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## **A Study Of Constitutional And Legal Provisions Of Electoral Commission Powers In India**

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### **ABSTRACT**

In our country, India, we have an elected government. A government that is of, by, and for the people governs this democracy. According to the definition given, a government that is run entirely by its citizens is a "government of, by, and for the people." The people of India administer the country in an indirect manner, through their elected representatives. It is through the process of electing these representatives that the concept of election is introduced. The Constitution of India has provisions for elections, and this study examines and evaluates them. Furthermore, the study focuses on an essential issue that is missing from the Indian constitution's election requirements. In order to serve as a representative of the people and administer the government, one must have the bare minimum of qualifications. There are no specifics in this paper, but it does provide an overview of the rules that govern elections in India under the Constitution. There is no complicated legal jargon used in the debate, but rather an easy-to-understand explanation of the laws so that anybody, regardless of their background, may grasp the constitutional provisions for elections in India.

**KEYWORDS:** Democracy, government, representatives, election, fallacy, qualifications.

### **INTRODUCTION**

Parliamentary democracy is the means through which India's government functions. The Indian federation consists of the Union government in the centre and the state governments at the periphery. The international community regards India as one of the world's most stable democracies. The Indian electoral commission had a significant impact on the country's democratic process. The Supreme Court, as a supreme judicial authority, increased the independence of the electoral commission through a series of major decisions. Keeping this democratic institution out of the hands of the government was becoming increasingly important.

Citizens of India are allowed to create political parties of their own choice since the country is a democratic one. An elected government can't be created unless the people of the nation have a say in who their representatives are. In order to elect a representative for public office, a cluster decision-making procedure such as an election is used. Contemporary representational democracy has relied heavily on elections since the 17th century. Vacancies in the legislature may occasionally be filled by regional and municipal elections, as well as those for the executive and judicial departments. Another common practise in both commercial and public enterprises is to follow this method.

## **LITERATURE REVIEW**

**M. MOHSIN ALAM BHAT (2021)**When it comes to the stability of constitutional democracy, election management bodies (EMBs) play a critical role. These institutions' autonomy and accountability have long been seen as political must-haves. It is far more difficult to find a medium ground between these two principles. When it comes to accountability, a strong EMB like India's Election Commission (ECI) serves as a good case study. Indian political scientists have long noted that in recent decades, the institution has risen in power to a degree that often exceeds its basic constitutional or legislative mandate. They claim that this has damaged the institution's ability to hold itself accountable.

**AMIT AHUJA (2021)**A world-class election regulating agency is impossible to find better than the Election Commission of India (ECI). For the last seven decades since 1947, India's Election Commission (ECI), one of the country's most trusted public organisations, has monitored the integrity of 17 national elections and more than 370 state elections. It was only until the Congress Party's stranglehold on the government began to wane, and under the strong leadership of succeeding chief electoral commissioners, was ECI able to establish its independence from political pressure.

**ELECTION COMMISSION OF INDIA (2019)**A systematic mechanism to enable and monitor election expenditure was implemented by the Election Commission in 2010 for the elections to Bihar's Legislative Assembly, which faced a growing danger from those who wanted to distort the mandate of the electors. ECI makes certain that the general population is not inconvenienced while reducing the threat of money and muscular force. Indeed, every effort is made to make the common citizen aware of the dangers posed by voter bribery and other corrupt practises that taint the electoral system and encourage him or her to aid the ECI process.

**NILESH EKKA (2018)**Regular elections are a critical component of a democratic government. In order for democracy to thrive, there must be elections. In this  
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way, people's political views, values, and beliefs can be captured on film and television. Voters choose a government, and that government has the constitutional authority to rule over the people who have chosen it to rule. For the selection and control of leaders, elections are the most fundamental democratic procedure. Elections allow people to express their confidence in their administration and to replace it if necessary. Elections are a representation of the people's sovereignty and the validity of the government's authority. As a result, successful democracies cannot exist without free and fair elections.

**S. GOKULAKRISHNAN, K.S. SHOBA JASMIN (2018)** Electoral reforms and public perceptions of electoral reform are examined in this paper. Elections are held so that we can elect a representative to represent our interests in government. A country's elections are its most significant feature. Elections are a critical component of a democratic society. Elections give the people a chance to select a leader who they believe will best serve their community or society as a whole and guide them on the proper road toward growth and progress. For a successful democracy, free and fair elections are more crucial than the selection of a leader by the people. Free and fair elections are considered essential to a country's development. However, in today's world of modern power politics, electoral justice is a must.

### **POWERS OF ELECTORAL COMMISSION IN INDIA**

Apparently, the Election Commission of India follows the Dominions Act of 1920, which was based on the Canadian model. 6 The Election Commission of India (ECI) is a constitutionally independent body that has the authority to conduct elections for the Union and States. Advisory powers, administrative powers, and quasi-judicial powers are all granted to the E C I by our constitution. It advises the President and Governor on matters relating to disqualification of members of parliament and state assemblies under the first kind. They wield power to designate polling places, compile voter registration lists, supervise and control elections under the second category of authority. The Commission's quasi-judicial powers allow it to act as a Court in cases involving the recognition of political parties and the emblems they display.

A candidate may be disqualified from standing for office if he or she fails to satisfy the standards of the Representation of the People Act and other Prescribed Laws. In addition to the power to suspend or shorten any such prohibition, it also has the power to impose any other ban. 8 Election Commission of India vs. Mohr Abdul Ghani, which involves the third proviso of Article 82, may provide the Supreme Court an opportunity to rule on a significant issue involving Election Commission of India vs. Mohr Abdul Ghani. ECI cannot amend any constituency's borders, area, or extend, according to the judgement.

To determine whether a candidate or elected official should be disqualified, the Kerala Panchayat Raj Act, 1994 grants the State Election Commission the following powers:

1."under provision, where the State Election Commission decides:

(2) This Act allows for the Commission to use affidavits and documents provided by parties on their own volition in investigations under Section 34 or Section 36 of this Act if it determines that the documents and affidavits cannot be relied upon to make a conclusion in the subject at hand.:-

- a) The act of appointing a person to testify under oath and requiring him to appear;
- b) Demanding that any paper or other tangible thing that may be used as evidence be found and brought to light
- c) obtaining affidavits;
- d) Any public document or copy thereof may be requested from any court or agency by
- e) commissioning witnesses or documents to be examined

2.The Commission also has the authority to demand information from anybody, including government officials who may be entitled to privileges under current law, on any issues or matters that the Commission deems relevant or valuable to the investigation.

3. The Commission may proceed to trial after recording the facts constituting the offence and the Statement of the accused in accordance with the Code of Criminal Procedure, 1973(Central Act 2 of 1974), if an offence described in Sections 175, 178, 179, 180 or 228 of the Indian Penal Code (Central Act 45of 1860) is committed in the Commission's view or presence. The Commission is a court of civil jurisdiction.

4. As stated in Sections 193 and 228 of the Indian Penal Code (1860), a judicial process is defined as any proceeding before the Commission (Central Act 45 of 1860).

5. Similar limits may be found in Section 196 of the Kerala Municipality Act of 1994.

### **SUPRINTENDENCE, DIRECTION AND CONTROL**

All government officials involved with regulating, monitoring, and managing elections to the House of People and state legislatures must take a realistic, practical, and flexible approach to guarantee that the nation is managed in line

with its authentic, secular, socialist, and democratic viewpoint. This jurisdiction is granted to the Election Commission of India under Article 324 of India's Constitution. An examination of the choices made by people for state legislatures, the offices of president and vice president, and the European Parliament is the subject of this article. This means that Article 324 does not override Parliament's or the Election Commission's legislative authority, which is meant to augment rather than replace it when it comes to supervising and conducting elections. Article 324 should not be read in isolation, but rather in connection with Articles 326 through 329. Even though the Commission was just giving guidelines for the administration of elections, it was determined that it could not acquire a legislative function reserved for Parliament and State Legislatures.

This is stated in Article 324 of the Indian Constitution as well. As stated in this article, the President has the authority to designate the Chief Election Commissioner and as many additional Election Commissioners he thinks appropriate. Election commissioners are selected by the president in line with laws enacted by Congress, who will choose the Chief Election Commissioner and the rest of the panel. When *Mohinder Singh Gill v. Chief Election Commissioner* ruled that Article 324 applies to regions that are not covered by legislation, the phrases "supervision, direction, and control" and "conduct of all elections" were used in the judgement.

"Conducting elections" covers the power to set the essential circumstances for free and fair elections, such as in the case of the *Union of India v. Association for Democratic Reforms*<sup>4</sup>. As a result, Article 324 of India's Constitution gives the Election Commission the authority and responsibility to oversee the fairness of the country's elections. It is the responsibility of the Election Commission to supervise and monitor the election process, which includes keeping track of all campaign expenditures made by candidates and political parties. The capacity to give instructions to political parties throughout the election process requiring them to disclose their candidates' campaign spending to the election commission for examination would be included in a wide definition of "conduct of elections."

<sup>5</sup> It is impossible for a political party to justify significant sums of money. The Election Commissioner has been granted the right to inspect the money of political parties in order to verify that their usage is restricted. Also, it is necessary to look at the position of the Chief Election Commissioner (CEC) and the individual Elections Commissioners (ECs). Unlike a Supreme Court judge, the Chief Election Commissioner's conditions of service cannot be changed to his or her disadvantage after appointment, so he or she does not have the legal status of a Supreme Court judge. However, he or she can be removed from office in the same way and for the same reasons. As stated in Article 324's first proviso, current Chief Election Commissioners are not entitled to preferential treatment

when it comes to compensation and other terms and conditions of employment. There is no difference between the Chief Election Commissioner and the other Commissioners other than the lack of the aforementioned safeguards. The Chief Election Commissioner is not more worthy of a better position since their discharge from job was different.

### **RIGHT TO STAND FOR ELECTION**

During *People's Union for Civil Liberties (PUCL) v. Union of India*, the Supreme Court declared that the right to vote included the right to freedom of speech. Rather of being unfettered, the right to run for public office is controlled by legislation. <sup>9</sup> Running for office, if it's one that may be governed by legislation approved by Parliament like voting itself, signifies that the right to exercise it is one that is statutorily protected. In order to keep this right under control, the legislation must be regularly updated by legislators who may give or revoke the privilege at any moment.

In *N.P. Ponnuswami v. Returning Officer, Namakkal Constituency*, the court recognised that the right to stand as a candidate for election is not established by legislation or special law and must thus be subject to the constraints imposed by it. Here's what we know:

To be able to vote or run for public office, one must adhere to the conditions of specific legislation or a special law.

If the legislature transferred this responsibility to a special tribunal with previously specified powers, the tribunal must carry out that authority in accordance with the legislation enacted by the legislature.

### **NATURE OF POWER AND JURISDICTION OF ELECTION COMMISSION**

Article 324 establishes an Election Commission-like body to administer and supervise elections. To be clear, whoever has final say over Election Day operations should be given the broadest authority possible under the provisions of the Voting Rights Act. The court, then, should take a highly liberal stance when interpreting the nature of power and jurisdiction vested with the Election Commission. People are duped by dishonest politicians who will do everything to become a member of the House of Representatives or the State Legislature.

### **ARTICLE 325**

Any citizen in India cannot be denied the right to vote because of their ethnicity, colour, class or gender as provided in Article 324 of the Indian constitution. Elections to both chambers of Parliament and state legislatures are covered by this rule. Keeping the Constitution's secular nature intact is critical to 14 Article

325. The Republic's secular character, enshrined in the Constitution, will be jeopardized if this article is violated. Article 15's clause I forbids the reservation of seats in the legislatures on the basis of religion, as well.

### **POWER OF PARLIAMENT**

According to Article 327 of the Indian Constitution, Parliament may enact legislation at any time to guarantee fair elections for the Indian Parliament and the Indian Legislative Assembly. However, this power is limited by the provisions of the Indian Constitution.

Members of the list system of proportional representation in a representative democracy are elected on party lines, which sets them apart from constituency-based representation. They are the target of political scolding. Disqualification is a possibility if they break the rules. As a result, Parliament may propose the term "open ballot" in order to give substance to the idea of proportional representation. This means that "free and fair elections" cannot be regarded as being defeated by "open ballot."

### **CONCLUSION**

Despite the Constitution of India's provisions on elections, the Constitution's creators overlooked a critical part of the process. The requirement that a person run for office have a minimum level of education was ignored, and elections were left open to anybody. India's failure to reach its full potential is mostly due to this issue. An individual's wise and rational thinking, or, to put it another way, how sensible they are in comparison to an uneducated guy, is determined by their level of education. The leader of the country, or those elected to represent the people, must be educated in order for the country to flourish at a rapid pace. Another factor to look into is the fact that even today, someone who is incarcerated can run for office. This is yet another major problem in the Indian Political Scenario that persists to this day. My background in law suggests that this has a negative impact on our country's development.

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