

20. ELECTION AND ELECTION COMMISSION

ELECTORAL SYSTEM

Articles 324 to 329 in Part XV of the Constitution make the following provisions with regard to the electoral system in our country :

- The Constitution (Article 324) provides for an independent Election Commission in order to ensure free and fair elections in the country. The power of superintendence, direction and conduct of elections to the Parliament, the state legislatures, the office of the President and the officer of the Vice-President is vested in the Commission. At present, the commission consists of a chief election commissioner and two election commissioners.
 - There is to be only one general electoral roll for every territorial constituency for election to the Parliament and the state legislatures. Thus, the Constitution has abolished the system of communal representation and separate electorates which led to the partition of the country.
 - No person is to be ineligible for inclusion in the electoral roll on grounds only of religion, race, caste, sex or any of them. Further, no person can claim to be included in any special electoral roll for any constituency on grounds only of religion, race, caste or sex or any of them. Thus, the Constitution has accorded equality to every citizen in the matter of electoral franchise.
 - The elections to the Lok Sabha and the state assemblies are to be on the basis of adult franchise. Thus, every person who is a citizen of India and who is 18 years of age, is entitled to vote at the election provided he is not disqualified under the provisions of the Constitution or any law made by the appropriate legislature (parliament or state legislature) on the ground of non-residence, unsound mind, crime or corrupt or illegal practice.
 - Parliament may make provision with respect to all matters relating to elections to the Parliament and the state legislatures including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing their due constitution. In exercise of this power, the Parliament has enacted the following laws :
 - Representation of the People Act of 1950
- which provides for the qualification of voters, preparation of electoral rolls, delimitation of constituencies, allocation of seats in the Parliament and state legislatures and so on.
- Representation of the People Act of 1951 which provides for the actual conduct of elections and deals with administrative machinery for conducting elections, the poll, election offences, election disputes, by-elections registration of political parties and so on.
 - Delimitation Commission Act of 1952 which provides for the readjustment of seats, delimitation and reservation of territorial constituencies and other related matters.
- The state legislatures can also make provision with respect to all matters relating to elections to the state legislatures including the preparation of electoral rolls and all other matters necessary for securing their due constitution. But, they can make provision for only those matters which are not covered by the Parliament. In other words, they can only supplement the parliamentary law and cannot override it.
 - The Constitution declares that the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies cannot be questioned in any court. Consequently, the order issued by the Delimitation Commission become final and cannot be challenged in any court.
 - The Constitution lays down that no election to the parliament or the state legislature is to be questioned except by an election petition presented to such authority, and in such manner as provided by the appropriate legislature. Since 1966, the election petitions are triable by high courts alone. But, the appellate jurisdiction lies with the Supreme Court alone.

Article 323 B empowers the appropriate legislature (Parliament or state legislature) to establish a tribunal for the adjudication of election disputes. It also provides for the exclusion of the jurisdiction of all courts (except the special leave appeal jurisdiction of the Supreme Court) in such disputes. So far, no such tribunal has been established. It must be noted here



Add. 41-42A, Ashok Park Main, New Rohtak Road, New Delhi-110035

+91-9350679141

that in Chandra Kumar case (1997), the Supreme Court declared this provision as unconstitutional. Consequently, if at any time an election tribunal is established, an appeal from its decision lies to the high court.

Besides the three laws (mentioned above) the other laws and rules in respect of elections are :

- Prohibition of Simultaneous Membership Rules, 1950.
- Presidential and Vice-Presidential Elections Act, 1952
- Registration of Electors Rules, 1960.
- Conduct of Elections Rules, 1961.
- Government of Union Territories Act, 1963.
- Government of the National Capital Territory of Delhi Act, 1991.
- Chief Election Commissioner and other Election Commissioners (Conditions of Service) Act, 1991.

Further, the Election Commission has issued the Election Symbols (Reservation and Allotment) Order, 1968. It is concerned with the registration and recognition of political parties, allotment of symbols and settlement of disputes among them.

ELECTORAL REFORMS

LOWERING OF VOTING AGE :

The 61st Constitutional Amendment Act of 1988 reduced the voting age from 21 years to 18 years for the Lok Sabha as well as the assembly elections.

ELECTRONIC VOTING MACHINE :

In 1989 a provision was made to facilitate the use of Electronic Voting Machines (EVMs) in elections. The EVMs were used for the first time in 1998 on experimental basis in selected constituencies in the elections to the Assemblies of Rajasthan, Madhya Pradesh and Delhi.

RESTRICTED TO TWO CONSTITUENCIES :

A candidate would not be eligible to contest from more than two parliamentary or assembly constituencies at a general election or at the bye-elections which are held simultaneously.

VOTING THROUGH POSTAL BALLOT :

In 1999, a provision was made for voting by certain classes of persons through postal ballot.

FACILITY TO OPT TO VOTE THROUGH

PROXY :

In 2003, the facility to opt to vote through proxy was provided to the service voters belonging to the Armed Forces and members belonging to a Force to which provisions of the Army Act applies.

DECLARATION OF CRIMINAL ANTECEDENTS, ASSETS, ETC., BY CANDIDATES :

In 2003, the Election Commission issued an order directing every candidate seeking election to the Parliament or a State Legislature to furnish on his nomination paper the information on the following matters :

- Prior to six months of filing nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charges were framed or cognizance was taken by a court. If so, the details thereof.
- The assets (immovable, movable, bank balances, etc.) of a candidate and his/her spouse and that of dependents.

Furnishing of any false information in the affidavit is now an electoral offence punishable with imprisonment upto six month or fine or both.

ELECTION COMMISSION

The Election Commission is a permanent and an independent body established by the Constitution of India directly to ensure free and fair elections in the country.

Article 324 of the constitution provides that the power of superintendence direction and control of elections to parliament, state legislatures, the office of President of India and the office of Vice-President of India shall be vested in the Election Commission. Thus the Election Commission is an all India body in the sense that it is common to both the central government and state government.

COMPOSITION

Article 324 of the Constitution has made the following provisions with regard to the composition of election commission :

- The Election Commission shall consist of the chief election commissioner and such number of other election commissioners, if any, as the president may from time to time fix.
- The appointment of the chief election



Add. 41-42A, Ashok Park Main, New Rohtak Road, New Delhi-110035

+91-9350679141

commissioner and other election commissioner shall be made by the president.

- When any other election commissioner is so appointed, the chief election commissioner shall act as the chairman of the election commission.
- The president may also appoint after consultation with the election commission such regional commissioners as he may consider necessary to assist the election commission.
- The conditions of service and tenure of office of the election commissioners and the regional commissioners shall be determined by the president.

Since its inception in 1950 and till 15 October 1989, the election commission functioned as a single member body consisting of the Chief Election Commissioner. On 16 October 1989, the president appointed two more election commissioners to cope with the increased work of the election commission on account of lowering of the voting age from 21 to 18 years. Thereafter, the Election Commission functioned as a multimember body consisting of three election commissioners. However, the two posts of election commissioners were abolished in January 1990 and the Election Commission was reverted to the earlier position. Again in October 1993, the president appointed two more election commissioners. Since then and till today, the Election Commission has been functioning as a multi-member body consisting of three election commissioners.

The chief election commissioner and the two other election commissioners have equal powers and receive equal salary, allowances and other perquisites, which are similar to those of a judge of the Supreme Court. In case of difference of opinion amongst the Chief Election Commissioner and/ or two other election commissioners, the matter is decided by the Commission by majority.

They hold office for a term of six years or until they attain the age of 65 years, whichever is earlier. They can resign at any time or can also be removed before the expiry of their term.

INDEPENDENCE

Article 324 of the Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of the Election Commission :

- Any other election commissioner or a regional

commissioner cannot be removed from office except on the recommendation of the chief election commissioner.

- The service conditions of the chief election commissioner cannot be varied to his disadvantage after his appointment.
- The chief election commissioner is provided with the security of tenure. He cannot be removed from his office except in same manner and on the same grounds as a judge of the Supreme Court. In other words, he can be removed by the president on the basis of a resolution passed to that effect by both the Houses of Parliament with special majority, either on the ground of proved misbehavior or incapacity. Thus, he does not hold his office till the pleasure of the president, though he is appointed by him.

Though the constitution has sought to safeguard and ensure the independence and impartiality of the Election Commission, Some flaws can be noted. Viz.,

- The Constitution has not prescribed the qualification (legal, education, administrative or judicial) of the members of the Election Commission.
- The Constitution has not specified the term of the members of the Election Commission.
- The Constitution has not debarred the retiring election commissioners from any further appointment by the government.

IN DETAILS, THESE POWERS AND FUNCTIONS ARE :

- To supervise the machinery of elections throughout the country to ensure free and fair elections.
- To advise the president whether elections can be held in a state under president's rule in order to extend the period of emergency after one year.
- To register political parties for the purpose of elections and grant them the status of national or state parties on the basis of their poll performance.
- To determine the territorial areas of the electoral constituencies throughout the country on the basis of the Delimitation Commission Act of Parliament.



Add. 41-42A, Ashok Park Main, New Rohtak Road, New Delhi-110035

+91-9350679141