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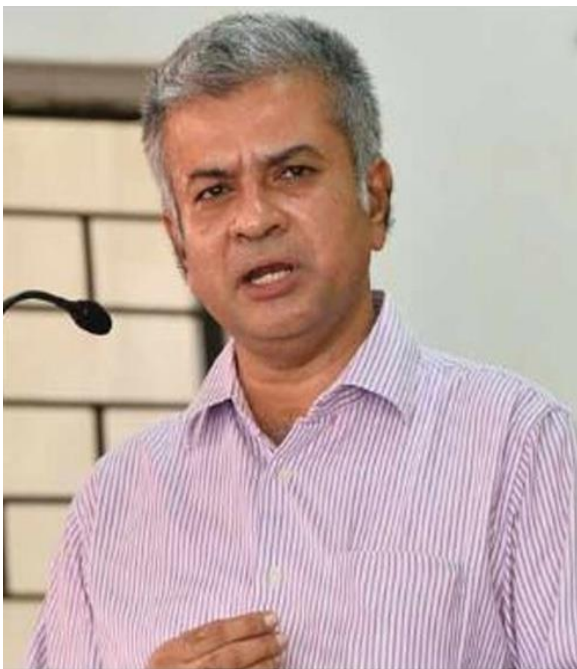
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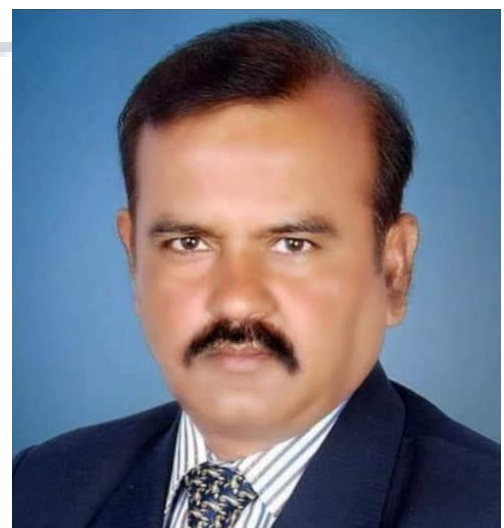
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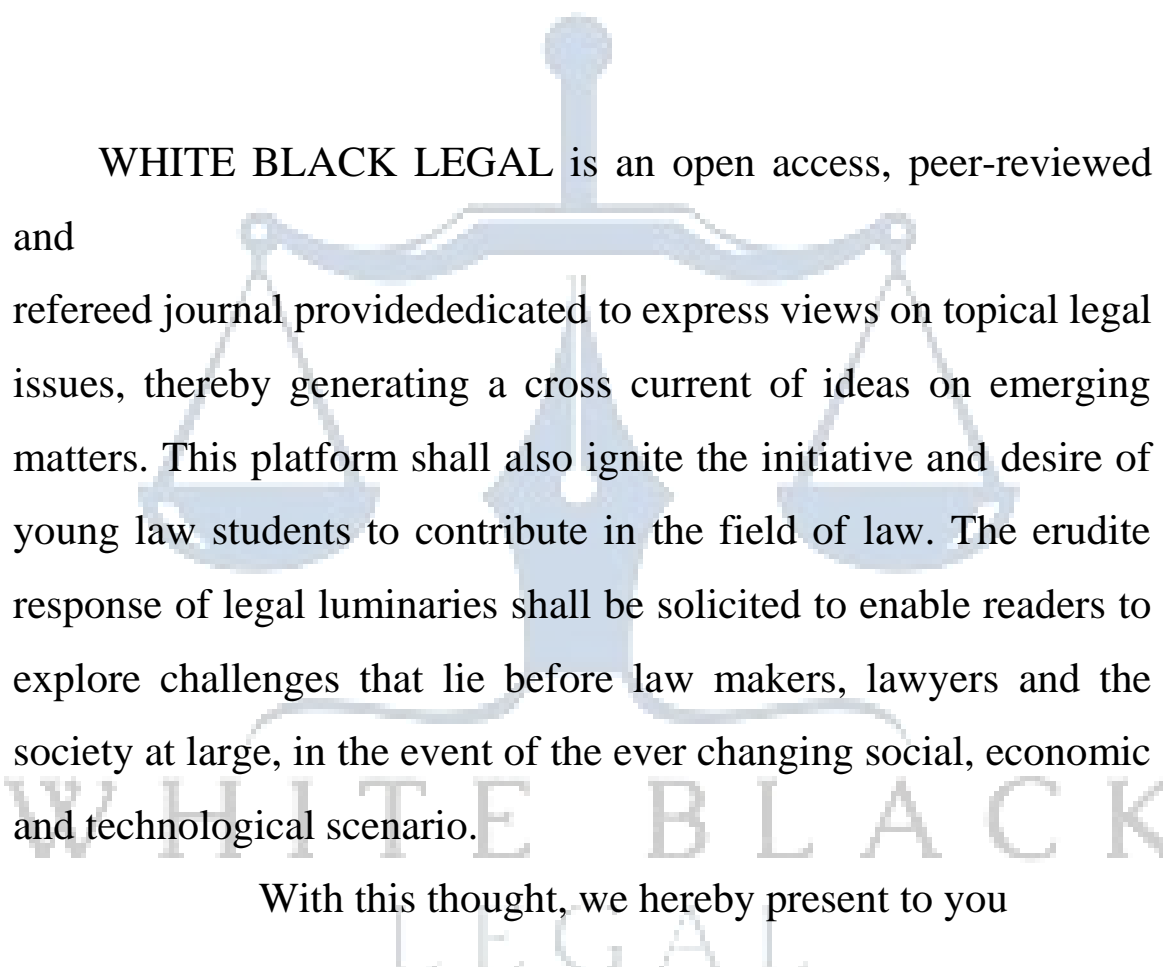


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## ***ABOUT US***



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated 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



# **ELECTION COMMISSION OF INDIA: THE GUARDIAN OF INDIAN DEMOCRACY**

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## **ABSTRACT:**

The Election Commission of India (ECI) is a constitutional body established to administer elections at various levels of government in India, ensuring the process remains free, fair, and transparent. As the guardian of democracy, the ECI is entrusted with the critical responsibility of upholding the electoral process, safeguarding the integrity of elections, and maintaining the public's trust in the democratic framework of the nation. This abstract highlights the role of the Election Commission in organizing and conducting elections, enforcing electoral laws, and promoting voter education and participation. It emphasizes the ECI's pivotal functions, including the supervision of electoral campaigns, ensuring a level playing field for all political parties, and addressing issues related to electoral malpractices. The paper also explores the commission's independent authority, its relationship with other government institutions, and the evolving challenges it faces in modern democratic governance, including the influence of technology and the role of social media in elections. As a central pillar in the Indian democracy, the Election Commission plays an indispensable role in maintaining the democratic ethos and ensuring that every citizen's right to vote is protected.

## **1. INTRODUCTION:**

The Preamble to the Constitution declares India to be a Democratic Republic. All of us who strive to preserve and uphold Indian people's civil rights are genuinely concerned about the country's democratic politics. "Democracy" is viewed as a fundamental aspect of the Constitution, as held in *Indira Nehru Gandhi v. Raj Narayan*.<sup>1</sup>

Elections are the mechanism by which a modern state fosters citizen involvement and participation in public affairs. Popular elections legitimize a government's authority and ensure

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<sup>1</sup> AIR 1975 SC 2299

a smooth and orderly transition of power to new leadership. A good electoral system is thus the foundation of true representative governance. Much depends, however, on how the system is implemented in practice, including if elections are administered efficiently and impartially by competent and honest administrators who are devoid of political bias.

The lack of universal confidence in the outcome of the ballot box may damage the public's faith in the democratic process. Pollock emphasized the importance of electoral administration, stating that "unless public elections are conducted with accuracy and efficiency, not only are public services discredited, but the entire democratic system is jeopardized." Only by placing the electoral administration, the basic pillar of democracy, beyond the grasp of "party Government" can the purity and freedom of elections be assured.<sup>2</sup>

## **2. ELECTIONS AND DEMOCRACY:**

Democracy is built on the will of the 'demos'. These wills are more effectively manifested when representatives of the people are chosen or elected. In a representative democracy, the wills of the people are temporarily transferred to their representatives for a set length of time, with their assent. Montesquieu said in 1748 that because it was not conceivable in a big state for the people to gather as a legislative body, they must appoint representatives to do what they couldn't do individually. The representatives (to whom authority would be transmitted) are chosen through periodical elections. A democratic political system must recognize only the people's will and freely provided permission as the basis for rule. This freely given permission at regular intervals through elections legitimizes the political system. Periodic elections are consequently necessary for modern representational democracy. In truth, the concept of a representative system cannot exist without periodical elections.

## **3. VICTORY OF DEMOCRACY:**

In a democratic country, the word 'election' represents the active and direct participation of the people of a nation in forming a government. It is widely understood that for a democracy to function properly, its citizens must elect their representatives and, in turn, govern themselves. Elections reflect the overall will of the people, as represented through their votes. The voting public displays its preferences for candidates, political parties, and governments by exercising their franchise on a regular basis. Electors' votes crystallize into the people's mandate. Elections

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<sup>2</sup> ELECTIONS, ELECTORAL MECHANISM AND BEHAVIOUR, PAGE 5.



are held every five years in our country (with the exception of the Jammu and Kashmir Legislative Assembly, which serves for six years). Voters use their franchise to express their shifting expectations and convictions about the type of government they want. Voters are the primary stakeholders in a democracy, and they vote with the expectation that the government, as the primary arbiter of the country's and its people's destiny, will give every citizen with the best available policies to develop a better country, community, and life for everyone.<sup>3</sup>

The legitimacy of the entire democratic government system is dependent on the efficacy and effectiveness of the election mechanism. If the people's verdict, which serves as the foundation for the political system's propriety and validity, is tainted by unethical tactics, the people's trust in the electoral system erodes, eventually destroying the very pillars of democracy.

One of the primary tasks after the country gained independence on August 15, 1947, was to prepare and organize general elections to elect a representative government based on universal adult suffrage. In order to achieve this, Article 289 of the draft constitution (later changed to Article 324 on the adoption of the Constitution), for the establishment of the Election Commission of India (ECI) as an independent constitutional authority, was made effective along with Articles 4 to 9 (regarding citizenship) on 26 November 1949, two months before the Constitution was finally adopted by 'we the people of India' on 26 January 1950.

#### **4. ELECTION - WHAT IT MEANS:**

According to Webster's dictionary "election" means the act or process of choosing a person for an office, position or membership by voting.

According to the Representation of the People Act 1951, the term "election" denotes "an election to fill a seat or seats in either House of Parliament or in the House or either House of the Legislature of the State."

The word election entails those who are to elect, called the "electors", the position to which election is to be made, and the person who is to be chosen, called the "candidate".<sup>4</sup>

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<sup>3</sup> INDIA VOTE, THE GENERAL ELECTION 2014, PUBLISHED BY ELECTION COMMISSION OF INDIA.

<sup>4</sup> ELECTION:LAW AND PRACTICE

Elections are a process. Part XV of the constitution uses the word election in a broad meaning, referring to the entire process of electing a candidate to the legislature. The usage of the word 'conduct of elections' in article 324 of the constitution emphasizes its broad scope. The phrase may be used to refer to the entire method, which consists of numerous phases and many steps in which an elected member is returned, regardless of whether a poll is required. It is not used in a restricted meaning<sup>5</sup>. The claim that the term election simply refers to the process of casting ballots and declaring results ignores the fact that numerous activities must be done in advance of and in connection with elections that are not part of the actual selection of representatives by citizens. A wide range of issues must be addressed before elections may take place. Election refers to the entire process. Part XV of the constitution uses the term in this broad connotation, as established in *Election Commission of India vs Shivaji*.<sup>6</sup>

## **5. ELECTION COMMISSION-THE GENESIS:**

The architects of the Indian constitution attributed the greatest importance to independent electoral machinery for the conduct of elections. This is evident in the findings of the constituent assembly's numerous committees, as well as discussions on the subject.

The Fundamental Right Sub Committee unanimously agreed that election independence and the avoidance of executive intervention in legislative elections should be recognized as fundamental rights and included in the chapter on the issue. The committee resolved:<sup>7</sup>

1. The constitution must provide for universal adult franchises.
2. Elections should be free, secret and periodic.
3. Elections should be overseen by an independent commission established under union law.
4. As a result, it suggested the inclusion of the following clause in the list of essential rights.:<sup>8</sup>

The Election Commission for the Union or Unit, as the case may be, shall have supervision, direction, and control over all legislative elections, whether of the union or of the unit, including the appointment of election tribunals, in all cases in accordance with Union law. The

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<sup>5</sup> AIR 1952 SC 64

<sup>6</sup> AIR 1988 SC 61

<sup>7</sup> B .SHIVA RAO,THE FRAMING OF INDIA'S CONSTITUTION:A STUDY(NEW DELHI,1968)

<sup>8</sup> IBID

committee agreed in general with the substance of the clause, but considered that rather than being included in the list of fundamental rights, it should find a place in some part of the constitution.<sup>9</sup> The union constitution committee accepted the Advisory committee's suggestion and inserted this clause regarding the machinery of election in the constitution plan that it created.<sup>10</sup>

Speaking in the constituent Assembly at the close of the third reading of the Constitution, Shri Rajendra Prasad said:

One of the threats we confront stems from any corruption that parties, candidates, or the government in power may commit. It is thus (good) that our constitution protects against this threat and provides for an honest and straightforward election by voters.

A reading of the relevant provisions of the constitution relating to elections reveals that the framers of the constitution, in their desire to ensure an independent position for such election authority, gave Parliament and the state legislature the authority to make laws regarding various electoral matters mentioned in articles 327 and 328 "subject to the provisions of the constitution," including the provisions of article 324 of the constitution. The Supreme Court confirmed this in *Sadiq Ali vs. Election Commission of India*<sup>11</sup>. The drafting committee considered two opposing ideas for the composition of the Election Commission:

- i. Either to have a permanent body of four or five members or
- ii. Ad hoc body constituted at the time of peak electoral activity.

The drafting group chose a medium path. It was determined that one guy, the Chief Election Commissioner, would serve as the permanent nucleus for organizing and conducting bye elections, as well as arranging for general elections. The basic machinery of the Chief Election Commissioner's office was to be supplemented by significant reinforcements who might be seconded for electoral duties from other tasks during general elections to Union and State Legislatures, including the appointment of Regional Commissioners.<sup>12</sup>

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<sup>9</sup> C.A.D.VOL IV

<sup>10</sup> ELECTIONS, ELECTORAL MECHANISM AND BEHAVIOUR,PAGE 12

<sup>11</sup> SADIQ ALI VS ELECTION COMMISSION OF INDIA, AIR 1972 SC 187

<sup>12</sup> ELECTIONS,ELECTORAL MECHANISM AND BEHAVIOUR,PAGE 15

## **6. ELECTION COMMISSION OF INDIA: MODERN ERA**

To ensure free and fair elections, the Constitution establishes the Election Commission. The Election Commission of India was established in 1950. This is an autonomous body that is free of political and governmental interference. Care has been taken to guarantee that the Election Commission operates as an independent body free of external pressures from the party in power or the executive of the day.<sup>13</sup> The Election Commission is responsible for conducting free and fair elections for the country's numerous legislative bodies and ensuring the advancement of democracy. There are mixed-population states. There are native people as well as those who are racially, linguistically, and culturally diverse, yet the Commission is set up to supervise, organize, and conduct elections at the all-India level.

The Election Commission has constitutional standing.<sup>14</sup> The Election Commission is responsible for the supervision, direction, and control of elections. It is in charge of preparing rolls for all parliamentary and state legislative elections.

## **7. THE ELECTION COMMISSION CONSISTS OF:<sup>15</sup>**

1. Chief Election Commissioner
2. Other such numbers of Election Commissioners as fixed by the President from time to time.
3. There shall be a Regional Election Commissioner.
4. The President or Governor on request by the Election Commission or Regional Election Commissioner shall make available such staff to discharge functions effectively.
5. The Election Commissioner or Regional Election Commissioner shall not be removed except on the recommendation of the Chief Election Commissioner.
6. Their tenure of service, other conditions shall be decided by the President.

## **8. THE SETUP OF ELECTION COMMISSION OF INDIA:<sup>16</sup>**

The Commission maintains a separate Secretariat in New Delhi, which is organized hierarchically and consists of approximately 300 staff.

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<sup>13</sup> INDIAN CONSTITUTIONAL LAW, PROF. M.P. JAIN, 5th EDITION, 2009

<sup>14</sup> ARTICLE 324 OF THE INDIAN CONSTITUTION

<sup>15</sup> D.D BASU, CONSTITUTION OF INDIA (SHORTER VERSION)

<sup>16</sup> [www.eci.nic.in/eci\\_main1/the\\_setup.aspx](http://www.eci.nic.in/eci_main1/the_setup.aspx)



The Commission is assisted by two or three Deputy Election Commissioners and Director Generals, the Secretariat's highest-ranking officers. They are normally appointed from the country's national civil service and are selected and appointed by the Commission for a certain term. Directors, Principal Secretaries, Secretaries, Under Secretaries, and Deputy Directors provide assistance to the Deputy Election Commissioners and Director Generals in turn. The Commission divides its work into functional and territorial categories. The work is divided into Divisions, Branches, and Sections, with a Section Officer overseeing each of the latter. The main functional departments are Planning, Judicial, Administration, Systematic Voter Education and Electoral Participation (SVEEP), Information Systems, Media, and Secretariat Coordination.

The territorial work is divided among several divisions responsible for different Zones, into which the country's 35 constituent States and Union Territories are organized for ease of management.

At the state level, the Chief Electoral Officer of the State supervises the election work, subject to the Commission's overall supervision, direction, and control, and is nominated by the Commission from among senior civil servants proposed by the concerned state government. In most states, he is a full-time officer with a modest support staff.

At the district and constituency levels, election work is carried out by District Election Officers, Electoral Registration Officers, and Returning Officers, who are aided by a huge number of subordinate officials. They all conduct election-related activities in addition to their other obligations. During election season, they are more or less available to the Commission on a full-time basis.

The massive task force for conducting a nationwide general election consists of nearly five million polling officials and civil police troops. This massive electoral machinery is considered to be on deputation to the electoral Commission and is under its control, supervision, and discipline for the one and a half to two-month election period.

## **9. CONSTITUTIONAL PROVISIONS RELATING TO ELECTION COMMISSION:<sup>17</sup>**

1. Article 324 establishes an Election Commission to oversee, direct, and manage elections. A Commission (referred to in this Constitution as the Election Commission) shall be in charge of supervising, directing, and controlling the preparation of electoral rolls for, and conduct of, all elections to Parliament and the Legislatures of each State, as well as elections to the offices of President and Vice-President held under this Constitution.
2. The Election Commission shall be composed of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time determine, and the President shall appoint the Chief Election Commissioner and other Election Commissioners subject to the provisions of any law passed by Parliament in that regard.
3. When another Election Commissioner is appointed, the Chief Election Commissioner serves as Chairman of the Election Commission.
4. Before each general election to the House of the People and the Legislative Assembly of each State, as well as before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President may appoint such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the Commission.
5. Subject to the terms of any law passed by Parliament, the conditions of service and tenure of office of the Election Commissioners and Regional Commissioners shall be such as the President may by rule designate.

Provided that the Chief Election Commissioner shall not be removed from his office unless in the same manner and on the same grounds as a Supreme Court Judge, and the Chief Election Commissioner's terms of service shall not be changed to his prejudice following his appointment:

Furthermore, no other Election Commissioner or Regional Commissioner may be removed from office except on the Chief Election Commissioner's suggestion.

6. When requested by the Election Commission or a Regional Commissioner, the President or Governor of a State must provide the required staff to carry out the

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<sup>17</sup> PART XV, ARTICLE 324-329 OF INDIAN CONSTITUTION

Commission's obligations under clause (1).

**a. MULTI MEMBER ELECTION COMMISSION:**

There has been a long-standing push to make the Election Commission a multimember body. The Honourable High Court in *S.S Dhanoba v/s. Union of India*<sup>18</sup> held that when the Election Commission is entrusted with vital functions and is armed with exclusive and uncontrolled powers to carry them out, it is both necessary and desirable that the powers are not exercised by one of the individuals, no matter how wise he may be. It also adheres to the principles of democratic governance.<sup>19</sup> On October 2, 1993, the government adopted an Ordinance to change the one-man Election Commission into a multi-member Commission by appointing two Election Commissioners. The Ordinance clearly states that the decision of the three-member Election Commission must, as far as practicable, be unanimous. However, if the Chief Election Commissioner and the other Election Commissioners disagree, the subject will be settled by the majority vote.

In a landmark decision in *T.N. Seshan Vs Union of India*<sup>20</sup>, a five-judge Constitution Bench of the Supreme Court unanimously affirmed the Act equating the position, power, and authority of two Election Commissioners with that of the CEC.

The court's decision ended nearly two years of acrimonious debate about the CEC's relationship with the Election Commissioners, and it exhorted all of them to "eschew their egos and work in a spirit of camaraderie for the sake of people and country."

However, as has happened with many other constitutional/statutory authorities in recent times, notably the Supreme Court (SC) of India and the Comptroller and Auditor General of India (CAG), the ECT's neutrality has been called into question. In the 'post-Congress polity', controversies have begun to plague the institution. If the petition of then Chief Election Commissioner (CEC) Seshan to the Supreme Court challenging the appointment and powers of two additional election commissioners (EC) was helpful in laying down the composition and collective functioning of the ECT, the move by CEC Gopaldaswami to remove then I-C Navin Chawla and, more recently, the refusal to note minority decisions by EC Ashok

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<sup>18</sup> AIR 1991 SC 1745

<sup>19</sup> THE CONSTITUTIONAL LAW OF INDIA, DR. J. N. PANDEY: CENTRAL LAW PUBLICATION

<sup>20</sup> AIR 1995 SC 852

Lavasa leading to his recusal are two incidents that illustrate the internal bickering within the institution.

## **b. THE ROLE OF ELECTION COMMISSION IN PROMOTING INDIAN DEMOCRACY:**

### **i. GUARDIAN OF FREE AND FAIR ELECTIONS:**

Elections at regular periods are a key characteristic of a democratic political system. Democracy is the "government of the people, by the people, and for the people".<sup>21</sup>

Periodic free and fair elections are vital components of a democratic society. It is a fundamental aspect of the Constitution's framework. It was held in T.N. Sheshan VS Union of India.<sup>22</sup> The Commission has made numerous attempts to ensure the success of elections, and thereby democracy. As a result, it is regarded as the Guardian of democracy as well as free and fair elections.

### **ii. MODEL CODE OF CONDUCT:**

The Election Commission is recognized as the protector of free and fair elections. Every election, it distributes a Model Code of Conduct to political parties and candidates to ensure that elections are free and fair. The Commission issued its first code in 1971 (5th Election) and has since updated it several times. It establishes principles for the conduct of political parties and candidates during elections. However, there have been cases of code violations by political parties, as well as concerns about candidates' misuse of official machinery.

The Commission held Mr. Narendra Modi and Smt. Sonia Gandhi accountable for violating the Model Code of Conduct by making contentious remarks during the 2007 Gujarat Assembly election campaign. In I.D. Systems (India) Pvt. Ltd. v. Chief Election Commissioner<sup>23</sup>, the Kerala High Court ruled that the purpose of the model code of conduct is not to prohibit all governmental operations, but rather to prohibit only those actions that may directly affect a segment of voters. Such a code is required to ensure free and fair elections. However, the code lacks a particular statutory basis. It merely has a convincing effect. It comprises what

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<sup>21</sup> QUOTES OF ABRAHAM LINCOLN

<sup>22</sup> AIR 1995 SC 852

<sup>23</sup> AIR 2006 Ker 26



are known as "rules of electoral morality". However, the lack of formal underpinning does not prohibit the Commission from implementing it. It has the authority to impose drawing force under Art. 324.<sup>24</sup>

**iii. REGISTRATION OF POLITICAL PARTIES:**

The party system is a fundamental component of parliamentary democracy. The law governing this registration process was created in 1989, and a number of parties registered with the Commission. It helps to avoid administrative uncertainty and headaches, as well as voter confusion. It assures that political parties implement democracy only through registration.

**iv. LIMITS ON POLL EXPENSES:**

To combat the growing influence and blatant display of money during elections, the Election Commission has made numerous recommendations. The Election Commission has established legal limits on the amount of money a candidate may spend during election campaigns. These limitations have been updated from time to time. By appointing observers, the Election Commission keeps track of individual election expenditures. Contestants are also required to provide expenditure data within 30 days of the results being declared. However, political parties do not follow the financial 'Lakshman Rekha' because large sums are spent by parties in the name of their followers.

The Election Commission cut the campaign duration for Lok Sabha and Assembly elections from 21 to 14 days with the goal of reducing election expenses. The Election Commission's attempt to implement these measures has been a positive step. Furthermore, while filing a nomination document, the Election Commission requests an affidavit detailing a candidate's assets.

In *Common Cause Registered Society vs. Union of India*<sup>25</sup>, it was stated that in India, elections are waged on the basis of money. The Court concluded that election purity is vital to democracy, and that the Commission may question candidates about the expenses expended by them and their political parties for this reason.

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<sup>24</sup> C.RAJASEKHAR, ENSURING FREE AND FAIR ELECTIONS

<sup>25</sup> (1996)2 SCC 752

**v. USE OF SCIENTIFIC AND TECHNOLOGICAL ADVANCEMENT:**

The Election Commission is working to improve election procedures by leveraging scientific and technological advancements. The advent of EVMs (Electronic Voting Machines) is one step in that direction. It was utilized to reduce misconduct and improve efficiency. It was originally used as an experiment in the state of Kerala for Legislative Assembly elections in 1982. After successful testing and legal inquiries, the commission made the historic decision to start using EVMs.

On February 28, 1998, the Election Commission, using information technology, opened its own website, [www.eci.gov.in](http://www.eci.gov.in). It contributes to the provision of reliable information, management, administration, and immediate election results. In 1998, the Election Commission took a daring step and approved a program for 'computerizations' of the electoral records. EPICs, or Electoral Photo Identity Cards, were introduced in 1993 to combat electoral fraud. In the 2004 elections, it was required to have a card. During the 2007 Punjab Assembly Elections, Parneet Kaur, an MP from Patiala, was unable to vote until late afternoon because she had forgotten her voter card. Karnataka is the first state to create electoral rolls containing voter pictures for the 2008 election. The State Election Commission created the electoral roll administration software 'STEERS'.

**vi. ELECTION COMMISSION - A TRIBUNAL FOR ADJUDICATION:**

There is bar to the Court for interference in the electoral matters<sup>26</sup>. Then the question arises: Is the Election Commission a tribunal? Can the Supreme Court hear an appeal from the Commission? U/A-136: Can the Commission be viewed as a tribunal when adjudicating disputes? In response to the questions, the Supreme Court determined that the Commission is a Tribunal for the purposes of Article 136 when considering such a conflict. This question was decided in the case of *A.P.H.L. Conference, Shillong vs. W.A. Sangama*.<sup>27</sup>

Further, commenting about the authorities and activities of the Commission, the Court said that, limiting loud speakers for electioneering and the order issued for

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<sup>26</sup> ARTICLE 329 OF CONSTITUTION OF INDIA

<sup>27</sup> AIR 1997 SC 2155

that is lawful, as held in the *Mohinder Singh vs. Chief Election Commissioner*<sup>28</sup>.

**vii. CHECKING CRIMINIZATION OF POLITICS:**

Political criminalization is a serious issue in India. This disease began in Bihar and gradually spread throughout the country. In 2003, a law was introduced to restrict convicts from being elected to legislative bodies. However, those with criminal records continue to hold seats in Parliament and State Assemblies. This creates a highly uncomfortable and embarrassing situation when lawbreakers become lawmakers. The Commission has voiced considerable concern over anti-social behaviour. The commission issued guidelines and recommendations to the government to combat the threat of political prosecution. They observed that,

"All political parties to reach a consensus that, no person with a criminal background will be given the party ticket".

Candidates must submit an affidavit in a defined form that declares their criminal records, including convictions, acquittals, charges, and pending cases.

The information provided by the candidates will be made available to the general public, as well as print and electronic media outlets.

**viii. RIGHT TO KNOW ABOUT CANDIDATES:**

Citizens have the right to know about the candidates they want to represent them in order to keep democracy healthy and clean. To prevent prosecution and protect the public interest, candidates' pasts should not be hidden. In the case of *Union of India v. Association for Democratic Reforms*<sup>29</sup>, the Supreme Court concurred with the Delhi High Court and required the Election Commission to obtain the relevant information from candidates on affidavits as part of their nomination papers. The Election Commission must collect mandatory information, including:

1. His or her criminal record, whether guilty or acquitted? Is it punishable by imprisonment or a fine?
2. Has he been charged with any offense punishable by two years in prison

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<sup>28</sup> AIR 1978 SC 851

<sup>29</sup> (2002) 5 SCC 294

prior to six months of filing his nomination paper? Whether the Court has taken cognizance, and if so, what the details are.

3. A candidate's assets (movable and immovable property, bank balance) as well as those of his or her spouse and dependents.

Any liabilities, particularly overdue payments to public financial institutions or the government.

4. Educational background of the candidate.

However, failure to include needed information on nomination papers will result in rejection of nomination papers by the Returning Officer. If the candidate provides incorrect or incomplete information, he or she may face penalties. The general public, as well as the print and electronic media, can obtain this information for free.

Ideally, successful candidates should be required to report their work to their constituencies on a regular basis, as well as any measures they have done to address people's problems. This sense of accountability must be codified in law, with penalties for failure to comply. There are other major developments to make elections cleaner, more competent, and less crooked. Invigilation is essential from the start to the finish of the electoral process.<sup>30</sup>

**ix. ROLE OF ADVISOR:**

Previously, the Election Commission operated as an advisor. On March 7 and 8, 2009, the Commission issued a notice to Mr. Varun Gandhi and the Bhartiya Janata Party for violating the Model Code of Conduct through inflammatory statements in the Pilbhit District of Uttar Pradesh. The Commission then told him to accept it or leave it. Following this, the Election Commission almost indirectly allowed the abusing politicians, such as Lalu Prasad Yadav, Rabri Devi, Udhav and Jaswant Singh, and many others, to continue by simply advising them to exercise 'self-restraint' but taking no concrete action, for their objectionable public statements against each other during the election campaign.

**x. PREPARATION OF ELECTORAL ROLLS:**

Maintaining an accurate and up-to-date register of all eligible voters is a

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<sup>30</sup> J.KRISHNA IYER, LAW AND LIFE, UNIVERSAL LAW PUBLICATIONS, 2008 EDITION.



necessary prerequisite for any functional democracy; without it, no free and fair election can be held. The electoral rolls, which determine whose votes will form the government, are the cornerstone of modern democracy.

According to Article 324 of the Constitution and Representation of Peoples Act 1951, the Election Commission's principal responsibility is to supervise, direct, and manage the creation of Electoral Rolls. Thus, as envisaged by the Constitution authors, the Election Commission supervises, directs, and controls the preparation of Electoral Rolls for each Constituency. The Commission takes on a 'active' role in weeding out fake voters and enlisting genuine ones because it understands that voter lists with more than 2% mistake are unacceptable. During the recent election to the West Bengal Legislative Assembly, the Commission deemed cleansing the electoral rolls a "high priority" duty. The names of 13 lakh "dead and shifted" voters have been erased, while 21 lakh new voters have been added to the list.

The Commission has also taken the extraordinary step of deleting the names of voters whose non-bailable warrants have been pending execution for more than six months. It believes that if a warrant cannot be executed for more than six months, it should be assumed that the person no longer resides in that location, and hence his name should not be on the voters' list. According to a message from the Election Commission, Mohamad Shahabuddin, a notorious RJD MP from Siwan (Bihar), had his name removed from the voters' list in 2005. In Bihar alone, 1.5 lakh names were removed from voters' lists.

To protect real voters, the Commission has insisted on photo ID cards being supplied to all eligible voters since 1993. T.N. Shoshan, the former CEC, issued a warning under Rule 37 of the Representation of the People's Act that the Commission would not announce elections after January 1, 1995 in areas where picture identification cards were not issued. The CEC's directive of 'no identity cards, no elections' sparked some controversy. T.N. Shoshan, the former CEC, issued a warning under Rule 37 of the Representation of the People's Act that the Commission would not hold elections after January 1, 1995 in places where picture identification cards were not distributed. The CEC's directive of 'no identity cards, no elections' prompted significant debate. The Commission's order was challenged in the Supreme Court, which ruled that the right to vote is an integral component of democracy and that procedural provisions cannot be

used to restrict the substantive right to vote. The issue was subsequently addressed when the Commission assured the Court that it would not withhold elections. The current Chief Election Commissioner is likewise insisting on photo ID cards. B.B. Tendon stated before the recent Assembly elections in West Bengal, Assam, and Tamil Nadu that "those without photo identity cards will not be allowed to cast their votes in the Assembly election."

**xi. ADVICE TO PRESIDENT:**

Advising the President on the matter of disqualification for any Member of Parliament, or advising the Governor on the question of disqualification for a member of a State legislature. Article 324 must be interpreted in light of the constitutional structure and the Representation of the People Acts of 1950 and 1951. The Election Commissioner's use of plenary power is subject to two limits. First, when Parliament or any State legislature has passed a lawful law relating to or in connection with elections, the Commission must follow that law. Article 324 empowers the Commission to expedite a free and fair election while adhering to the rule of law, natural justice norms, and reasonable expectations. Second, the Commission shall adhere to the rule of law, operate in good faith, and be subject to the norms of natural justice insofar as compliance to such can fairly and realistically be expected of it.

**ELECTORAL REFORMS:**

- Candidates must produce affidavits regarding their criminal history, assets, and so on.
- Need to enhance candidates' security deposits.
- Restrictions on the number of seats that can be contested
- Surrogate ads are prohibited in print media.
- Negative/neutral voting
- Appointment of appellate authority in districts against election registration officers' directives.
- Political parties are required to maintain accounts and have them audited by election commission-approved organizations.
- Government-sponsored advertisements
- Expenses of election commission to be treated as charged

- Ban on election officer transfers on the eve of elections.
- Simplified procedure for disqualifying a person found guilty of corrupt practice.
- Making a false declaration in conjunction with elections is an offense.
- Common electoral rolls are used in elections held by the election commission and state election commissions.

## 10. CONCLUSION:

Finally, it must be admitted that the Election Commission of India has played a significant role in the survival of Indian democracy. No democracy can be considered complete without periodic elections, which are made feasible in India thanks to the Election Commission's active participation. It is one of the few constitutional bodies that have carried out the dreams and visions of the Indian Constitution's founding fathers. The Commission's function has frequently been viewed as renewed "activism" in recent years. The 2015 Bihar Assembly elections were widely regarded as the most fair in the country. The Election Commission and its special observer, K.J. Rao, had created conditions that allowed the Dalits and the destitute to vote freely and fearlessly.

However, the Election Commission still has a long way to go. K.J. Rao agrees that more should be done. He supports the development of a separate cadre of officers for the Election Commission. M.S. Gill, the former CEC, stated that the Commission must "assert its constitutionally guaranteed independence more fiercely than ever" if India is to organize free and fair elections. The Government of India must move quickly on the Election Commission's proposals for election reforms so that the Commission is prepared to cleanse the Indian political system of criminals and corrupt politicians. The Commission should not only be neutral, but also appear to be unbiased. The current scandal in which a Member of the Commission was alleged to have received donations from many Congress lawmakers for trusts with which his family is associated does not help the reputation of this highly respected constitutional authority. To avoid such events, Commission members and the Chief Commissioner should be recruited based on merit rather than politics.

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