media, social media, and other digital stages from carrying political ads in the last 48 hours before the voting begins.
- Election Commission of India (EC) has removed NOTA (None of the above) choice from ballot papers of Rajya Sabha, Legislative Council elections subsequent instruction of Supreme Court. The NOTA choice, from now will be only available in direct elections such as Lok Sabha and state assembly elections.

#### CONCLUSION:

The principle of free and fair elections is a vital hypothesis of democracy, which in turn is a part of the basic arrangement of the Constitution of India. The system of democracy through the electoral procedure is the most practical of all systems and the one that offers the greatest prospects and happiness with the fewest risks to the common people. It is the only system of government in which the people can enjoy their most appreciated rights and liberties. It has a most generous effect on the development of the moral and intellectual importance of citizens. But the system is not without pitfalls. Though, its flaws or limitations do not decline the excellence of the ideal of this system. The flaws of the system are generally found due to social, economic, or historical factors peculiar to it, which can be removed or diminished. Further, the flaws may be cured, not by less, but by more democracy and, therefore, despite some weaknesses, this system has great compensations in comparison to all other systems of Government. This is the reason that it is considered as the best system of Government in the modern world. As a system of Government, it may disappear from the world from time to time or may deteriorate but it will never die. It is a system that is continuous, and has its roots like the community. The people of India have accepted the system of democracy and electoral process as the central principle of the vital law of India. It is the life-breath of Indian people as preserved in the Constitution of India and there is no doubt that the people of India have their full faith in this system.