

ELECTION COMMISSION

Legal Framework

The Election Commission is a permanent and 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 Legislature, 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 the States Government.

The powers vested in the Election Commission under Article 324 of the Indian Constitution are supplemented further by Acts of Parliament and the rules and orders under them, viz.,

- (i) Representation of the People Act, 1950 which deals with the qualification of voters, preparation of electoral rolls, delimitation of constituencies, allocation of seats in Parliament and State Legislatures and so on.
- (ii) Representation of the People Act, 1951, which deals with the administrative machinery for conducting elections, the poll, election disputes, by-elections, registration of political parties and so forth.
- (iii) Delimitation Commission Act 1952, which provides for the readjustment of seats, delimitation and reservation of territorial constituencies and other related matters.
- (iv) Presidential and Vice-Presidential Election Act, 1952.
- (v) Government of Union Territories Act, 1963.

(vi) Government of the National Capital Territory of Delhi Act, 1991.

It must be noted here that the Election Commission is not concerned with the elections to Panchayats and Municipalities in the states. For this, the constitution of India (Article 243 K and 243 ZA) provides for a separate State Election Commission.

Composition

Article 324 of the Constitution has made the following provision with regard to the composition of Election Commission:

- (i) 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.
- (ii) The appointment of the Chief Election Commissioners and other election Commissioner shall be made by the President.
- (iii) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the chairman of the Election Commission.
- (iv) The President may also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission.
- (v) The condition 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 October 15, 1989, the Election Commission functioned as a Single Member Body consisting of the Chief Election Commissioner, on October, 16, 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 by the Sixty-First Constitutional Amendment of 1989. Thereafter, the Election Commission functioned as a multi-member Body consisting of three Election Commissioners. However, the two posts of Election Commissioners were abolished in January 1990 and the Election Commission were 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 other Election Commissioners have equal powers and receive equal salary, allowances and other perquisites. 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.

The Chief Election Commissioner and other Election Commissioners are entitled to the same salary and other facilities as are provided to a Judge of the Supreme Court.

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 provision to safeguard and ensure the independence and impartial functioning of the Election Commission:

(i) 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 of India. 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.

(ii) The service condition of the Chief Election Commissioner cannot be varied to his disadvantage after his appointment.

(iii) Any other Election Commissioner or a Regional Commissioner cannot be removed from office except on the recommendation of the Chief Election Commissioner.

Though the Constitution has sought to safeguard and ensure the independence and impartiality of the Election Commission, some flaws can be noted, viz.,

(i) The Constitution has not prescribed the qualifications (legal, educational, administrative or judicial) of the members of the Election Commission.

(ii) The Constitution has not specified the term of the members of the Election Commission.

(iii) The Constitution has not debarred the retiring Election Commissioners from any further employment in the Government of India or a state.

Powers and Functions

The powers and the functions of the Election Commission with regard to elections to the

Parliament, State Legislative and Officers of President and Vice-President can be classified into three categories, viz.,

- (i) Administrative
- (ii) Advisory
- (iii) Quasi-Judicial

In detail, these powers and functions are:

(i) To determine the territorial areas of the electoral constituencies throughout the country on the basis of the Delimitation Commission Act of Parliament, 1952, as amended in 1962, 1972 and 2002.

(ii) To prepare and periodically revise electoral rolls and to register all eligible voters.

(iii) To notify the dates and schedules of elections and to scrutinize nomination papers.

(iv) To grant recognition to political parties and allot election symbols to them.

(v) To act as a Court for settling disputes related to granting of recognition to political parties and allotment of election symbols to them.

(vi) To appoint officers for inquiring into disputes relating to electoral arrangements.

(vii) To determine the code of conduct to be observed by the parties and the candidates at the time of elections.

(viii) To prepare a roster for publicity of the policies of the political parties on Radio and TV in times of elections.

(ix) To advise the President on matters relating to the disqualifications of the members of members of Parliament.

(x) To advise the Governor on matters relating to the disqualification of the members of State Legislature.

The Election Commission is assisted by Deputy Election Commissioners. They are drawn from the Civil service and appointed by the Commission with the tenure system. They are assisted, in turn, by the secretaries, joint secretaries, Directors, Deputy Directors and under Secretaries posted in the Secretaries of the Commission.

At the state level, the Election Commission is assisted by the Chief Electoral Officers who is appointed by the Chief Election Commissioner in consulting with the state Government. Below this, at the District level, the collector acts as District Returning Officer. He appoints Returning Officers for every constituency in the District and Presiding Officers for every polling booths in the Constituency.

