

UNIT V ELECTION PROVISIONS AND EMERGENCY PROVISIONS

Election Commission of India- Composition, Powers and Functions and Electoral Process, Anti-Defection Law. Types of Emergency-Grounds, Procedure, Duration and Effects

ELECTION COMMISSION

The Election Commission is a permanent and an independent body established by the Constitution of India directly to ensure free and fair elections in the country. Article 324 of the Constitution provides that the power of superintendence, direction and control of elections to parliament, state legislatures, the office of president of India and the office of vice-president of India shall be vested in the election commission. Thus, the Election Commission is an all-India body in the sense that it is common to both the Central government and the state governments. 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 provides for a separate State Election Commission.

Composition

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

1. The Election Commission shall consist of the chief election commissioner and such number of other election commissioners, if any, as the president may from time to time fix.
2. The appointment of the chief election commissioner and other election commissioners shall be made by the president.
3. When any other election commissioner is so appointed, the chief election commissioner shall act as the chairman of the election commission.
4. The president may also appoint after consultation with the election commission such regional commissioners as he may consider necessary to assist the election commission.
5. The conditions of service and tenure of office of the election commissioners and the regional commissioners shall be determined by the president.

Note: For detailed discussion, it is recommended to refer "Indian Polity" by Lakshmikanth

The chief election commissioner and the two other election commissioners have equal powers and receive equal salary, allowances and other perquisites, which are similar to those of a judge of the Supreme Court. In case of difference of opinion amongst the Chief Election Commissioner and/or two other election commissioners, the matter is decided by the Commission by majority. They hold office for a term of six years or until they attain the age of 65 years, whichever is earlier. They can resign at any time or can also be removed before the expiry of their term.

Independence

Article 324 of the Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of the Election Commission: 1. The chief election commissioner is provided with the security of tenure. He cannot be removed from his office except in same manner and on the same grounds as a judge of the Supreme Court. In other words, he can be removed by the president on the basis of a resolution passed to that effect by both the Houses of Parliament with special majority, either on the ground of proved misbehaviour or incapacity. Thus, he does not hold his office till the pleasure of the president, though he is appointed by him. 2. The service conditions of the chief election commissioner cannot be varied to his disadvantage after his appointment. 3. Any other election commissioner or a regional commissioner cannot be removed from office except on the recommendation of the chief election commissioner.

Powers and Functions

The powers and functions of the Election Commission with regard to elections to the Parliament, state legislatures and offices of President and Vice-President can be classified into three categories, viz, 1. Administrative; 2. Advisory; 3. Quasi-Judicial

In detail, these powers and functions are:

1. To determine the territorial areas of the electoral constituencies throughout the country on the basis of the Delimitation Commission Act of Parliament.
2. To prepare and periodically revise electoral rolls and to register all eligible voters.

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3. To notify the dates and schedules of elections and to scrutinise nomination papers.
4. To grant recognition to political parties and allot election symbols to them.
5. To act as a court for settling disputes related to granting of recognition to political parties and allotment of election symbols to them.
6. To appoint officers for inquiring into disputes relating to electoral arrangements.
7. To determine the code of conduct to be observed by the parties and the candidates at the time of elections.
8. To prepare a roster for publicity of the policies of the political parties on radio and TV in times of elections.
9. To advise the president on matters relating to the disqualifications of the members of Parliament.
10. To advise the governor on matters relating to the disqualifications of the members of state legislature.
11. To cancel polls in the event of rigging, booth capturing, violence and other irregularities.
12. To request the president or the governor for requisitioning the staff necessary for conducting elections.
13. To supervise the machinery of elections throughout the country to ensure free and fair elections.
14. To advise the president whether elections can be held in a state under president's rule in order to extend the period of emergency after one year.
15. To register political parties for the purpose of elections and grant them the status of national or state parties on the basis of their poll performance.

Vision

The Election Commission of India strives to be an Institution of Excellence by enhancing active engagement, participation; and deepening and strengthening electoral democracy in India and globally.

Mission

The Election Commission of India maintains independence, integrity and autonomy; ensures accessibility, inclusiveness, and

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ethical participation of stakeholders; and, adopts highest standards of professionalism for delivering free, fair, and transparent elections to strengthen the trust in electoral democracy and governance.

Guiding Principles

The Commission has laid down for itself guiding principles of good governance:

1. To uphold the values enshrined in the Constitution viz, equality, equity, impartiality, independence; and rule of law in superintendence, direction and control over the electoral governance;
2. To conduct elections with highest standard of credibility, freeness, fairness, transparency, integrity, accountability, autonomy and professionalism;
3. To ensure participation of all eligible citizens in the electoral process in an inclusive voter centric and voter friendly environment;
4. To engage with political parties and all stakeholders in the interest of electoral process;
5. To promote 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;
6. To develop the human resource for effective and professional delivery of electoral services;
7. To build quality infrastructure for smooth conduct of electoral process;
8. To adopt technology for improvement in all areas of electoral process;
9. To strive for adoption of innovative practices for achieving excellence and overall realization of the vision and mission;
10. To contribute towards the reinforcement of democratic values by maintaining and reinforcing confidence and trust of the people in the electoral system of the country.

ANTI-DEFECTION LAW

Defection by legislators occurs in many democracies. It can be argued that they can undermine the stability of the cabinet, which is dependent on the support of elected legislators. The argument follows that such instability can amount to a betrayal of the people's mandate as voiced at the most recent prior election.

The anti-defection law enshrined through the introduction of the Tenth Schedule in the Constitution of India comprises 8 paragraphs.

The following is a brief summary on the contents of the law:
Paragraph-1: Interpretation. This section handles the definitions of distinct terms applied in laying out the legislation.
Paragraph-2: Disqualification on grounds of defection. This section deals with the crux of the legislation, specifying factors on which a member could be disqualified from the Parliament or the State assembly. Provisions in para 2.1(a) provide disqualification of a member if he or she "voluntarily gives up the membership of such political party", whereas paragraph 2.1(b) provisions, addresses a situation when a member votes or abstains from any crucial voting contrary to the directive circulated by his/her respective political party.

Paragraph 2.2 states that any member, after being elected as a representative of a certain political party, shall be disqualified if he/she joins any other political party after the election.

Paragraph 2.3 states that a nominated member shall be disqualified if he/she joins any political party after six months from the date he/she takes his seat.

Paragraph-3: Omitted after amending the schedule by the Ninety-first Amendment act – 2003, which exempted disqualifications arising out of splits with one-third of the members defecting from a political party.

Paragraph-4: Disqualification on ground of defection not to apply in case of merger. This paragraph excludes from disqualification in the case of mergers of political parties. Provided if the said merger is with two-thirds of the members of the legislative party who have consented to merge with another political party.

Paragraph-5: Exemption. This paragraph provides exemptions to

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the Speaker, Chairman and Deputy-Chairman of various legislative Houses.

Paragraph-6: Decision on questions as to disqualification on ground of defection. This provision mandates the Chairman or the Speaker of the respective legislative house to be the ultimate decision-making authority in case of any disqualification that arises.

Paragraph-7: Bar of jurisdiction of courts. This provision bars any court jurisdiction in case of disqualification of a member under this schedule. However, this schedule does not bar court intervention under articles 32, 226, and 137 of the Constitution of India.

Paragraph-8: Rules. This paragraph deals with framing the rules for disqualification. The schedule allows the Chairman and the Speaker to frame rules concerning their respective legislative houses to deal with the disqualification of members of their various houses of the legislature.

TYPES OF EMERGENCY

Under The Indian Constitution Black law's dictionary defines emergency "as a failure of social system to deliver reasonable conditions of life". The term emergency may be defined as "circumstances arising suddenly that calls for immediate action by the public authorities under the powers especially granted to them". Dr. B.R Ambedkar claimed that the Indian Federation was unique as during the times of emergency it could convert itself into an entirely unitary system. In India, the emergency provisions are such that the constitution itself enables the federal government acquire the strength of unitary government whenever the situation demands. During such urgent needs all the pacific methods should be exhausted and emergency should also be the last weapon to use as it affects India's federal feature of government. There are three types of emergencies under the Indian Constitution namely-

- National Emergency
- Failure of constitutional machinery in states
- Financial Emergency.

National Emergency

Article 352 of the Indian Constitution talks about the national emergency. National emergency is imposed whereby there is a grave threat to the security of India or any of its territory due to war, external aggression or armed rebellion. Such emergency shall be imposed by the president on the basis of written request by the council of ministers headed by the Prime Minister. When they are satisfied that there is an eminent danger thereof. Every proclamation is required to be laid before each House of Parliament, it will cease to operate after one month from the date of its issue unless in the meantime it is approved by the parliament, the proclamation may continue for a period of 6 months unless revoked by the president. For further continuance of emergency the resolution has to be passed by either house of parliament by a majority of not less than two-third members of the houses. During the times of such emergency the executive, legislative and financial power rests with the centre whereas the state legislature is not suspended. The union government under Art.250 of the constitution gets the power to legislate in regards to subjects enumerated in the state list. Except Art.20 and 21 all the fundamental rights are suspended. Under Art.359 the president may suspend the right to move to the courts for enforcement of fundamental rights during the time of emergency.

Failure Of Constitutional Machinery In State

Article 256 talks about the failure of constitutional machinery in state also known as the President's rule. If the president on Governor's report or otherwise is satisfied that the situation has arisen that the government can't be carried in accordance with the constitutional provisions then, he may issue State emergency. President can declare emergency either by the report of Governor or he himself is satisfied that the situation is such that the emergency has to be imposed. But at times, President may declare emergency when a report is not received from the governor. This was done by President Venkataraman in 1991 in the state of Tamil Nadu even though he didn't receive a report from the governor. After the 42th Amendment of the

constitution the state emergency was made immune from judicial review.

But later in the 44th Amendment the legality of President's rule could be challenged. The proclamation relating to state emergency shall be laid before each House of Parliament unless both Houses approve it, the emergency shall cease to have effect after the expiry of a period of two months. Further the duration of proclamation can be extended to 6 months each time by both Houses of Parliament passing resolution approving its continuance. Beyond the period of an year the proclamation can only be continued if the Election Commission certifies that it is not possible to hold election in the state or that territory. The consequences of state emergency are- · The president assumes all the executive power of the state himself. The state administration runs by him or any person appointed by him generally the Governor. ·

During such proclamation, the state assembly is either dissolved or suspended. But the MLA's do not lose their membership of the Assembly. · Parliament makes laws regarding the state list. The parliament only passes the budget for the state. · The High court of the state functions independently. · President also proclaims ordinances in the state.

Financial Emergency

The president under Article 360 of the constitution has the power to declare financial emergency if he is satisfied that the financial stability or the credit of India or any part of its territory is threatened. It has to be laid before both the Houses of Parliament and ceases to operate at the expiration of two months unless meanwhile approved by the resolution of Houses. During the operation of financial emergency, the executive authority of the union extends to the giving of directions to any state to observe certain specified canons or financial propriety and such other directions that the President may find necessary. The directions may include reduction of salaries or allowance of those serving a state, of all those in connection with the affairs of union including judges of high court and Supreme Court. There has been no occasion of financial emergency in India.

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