



## A Review Study of ECI And Issues and Challenges Before ECI

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### Abstract:

The Election Commission of India (ECI) is tasked with ensuring free and fair elections in the country. However, the ECI faces a variety of issues and challenges that can undermine its ability to carry out this mandate effectively. This paper provides an overview of some of the major issues and challenges facing the ECI, including voter registration and participation, electoral malpractices, political funding, and technological innovations. The paper examines the underlying factors that contribute to these challenges, such as political interference, inadequate resources, and lack of public awareness and participation.

**Keywords:** Election, Politics, Constitution, Jurisdiction

### Introduction:

The question of Electoral reforms acquires importance in India at the present day due to the growing deterioration in Electoral politics. Today Most of the Indian citizens do not have faith in the way that our elected representatives are chosen and it seems to be a danger to the very idea of democracy itself. There are many issues which are standing as a challenge before the ECI. Widely held views among the public with regard to the criminalization of politics, the use of money power in securing votes, the paid-news disease is some of the issues that are enlarging the trust deficit with regard to our electoral process.

The Election Commission of India (ECI) has a mammoth task, and the severities of the duties it is called "upon to discharge are too obvious to require any elaboration. The ECI has functioned since its inception in 1951 as a single man Commission, the CEC being the sole authority in all matters pertaining to elections. However, the scheme of the ECI, as envisioned in the Constitution, till now has not evolved to provide the country with sufficient machinery to ensure the proper conduct of elections. The mid-term polls in a number of states marked the beginning of a new era in our political life, and the ECI has to be overhauled so that it can ensure its worth becoming enforceable throughout the country.

### Independence of The Election Commission of India

The independence of the ECI is as important as that of the judiciary, as the former is expected to ensure free and fair election and the latter is entrusted with dispensing justice without fear or favor. The framers of the Constitution wanted the ECI to be truly independent from any kind of control or interference from the Government of the day, as reflected in Clause (5) of Art. 324 of the Constitution, which states that the ECI's conditions of service and tenure of office shall be such as



the President may by rule determine, and that the CEC shall not be removed from his office except in like manner and on the like grounds as a judge of the Supreme Court. This provision guarantees the ECI from both the executive and legislative organs.

### **Jurisdiction of the Supreme Court over the ECI**

The ECI is deemed to be 'tribunal' within the meaning of Art. 136(1) of the Constitution of India, and by a special leave, appeal lies to the Supreme Court. The question of whether the ECI is a tribunal was raised before the Supreme Court for the first time in All Party Hill Leaders' Conference, Shillong v. Captain W.A. Sangma. The Supreme Court observed that several tests have been laid down to determine whether a particular body or authority is a tribunal, and that the authority must be constituted by the State and invested with some function of judicial power of the State. The ECI is created under the Constitution and is invested under the law with not only administrative powers but also with certain judicial powers of the State, however, fractional it may be. The ECI is a tribunal that resolves disputes between rival parties with regard to claims for being a recognized political party for the purpose of the electoral symbol.

It is subject to the mandatory provisions of constitutional law and statutory rules and a court can interfere if those provisions are violated. However, Art. 324 of the Constitution not only imposes duties but also confers powers, so that an order of the ECI relating to the conduct of elections cannot be set aside on the mere ground that it is not specifically authorized by any law. It is the duty of the courts to protect and preserve the integrity of all constitutional institutions like the ECI, which are devised to foster democracy, and when the method of their functioning is questioned, Court must examine the allegations with more than ordinary care. Until that presumption is displaced, it is not just or proper to act on pre-conceived notions and to prevent them from discharging functions which are clothed upon them.

The Supreme Court has made it clear that the orders of the ECI are subject to judicial review and erroneous decisions can be quashed by the Court. The ECI cannot defy the law or act arbitrarily, and the courts can interfere in a decision if any provision of constitutional law or statutory law is violated, the principles of natural justice are not observed, or the decision or order is arbitrary or without jurisdiction.

### **Delegation of Functions of ECI**

The functions of the ECI under the Constitution, the Representation of the Peoples Act, 1950 (43 of 1950) and 1951 (Section 19- K) or under the rules made thereunder may be performed by a Deputy ECIEr or by the Secretary to the ECI. It is pertinent to note that no such delegation is permissible of the functions of Chief Election Officer to his assistants. The ECI has done commendable service to the nation for the past 4 decades, and time is appropriate for expanding the ECI to withstand political pressures and inspire greater public confidence. Regarding the conditions of service and the term of office of the CEC, the Constitution makers have expressed their anxiety to favor only persons of unquestionable integrity and the highest judicial probability



for this high office. Different Commissions, leaders of political parties, ECI and others have given their opinions in this regard, and the ECI must not only be independent in theory but also appear to be so in the exercise of its powers of organizing and conducting elections.

The ECI has become less independent of the executive in recent years due to the practice of making it a berth for retiring Government officials. This has led to rumors of irregularities in polling and the subsequent counting and declaration of results, undermining the prestige and confidence of the ECI. The Tarkunde Committee held that it is necessary to ensure that the ECI is so constituted that its integrity and fairness are unimpeachable. A commission consisting of three members can arrive at a consensus on major controversial problems of organizing elections, and the manner of appointing them members of the commission and the choice of the CEC should be made by the President. This is in keeping with the basic features of cabinet responsibility under the parliamentary system of government.

The Tarkunde Committee recommended that members of the Election Commission should be appointed by the President on the advice of a committee consisting of the Prime Minister, the Leader of the opposition in the Lok Sabha and the Chief Justice. The ECI has recommended to the Union Government to vest it with legal powers to proceed against officials responsible for duties connected with electoral matters for their acts of omission and commission. However, the commission has no power to initiate disciplinary proceedings Suo moto against its own officers, and the entire electoral machinery is under the administrative control of the respective State Government.

Mr. Ganesan said that during the year under review, it was necessary to take action against several government servants for irregularities such as non-maintenance of ballot paper account by the presiding officers, failure to put signatures on the back of ballot papers, and canvassing for a particular candidate. He cited an example of a complaint relating to the general election to Bihar legislative assembly, 1980 from Khapauti (SC) constituency, where one of the presiding officers did not maintain the ballot paper account properly and the presiding officer of another polling station failed to put his signatures on the ballot papers. The chief Electoral Officer, Bihar was directed to issues written warning to the concerned officers. The High Court at Patna observed that a block development officer canvassed votes in favor of the elected candidate and also moved in his company on several occasions. The commission directed the Chief Secretary to the Government of Bihar to relieve the officer immediately of his election duties and to initiate disciplinary action against him.

The Chief Electoral Officer reported that papers relating to the disciplinary proceedings were called for from Personnel Department and were carefully perused. None of the allegations against the officer was proved. The Government of Tamil Nadu, Karnataka, and Andhra Pradesh issued orders that government officials nominated on notified area Committees should not take part in elections from the local authorities 182 constituencies. This is intended to keep government officials clear of politics and political affiliations. The Department proceedings were withdrawn giving the benefit of doubt to the Defaulting Officer.



## Issues and Challenges Before the ECI

Some of the problems which deteriorate our electoral system are being discussed:

### 1. Criminalization of Politics:

During the Election period, newspapers are usually full of information about the number of criminals in the field sponsored by every party. The reason of the criminals behind the entrance to politics is to gain influence and ensure that cases against them are dropped or not proceeded with. They are able to make it big in the political arena because of their financial clout. Political parties tap criminals for the fund and in return provide with political patronage and protection. Approximately, 20 percent of candidates in any state election come from criminal backgrounds. Mafia dons and other powerful gangsters have shown that they can convert their muscle power into votes often at gunpoint. Voters in many parts of the country are forced to vote for the local strongman. Tickets were given to the candidates with criminal records even by National Party. All these instances reported time and again show that Democracy in India has largely failed to be what it was meant to be because the electoral system has been perverted. Our politics have been corrupted because the corrupt and criminals have to enter it Criminalization of Politics have become an all-pervasive phenomenon. There used to be a time, when politicians would hire criminals to help them win elections by rigging or booth capturing or any other unfair means. Now, the very same criminals have started entering parliament and the state legislature. Every 3rd politician in the House or in any given Party, has either a criminal record, or is an accused in ongoing investigation or has been acquitted in a case because of his power. There are so many instances of criminal acts that don't see the light of the day because of their influence.

### 2. Misuse of Government Machinery:

It is often complained that the government in ruling during the election uses their power unduly via official machinery to increase the prospects of its party. This misuse happens in different forms, like, advertising at the cost of government by emphasizing their achievements, disbursements out of the discretionary funds at the disposal of the ministers, use of government vehicles for canvassing etc. the misuse of official machinery in the ways mentioned above gives an unfair advantage to the ruling party at the time of elections.

### 3. Financing of elections:

It is common knowledge that to successfully contest in an election would cost a significant amount of money. Now it goes without saying that 9 out of times that is much greater than the prescribed limits. The issue with the extravagant expenditure is that the candidate who wins ends up spending his or her time in just recovering that and returning the favor to those who funded him or her, instead of focusing on substantial and real issues of governance. Furthermore, citizens are tête-à-tête affected because apart from compromised governance, the money spent on elections inflates the cost of everything. As a consequence, to this, a common man faces obstacles in procuring even the basic needs. Moreover, it has been seen that electoral compulsion for funds becomes the foundation of the whole structure of corruption. Conduct and management of elections: The



massive size of the Indian electorate makes general elections an enormous and daunting exercise. Millions of security personnel are required to promote a peaceful and incident-free voting experience rigging of elections have become common facets of the electoral system in India.

### **Conclusion:**

The independence of the ECI and peoples' confidence in its impartiality is essential for the fabric of democracy. The ECI must address the growing trust deficit in the electoral process due to criminalization, money power, and paid-news. The ECI needs to be overhauled to ensure its effectiveness and enforceability. Criminalization of Politics has become an all-pervasive phenomenon in India, with 20% of candidates in state elections from criminal backgrounds. The misuse of official machinery gives an unfair advantage to the ruling party during elections. Money spent on elections inflates the cost of everything, leading to compromised governance and corruption.

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