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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **INDEPENDENCE OF ELECTION COMMISSION OF INDIA: AN ANALYSIS OF RELEVANT PROVISIONS IN LIGHT OF RECENT DEVELOPMENTS**

AUTHORED BY - KUSHAGRA SHARMA,  
Amity University<sup>1</sup>

*Abstract: In India, regular elections that are both free and fair have been carried out in accordance with the principles delineated in the Constitution, Electoral Laws, and System. As per the provisions outlined in the Constitution of India, the Election Commission of India has been vested with the authority to oversee, guide, and regulate the comprehensive electoral process pertaining to the selection of candidates for the Parliament and Legislature of individual States, as well as for the esteemed positions of President and Vice-President of India. The Election Commission of India, which is a constitutional entity, holds a permanent position. The Election Commission was established on January 25, 1950, in adherence to the stipulations stated in the Constitution. The Golden Jubilee of the Commission was commemorated in the year 2001. The commission's initial membership was restricted to the appointment of a Chief Election Commissioner. The current composition of the electoral body consists of the Chief Election Commissioner and two Election Commissioners. Two additional Commissioners were appointed for the first time on October 16, 1989. Nevertheless, their sojourn was of short duration, concluding on January 1, 1990. As a result, two additional Election Commissioners were appointed on October 1st, 1993. Under further developments, the concept of a multi-member Commission has been introduced, wherein the allocation of decision-making power is determined through a majority vote. The Election Commission is protected against executive interference and obstruction throughout the execution of its responsibilities. Despite being safeguarded by various constitutional measures, the Election Commission remains susceptible to significant political meddling. This article examines the pertinent provisions, political arguments, and significant legal cases related to elections in India. The paper also provides insights into a comparative analysis of elections and the functioning of the Election Commission of India (ECI) in various countries. The study thoroughly examines the pertinent topics and thereafter provides*

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<sup>1</sup> Final year law student at Amity Law School, Noida

*recommendations.*

**Key terms:** Election, Candidates, politics, governance, democracy

The parliamentary democracy is a defining feature of India's political system. India operates under a dual polity system, specifically characterised by a federal form of governance.<sup>2</sup> The structure of the Indian federation consists of a central Union administration and dispersed State governments. The nation of India has gained international recognition as a prominent and enduring democratic state. The influence of the Election Commission of India on the evolution of the Indian democratic system has been substantial. Through a series of key rulings, the Supreme Court, being the ultimate legal authority, has greatly bolstered the autonomy of the election commission. The democratic institution experienced a growing call to curb the executive branch's ability to exercise influence. Several nations, including India, the United Kingdom, Australia, Canada, Sri Lanka, and South Africa, have implemented the Independent electoral model, which is recognised as one of the five established election models employed by highly developed countries worldwide. The principle of constitutional autonomy for the electoral commission has been upheld in numerous nations.<sup>3</sup> Some countries follow the second form, referred to as the Branch model, which is widely recognised as a separate presidential branch of government. This strategy enjoys widespread popularity in Venezuela, Nicaragua, Bolivia, Costa Rica, and Panama. The hybrid model, as evidenced in France, Germany, Japan, Spain, and Senegal, entails the presence of an autonomous board responsible for formulating policies that are commonly implemented by the executive part of the government, with the independent board serving as the overseeing body.

The executive system, as exemplified in Sweden, Switzerland, Tunisia, Denmark, and Singapore, entails the exclusive oversight of the electoral commission by a cabinet Minister, who operates as an executive entity inside the government. The Judicial Model, also known as the fifth model, entails a rigorous oversight and direction of the electoral body by a dedicated judicial entity called the

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<sup>2</sup> Ganga Ram Moolchandani vs.State of Rajasthan and Ors., ( ACE aceproject.org)

<sup>3</sup> S.190 of the Constitution of South Africa, deals with the Functions of election commission: S.190 cl (1)(a) states that the electoral commission must- manage elections of national, provincial and municipal legislative bodies in accordance with national legislation;(1)(b) ensure that those elections are free and fair; and(1) (c) declare the results of those elections within a period that must be prescribed by national legislation and that is as short as reasonably possible. Cl (2) The Election Commission has the additional powers and functions prescribed by the national legislation. [en.m.wikipedia.org/wiki/](https://en.m.wikipedia.org/wiki/)



"Electoral Court." The ultimate accountability of the electoral body lies with the "Electoral Court." Argentina, Brazil, and Mexico have implemented this approach. According to its constitution, India is formally acknowledged as a democratic Republic. Democracy, encompasses a set of ideas and serves as a political framework. The essential elements of this system include: a) The principle of conducting elections that are both unrestricted and equitable, b) The equal right of all individuals to participate in the process of governance, c) The principle of protecting the interests of both the majority and minority, d) The preservation of individual freedom and dignity, e) The adoption of a parliamentary form of government, and f) The establishment of a sovereign, democratic, republican structure. g) The concept of constitutional supremacy. h) The division of powers.

1. Rule of law.
2. An Analysis of the Government under a Federal System.

A democratic form of governance is predicated upon the principle of consent, which is not only presumed but authentically manifested through regular democratic procedures. The Supreme Court has ruled that democracy is an inherent and basic component of the Indian Constitution in various notable instances,<sup>4</sup> including *Kesavananda Bharati v. State of Kerala*, *Indira Nehru Gandhi v. Raj Narain*, and *Minerva Mills v. Union of India*.

The ECI possesses immense authority within its jurisdiction. According to the provisions, the President possesses the authority to designate Election Commissioners. The duration of their operation spans a period of six years, or until they reach the age of 65. The CEC and other commissioners have equal compensation and privileges as Judges. The removal process is conducted in a same manner and based on the same criteria as that of a Supreme Court Judge. The Commission carries out its activities by holding regular meetings and distributing materials. All Election Commissioners possess equal decision-making authority within a shared framework. In certain

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<sup>4</sup> *Kesavananda Bharati v. State of Kerala* AIR 1973 SC 1461, *Indira Nehru Gandhi v. Raj Narain* AIR 1975SC2299, *Minerva Mills v. Union of India* AIR 1980SC1789

instances, the Commission delegates specific executive duties to its officers within its Secretariat. The Commission possesses a separate Secretariat situated in New Delhi, including around 550 personnel, functioning under a hierarchical framework. The Commission is provided with support from a cohort of high-ranking officials within the Secretariat, comprising 5 or 6 Deputy Election Commissioners and Director Generals. Usually, they are selected from the nation's domestic civil service and designated by the Commission for a predetermined duration. The assistance of Directors, Principal Secretaries, Secretaries, Under Secretaries, and Deputy Secretary is provided to the Deputy Election Commissioners and Director Generals in a sequential fashion. The Commission demonstrates a comprehensive distribution of tasks in terms of both functionality and territory. The Chief Electoral Officer of the State is responsible for overseeing election activities at the state level. The Commission appoints this member from a group of experienced civil workers, as suggested by the state government. The Chief Electoral Officer is accountable to the Commission for its comprehensive oversight, guidance, and regulation. Across much of the United States, he occupies a permanent role as an officer and supervises a small group of auxiliary staff. The election proceedings at the district and constituency levels are conducted by the District Election Officers, election Registration Officers, and Returning Officers, who get assistance from a significant number of officials. Aside from their other responsibilities, all of them perform their duties related to elections. During the electoral period, the Commission has access to them on a full-time basis, but with certain limitations. The comprehensive governing body tasked with supervising a countrywide general election consists of more than twelve million personnel and civil police units. The Election Commission exercises jurisdiction over the comprehensive electoral infrastructure, which is subject to its oversight, supervision, and regulation throughout the election period, which typically lasts between one and a half to two months.

The Secretariat of the Commission maintains an independent budget, which is established through direct collaboration between the Commission and the Finance Ministry of the Union Government. The aforementioned frequently adopts the recommendations presented by the Commission about its financial allocations. The Ministry of Law & Justice (for the Government of India component) and the different States/Union Territories allocate the main money for the implementation of elections. The responsibility for managing the budget and expenditure related to the elections of Members of Parliament (MPs) lies with the Central government, whereas the state government is tasked with handling the expenses associated with elections at the state and local levels. Simultaneous elections

for both the Parliament and State Legislature result in an equitable distribution of the financial responsibility between the Union and State Governments. The funds are provided for a variety of purposes, such as the creation of electoral rolls and the issuance of Election ID cards.

The Election Commission is completely independent and unaffected by any external interference in any kind. It is purportedly devoid of any executive interference while carrying out its daily operations, even during election periods and other occasions. The responsibility of determining the dates for conducting polling votes in both central and state elections lies with the Commission. The ECI is responsible for establishing polling stations equipped with sufficient polling infrastructure to enhance the efficiency of the voting process. It also focuses on the maintenance of counting centres and any associated matters.

An election petition may be submitted to both the High Court and the Apex Court subsequent to the conclusion of elections for the Parliament and State Legislatures, with the intention of challenging the outcomes. The constitution explicitly prohibits the judiciary from intervening in any election-related petitions during the relevant election periods. After the polls are finished and the results are announced, the Commission lacks the ability to conduct an independent review of any outcome. The evaluation procedure for elections to the Parliament and State Legislatures is only carried out through the submission of an election petition to the High Court. It is crucial to acknowledge that the submission of petitions for the posts of President and Vice President is restricted to the Supreme Court, as part of the election procedures. The governing body has developed a comprehensive policy regarding the media. The organisation regularly conducts briefings for both print and internet mass media, in a consistent manner throughout the election cycle and as necessary for other instances. In addition, media representatives are provided with the requisite resources to effectively report on the practical execution of polling and counting protocols. Individuals are permitted access to polling stations and counting centres based on authority letters issued by the Commission. They consist of persons from both international and national media organisations. Furthermore, the Commission disseminates statistical reports and other materials that are readily available to the broader public.

The construction of the Election Commission of India is derived from the Canadian model, in accordance with the provisions delineated in the Dominions Act of 1920.<sup>5</sup> The Election Commission

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<sup>5</sup> m.economictimes.com, Appointment of election commissioners what is Canada's contribution - Dominion Elections Act, 1920 in the Constituent Assembly of India on June 16th 1949 a specific reference was made to this Canadian Act as

of India (ECI) is an autonomous constitutional body entrusted with the jurisdiction to supervise the execution of both national and regional elections. The Constitution confers to the Election Commission of India (ECI) three essential authorities, specifically: 1) Administrative authorities, 2) Advisory Powers, and 3) Quasi-Judicial Powers. The ECI offers guidance to the President regarding the dismissal of MP's and MLA's within the initial category. The second category of authorities pertains to the power to allocate electoral districts as deemed essential, create electoral registers, supervise and administer election procedures, and other related functions. The Commission, possessing quasi-judicial authority, undertakes the function of a Court in the resolution of conflicts over the recognition of political parties and their symbols.<sup>6</sup>

Noncompliance with the deadline for submitting election expense accounts, as stipulated by the Representation of People Act and other relevant legislation, may lead to the disqualification of a candidate. The entity in question has the power to reduce or abolish the length of the disqualification, as well as any other disqualification as mandated by legislation. In the case of Election Commission of India versus Mohd. Abdul Ghani<sup>7</sup>, the Supreme Court has made a ruling about the disputed delimitation Order of 1976, which was enacted under the Delimitation Act of 1972. By considering the third proviso to Article 82 of the Constitution, this conclusion is made. The absence of jurisdiction for the Election Commission of India (ECI) to alter the borders, area, or expansion of any seat, as stipulated in the Delimitation order, is also acknowledged. In the Republic of India, the electoral process encompasses a diverse array of positions, which include the President, Vice President, MP's, MLA's, Council members, elected personnels of local bodies and various other entities. In the event of the demise, resignation, or disqualification of elected candidates from a certain constituency, by-elections may be held. The act of voting is the essential core of democracy. The nation has a constitutionally required structure for conducting both direct and indirect elections to both the Parliament and State legislatures.

1. Direct Election: One of the two chambers of Parliament, known as the Lok Sabha, is elected by direct elections. These elections are conducted in particular single member territorial constituencies, utilising universal adult suffrage for anyone aged 18 and above. The electoral technique employed is

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the model for India. The same was also referred in a petition filed by Anoop Baranwal and argued by Advocate, Prashant Bhushan before the apex Court.

<sup>6</sup> [prsindia.org](http://prsindia.org)

<sup>7</sup> 1995-SCC 1-721,1995-JT-7-590

the first past the post (FPTP) system. In a similar vein, adult voters possess the capacity to directly elect representatives for State Legislative Assemblies from the territorial districts situated within their respective States.

2. Indirect elections are employed to select the President of India, who assumes the role of the Constitutional head of the Indian Union. This election is conducted using an electoral College system. The manner by which Members of Rajya Sabha and Legislative Councils at the State level are indirectly elected can be likened to the procedure involved in electing the Vice-President.

3. Local Body Elections: The obligatory elections for Panchayat Raj Institutions and Municipalities, as stipulated by the 73rd and 74th Amendments to the Constitution<sup>8</sup>, are governed by the provisions of Part IX and IXA of the constitution, along with the relevant State Laws concerning Panchayati Raj Institutions and Municipalities. All elections, save for local body votes, are conducted under the supervision, direction, and control of an independent constitutional authority referred to as the Election Commission of India (Article 324). The responsibility for the supervision and administration of local body elections is delegated to the State Election Commission.<sup>9</sup> The Supreme Court's ruling in the case of *Krishan Singh Tomar v. Municipal Corporation of the City of Ahmedabad*<sup>10</sup> established that the State Election Commission (SEC) possesses equivalent jurisdiction to the Election Commission of India in matters pertaining to elections for Panchayats and municipalities. According to Article 243K and 243ZA, the Securities and Exchange Commission (SEC) possesses powers that are comparable to those held by the Election Commission of India under Article 324. Moreover, the authority of the Securities and Exchange Commission (SEC) with regards to the Conduct of elections is comparable to that of the Election Commission of India. In the case of *Indira Nehru Gandhi v. Raj Narain*<sup>11</sup>, the Supreme Court articulated the perspective that the unimpeded exercise of voting rights constitutes a fundamental attribute of our democratic framework.

Judge Hans Raj Khanna asserts that the principle of free and fair election is an essential cornerstone of democracy, deeply ingrained throughout the foundational structure of the Constitution of India. In

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<sup>8</sup> Articles 243 to Article 243ZG

<sup>9</sup> Art.243K&243ZA of the Constitution

<sup>10</sup> 2006)8 SCC,352, A decision rendered by 5 judge Bench

<sup>11</sup> AIR 1975 SC 2299

the legal matter of P.R Balagali v. B.D. Jatti,<sup>12</sup> the highest court rendered a verdict affirming that the principal objective of election legislation is to safeguard the integrity of electoral processes and dissuade individuals from being elected through flagrant breaches of election norms. Both the right to elect and the right to be elected are granted statutory protection. The Supreme Court has established that the right to vote, although essential for democracy and somewhat atypical, is not classified as a fundamental right or a common law right, as evidenced by the cases of N.P Punnuswami v. Returning Officer<sup>13</sup>, Ramkumar Pandey v. Union of India,<sup>14</sup> Mohinder Singh Gill v. Chief Election Commissioner<sup>15</sup>, and Election Commission v. Shivaji.<sup>16</sup> However, it is solely a legally mandated entitlement. The rights to participate in elections and the right to contest elections are both of considerable importance. These topics do not have any inherent or customary legal entitlement beyond what is specified in the Statute, specifically the statutory provisions of the Representation of People Act, 1951. The election process culminates in the declaration of a candidate's election, which takes place one day subsequent to the issuance of the notification. The Superior Courts are required to examine any ambiguity or dispute pertaining to electoral affairs. Hence, it is imperative that the judicial system be an essential element of the electoral process and be encompassed within the purview of the election. The law confers onto the courts an extended scope of authority, which includes the interpretation of relevant statutory provisions and the execution of measures to detect occurrences of corruption in election procedures. In relation to judicial rulings, it is crucial to acknowledge that the conclusive provision of decisions rendered by Election Tribunals, which function as platforms for adjudicating election petitions, is deemed invalid. In accordance with the Representation of Peoples Act of 1951, prior to 1966, the Election Tribunal's decision was not deemed final due to the Supreme Court's provision for special leave to appeal under Article 136.

The competence was then transferred to the High Court, which functioned as a statutory tribunal under section 80A, pursuant to the amendment made to the Representation of Peoples Act in 1966. Section 116A of the Act conferred upon the High Court the power to appeal to the Supreme Court. The absence of a mechanism for appeal from a presiding judge to a division bench is evident. In the

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<sup>12</sup> AIR 1971 SC1348

<sup>13</sup> AIR 1952 SC64

<sup>14</sup> (1993)2 SCC 438 at pp 441-42

<sup>15</sup> A I R 1978 SC 851

<sup>16</sup> (1998 )1 SCC 277

case of *Sangram Singh v. Election Tribunal*<sup>17</sup>, it was established that the High Court's power to issue writs within its territorial jurisdiction, as outlined in Article 226, is immutable and cannot be invalidated by any ordinary legislation, such as the Representation of Peoples Act, 1951. The Constitution (19th Amendment) Act of 1966 resulted in the revocation of the Election Commission's authority to appoint and dismiss Election Tribunals. Conversely, the power to settle conflicts was delegated to the High Courts. The 39th Amendment Act of 1975 made amendments to Article 71 of the Constitution, resulting in the removal of the jurisdiction of the Supreme Court and High Courts in resolving disputes pertaining to the election of the President and Vice-President, Prime Minister, and Speaker. Furthermore, it conferred to the Parliament the authority to pass laws via Article 329-A in order to create a specialised platform for this objective. In the case of *Indira Nehru Gandhi v Shri Raj Narain & Anr*,<sup>18</sup> it was determined that the 39th Amendment was found irrational and in contravention of Article 14 of the Constitution. The modification indicated above poses a threat to the core structure of the Constitution. In the matter of *P.A Sangma v. Pranab Mukherjee*<sup>19</sup>, the Supreme Court has rendered a decision to dismiss P.A Sangma's petition challenging the election of Pranab Mukherjee. The court's ruling was predicated on the contention that the petition did not furnish adequate information to satisfy the criteria for prompt examination. The 44th amendment of the Constitution Act resulted in the removal of Article 329-A and the reinstatement of Article 71, so conferring upon the Supreme Court the power to adjudicate this matter. The Election Commission's orders may be subject to judicial review if they are found to be arbitrary, malicious, unjust, exceeding their jurisdiction, or in violation of laws passed by Parliament under Article 327. Nevertheless, it is crucial to acknowledge that these issues are finally decided by the supreme court via an electoral petition.

The case of *V.S Achuthanadan v. P.J Francis and another*<sup>20</sup> established that Article 329(b) of the Constitution provides a comprehensive definition of "Election," which includes the entire process from the issuance of an election notification to the official announcement of the final results. In the legal matter of *Kesavananda Bharati vs. State of Kerala*,<sup>21</sup> the Supreme Court expounded upon the notion that democracy is an intrinsic and essential attribute of the Constitution of India, serving as an

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<sup>17</sup> (AIR 1955 SC 425)

<sup>18</sup> AIR 1975 SC 2299

<sup>19</sup> *P.A Sangama vs Pranabmukherjee*, dated 05-12- 12, <https://m.timesofindia.com>

<sup>20</sup> (1999)2 LRJ200 )

<sup>21</sup> AIR 1973 SC 1461

integral element within its fundamental structure. The Supreme Court plays a crucial role in the electoral process by asserting that the presence of free, fair, fearless, and impartial elections is essential for ensuring the integrity of a democratic society. The establishment of an effective procedure is an essential requirement for the execution of such electoral processes. To ensure the efficient execution, preservation, and completion of the democratic process, it is unquestionably essential to establish a potential legislation that is grounded in societal requirements and assessed over time. The Supreme Court's mandate, as established in the case of *Indira Nehru Gandhi vs. Raj Narain*<sup>22</sup>, is to consistently apply a fair and impartial judicial approach when enforcing legislation related to franchise.

The idea behind judicial interpretation is that the Indian Constitution is-- formed by the perspectives and interpretations of the judges who have been appointed to the position. Part XV of the Constitution is where the subject of "elections" is discussed. There are a total of six articles, which are numbered 324, 325, 326, 327, 328, and 329 respectively. Article 324 addresses the establishment of the ECI, as well as its duties and obligations, and the powers that have been delegated to it during the course of its existence. The powers that are granted to the Election Commission under Article 324 are designed to supplement, rather than replace, the law that is already in place with regard to monitoring, direction, and control. In light of this, this authority does not take precedence over the Acts that have been passed by Parliament or the rules that have been established in accordance with them. To ensure that Article 324 is interpreted in a manner that is consistent with Articles 326 to 329 and does not subordinate them, it is of the utmost importance. The Commission, while protected by the right to issue orders limiting election behaviour, is banned from assuming a legislative role that is exclusively vested in Parliament and State Legislatures, as stated in the verdict that was handed down by the highest Court in the case of *A.C. Jose vs. Sivan Pillai*<sup>23</sup>. It is solely the responsibility of the Election Commission to determine the schedule or calendar for the election of the legislative Assembly. The Election Commission is not constrained by any legislation that has been approved by Parliament. Legislation that pertains to the administration of elections is something that can be enacted by the Parliament and is within its purview. However, according to the highest court in the land, Special Reference No. 1<sup>24</sup>, the Election Commission is solely responsible for the organisation of elections.

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<sup>22</sup> AIR 1975 SC 2299

<sup>23</sup> (1984)2 SCC 656, A I R 1984 SC 921)

<sup>24</sup> 2002 (2002)8 SCC 237 Para 80



Article 324 is applicable to spheres of activity that are not presently under the jurisdiction of the legislature. "Superintendence," "direction," and "Control" are the terms that are regarded to be the most all-encompassing and all-inclusive in the case of Mohinder Singh Gill versus the Chief Election Commissioner.<sup>25</sup>

### **Control and Supervision of Elections:**

Conduct of Elections 'Conduct of election' is widely acknowledged to contain a broad scope, which includes the authority to develop all required measures for the execution of elections that are both free and fair. This is a widely accepted definition of the phrase. When the Union of India filed a lawsuit against the Association for Democratic Reforms, a viewpoint that was quite similar to this were voiced.<sup>26</sup> During the course of the electoral process, the election commission is responsible for exercising oversight and control over the conduct of elections. This includes the assessment of all expenditures made by a political party, a candidate, or any other individual or group. The term "conduct of election" incorporates a wider range of responsibilities, which enables the authority to issue directions during the process of election. A detailed account of the expenses incurred or authorised by political parties in regard to the election of their representative candidates is required to be provided to the Election Commission by political parties in accordance with these guidelines. The case of Common Cause v. Union of India<sup>27</sup> lay the groundwork for the establishment of this idea.

One of the key components of a constitution is democracy, which is an inherent part of the fundamental framework of a constitution. The practice of free and fair elections is the cornerstone of democracy. In its comment, the Supreme Court made the observation that the absence of a free and fair election is a sign that democracy has already been destroyed. In Re Special Reference No. 1, it is clear that the case of M.S. Gill vs. Chief Election Commission<sup>28</sup> is being relied upon.

The term "election" is used in a larger context to embrace the entirety of the electoral process, which consists of numerous stages and encompasses various steps that may significantly effect the outcome of the process. This utilisation of the term "election" is carried out in accordance with the definition

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<sup>25</sup> (1978) SCC.405, para 39 at page 431, also para 113 pages 459-60

<sup>26</sup> (2002)5. SCC 249

<sup>27</sup> (1962)2 SCC 752 (para 26, p767)

<sup>28</sup> (1978) SCC (para 12); AIR 1978 S C 85

provided in Article 324. The nation of India is home to a sizeable population of people who are eligible to vote. In spite of the fact that they are politically informed, a sizeable part of them continue to be illiterate, as was observed by the highest court in the case of *Kanhiya Lal Omar vs. R.K. Trivedi*.<sup>29</sup>

According to the rules that are defined in the Chief Election Commission (CEC), the CEC can be removed from office in the same manner and on the basis of a similar set of grounds as a Supreme Court judge. This is stated in the provisions that are outlined in the CEC. In addition, the conditions of service of the CEC shall not be adjusted in a manner that is detrimental to them after they have been appointed, in a manner that is analogous to the restrictions presented in Articles 124(4) and 125(2). However, it is essential to keep in mind that the laws in question do not confer the same prestige on the CEC as they would on a judge of the Supreme Court. A decision was made by the court in the matter that was brought before it by *T.N. Seshan Chief Election of India versus Union of India*.

In the case of *Chief Election Commission S.S. Dhanoa vs. Union of India*, the Supreme Court of India performed a study of the composition and powers of the Chief Election Commission and other Election Commissions. The analysis focused on the democratisation of election commissions and the multi-member commission. The United States Supreme Court has reached the conclusion that the formation of a Multi-Member Election Commission would be beneficial. The accumulation of power in the hands of a single person has the potential to result in the establishment of a totalitarian government. On the other hand, it is essential to emphasise that the Election Commission and the Chief Election Commissioner should not be confused with one another. The Chief Election Commissioner does not have the same level of constitutional protections as the Election Commission of the United States. The government first established an Ordinance in 1993, and then it went on to enact an Act in order to appoint two extra commissioners in addition to the Chief Election Commission. In addition, this piece of law altered the duties and responsibilities of the Election Commissioners, bringing them on line with the Chief Election Commissioner in terms of the length of their tenure in office and the amount of money they receive. In the event that there is a disagreement and it is not possible to establish a consensus, the Commission will make a decision based on the

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<sup>29</sup> (1995)4 SCC 61

opinion presented by the majority of its members.

The Act was challenged in the case *Chief Election Commissioner vs. T.N. Sheshan*<sup>30</sup>, which was brought before the Supreme Court. The challenge was brought by the lone member of the Commission. The Supreme Court has upheld the Act that provides the other two Election Commissions with equal standing in the administration of elections. The Chief Election Commissioner is guaranteed a higher level of tenure security in comparison to the justices of the Supreme Court, as stated in Article 324 of the Constitution.

In the process of selecting the Chief Election Commissioner and Election Commissioners, the following reforms have been implemented:

In the year 2001, Mr. B.B. Tandon, who was serving as the Chief Election Commissioner at the time, issued suggestions concerning the powers and responsibilities of the Election Commission of India (ECI). In the letter that Mr. Tandon sent to the President, he makes the suggestion that a diverse Committee should be responsible for the appointment of individuals to serve as the Chief Election Commissioner and Election Commissioners. In the past, there have been proposals that advocated for the introduction of a method that is both credible and transparent for the selection of the Chief Election Commissioner and the Election Commissioners. The concept was initially proposed by Mr. V.M. Tarkunde over forty years ago, and it was subsequently reaffirmed by the Dinesh Goswami Committee, which was responsible for conducting an evaluation of electoral changes in the year 1990. On the other hand, it has not been eliminated. In order to select the Chief Election Commissioner and the Election Commissioners, Mr. Tandon proposed the formation of a Committee that would be led by the Prime Minister. It is recommended that the Committee be made up of the Leader of the Opposition in the Lok Sabha, the Deputy Chairperson of the Rajya Sabha, and a Judge of the Supreme Court who is selected by the Chief Justice of India. From what Mr. Tandon has stated, it has been proposed that the selection process need to be comparable to the one that is utilised in the appointment of the Central Vigilance Commissioner or the Chairman of the National Human Rights Commission. It has been stated by the former Chief Election Commissioner that the implementation of significant reforms to the selection and appointment procedure of Election Commissioners will help to the reputation of the Commission as an independent and transparent organisation. Mr. Tandon is of the

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<sup>30</sup> (1995)4 SCC 61

opinion that the establishment of a diverse selection committee will result in an increase in the public's perception of trust and assurance. Item No.21 deals with the "mode of appointment of Chief Election Commissioner and other Election Commissioners," and the Election Commission of India has presented its "views and proposals for Consideration on Electoral reforms" in this regard. The commission is of the opinion that Article 324 of the Constitution ought to be amended in order to incorporate the provisions that are listed below: (a) In addition to the Chief Election Commissioner, there should be a maximum of two Election Commissioners; (b) The manner of appointment and constitutional protection, after the commission has been appointed, should be the same for the Chief Election Commission and for the other Election Commissioners. with regard to item number 22, which is concerned with the fact that the Chief Election Commissioner and other Election Commissioners are not qualified to be appointed to positions within the government in the future.

In the past, there was a Committee on Electoral Reforms that was led by Jayaprakash Narayan, who had previously served as an Indian Public Administrator. A prominent jurist by the name of Mr. V.M. Tarkunde had distributed a number of proposals before to the emergency that occurred in 1975. These recommendations were intended to free the electoral process from influence from the state. In its report, the Committee expressed the opinion that the Election Commission needs to be seen as an entity that is fair and impartial. As a consequence of this, it was suggested that the selection of the Chief Election Commissioner and Election Commissioner should be carried out by a Committee that would include of the Prime Minister, the leader of the opposition in the Lok Sabha, and the Chief Justice of India. This recommendation was not taken into consideration by the present administration. For a period of fifteen years, the problem lay dormant until Mr. Dinesh Goswami was appointed to the office of Law Minister in the Coalition Government that was led by V.P. Singh in the years 1989-1990. The Prime Minister made a request for him to take over the chairmanship of a committee that would be handling election reforms. In accordance with the recommendations made by the Committee, the electoral commission should consist of three individuals. The Chief Election Commissioner, the Chief Justice of India, and the leader of the opposition should all participate in a consultative process before the selection of the Chief Election Commissioner. This process should be carried out. In addition, the Goswami Committee suggested that the Committee should have a diverse membership when it comes to the appointment of the remaining members. In addition to the selection of the Chief Election Commissioner and other Election Commissioners, the selection of individuals who hold other Constitutional offices will also be subject to their selection. It is anticipated that the

presence of presiding officers from both Houses of Parliament, opposition leaders, and a judge from the Supreme Court will strengthen the credibility of the selection process as well as the persons who are selected. In the event that the proposition to establish a thorough Committee is accepted, it may result in the examination of other suggestions concerning the constitutional standing of the Election Commissioner.

With regard to item No.21 of the proposed Electoral Reforms, the Election Commission has drawn to the attention of the Government the imbalance in the service conditions that exist between the Chief Election Commission and the Election Commissioner. According to Article 324(5), the Chief Election Commissioner cannot be removed from his post unless it is done in the same manner and on the same grounds as a judge of the Supreme Court. This is because the Chief Election Commissioner and a judge of the Supreme Court do not have the same constitutional state of affairs and guarantees. Nevertheless, this provision does not provide election commissioners with the same level of protection than other rules. A goal of the Commission is to guarantee that election commissioners are granted the same level of security and safeguards as other individuals. It would be wrong to provide strong constitutional protection to Election Commissioners if their appointment is selected through a political process, such as by the administration that is now in power.

In 2015, Anoop Baranwal submitted a Public Interest Litigation (PIL) to the Supreme Court, requesting that it issue instructions for the establishment of an independent, collegium-style system for the appointment of the Chief Election Commissioner (CEC) and Election Commissioners (ECs). The Supreme Court of the United States reached the conclusion in March 2023 that there has been a dearth of legislation concerning the selection of the CEC and EC in the 73 years that have passed since the Constitution was introduced. The independence of the Election Commission of India (ECI) is absolutely necessary in order to ensure that elections are conducted in a fair and unrestricted manner, which is of the utmost significance for the development of a functioning democracy. In its decision, the Supreme Court cited a number of other institutions that uphold constitutional democracy and possess autonomous mechanisms for appointing their leaders or members. These institutions include the National and State Human Rights Commission, the Central Bureau of Investigation (CBI), the Information Commission, and the Lokpal. Before, the Dinesh Goswami Committee on Electoral Reforms (1990) and the Law Commission in its 255th report on Electoral Reforms (2015) proposed that the appointment of the Chief Election Commissioner (CEC) and Election Commissioners (ECs) should be carried out by a committee consisting of the Prime Minister, the Chief Justice of India (CJI),

and the Leader of the Opposition or the largest Opposition party in the Lok Sabha. This committee would be responsible for making the appointment of the Chief Election Commissioner (EC) and Election Commissioners (ECs). In consideration of the aforementioned recommendations, the Supreme Court of India, in the exercise of its authority under Article 142 (to issue directives for ensuring 'complete justice' in any domain), established that the appointment of the Chief Election Commissioner (CEC) and Election Commissioners (ECs) shall be carried out by a committee consisting of the Prime Minister, the Chief Justice of India (CJI), and either the Leader of the Opposition or the opposition party that holds the largest number of seats in the Lok Sabha. This strategy will continue to be utilised until legislation pertaining to this matter is enacted by Parliament, as stated in the announcement. The legislation that is being proposed, notwithstanding the fact that it has various amendments. The proposed legislation intends to change the appointment process from being solely based on the choice of the executive branch to being based on a selection made by a committee, albeit with a preference for the government that is now in power.

There were millions of members of the general public who took part in the process of drafting the Constitution of India. The genuine spirit of the freedom movement is encapsulated in the Constitution, which is the conclusion of the discussions that took place between the members of the Drafting Committee and the general population of India. Dr. B.R. Ambedkar, a prominent figure in the development of the Constitution of the Indian Republic, and Dr. Babu Rajendra Prasad, the Chairman of the Constituent Assembly and the First President of the Republic of India, both expressed a sense of caution during the final session of the Constituent Assembly to express their concerns. They voiced their conviction that the individuals who are entrusted with the responsibility of implementing a Constitution do, in fact, have the ability to impact the potential for undesirable results, despite the fact that a Constitution may have the potential to be beneficial. One way in which the efficiency of a Constitution can be improved is by ensuring that the individuals who are tasked with its execution are subjected to favourable circumstances. This is true regardless of the potential inadequacies of a Constitution. In his final address, Dr. Rajendra Prasad expressed his satisfaction with the drafting of a Constitution that is well-crafted and will serve the nation in an effective manner. On the other hand, he underlined that the method in which the country is administered will eventually determine the state of the nation's well-being. That is going to be dependent on the people who are in charge of looking after it. If the people who were elected were capable enough, as well as men of character and integrity, they would be able to make the most of a Constitution that has flaws, even if it is faulty. In the event

that the Constitution is lacking in these particular areas, it will be unable to provide assistance to India. The term "these" refers to those who fulfil the characteristics of being capable, having character, and having integrity. In his concluding remarks, Dr. Babasaheb Ambedkar, a significant role in the freedom of India, voiced his opinion that India would transition into a democratic nation on January 26, 1950. He stated that he believed this to be the case. He stressed that this transition would involve the development of a government that is accountable to the people, governed by the people, and represents the people in a manner that is representative of the people. A government that is "of the people, for the people, and by the people" is a system in which citizens act as both subjects and rulers, and they are equally bound by the rules.

The construction of a welfare state that places a high priority on the distribution of the most possible benefits to the greatest possible population is the major purpose of this endeavour. It is important to note that the government functions according to a "By the People" framework, which signifies that all adult people actively participate in the process of governance through the use of elected representatives or representatives. In essence, independent of any discrimination based on criteria such as caste, creed, ethnicity, sex, religion, and so on, the public would have the ability to construct or dissolve the ruling body. This authority would be at their disposal.

#### **Concluding remarks and recommendations:**

The Election Commission is in a position to undergo a comprehensive renovation and reorganisation at the present time. In order to safeguard the values of quality and integrity, the highest constitutional body is committed to providing support. The overarching goal of this initiative is to ensure that every Indian voter participates in the political process in a manner that is both complete and reasonable. In addition to upholding constitutional morality, it is important to uphold the constitutional ideas of equality, fairness, justice, and the rule of law. When it comes to improving the fairness of elections, the implementation of new technology is absolutely required. Currently, numerous electoral management bodies are utilising and implementing cutting-edge technologies for a variety of tasks. These tasks include the compilation of voter lists, the drawing of electoral boundaries, the management and training of staff, the printing of ballots, the execution of voter education campaigns, the recording of cast votes, the counting and consolidation of voter list results, and the publication of election results. When technology is included into the electoral process, there is the potential for it to improve administrative efficiency, reduce expenses over the long term, and promote greater political transparency. For the purpose of ensuring that elections are carried out without any hitches, it is

absolutely necessary to cultivate sufficient human skills and infrastructure.

In the process of determining its selection methodology, the Supreme Court of India took into consideration the recommendations that were presented by a number of committees, as well as the appointment procedure for independent organisations like the Central Bureau of Investigation (CBI), in which the Chief Justice of India (CJI) is involved. Despite the fact that Parliament had the jurisdiction to enact legislation regarding this subject, it could have been appropriate to maintain the Chief Justice of India (CJI) on the selection committee in order to ensure that the selection process is completely independent. It would be laudable and would inspire great confidence in the public regarding the operation of the ECI if the selections made in accordance with the new law were made by the proposed selection committee through unanimous decisions.

In order to preserve the genuine character of the Indian democracy, it is of the utmost importance to ensure that elections are conducted in a manner that is both respectful and inclusive. In a manner analogous to the way in which judges in the Supreme Court and High Court are appointed by a collegium, it is suggested that the appointment of the Chief Election Commissioner and other election commissioners be carried out by an independent organisation. Through the implementation of this strategy, the Election body would be able to achieve greater independence, which would in turn guarantee the conduct of elections that are both free and fair. It is also suggested that it should be separated from the executive arm of the government, which is another idea. It is of the utmost importance to develop a normative autonomy in the process of decision-making and action, making certain that it is not influenced by governmental, political, or partisan forces.

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