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There is need for more powers for Election Commission in India

M. RAMANJANEYULU

POST-DOCTORAL FELLOW

ICSSR, UNIVERSITY OF HYDERABAD

Introduction

The Election Commission of India (ECI) is a permanent and independent body established by the Constitution of India directly to ensure free and fair elections in the country. The Election Commission is an all-India body in the sense that it is common to both the Central government and the state governments. The commission has the powers under the Constitution, to act in an appropriate manner when the enacted laws make insufficient provisions to deal with a given situation in the conduct of an election. Being a constitutional authority, Election Commission is served by its secretariat located in New Delhi. The Election Commissioners are assisted by Deputy Election Commissioners, who are generally IAS officers. They are further assisted by Directors General, Principal Secretaries, and Secretaries and Under Secretaries.

At the state level, Election Commission is assisted by the Chief Electoral Officer of the State, who is an IAS officer of Principal Secretary rank. At the district and constituency levels, the District Magistrates (in their capacity as District Election Officers), Electoral Registration Officers and Returning Officers perform election work.

Functions and Powers of the Election Commission

Various functions and powers are assigned to the Election Commission of India. Some of them are as follows:-

(1) Preparation of Electoral rolls

Preparation of electoral rolls and periodically revising the electoral rolls is the main function of the Election Commission. All the names of eligible voters irrespective of their religion, race, caste and sex are included in the voters Lists. A person who is 18 years of age, an Indian citizen and is not otherwise disqualified under the Constitution of India or under any law made by appropriate Legislature on the ground of non-residence,

unsoundness of mind, crime or corrupt or illegal practices is entitled to be registered as a voter at any election (Article 326).

The preparation of electoral rolls is the responsibility of the Election Commission and the courts cannot interfere in the electoral matters (Article 329).

(2) Conduct of the Poll

The Conduct of the poll is another important function of the Election Commission. The Election Commission conducts elections to the Parliament, state legislatures, to the offices of President and Vice-President. During polling, the party in power and various dominant groups and individuals try to use all sorts of underhand means to win the election. Hence, the Election Commission had to be very vigilant to prevent rigging and other irregularities in the elections. For this purpose the Election Commission-

- (i) provides separate booths for the weaker sections of society;
- (ii) appoints election observers to keep a watch on the conduct of officials and other miscreants;
- (iii) Prevents impersonation by taking the thumb impression or signature of the voter on the counterfoil of the ballot paper and by putting a mark of indelible ink on the finger.
- (iv) allows the candidate or his agent to put his seal on the ballot box;
- (v) Ensures secrecy of voting by shuffling the ballot papers before counting;
- (vi) Does not permit the candidate or his agent or any other person except the polling officer to note the serial number of ballot paper issued to the voter.

(3) Cancellation of poll and ordering re-poll

The Election Commission is empowered to cancel the poll if any irregularities like rigging, proxy voting, pouring of ink into the ballot boxes, replacement of ballot boxes have taken place during the time of election and counting of the votes and order repoll. A re-poll was ordered in Ferozpur Lok Sabha by-election in 1977, in which the miscreants have taken away the ballot boxes at the time of counting of votes. Another such re-poll was ordered in Garhwal Lok Sabha by-election in 1981.

(4) Holding of By-election

It is also the responsibility of the Election Commission to hold by-elections whenever there arises a vacancy in the Lok Sabha or Legislative Assembly either because of the resignation of sitting M.Ps or M.L.As or because of the death of M.P or M.L.A. For example, the Election Commission has conducted by-elections to 4 Lok Sabha and 18 Assembly seats in the State of Andhra Pradesh in 2008. The vacancies were caused by the

resignation of 4 M.Ps and 18 M.L.Ss belonging to Telangana Rashtra Samiti Political Party in support of their demand for a separate Telangane State.

(5) Recognition of Political Parties and Allotment of Symbols

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.

The Election Commission not only allots symbols to political parties but also individual candidates and while doing so it can change the symbols of the candidates as well.

(6) Disqualifying the Candidates

Under the People's Representation Act 1951, the Election Commission is empowered to disqualify a candidate if he does not file election returns within a prescribed period. After every election a fairly large number of candidates fail to file these election returns and hence, the Election Commission has to disqualify them. In 1977 as many as 720 candidates were disqualified for three years on this ground.

(7) Advising the President of India about Disqualification of MPs and MLAs

The Election Commission also advises the President about the Disqualification of MPs and MLAs which they may incur after their election either by accepting a paid government assignment or otherwise.

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.

(8) Preparation of Model Code of Conduct

The Election Commission prepares the Model Code of Conduct with the consent of the Political Parties for the guidance of Political Parties and Candidates before conducting the elections and implements during the time of elections. The Model Code of Conduct comes into effect from the day on which the dates for conducting elections are announced by the Election Commission.

(9) To suspend or withdraw recognition of a recognized Political Party

The Election Commission is empowered to suspend or withdraw recognition of a recognized National or Regional Political Party for their failure to observe the model code of conduct or for their failure to follow the directions of the Election Commission during the time of elections.

Electoral Offences and Punishment for offences

The following activities are declared as electoral offences under Representation of People Act 1951.

Bribery-

(i) Whoever gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercise any such right; or

(ii) Whoever accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right, commits the offence of bribery.

Punishment for bribery: -

Whoever commits the offence of bribery shall be punished with imprisonment for one year, or with fine, or with both. The period of imprisonment should be increased from one year to five years and amount of fine should be around five thousand rupees so that the offence of bribery can be prevented to a greater extent.

Undue influence at elections:

Whoever interferes or attempts to interfere in the exercise of any electoral right by the voter and whoever threatens any candidate or voter with injury of any kind, commits the offence of undue influence at an election.

Personation at elections: -

Whoever at an election applies for a voting paper or votes in the name of any other person, whether living or dead, or in a fictitious name, or who having voted once at such election applies at the same election for a voting paper in his own name, and whoever abets, procures or attempts to procure the voting by any person in any such way, commits the offence of personation at an election.

Punishment for undue influence or personation at an election:-

Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of one year, or with fine, or with both. The period of imprisonment should be increased to three years and the fine should be around five thousand rupees so that the offence of undue influence or personation at an election can be prevented to a greater extent.

False statement in connection with an election:-

Whoever with an intention to affect the result of an election makes or publishes any statement, purporting to be a statement of fact, which is false and which he either knows or believes to be false or does not believe to be

true, in relation to the personal character or conduct of any candidate shall be punished with fine. The amount of fine should be around five thousand and should be imprisoned for one year.

Illegal payments in connection with an election: -

Whoever without the general or special authority in writing of a candidate incurs expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees. The amount of fine should be increased to five thousand rupees and should be imprisoned for one year so that the supporters of the candidate will not involve in the offence of illegal payments.

Statements conducing to public mischief:-

(1)Whoever makes, publishes or circulates any statement, rumour or report,-

(a) With an intention to cause, or which is likely to cause, any officer, soldier, sailor or airman in the Army, Navy or Air force of India to mutiny or otherwise disregard or fail in his duty as such; or

(b) With an intention to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or

(c) With an intention to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community;

Shall be punished with imprisonment, which may extend to three years, or with fine, or with both. The period of imprisonment should be increased to five years and the fine should be around five thousand rupees so that people will not dare to involve in the offence of public mischief.

(2)Statements creating or promoting enmity, hatred or ill-will between classes: -

Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to cause or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Dangers to the Electoral System

The working of Indian electoral system has been witnessing considerable drawbacks and malpractices. The major problems that the Indian Electoral System facing are:-

Use of Money in excessive amounts by the Political Parties and Candidates for winning the elections

The Political Parties and candidates spend a lot of income during the time of elections for achieving victory in the elections. The Election Commission should be empowered to debar the Political Parties and Candidates if involved in the distribution of money to voters.

Misuse of Government Machinery

There are numerous other ways in which the government power and machinery can be misused by the parties in power at the centre and in the states. Some of them can be listed as follows;

- (1) Holding official functions attended by ministers during the election period;
- (2) Coverage of such function by the official radio or T.V.
- (3) Combining official tour of ministers with election work.
- (4) Use of government vehicles or aircraft by ministers for election purposes or during the election period.
- (5) Advertisements of government achievements in newspapers at Government cost during the period of election.
- (6) Use of jeeps, buses or other vehicles belonging to government and local bodies, public corporations and undertakings for election work of any political party.
- (7) Use of Public Works department or Government contractors for erecting rostrums for the election meetings of minister or their party.
- (8) Announcement of new government policies, making promises or starting new projects, grant of new allowances or loans, waiving of interests on loans and increase in salary on the eve of election, or after the notification of election schedule, and
- (9) Transfer of government officers after the notification of election schedule.

In order to prevent the misuse of government machinery by the Political Party in power and provide level playing field to all the Political Parties and Candidate for contesting elections, the President's rule should be imposed in the states where elections are being conducted.

Powers needed to strengthen the Election Commission

(1) Independent Election Department under the control of the Election Commission

The Election Commission should be given separate staff on the pattern of the Indian Audit and Accounts Department. If the Election Commission has the staff of its own it can perform its functions independently and effectively without depending on the staff of Central and State government during the time of elections. During the time of elections the Election Commission involves staff of central government and state government and conducts the elections. The newly taken staff is not properly discharging the assigned duties because of lack knowledge on the functions of the election commission. Because of lack of sufficient staff the Election Commission is not able to create awareness among the voters on how to exercise their right to vote, how to cast vote through Electronic Voting Machine (EVM). During the By-elections in A.P in 2008 most of the uneducated voters have put their thumb impression on EVM because of lack of knowledge on how to cast their vote by using EVM.

2) Poll fund should be placed at the disposal of the Election Commission.

The Election Commission does not have its own funds for conducting elections. Whenever the Election Commission conducts elections, it approaches the government for funds and this severely curbs its independence. If the governments are not in a position to give poll fund, the Election Commission has to either post-pone the elections or conduct whenever the government gets ready to give poll fund. So, there has to be poll fund at the disposal of the Election Commission for conducting elections.

(3) Setting Longer Disqualification Period for Candidates

The Election Commission should be empowered to disqualify the Candidates who indulge in electoral corruption for a longer period. The law should be made to ensure automatic disqualification of the candidate for at least 10 years who has not filed his election expenses account before the prescribed period of the Election Commission. If the disqualification period is long the candidates will not dare to adopt illegal methods like distributing money to the voters during the time of elections, proxy voting etc for winning the elections. Some of the candidates spend so much expenditure during campaigns but show very less expenditure on records. The Election Commission should be empowered to conduct enquiries on the income spent by the candidates during the campaigns and take action against the candidates according to the facts brought to the fore through an enquiry.

(4) Deregistration of Political Parties

The Election Commission of India should be given the power of deregistration of political parties if they do not contest in the elections in the country. The Election Commission should be empowered to deregister a Political Party if it involves in serious malpractices during the time of elections.

5) The Election Commission should be empowered to advise the Presiding Officers of both Parliament and state legislature for disqualification of the members of either House of Parliament or State legislature.

In 1985, through 52nd Amendment Act, Tenth Schedule in the Constitution was introduced to deal with the provisions of for disqualification of the members of either House of Parliament or State Legislature. This act is popularly known as the anti-defection Law. Anti-defection law states that any legislator of any Political Party shall be disqualified from being the member of the concerned legislature if he voluntarily gives up the membership of his party or votes against his Political Party or abstains himself from voting without the permission of the concerned authority of his Political Party and such voting or abstention is not condoned by the Political Party within 15 days. Anti-defection Law further states that if an independent legislator joins any Political Party after his election to a House of Legislature or Parliament, he shall be disqualified from being a member of the House and if a nominated member joins a Political Party after six months from the date on which he takes his seat shall be disqualified from being a member of the House.

According to the anti-defection Law, the sole and final authority in deciding the questions arising out of the provisions of this act is the Presiding Officer of the legislature concerned. The law should be changed in such a way that the speaker consults the Election Commission and acts in accordance with the advice of the Election Commission.

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