



# Electoral process and Election Commission in India

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## Introduction

DR. B.R. Ambedkar explained in the constituent Assembly that the proposal to centralise the election machinery in the hands of a single commission to be assisted by regional Commissioners, not working under the provincial Government, but working under the superintendence and control of the Central Election Commission was a radical change. This is undoubtedly a radical change. But, this change has become necessary because today we find that in some of the provinces of India, the population is a mixture. There are what may be called original inhabitants, so to say, the native people of a particular province. Along with them, there are other people residing there, who are racially, linguistically or culturally different from the dominant people who are the occupants of that particular Province. It has been brought to the notice both of the Drafting Committee as well as of the Central Government that in these provinces the executive Government is instructing or managing things in such a manner that those people who do not belong to them either racially, culturally or linguistically, are being excluded from being brought on the electoral rolls.

The House will realize that franchise is a most fundamental thing in a democracy. No person who is entitled to be brought into the electoral rolls on the grounds which we have already mentioned in our Constitution, namely, an adult of 21 years of age, should be excluded merely as a result of the prejudice of a local Government, or the whim of an officer. That would cut at the very root of democratic Government. In order, therefore, to prevent injustice being done by provincial Governments to people other than those who belong to the province racially, linguistically and culturally, it is felt desirable to depart from the original proposal of having a separate Election Commission for each province under the guidance of the Governor and the local Government. Therefore, this new change has been brought about, namely, that the whole of the election machinery<sup>18</sup> should be in the hands of a Central Election Commission which alone would be entitled to issue directives to returning officers, polling officers and others engaged in the preparation and revision of electoral rolls so that no injustice

may be done to any citizen in India, who under this Constitution is entitled to be brought on the electoral rolls.<sup>1</sup>

While talking about the conditions of service and tenure of office of the Chief Election Commissioner and other members of Election Commission Dr. B. R. Ambedkar stated that we have left the matter to the President to determine the conditions of service and the tenure of office of the members of the Election Commission, subject to one or two conditions, that the Chief Election Commissioner shall not be liable to be removed except in the same manner as a Judge of the supreme court. If the object of this house is that all matters relating to Elections should be outside the control of the Executive Government of the day, it is absolutely necessary that the new machinery which we are setting up, namely, the Election Commission should be irremovable by the executive by a mere *fiat*. We have therefore given the Chief Election Commissioner the same status so far as removability is concerned as we have given to the Judges of the Supreme Court. We, of course, do not propose to give the same status to the other members of the Commission. We have left the matter to the President as to the circumstances under which he would deem fit to remove any other member of the Election Commission; subject to one condition that-the Chief Election Commissioner must recommend that the removal is just and proper.<sup>2</sup>

### Functions and Powers of the Election Commission

The superintendence, direction and control of the elections to Parliament, to the legislature of every State, to the offices of President and Vice-President, have been vested in the Election Commission. The Election Commission is entrusted with the duty of preparation electoral rolls. A person who is twenty-one years of age, an Indian citizen and is not otherwise disqualified under this Constitution or under any law made by appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt illegal practice is entitled to be registered as a voter at any such election. (Art.326)The Conduct of the poll to the Parliament and state legislatures is another important function of the Election Commission. The Election Commission has not only the power of holding elections but also to cancel it, and order repoll, if it is rigged. This was done in Garhwal Lok Sabha by-election in 1981. Earlier such a repoll was ordered in Ferozepur Lok Sabha by-elections in 1977, in which ballot boxes were taken away by miscreants at the time of counting of votes. <sup>3</sup>It is also the responsibility of the Election Commission to hold by-elections whenever there is a mid-term vacancy in the Lok Sabha or Legislative Assembly. One of the important functions of the Election Commission is to recognize political parties as National or Regional political parties and to allot them election symbols. If in a general election a particular party gets four percent of votes polled in any four states it is recognized as an all India or National Party. If a party gets four percent votes in a State, or a region it is recognized as State or regional party. Under the People's Representation Act, the Election Commission also has the power to disqualify a candidate if he does not file election returns within a prescribed period. The Election Commission also advises

<sup>1</sup>. Election Commission of India, Debate in Constituent Assembly on Part-XIII-Article-289, Existing part XV-Elections,6.

<sup>2</sup>.Election Commission of India, Debate in Constituent Assembly on Part-XIII-Article-289, Existing part XV-Elections, 7.

<sup>3</sup>.J.R.Siwach,'Dynamics of Indian Government and Politics', 316, Sterling Publishers Private Limited, 1985.

the President about the Disqualification of MPs and MLAs. Hence, it can be said that the Election Commission has very important powers and functions in our democratic system. In fact, it will not be wrong to say that the very success of democracy depends upon its functioning in an impartial manner.<sup>4</sup>

Political Parties are registered with the Election Commission under the law. Representation of the people Act of 1951 provides for registration of Political Parties. The Election Symbols (Reservation and Allotment) Order of 1968 provides for registration, categorization of Political Parties, allotment of election symbols to Political Parties and deregistration of Political Parties as per the criteria set by the Election Commission. This order has been amended several times by the Election Commission. The Election Commission grants the recognition as national or State Parties on the basis of roll performance.<sup>5</sup>

### **The Election Laws:**

The election laws of the country are covered by Presidential and Vice Presidential Election Act, 1952, the Representation of the People Act, 1950 and Representation of the People Act, 1951, the Government of Union Territories Act, 1963, Registration of Electors Rules, 1960, and conduct of Elections Rules, 1961. The Election Commission also has issued the Election Symbols (Reservation and Allotment) Order, 1968 besides a large number of instructions for the guidance of electoral machinery and the electorate.

The Representation of the People Act, 1950, basically deals with the preparation of electoral rolls whereas the Act of 1951 provides legal sanction for actual conduct of elections making specific provisions to maintain peace and order during election to ensure dignity or fairness of electioneering and to enforce neutrality of civil service. The Election Symbols order is concerned with the registration, recognition of Political Parties, allotment of symbols and settlement of disputes among them.<sup>6</sup>

The appointment of TN Seshan as the tenth Chief Election Commissioner in 1991 was the beginning of a new chapter in the history of India's parliamentary democracy. He not only reinvigorated the Election Commission, but was also largely successful in curbing electoral malpractices in the country. By cancelling or ordering re-polling in those areas where irregularities were reported, by taking strict action against those who were found guilty of dereliction of duty and by deploying paramilitary forces in sensitive areas, Seshan implemented the Election Commission's model code of conduct seriously and forced everyone to realise that this constitutional body can even bite. By the time he quit the esteemed office in December 1996, he had set very high standards for his successors, who have, by and large, managed to maintain the sanctity of this constitutional body, which is responsible for holding free and fair elections in the world's largest democracy. TN Seshan was a man who refused to compromise on his principles, which often placed him on the warpath with politicians. He had once commented that "good elections require four elements: an election law that is fully tuned to provide free and

<sup>4</sup> Ibid, 319

<sup>5</sup> Civil Services Chronicle, Vol.XV No.10, 34, June 2005.

<sup>6</sup> N.S.Narang, 'Indian Government and Politics' (4th Edition), p.457, Githanjali Publishing House, New Delhi, 1993.

fair elections; an election commission which is truly autonomous and fearless; Administrative procedures that ensure even the smallest man and woman can exercise their franchise freely and without fear; and an electorate which is fully aware of its rights and responsibilities". During the initial period after his appointment, Seshan started cleaning up the commission's image. On his first day at work, Seshan, despite being a Brahmin and a religious man, had instructed his staff to remove the photos of Hindu deities on the walls of the office to project a more secular image.<sup>7</sup> He banned long lunch breaks and reading in the library during office hours. During his tenure, Seshan is said to have reviewed more than 40,000 cases of alleged false election returns and disqualified 14,000 potential candidates. In 1993, Seshan took on the central government when the home minister disagreed with his order to deploy security forces in Tamil Nadu when violence threatened to mar the state election. When the home minister refused to execute Seshan's order, the latter announced that no elections would be held in India until the government recognised the power of the Election Commission. The government was forced to turn to the Supreme Court. But before the case was heard, Seshan revoked his order. However, his defiance had won the admiration of the people. In an attempt to curb rampant voter impersonation, Seshan had urged the government to issue photo identification cards to all legal voters. The government argued that it was unnecessary and expensive. Seshan then proclaimed that no elections would be held after Jan 1, 1995 and several elections were postponed, forcing the government to approach the court. To check the misuse of unaccounted funds during elections, Seshan introduced Election Inspection Observers comprising senior officers from the national tax bureau. The observers were assigned to check poll expenditure in each constituency on a daily basis and their presence minimised the use of government funds to buy votes. Taking it one step further, Seshan implemented Section 77 of the Representation of the People Act, making it mandatory for candidates to keep accurate accounts of their expenditure. Among other requirements, he also made it compulsory for candidates to file their accounts accompanied by an affidavit of oath, which would make them liable to prosecution if false information pertaining to the accounts was provided. During the 1993 national election, Seshan personally kept watch on electoral expenses and his officers were assigned to monitor each state. After the election, 1,488 candidates from the Lower House were disqualified for three years when they failed to furnish their expense accounts. When detractors retorted that the code had no legal authority, Seshan responded that such sanction was not required for one not to tell lies. He said no one could raise an objection if the government did not announce grants to gain votes from the electorate. He did not allow the use of government travellers' bungalows by their own supporters and did not use government aircraft and transport for electioneering purposes. His remark that the "high and mighty" were not exempted from this code put him at loggerheads with several prominent politicians. He also angered the Indian Administrative Service when he described its officers as "polished call girls" for prostituting their positions. Seshan also issued a five-page order expressing concern over candidates attempting to win votes on sentiments of caste, creed, race and language. On being credited as the person who reformed the electoral process, Seshan remarked: "It was not that I introduced a new reform in the system. In fact, I didn't even add one comma, semicolon or a full stop to the Act. Whatever was said in the Act, I implemented." "What is wrong with Indian politics are the

<sup>7</sup>.Time to 'Seshan'the EC, RK Anand, June 20, 2012 (Wikipedia)

three 'Ms'," Mr Seshan recently stated. "Money, muscle-power and ministers." The commissioner also banned loudspeakers and graffiti. Most importantly, he has stopped politicians from making speeches which might stir up hatred between Hindus and Muslims and within Hinduism's hierarchy of castes.<sup>8</sup>

### **Election Commission of India makes transfers in Andhra Pradesh**

Article 324 (6) of the Indian Constitution empowers the Election Commission to seek necessary staff for conducting elections. The Commission has to allot election duties to only those officials who would implement its decisions in an impartial manner. If the Election Commission comes to know that a particular officer is showing partiality towards a particular party or a contesting candidate it either transfers or removes the officer from election duty. The Election Commission of India ordered that SIs working in stations of their home constituencies (native place) should also be shifted to other segments. The same guidelines should apply to MROs. Twenty mandal revenue officers (MROs) are transferred out of the Assembly constituencies in which they have been working in Anantapur district, as per the directions of the Election Commission of India (ECI). In the Police Department, only one Circle Inspector is likely to be moved out as per the ECI norms. The ECI communication dated February 25 to the district administration stated that any police officer of the rank of Sub-Inspector or Station House Officer working in a station or stations within the geographical limits of an Assembly constituency for four out of the last five years should be shifted out to stations in other constituencies. The District Revenue Officer, V. Mohan Rao, told that there were about 20 MROs who would fall into the specifications issued by the ECI. Accordingly, they would be transferred to other constituencies. However, the Police Department had no such problem except the CI of Bathalapalli. The Superintendent of Police, Anil Kumar, explained that there were no SIs in the district who would attract the ECI norms. The SI of Kundurpi was a native of the same constituency but he was transferred to a police station in another constituency recently.<sup>9</sup> As per the directions of the Election Commission the Anantapur district administration has requested the neighbouring Cuddapah administration to depute 9,100 polling personnel for the ensuing elections. Similarly, half the requirement of Cuddapah district will be met by Anantapur. Two to three personnel of the polling parties, comprising one presiding officer and five polling officers each, will be from the neighbouring district. The polling parties will be heterogeneous groups picked through random generation by computers. The polling parties will know about their destination only 24 hours before the commencement of polling. In all, the district will require 16,572 polling personnel for the coming elections. Coupled with 10 per cent reserve personnel the requirement will be 18,219. Of them, 9,114 will be deputed from Cuddapah district. Of the 2,762 polling stations 1,335 will be general, 720 for men and 707 for women. Counting of votes for all 14 Assembly and two Lok Sabha constituencies will be done at the district headquarters. Further, the administration has proposed shifting of eight polling stations due to the shifting of designated institutions to other premises and nomenclature changes to 137 polling stations. Election expenditure observers will camp in their respective

<sup>8</sup>. Gilmartin David, one Day's Sultan:T.N.Seshan and the reform of the Election Commission (Wikipedia)

<sup>9</sup>. [www.hindu.com](http://www.hindu.com), February-29, 2004.

constituencies from day one of election notification till the end of polling.<sup>10</sup> To bring polling stations closer to habitations, within 2 km from polling areas, the Election Commission has approved Anantapur district administration's proposal to change location of 11 polling stations. According to the District Collector and District Election Officer, Y.V. Anuradha, polling stations with change in locations are spread in Uravakonda (2), Kadiri (1), Kalyanadurg (6) and Tadipatri (2). Besides, counting of votes pertaining to all 14 Assembly segments will be taken up at the district headquarters this year. The Collector has urged political parties to follow the model code of conduct and warned them against intimidation of voters. She also warned officials against misuse of official position. A meeting has been convened with the political parties on March 15 on the observation of model code of conduct. Returning officers and assistant returning officers have also been told to tour their constituencies from March 15. MROs have been asked to identify the problematic villages. The District Election Officer has also appealed to the print and electronic media against the use of names and photographs of the district officials in advertisements being issued by the people's representatives. She stated that some people's representatives were issuing advertisements on the progress of various schemes as their achievements along with the officials' photographs.<sup>11</sup>

The Election Commission questioned the government how it could entrust election related responsibilities to Mr. Prakash against whom it had recommended disciplinary action when he was Visakhapatnam Collector and has chosen Kurnool district Collector M. Dana Kishore to replace Praveen Prakash as Ranga Reddy district Collector. The Commission picked Mr. Kishore from the panel of three names submitted by the Andhra Pradesh government on its directions after it ordered the immediate transfer of Mr. Prakash. Chittoor Collector M. Ravichandra and his Medak counterpart Piyush Kumar were the other IAS officers suggested by the government.<sup>12</sup>

All major opposition parties, including the TDP-led "grand alliance" and BJP, had sought the replacement of Yadav for praising the Chief Minister at a meeting to educate the police officers on the Model Code of Conduct for elections during his official tour of Kurnool district.<sup>13</sup> After DGP Shyam Sunder Prasad Yadav praised the state government at a police meeting in Kurnool, the Election Commission of India shunted him out from the top post on charges of having violated the model code of conduct. The decision to remove Yadav was taken at a meeting of the full commission in New Delhi and the same was conveyed to chief electoral officer I V Subba Rao. The EC has asked the state to submit a panel of three names from which they will name a successor to Yadav. K R Nandan, A K Mohanty and P Goutham Kumar are the seniormost officers after Yadav in the state.<sup>14</sup> The Election Commission had recommended appointment of IPS officer A K Mohanty as the next DGP of Andhra Pradesh. Mohanty will replace S S P Yadav, who was transferred by the EC for reportedly praising Chief Minister Y S Rajsekhar Reddy during an official tour, thus violating the poll code.<sup>15</sup>

<sup>10</sup>. [www.hindu.com](http://www.hindu.com) march-31, 2004.

<sup>11</sup>. [www.hindu.com](http://www.hindu.com), march-12, 2004.

<sup>12</sup>. [www.hindu.com](http://www.hindu.com), April 27, 2008.

<sup>13</sup>. [www.the-times-of-india.com](http://www.the-times-of-india.com), March11, 2009.

<sup>14</sup>. [www.the-times-of-india.com](http://www.the-times-of-india.com), March19, 2009.

<sup>15</sup>. [www.the-times-of-india.com](http://www.the-times-of-india.com), March22, 2009.

The Election Commission removed the Returning officer (RO) of Chilakaluripet constituency of Guntur District, B Venkata Reddy, following a complaint lodged by the TDP. The TDP alleged that Venkata Reddy was a classmate of the minister and was appointed as project director (PD) of DRDA a few days before the election schedule was released. District collector Jayesh Ranjan relieved the official from duties within an hour after receiving the directive from chief electoral officer I V Subba Rao. Venkata Reddy was not only removed as RO, but also from the post of PD as the state government repatriated him to his parent department of labour and employment. The TDP leaders alleged that the official was brought to the district to facilitate the win of likely Congress nominee Marri Rajasekhar, who is the sitting MLA. Mannava Subbarao of TDP, who filed the complaint, said the official was brought to ensure the defeat of Prattipati Pulla Rao, probable TDP candidate. Meanwhile, additional project director at DRDA A Ramakrishna Reddy has been made the RO of Chilakaluripet segment. Venkata Reddy, a deputy commissioner in labour department in Ongole, was hurriedly appointed as PD, DRDA. While a joint director (DRO rank) cadre official is eligible for the DRDA PD post, Venkata Reddy is only a deputy director (RDO) rank official. Venkata Reddy's brother Busireddy Malleswara Reddy is a businessman and chief election agent of Kanna Lakshminarayana.<sup>16</sup>

the Election Commission suspended Deputy Superintendent of Police of Adoni in Kurnool district, T. S. Krishna Murthy, and ordered an inquiry against him for “negligence of duty”. Chief Electoral Officer I. V. Subba Rao, who announced this at a media-briefing of the day’s decisions taken by the EC and election-related developments, however, refrained from citing any specific instance of negligence on the part of Mr Murthy in spite of repeated queries, saying it was not proper to reveal the details in the best interests of elections. It is said that the decision by the EC followed complaints by political parties against Mr Murthy that he was favouring a political party and a report submitted by the Director-General of Police. The EC also shifted Mr Y. Nagi Reddy from East Godavari district which he is serving as Superintendent of Police, following a similar report by the DGP accompanied by comments by CEO. Ms Charu Sinha has been appointed in his place.<sup>17</sup>

With a view to conduct the elections in an impartial manner The Election Commission of India has appointed 22 senior IAS officers from other states as observers for the constituencies going to the polls in the first phase on April 16 to the state of Andhra Pradesh in 2009. The observers for the constituencies that fall under Hyderabad, Secunderabad and Ranga Reddy districts are Tarkeswarnath Singh, UP (Hyderabad); Harjit Singh, Punjab (Secunderabad); K S Kropha, Assam-Mizoram (Malkajgiri); and K R Srinivasan of Karnataka (Chevella). Each observer will be assisted by one more IAS officer and an IRS officer for accounting purpose.<sup>18</sup>

<sup>16</sup>. www.the times of India.com, March20, 2009.

<sup>17</sup>. www.hindu.com, April08, 2009.

<sup>18</sup>. www.the times of India.com, March 25, 2009.

Mr. Subba Rao said the EC had appointed S. Subbaiah, and N. Sivasailam, both senior IAS officers from other States, as special observers on May 11, 2008 for by-elections. They would submit reports on the goings-on regularly and issue notices to the guilty for any violation of election code. These would be in addition to 48 general/expenditure observers already named, and micro-observers to be posted for sensitive/troublesome polling stations. He instructed the election officials in the districts to ensure random selection of EVMs compulsorily at constituency and polling station levels in the light of apprehensions that a particular set of EVMs might be sent to a specific constituency/polling station after pre-setting its programme.<sup>19</sup>

### **Election Commission had disqualified ineligible contestants**

The Representation of People Act, 1951 empowers the Election Commission to disqualify all those who fail to submit the expenditure details within the fixed date by the commission. Whoever exceeds the permitted expenditure limit are also disqualified under the Act. Nearly 71 persons from the State have been disqualified from contesting elections in 2004 either for Lok Sabha or Assembly, for non-submission of accounts indicating the expenditure made by them as candidates during the 1999 elections. Of them, 13 contested for the Lok Sabha elections and 58 for the Assembly. The three-year disqualification will end in June next for those of the Lok Sabha and in August for those of the Assembly. Among the 13 persons of the Lok Sabha, five were from Secunderabad, four from Vijayawada and one each from Bapatla, Ongole, Rajampet and Cuddapah. The 58 names of the Assembly contestants come from a cross-section of constituencies and no single constituency dominates. All of them attracted the punishment under Section 10 (A) of the Representation of the People Act, which makes it mandatory for contestants to submit expenditure details within a time-limit.<sup>20</sup> The Election Commission has also barred 16 candidates of various parties and independents from contesting any election for three years for their violation of the model code of conduct during the 1999 elections. The candidates have been disqualified for contesting elections for three years from June 6, 2001 to June 6, 2004 under the People Representation Act, 1951. The candidates barred from contesting elections are: two independents and one Anna TDP candidate who contested from Nallamada, two independents contested from Hindupur, two independents from Penukonda, three independents from Gooty, one independent from Singanamala, two independents and one Anna TDP candidate from Dharmavaram and two independents from Tadipatri.<sup>21</sup>

<sup>19</sup> . [www.hindu.com](http://www.hindu.com), May 11, 2008

<sup>20</sup> . [www.hindu.com](http://www.hindu.com), March-27, 2004.

<sup>21</sup> . [www.hindu.com](http://www.hindu.com), March-28, 2004.



## Election Commission rejected nominations

The Election Commission had strictly implemented the eligibility rules to contest in the elections to the Lok Sabha and Andhra Pradesh State Assembly. The Commission had allowed only the eligible candidates in the fray and rejected the nomination papers of ineligible candidates. As many as 100 nominations were rejected in the State of Andhra Pradesh. They included 30 in the city of Hyderabad. The Additional Chief Electoral Officer, Ajay Swahney, told that the rejections were mostly due to non-submission of 'B' forms by candidates within the time stipulated, underage of candidates mentioned in nominations and insufficient number of proposals for candidates. Mr. Sawhney said the submission of 'A' form by which the competent person in the party would authorise another in the same party to issue 'B' form for a candidate was also a must as per the Clause 13 of the Election Symbols Reservation and Allotment order of 1968. The nomination filed by Nattu Narendra Yadav for the Srikakulam Lok Sabha constituency has been rejected under the criminal antecedents provisions of the election law. He filed his papers as an Independent.<sup>22</sup>

Nominations of the two Bahujana Samaj Party's candidates for the Visakhapatnam-II and Pendurthy Assembly constituencies were rejected. The papers of Goddu Gokuldas for the Visakha-II were rejected because he was underaged and in the case of Pendurthy, Patiwada Appa Rao's name was not found in the voters list. three out of the 14 nominations filed for the Visakhapatnam parliamentary constituency were rejected. For the Anakapalle Lok Sabha seat, the nomination of the Telugu Desam Party's dummy candidate, Adari Tulasi Rao, was rejected. In the case of 13 Assembly constituencies, 30 out of the 111 nominations filed were rejected. The rejected included the dummy candidates of the TDP, the Congress and the CPI, because their papers were without the B- Forms issued by their parties. The nomination of K.P. Rangaiah, a resident of Hyderabad, who submitted his papers on behalf of the Telengana Rashtra Samiti (TRS) for the Visakhapatnam parliamentary seat were not accepted due to insufficient number of proposers. Pendurthy saw the maximum number of nominations, six, being rejected while only at Payakaraopeta, among the 13 Assembly constituencies, all the nominations, numbering five, were found to be in order. The nomination papers of the Congress rebel candidate, Md. Gurfan, and his brother Farukh Khan, were rejected. Both of them mentioned their age as 23 years in the affidavit while the minimum age required for contesting the elections is 25 years.<sup>23</sup>

### Acknowledgement

I Sincerely thank ICSSR (Indian Council for Social Science Research) for providing me Post-Doctoral Fellowship and enabling me to write this paper.. I am conducting Research on Electoral Reforms in India as Research Scholar (Post-Doctoral Fellow).

**Conclusion:** The Election Commission of India has succeeded in conducting elections to the parliament and state Assemblies in the country from 1950s to the present day as it is made the independent body in taking decisions and implementing them. The Chief Election Commissioners and the other Election Commissioners are not under the control of the executive in the country.

194 <sup>22</sup>.[www.hindu.com](http://www.hindu.com), April-03, 2004.

195 <sup>23</sup>.[www.hindu.com](http://www.hindu.com), April-03, 2004

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