The election commission of India: Significance and challenges

Ayush Kishore
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KIIT Law School

Abstract- This paper aims to define the powers and functions, structure, and significance of the Election Commission of India. This paper takes up various challenges, faced by the election commission of India, during elections and this paper takes up the case and examples of such challenges and how they can be tackled. The challenges faced by the election commission is a topic, which is less debated and discussed. This paper concludes with the important role of such constitutional agencies as the election commission.

INTRODUCTION
India is a democratic country. Not just simply a democratic country, representative form of parliamentary democracy. Here, the parliament is elected by the people, and people are the real rules in such democracy. There is a process of election, which is itself both simple and complex process, called ‘election’.

The election process is of two types, one is ‘First past the post system’, where the election candidate, having the maximum number of vote percentage, will win the election. Here the whole country is divided into various geographic entities, known as ‘constituencies’, consisting a significant amount of population. The public vote for their choice of candidates, and the candidate having maximum number of votes will be declared as winner of election. The public can question their representatives for any issue in their respective constituencies Countries like United States, United Kingdom and Canada follow such pattern of election.

The second is ‘Proportional Representation’, where the public vote for the parties of their choice and the party having maximum confidence of the public will win the election. The parties will choose candidates for the people. This is more like a bureaucratic form of process, taking place. This is very complex process.

In India, both the process of election takes place, in case of election to the House of people and legislative assemblies it is the first past the post election process follow. While, the council of states and legislative councils, in some states follow the complex system of proportional representative. Although, not such system in bona-fide manner, rather it is deemed like that. It is indirect process of election.

All those such process of elections are conducted by a constitutional, independent, autonomous body. It also enjoys certain judicial powers. It also ensures that the ‘Model code of conduct’ is implemented in a keen manner.

The election commission of India derives its all powers from Article 324 of the Constitution of India, thus makes it a constitutional body. Implies that if any changes are to be made regarding this body, it will require a constitutional amendment. It is not only concerned with general election, but also it conducts the bye-elections, if such a situation of mid-term election arises, this commission takes-up its constitutional responsibility.

It exercises judicial powers also, it may ban any election candidate from campaigning, if any proved misbehaviour or indisciplinary activity is committed by any election candidate. Those misbehaviour or indisciplinary acts are associated with violation of model code of conduct.

It also appoints the ‘Returning officers’ for the respective constituencies. Now, those returning officers are deputed to the election commission. They need to report to the election commission of India. Even the election commission may transfer or may conduct departmental proceedings against those officers.

STRUCTURE OF ECI
Prior to amendment, brought in 1989, known as Election Commissioner Amendment Act, 1989, it was a body headed by a single member. But, the amendment in 1989 turned it a multi-member body. Thus, it is composed of a chief election commissioner, and two election commissioner. It is similar to a three-judge bench of Supreme Court. If majority decision i.e. of two judges are of opinion, it is declared as a judgment, similarly it also in the election commission.
The election commissioners are appointed by the Hon’ble President of India. He/she is appointed for a term of six years, or till the age of 65, or whichever is earlier. All the salaries, perks and allowances are similar to a judge of the Supreme Court of India. It is drawn from the consolidated fund of India. This not only ensures fairness and unbiasedness of the office of election commissioner but he/she can discharge his/her duty fearlessly.

Sukumar Sen was the first election commissioner of India. On 15th of May, 2022, the President of India has appointed Rajiv Kumar, a 1984-batch Indian Administrative Service Officer, as the 25th chief election commissioner of India.

REMOVAL
But, law system is absolute, there is a keen mechanism of checks and balances at each and every step. Therefore, a process of removal can be initiated against the chief election commissioners, only on the grounds on proven misbehaviour or incapacity. The removal procedure is similar to that of a Supreme Court judge, i.e. with a special majority.

SIGNIFICANCE
After independence, the ECI has facilitated the completion of 17 national and over 370 state elections. India is the world’s biggest democracy, and ECI holds a significance of conducting world’s largest and longest elections. In the last general elections, there were 90 crores of eligible voters, and the elections were completed in nine phases, over 39 days. Celebrated as ‘undocumented wonder’, the ECI has emerged as a guardian of public value, which facilitates free and fair elections in India. If the elections are not free and fair, the whole system of democracy remains null and void.

In recent times, the commissions have started to play the more active role to ensure greater participation of the voters. The Election commission aims that ‘No voter shall be left out’ It creates awareness about the electoral process and electoral governance amongst stakeholders namely, voters, political parties, election functionaries, candidates and people at large; and to enhance and strengthen confidence and trust in the electoral system of this country. It upholds the values enshrined in the Constitution viz, equality, equity, impartiality, independence; and rule of law in superintendence, direction, and control over the electoral governance. It conducts elections with the highest standard of credibility, freeness, fairness, transparency, integrity, accountability, autonomy and professionalism.

FUNCTIONS
The superintendence of the Election Commission of India extends to oversee, direct, and regulate the whole election process for the offices of President and Vice-President of India as well as the legislatures of each State. The commission’s primary responsibility is setting the election dates for the timely and periodic conduct of general or bye-elections. It creates voting lists and issues electronic photo identification cards (EPIC).
It makes decisions regarding the placement of polling places, the distribution of voters among them, the location of counting centres, the preparations to be made in and around polling places and counting centres, as well as any related issues.
It recognises political parties, awards them electoral emblems, and resolves disputes pertaining to it. The introduction of party symbols has an interesting history. When the first general elections were held in 1952, only 15% of the population was literate. Thus, in order to make the people’s choice free and fair the said system was developed.
The Commission also has advising authority over the issue of post-election disqualification of lawmakers and state representatives who are currently serving in office.
It publishes the Model Code of Conduct in elections for political parties and candidates in order to prevent unfair practises and wilful misuse of authority by those in authority. It regulates and establishes campaign spending caps for each candidate across all political parties.

CHALLENGES BEFORE ECI
The election commission of India is conducting world’s largest and longest elections in the world, it also faces various issues.

- **Muscle power** - The most popular issue if booth capturing. Some of influential people in locality, having criminal background tend to capture the polling booth. This is popularly known as ‘Booth Capturing’. It refers to a type of electoral fraud in which members of a party or hired criminals cast false votes either by threatening voters or by preventing genuine voters from reaching the polling booth.

Although, this is declined to a great extent, but in was very prevalent during 80s and 90s, in some parts of Uttar Pradesh, Bihar, Maharashtra and West Bengal.
• Money power: - The money is used restlessly in elections and political campaigns. Some critics put forward that in-order to regain such money, the politicians indulge corrupt practices to earn money. They influence the officers also, in such things.

• Technical issues: - Earlier the elections were conducted on the ballot system. It was more prone to human errors. Many times, the counting also went wrong and it also sometimes made the whole polling as void. Also when the booth capturing occurred, ink bottles were poured into the ballot boxes, in order to destroy the all the papers. Although, this system has been resolved to a great extent, in the general elections of 2004, when for the first time the system of elections was wholly conducted by the EVMs i.e. Electronic Voting Machines. However, still it is alleged to be tampered and hacked. Also, the EVMs are used only in general elections and state assemblies. The election for local bodies are still conducted in ballot box.

In the elections of the local authorities, still conducted in ballot box. For instance, there are six posts for vacant for elections, in a Gram Sabha. Now, it is not practically possible for election commissions to provide six EVMs on each booth. Therefore, ballot boxes are used over there. It is cheaper. But, as mentioned earlier, it is more prone to human errors. The ballot boxes are also easy to capture, during booth capturing. Cases have been reported, where liquid inks were poured into the boxes, destroying the whole set of ballot papers, inside the boxes.

• Social issues: - The people were unable to read and write. At the beginning people were unprepared to accept the institution of election commission and the system of elections. For instance, in the first general election of 1952, the name of about 40 lakhs of women voter were terminated out from the voter’s list, just because, their actual names were not mentioned. They were simply referred to as ‘wife of someone’ or ‘daughter of someone’.

Even today, there are some parts of India, where the elections are not conducted due to involvement of several notorious organisations. For instance, the strength of the house of people, prescribed by the constitution of India is 550, out of which elections are conducted only on 545, rest 5 seats are vacant for a long time. Those five seats belong to Pakistan occupied Kashmir, Aksi Chin and some naxal effected areas of North-Eastern States.

• Lack of forces: - This challenge is not explicit related to conduction of election, but also a genuine problem our country is facing. There are approximately 1.07 lakhs of posts vacant in the defence forces, according to a data by Government of India. The para-military forces are also lacking to a great extent. It leads to extension of working hours of those personnel’s. In context of elections, there are lack of forces and it makes the goons easy to disturb. The elections can’t be conducted in one go. The elections at different times and different phases, which costs tremendous waste and time and money.

During local elections and assembly elections, within the 200 m radius of booth, the election campaign and any kind of political banners and posters are not allowed, as enacted by model code of conduct. But, cases of violent clashes have been reported on polling booth, between the party workers, and it is more intense in some of the states, where the local elections are party based.

• Corruption charges: - For every election, there are several allegations about the malpractices. But it was found that, generally there are false allegations that are made by the lost candidates. The EVM is not an easy machine to hack.

• Bribery: - Some contemporary parliaments have quoted that the elections for the candidates are the matter of life or death. Hence, the candidates, in order to win the elections, they forbid unfair means. Those unfair means include threats to the voters, false promise to voters and even the voters are bribed, both in ‘cash’ and ‘kind’. Mostly in kind. This is prevalent in all the levels of elections, but mostly it is in election of local bodies. The people are distributed with mobiles, laptops, other electronic gadgets, banquet treat to the public, even in some remote areas, there are cases reported that the voters were distributed with cash.

• Influence: - There are several other allegations also on the ECI that it is influenced by the ruling parties. It is alleged that the sitting members and party leaders use arbitrary use of their powers and influence the members and other officers of ECI. Even officers are influenced. In the case of Indira Gandhi v. Raj Narain: [(1975) 2 Supreme Court Cases 159]. It was brought to the appeal in the Hon’ble apex court of our country, Hon’ble High Court of Allahabad disqualified the election of the then Prime Minister of India, Mrs. Indira Gandhi. The socialist leader, who contested against Mrs. Gandhi from the constituency of Bareli, Uttar Pradesh. Mr. Raj Narain brought out the suit on various contentions, extended by two major legal issues. One was that all the elections campaign was funded by the public fund of Uttar Pradesh Government, NOT from party fund. Secondly, all the campaign was arranged and managed by the Private Secretary to the Prime Minister of India, Yashpal Kapoor, who was then a bureaucrat. These were unswerving violation of provisions of People’s Representation Act, 1951, Model code of conduct and service rules.
There were many allegations on the ECI also that it was influenced and it was biased. Although, those allegations against the ECI was quashed by Hon’ble apex court.

The candidates are required to fill out an affidavit, during their nomination for election. That nomination affidavit contains all the property declaration and all the civil and criminal cases pending against the candidate. This is to bring transparency to the people. This is the right of the public to know about the candidate, they are voting for. The hurdle is that the candidate many times tend to hide their properties declaration and the required information. Sometimes, false information is also given. Although, that can be challenged through writs. But, the public will remain in dark about their representative, until or unless it is ‘challenged’ in the court of justice.

Few years ago the Hon’ble apex court observed a judgment, which made mandatory for the political parties to give reasons that why they gave ‘party ticket’ to a candidate, facing a criminal suit. But, that is not being followed by the political parties. Those people should not be allowed to contest elections, as similar to those candidates, who are public service aspirants. But, the strongest argument against it is that the due to political enmity, the false cases may be logged against the candidates, in order to disturb them and preventing them from contesting elections. But, there are rules and expectations for the government job aspirants. Such conditions may be applied in the elections. It is dangerous for the democracy. The people, who are facing criminal charges are making laws and it is fatal for long-term democracy. It gradually rotten the system.

CONCLUSION
The ECI is a constitutional body, discharging its functions since independence. It is also facing many challenges, difficulties and allegations. The challenges are being addressed by the ECI only. For some of them, the ECI is able to find the solution, while some are still being analysed. The difficulties can be overthrown by the help of local authorises and law and order maintaining agencies. As far as allegations are concerned, none of the constitutional bodies are free from criticism.

But, what the system will do, will be the best. But, we as responsible citizens of our country India, the vote is not only a right, it is a responsibility. The election officer and those officials, and staff supporting and making the elections possible should be respected and help and support. The utmost cooperation is required only and only by the people.

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