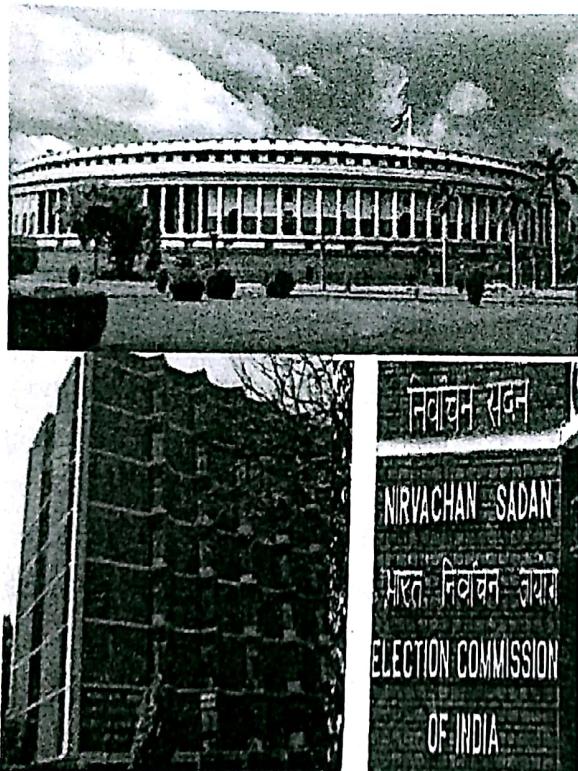


Ref: An Undocumented Wonder
The making of the Great Indian Elector
S. Y. Quraishi, Rupa, 2014

EMPOWERING THE ELECTION COMMISSION



Rationale for an Independent Election Commission

So far as the fundamental question is concerned that the election machinery should be outside the control of the executive government, there has been no dispute. What Article 289 (later renumbered as Article 324) does is to carry out that part of the decision of the Constituent Assembly. It transfers the superintendence, direction and control of the preparation of the electoral rolls and of all elections to Parliament and Legislatures of the States

to a body outside the executive to be called the Election Commission. That is the provision contained in sub-clause (1). Sub-clause (2) says that there shall be a CEC and such other Election Commissioners as the President may from time to time appoint. There were two alternatives before the Drafting Committee, namely, either to have a permanent body consisting of four or five members of the Election Commission who would continue in office without any break, or to permit the President to have an ad hoc body appointed at the time when there is an election on the anvil. The Committee has steered a middle course. What the Drafting Committee proposes by sub-clause (2) is to have permanently in office one man called the CEC, so that skeleton machinery would always be available. Elections no doubt will generally take place at the end of five years, but there is the question, namely, that a bye-election may take place at any time. The Assembly may be dissolved before its period of five years has expired. Consequently, the electoral roll will have to be kept up-to-date all the time so that the new election may take place without any difficulty. It was, therefore, felt that having regard to these exigencies, it would be sufficient if there was permanently in session one officer to be called the CEC, while when the elections are coming up, the President may further add to the machinery by appointing other members to the Election Commission.

Now, Sir, the original proposal under Article 289 was that there should be one Commission to deal with the elections to the Central Legislature, both the Upper and Lower Houses, and that there should be a separate Election Commission for each Province and each State, to be appointed by the Governor or the Ruler of the State. Comparing that with the present Article 289, there is undoubtedly a radical change. This Article proposes to

centralise the election machinery in the hands of a single Commission to be assisted by Regional Commissioners, not working under the Provincial Government, but working under the superintendence and control of the Central Election Commission. As I said, this is undoubtedly a radical change. But this change has become necessary because today we find that in some of the provinces of India, the population is a mixture. There are what may be called original inhabitants, so to say the native people of a particular province. Along with them, there are other people residing there, who are racially, linguistically or culturally different from the dominant people who are the occupants of that particular province. It has been brought to the notice both of the Drafting Committee as well as of the Central Government that in these provinces the executive government is instructing or managing things in such a manner that those people who do not belong to them either racially, culturally or linguistically, are being excluded from being brought on the electoral rolls. The House will realise that franchise is a most fundamental thing in a democracy. No person who is entitled to be brought into the electoral rolls on the grounds which we have already mentioned in our Constitution, namely, an adult of 21 years of age, should be excluded merely as a result of the prejudice of local government, or the whim of an officer. That would cut at the very root of democratic government. In order, therefore, to prevent injustice being done by provincial governments to other than those who belong to the province racially, linguistically and culturally, it is felt desirable to depart from the original proposal of having a separate Election Commission for each province under the guidance of the Governor and the local Government. Therefore, this new change has been brought about, namely, that the whole of the election machinery should be in the hands of a Central Election

Commission, which alone would be entitled to issue directives to returning officers, polling officers and others engaged in the preparation and revision of electoral rolls so that no injustice may be done to any citizen in India, who under this Constitution is entitled to be brought on the electoral rolls. That alone is, if I may say so, a radical and fundamental departure from the existing provisions of the Draft Constitution.

—B.R. Ambedkar, Chairman of the Drafting Committee
of the Constituent Assembly, 15 June 1949

Introduction

Constitutional experts regard the Election Commission as the greatest gift of the Constitution of India to the nation. The remarkable wisdom and foresight of the founding fathers ensured the formation of an institution that has stood the test of time as a powerful watchdog of democracy.

Empowering the Election Commission in a federal state empowers citizens to participate actively in the democratic process, as well as promotes transparency and accountability in politics. Good public policy and public welfare ultimately originate from fair elections supervised by a credible and empowered constitutional authority. The Constitution of India proclaims the country as a Sovereign Socialist Secular Democratic Republic. Thus, democracy, a basic inalienable feature of our Constitution, is well understood to be a form of government ‘of the people, by the people, for the people’. For the formation of such a government, the will of the people has to be ascertained through periodic elections, regularly held at prescribed intervals. And such elections have to be free and fair, if they are to be reflective of the true choice of electors. In other words, free and fair elections form the cornerstone of all democratic institutions. Thus, it needs no arguments to claim

that the ECI, which has been charged with the constitutional responsibility of conducting free and fair elections, is also a part of the same basic structure of the Constitution. This issue was settled by the Constitution Bench of the Supreme Court (AIR 2003 SC 87).

Free and fair elections postulate three basic requirements:

1. an independent electoral management body to conduct elections,
2. a set of rules governing the conduct of these elections, and
3. an effective mechanism for resolution of disputes arising out of, or in connection with, elections. The founding fathers of the Constitution took care to meet these three basic postulates. In Article 324 of the Constitution, they provide for the establishment of an independent Election Commission; by Article 327, they empowered Parliament to enact laws governing all aspects of conducting elections; and by Article 329, they provided a mechanism for resolving all electoral disputes by judicial fora through election petitions.

Historical Evolution of the Election Commission of India

The framers of the Constitution of India, after a careful study and analysis of various democratic forms of governments prevalent in different parts of the world, adopted, with modification to suit our own needs, the Westminster type of parliamentary form of government functioning in the United Kingdom. The Westminster model, however, has hereditary monarchy while in India the President is elected, as are members of the Upper House unlike nominated members of the House of Lords. Most importantly, the Election Commission was a total departure from the Westminster model. The only election body referred to in the Constituent Assembly in that model

was the one set up in Canada, under the Dominion Elections Act of 1920.*

The Constitution makers weighed several options to establish parliamentary institutions based on free and fair elections. They considered whether an electoral management body should be created at the centre for electing the President, Vice President and the Union Parliament, and separate electoral management bodies for elections to respective state legislatures; or whether a central electoral management body should be entrusted with the responsibility of conducting elections both for the Union and the states. Concerned about the political situation prevailing in various states which stood divided on many ethnic, religious and linguistic considerations, they chose a unified command in the hands of a single electoral management body for conducting all elections. While introducing draft Article 289 (which later became Article 324 in the final Constitution) on 15 June 1949, in the Constituent Assembly, B.R. Ambedkar, the Chairman of the Drafting Committee of the Constituent Assembly, explained the rationale for an independent central and federal Election Commission which has been quoted at length at the beginning of this chapter.

Thus, a central Election Commission was provided to be constituted under clause (1) of Article 324 in which was vested the superintendence, direction and control of preparing electoral rolls for, and the conduct of, elections to Parliament as well as state legislatures and to the offices of the President and Vice President of India.

Another notable fact was that the Election Commission came to be constituted even before India became a sovereign republic on 26 January 1950. Article 324 of the Constitution was brought into force on 26 November 1949, when the

*Alistair McMillan, 'The Election Commission of India and the Regulation and Administration of Electoral Politics', *Election Law Journal*, Vol. 11, Nov. 2012.

Constitution was formally adopted by the Constituent Assembly. This Article was one of the few articles which the Constituent Assembly in its wisdom thought fit to be brought into force urgently even before the date of commencement of the Constitution. This evidently shows the significance which the Constitution makers attached to conducting elections to Parliament and state legislatures. Pursuant to this constitutional provision, the Election Commission was established on 25 January 1950, that is, a day before the country became a sovereign republic on 26 January 1950. Notably, from 2011, on the request of the Election Commission, 25 January of each year has been declared by the Government of India as the National Voters' Day (see details in Chapter 9).

Sukumar Sen, ICS, was appointed the first Chief Election Commissioner on 21 March 1950. Sen's contribution in laying the foundation of a robust election management system is historic, though not adequately celebrated. This is largely because he left no memoirs. The nation owes him gratitude for laying the foundation of a great institution and for his superhuman effort in conducting the first general elections in 1951–52 in the most difficult circumstances with no infrastructure.

Composition of the ECI

Article 324 (2) of the Constitution provides that the Election Commission shall consist of the CEC and such number of other Election Commissioners, if any, as the President may, from time to time, fix. The Election Commission could, therefore, be either a single-member body or a multi-member body. To begin with, the Commission was established as a single-member body with only the CEC as its head. This continued till 16 October 1989 when, for the first time, two Election Commissioners, S.S. Dhanoa and V.S. Seigell, in addition to R.V.S. Peri Sastri, CEC, were appointed by the President. This arrangement proved to be short-lived, as on 1 January 1990 the two posts of Election

Commissioners were abolished by another presidential order and the Commission was again converted to a single-member body.

The story behind this is interesting and has been vividly told by J.M. Lyngdoh, former CEC, in his book, *The Chronicle of an Impossible Election*, published in 2004. When Janata Dal (JD) wanted the wheel with twenty-four spokes as its symbol, Dhanoa and Seigell gave it only three. Since it seemed to resemble the logo of the Youth Congress, Dhanoa agreed to increase the number of the spokes to six. Dissatisfied with the decision, the fiery Devi Lal, a member of the JD delegation, stomped out of the Commission's room thundering, 'We shall be back in a couple of months and you will be the first to be thrown out.' This was one poll 'promise' that was honoured. On 1 January 1990, the President issued a notification reverting to a single-member Commission.

Dhanoa challenged this presidential order before the Supreme Court mainly on the ground that he was appointed for a term of five years, as per the service rules framed by the President under Article 324 (5) then governing the office of the Election Commissioners, and that his term could not be curtailed by the presidential order (S.S. Dhanoa versus Union of India and others, 1991). The Supreme Court, however, did not agree with this contention and upheld the presidential order holding that the creation and abolition of posts was the prerogative of the executive, and Article 324 (2) left it to the President to fix and appoint such number of Election Commissioners as he may from time to time determine. The apex court further observed that the power of the President to create posts was unfettered, so was his power to reduce or abolish them, and with the abolition of posts the service rules pertaining to those posts also ceased to have effect and, therefore, the petitioner could not validly claim to continue for the full tenure. It also observed that the role of the two Commissioners was not defined. But while dismissing Dhanoa's

petition, the Supreme Court observed:

There is no doubt that two heads are better than one, and particularly when an institution like the Election Commission is entrusted with vital functions, and is armed with exclusive uncontrolled powers to execute them, it is both necessary and desirable that the powers are not exercised by one individual, however all-wise he may be. It ill-conforms the tenets of democratic rule. It is true that the independence of an institution depends upon the persons who man it and not on their number. A single individual may sometimes prove capable of withstanding all the pulls and pressures, which many may not. However, when vast powers are exercised by an institution which is accountable to none, it is politic to entrust its affairs to more hands than one. It helps to assure judiciousness and want of arbitrariness. The fact, however, remains that where more individuals than one man an institution, their roles have to be clearly defined, if the functioning of the institution is not to come to a naught.

Taking a cue from these observations by the Supreme Court, the President again converted the Election Commission into a multi-member body with effect from 1991. This law created a distinction between the CEC and the Election Commissioners in terms of status, retirement and perquisites.

From 1 October 1993, the Commission became a three-member body with the addition of two Election Commissioners, M.S. Gill and G.V.G. Krishnamurty, besides T.N. Seshan, the then CEC. A three-member Commission has been a regular feature since then.

There is also a provision in Article 324 (4) for appointing Regional Commissioners to assist the Election Commission in the performance of its functions. It provides that before each general election to the House of the People and to the Legislative Assembly of each state and each biennial election

to the legislative council of a state, the President may appoint, after consultation with the Election Commission, such Regional Commissioners, as may be considered necessary. But such Regional Commissioners have never been appointed except at the time of the first general elections in 1951–52. Two Regional Commissioners were then posted—T.G.N. Iyer, an Indian Civil Service (ICS) officer in Patna from 31 October 1951 and M.R. Meher, a retired ICS officer in Bombay from 1 November 1951. They held their offices up to 1 April 1952.

A look at the Election Management Bodies (EMBs) functioning in some of the important democracies shows that their composition is vastly different. The Federal Election Commission (FEC) of the United States of America consists of six commissioners who are appointed by the President with the advice and consent of the Senate. They can be members of political parties, but not more than three commissioners can be members of the same political party. They serve for a term of six years but two of them retire every two years.

The Electoral Commission of South Africa consists of five members, one of whom is a judge, appointed by the President on the recommendation of the National Assembly. The National Assembly makes its recommendations on the basis of a list of at least eight candidates recommended by a selection committee consisting of: (1) the President of the constitutional court, (2) a representative of the Human Rights Commission, (3) a representative of the Commission on Gender Equality, and (4) the public protector. The term of a Commissioner is seven years, which may be extended by the President on the recommendation of the National Assembly for a specified period. He may be reappointed, but only for one further term. He can be removed from office on grounds of misconduct, incapacity or incompetence by the process of impeachment.

The Electoral Commission of Ghana consists of seven members—a chairman, two deputy chairmen and four other members. The chairman and members of the Commission are

appointed by the President on the advice of the Council of State. The chairman has the same terms and conditions of service as a Justice of the Court of Appeal, whereas the two deputy chairmen have the terms and conditions as applicable to a Justice of the High Court. The other four members are paid such allowances as Parliament may determine. The chairman and the two deputy chairmen have permanent tenure of office.

In Brazil, the Electoral Management Body at the centre known as the Superior Electoral Court (TSE) consists of seven judicial members (ministers)—three from the Federal Supreme Court (STF), two from the Superior Court of Justice (STJ) and two judges chosen from a list of six attorneys appointed by the Federal Supreme Court. They serve for a period of two years and cannot hold office for more than two consecutive terms. The President and Vice President of TSE are selected from among three members from STF, while there is one Electoral Inspector General who is one of the ministers of STJ.

In Canada, the electoral management body, 'Elections Canada', is an independent non-partisan agency of Parliament. It is headed by a Chief Electoral Officer, who is appointed by a resolution of the House of Commons, so that all parties represented in the House may contribute to the selection process. Once appointed, he reports directly to the Parliament and is thus completely independent of the government. He serves until the age of retirement, that is, sixty-five years. He can be removed from office by the Governor General after a joint request following a majority vote by the House of Commons and the Senate.

Closer home, in Southeast Asia, Election Commissions follow a model similar to India. For instance, the Election Commission of Bangladesh is an independent constitutional authority created under Article 118 of the Bangladesh Constitution. In this Commission also, there is one CEC and such number of other Election Commissioners as the President may from time to time direct. They are appointed by the

President, subject to the provisions of any law made on that behalf by Parliament. They serve for a term of five years and after retirement they are not eligible for further appointment under the government, except that an Election Commissioner may be appointed CEC. They can be removed by impeachment on the same grounds and in the same manner as a judge of the Supreme Court.

The Election Commission of Pakistan is also an independent autonomous constitutional body. It consists of the CEC and four other members. The CEC is appointed by the President who is, or has been, a judge of the Supreme Court or is, or has been, a judge of a High Court and is qualified to be appointed as a judge of the Supreme Court. The term of his office is three years, which may be extended by the National Assembly by a resolution for a period not exceeding one year. He enjoys the same privileges as those of the Chief Justice of Pakistan. The four Election Commissioners are drawn from judges of provincial high courts—one each from each of the four high courts. They are all sitting judges of the respective high courts and are appointed by the President in consultation with the Chief Justice of the High Court concerned and the CEC. In the matter of decision-making, they have equal say. Bhutan and Nepal also have EMBs similar to India.

It is clear that while each country has its own wisdom about the size, composition, tenure and process of appointment, the underlying concern is the same, namely, independence of the Commission. It is noteworthy that the Election Commission is a multi-member body in every country and it is remarkable that the largest democracy in the world conducted its elections till 1993 with a single member, the CEC, with complete credibility and trust. Canada is probably the only other exception where a single member, designated as the Chief Electoral Officer, with absolute powers conducts all elections with equal credibility. Many small countries have very large Election Commissions, going up to eleven, thirteen or fifteen members.

In my view, the enlargement of the Indian Election Commission to three members is one of the most significant developments. This is not to negate the absolutely neutral and fair conduct of the single-member Election Commission before 1993, but a three member composition is a near foolproof measure to ensure fairness, neutrality and independence and for protecting the Commission from any allegation or perception of bias. Even the quality of decisions improves with three heads. Many a time, what I thought was my 'bright' idea, was tempered with the wisdom of my two brother commissioners. In an earlier dispensation, even I had played the moderator when the situation so demanded (and that was many times!). That is the reason why many decisions that could have created unnecessary controversies and bitterness were checked in time. That was the phase in which there were too many 'leaks' vitiating the bonhomie among the commissioners. It was then that the three commissioners decided to meet often without aides, so that our differences of opinion were resolved within, unlike earlier where some officers, who were privy to the differences, either indiscreetly leaked them outside or exploited them by playing one against the other, leading to considerable acrimony occasionally.

My conclusion, thus, is that a multi-member Commission is essential, and the size of three is ideal; anything larger than that could be unwieldy.

Manner of Appointment of Election Commissioners in India

The manner of appointment of Election Commissioners is extremely critical for the neutrality and a perception of neutrality of the institution. Most countries, therefore, appoint their commissioners through a system of collegium or different elaborate processes. In India, Election Commissioners are appointed by the government of the day without any consultation mechanism. The Law Minister puts up the file to the Prime Minister who recommends a name to the President.

After his approval, the law ministry issues the notification. It is a miracle that the incumbents so appointed have commanded the trust of the nation.

Suggestions have often been voiced that in the appointment of the CEC and Election Commissioners, the opposition should also be taken into confidence so that their appointments receive wider acceptance. For that purpose, several collegiums are being suggested to include, among others, the leader of the opposition in Parliament, the Chief Justice of India and so on. The time has come for these suggestions to be taken up seriously. My advice would be to include the outgoing CEC too in this process, as he understands the job requirement the best.

Conditions of Service of Election Commissioners

Clause (5) of Article 324 provides that the conditions of service of the CECs and other Election Commissioners and their tenure of office be regulated by law and, until such law is made, the President shall determine by rule all such matters. However, to insulate the Election Commission from interference by the executive and to ensure its independent functioning, a safeguard has been provided that the conditions of service of the CEC once determined shall not be varied to his disadvantage after his appointment and that he shall not be removed from his office except in like manner and on the like grounds as a judge of the Supreme Court. Election Commissioners once appointed cannot be removed from office except on the recommendation of the CEC.

From 1950 till 25 January 1991 the conditions of service of the CEC were determined by the President under the rules framed by the government and he was given tenure for five years. The Parliament enacted the CEC and other Election Commissioners (Conditions of Service) Act, 1991 with effect from 25 January 1991. Under this Act, the CEC was given tenure of six years or upto the age of sixty-five years, whichever was earlier, and his salary and allowances and other perquisites

were to be the same as those for a judge of the Supreme Court; whereas the Election Commissioners were given tenure of six years but upto the age of sixty-two years and their salaries and allowances were equated with those of a judge of a High Court.

This act was, however, significantly amended in 1993 and even its nomenclature was changed as the CEC and other Election Commissioners (Conditions of Service) Amendment Act, 1993. Under the amended Act, the CEC and Election Commissioners were brought at par in all respects—they all now have terms of six years or upto the age of sixty-five years, whichever is earlier, and they are all given the same salaries and allowances and other perquisites as a judge of the Supreme Court. Further, they have equal powers in decision-making and wherever unanimity cannot be reached in deciding a particular matter, the opinion of the majority prevails. I have pleasure in recording that such occasions, where matters had to be decided by majority opinion, arose only on three occasions during my tenure of six years as Election Commissioner and CEC.

A narration of developments will not be complete without mentioning that the amendments to the conditions of service of the CEC and Election Commissioners brought about in 1993 were challenged before the Supreme Court by the then CEC, T.N. Seshan. This challenge was, however, rejected by the court on 14 July 1995 (T.N. Seshan versus Union of India and Others (1995 (4) SCC 611). The court held:

The scheme of Article 324 is that there shall be a permanent body to be called the Election Commission with a permanent incumbent to be called the CEC. The Election Commission can therefore be a single-member body or a multi-member body if the President considers it necessary to appoint one or more ECs. The argument that a multi-member Election Commission would be unworkable and should not, therefore, be appointed must be stated to be rejected as acceptance of such argument

would tantamount to destroying or nullifying clauses (2) and (3) of Article 324.

By clause (1) of Article 324, the Constitution makers entrusted the task of conducting all elections in the country to a Commission referred to as the Election Commission and not to an individual. It may be that if it is a single-member body the decisions may have to be taken by the CEC but still they will be the decisions of the Election Commission. They will go down as precedents of the Election Commission and not the individual. It would be wrong to project the individual and eclipse the Election Commission. Nobody can be above the institution which he is supposed to serve. He is merely the creature of the institution, he can exist only if the institution exists. To project the individual as mightier than the institution would be a grave mistake. Therefore, even if the Election Commission is a single-member body, the CEC is merely a functionary of that body; to put it differently, the alter ego of the Commission and no more. And if it is a multi-member body the CEC is obliged to act as its Chairman. Having regard to the meaning of the word 'Chairman', it has been variously defined in dictionaries as a person chosen to preside over meetings or a presiding officer, etc. Therefore, the function of the Chairman would be to preside over meetings, preserve order, conduct the business of the day, ensure that precise decisions are taken and correctly recorded and do all that is necessary for smooth transaction of business. The nature and duties of this office may vary depending on the nature of business to be transacted but by and large these would be the functions of a Chairman. He must so conduct himself at the meetings chaired by him that he is able to win the confidence of his colleagues on the Commission and carry them with him. This a Chairman may find difficult to achieve if he thinks that others who are members of the Commission

are his subordinates. The functions of the Election Commission are essentially administrative but there are certain adjudicative and legislative* functions as well. The Election Commission has to lay down certain policies, decide on certain administrative matters of importance as distinguished from routine matters of administration and also adjudicate certain disputes,** e.g., disputes relating to allotment of symbols. Therefore, besides administrative functions it may be called upon to perform quasi-judicial duties and undertake subordinate legislation-making functions as well.

Removal of Election Commissioners from Office

As mentioned earlier, in order to ensure the independence of the Election Commission and to insulate it from Executive interference, the Constitution provides that the CEC can be removed from office only in like manner and on like grounds as a judge of the Supreme Court—in other words, by the process of impeachment laid down in the Constitution. It is, however, paradoxical that the same protection in the matter of their removal from office has not been provided to the Election Commissioners. Only limited protection is available to them in that they cannot be removed from office except on the recommendation of the CEC. The Commission has been

*The Election Symbols (Reservation and Allotment) Order, 1968 promulgated by the Election Commission on 31 October 1968 is one such piece of legislative activity of the Commission.

**The Constitution of India has also vested under Articles 103 and 192 the power of adjudicating disputes relating to disqualification of sitting members of Parliament and state legislatures and tender opinion in such cases to the President and Governors. The Commission also goes into the disputed question of disqualification of candidates filing their returns of election expenses under section 10A of the Representation of the People Act, 1951.

insisting with the government for several years that the Election Commissioners be placed at par with the CEC in the matter of their removal from office, as the underlying intention and object of creating an autonomous Election Commission is to ensure the independence of the Commission as an institution and not only of the CEC.

Functions of the Election Commission of India

The Constitution of India has vested in the Election Commission the superintendence, direction and control of preparing electoral rolls, and conducting elections to the offices of President and Vice President of India and to both the Houses of Parliament and state legislatures. Additionally, the Commission has also been conferred the responsibility of tendering its opinion to the President and Governors of states on questions of disqualification of sitting members of Parliament and state legislatures. The opinion of the Election Commission in such questions to the President under Article 103 (2) in relation to sitting members of Parliament and to the Governor of a state under Article 192 (2) relating to sitting members of the state legislature, is binding on them and they have to act according to such opinion, without reference to their council of ministers. The Commission has the powers of a civil court while making enquiry into such questions of alleged disqualifications for the purpose of formulating its opinion. Besides, the Commission has the exclusive jurisdiction to decide on disputes between rival groups or factions of a recognized national or state party under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968.

It is pertinent to clarify here that elections to lower bodies like municipal corporations, municipalities, district councils (zila parishads) and village councils (panchayats) are conducted not by the ECI, but by the respective State Election Commissioners (SECs) who are also independent constitutional authorities.

These authorities were created by the Constitution (seventy-third and seventy-fourth) Amendment Acts, 1992, which came into effect on 1 June 1993. This distinction between ECI and SECs is not widely understood with media and political leaders regularly blurring the distinction, particularly referring to the Chief Electoral Officer (CEO) of a state (an officer of ECI) as the SEC.

The roles and responsibilities of Electoral Management Bodies (EMBs) across the globe vary significantly in different countries. For instance, the Federal Election Commission (FEC) of the United States of America is not directly concerned with conducting elections, either at the federal or state levels. These elections are conducted by EMBS of the respective states whose composition and functions vary from state to state and they conduct elections as per the laws made by those states. The FEC's role is confined to administering and enforcing the Federal Election Campaign Act which governs the financing of federal elections. It is an independent regulatory agency created in 1975 and its duties are watching over the disclosure of campaign finance information, enforcing limits and prohibitions on contributions and overseeing the public funding of presidential elections.

In the United Kingdom too, the responsibility of conducting national and local elections is not that of the Election Commission—these elections are managed by the Home Department. Here again, the role of the Election Commission set up in 2001 is just registering political parties and overseeing election expenditure and the public financing of elections.

The Electoral Commission of South Africa has been entrusted with the duty of conducting all national, provincial and local elections. In Canada, the Chief Electoral Officer is responsible for the administration of general elections and bye-elections and also of referenda and other important aspects of the democratic electoral system in the country.

In Bangladesh, the role and responsibilities of the Election

Commission are almost similar to those of the ECI. Its Constitution also vests the superintendence, direction and control of preparing electoral rolls and conducting elections to Parliament and to the office of the President in the Election Commission. This Commission, unlike India, is also responsible for delimitation of constituencies for the elections to Parliament. Election tribunals for disposal of election petitions are also constituted by the Election Commission. The Bangladesh Election Commission can also be entrusted with such other functions as may be prescribed by law. Under this prescription, conducting elections to local bodies is also the responsibility of the Election Commission.

The Election Commission of Pakistan is charged with the function of conducting elections to both national and provincial assemblies. However, conducting elections to the office of the President and the Senate is the responsibility of the CEC and not of the entire Commission. Likewise, conducting local government elections and referenda is also the responsibility of the CEC.

It is clear from this discussion that each country has its own variations. Some commissions conduct all the elections—national or local—some even have delimitation under their jurisdiction. However, in India, the ECI conducts all elections up to the state legislature with only elections to local bodies being the jurisdiction of state ECs. The delimitation of constituencies is also not the jurisdiction of the ECI.

It is interesting to see that two of the most respected democracies, the US and UK, set up Election Commissions very recently (1975 and 2001 respectively) and with very limited roles and powers.

Secretariat of the Election Commission of India

The Election Commission superintends, directs and controls the largest man-managed event in the world when it conducts countrywide general elections to the House of the People,

involving over seven hundred million electors and eleven million polling staff and security personnel. Almost an equal number are posted in all the states put together. The Secretariat of the Commission comprises, however, only about fifty officers and three hundred officials to assist it in the performance of its gigantic functions. At present, there are three Deputy Election Commissioners and three Directors Generals* at the senior level heading certain departments. They are assisted by some directors, principal secretaries, secretaries, undersecretaries and other officials at the lower levels. Some of them have been seconded to the Commission on deputation and they are members of various all-India services, whereas others are part of the permanent cadre of the Commission. Their conditions of service are mainly regulated by the rules framed by the President under Article 309 of the Constitution.

Administrative Expenditure of the Election Commission

Expenditure on salaries and allowances of Election Commissioners and other officers of the Commission and other administrative expenditure for the day-to-day functioning of the Secretariat of the Commission are voted by Parliament. The Commission is of the considered view that in order to ensure full independence of the Commission, its expenditure

*Two new divisions were created in 2010 to meet the changing needs of the Commission to undertake the task of voter awareness, which was hitherto left to political parties and civil society organizations, and monitoring of election expenses of political parties and candidates. To head these divisions, the posts of two Directors Generals were also created. In addition, the Commission also established the India International Institute of Democracy and Electoral Management to meet its needs of imparting training to millions of officers and staff engaged in various election duties in the country. The institute has also become a focal point for meeting the training needs of various EMBs across the world. This is also headed by a Director General.

should be a 'charge' on the Consolidated Fund of India like the expenditure of the Supreme Court, the Comptroller and Auditor General of India and the Union Public Service Commission. Such a measure of making the expenditure of the Commission a charge on the Consolidated Fund of India will further enhance its independence and insulate it from Executive interference making inroads in its financial autonomy, for any control on the Commission's budget might be misconstrued as a check on its activities by the political executive.

The First Indian Elections after Independence

Since the Constituent Assembly adopted the Constitution on 26 November 1949, it was provided in the Constitution (Article 379) that the Constituent Assembly shall itself be the provisional Parliament of India till the regular constitution of Parliament. The Constitution makers took another historical step by declaring that elections to the House of the People and State Legislative Assemblies shall be held on the basis of universal adult suffrage. In spite of the fact that the country was passing through great turmoil after its division into India and Pakistan and there was a large migration of population from one place to another, the Constituent Assembly started giving directions to state governments on how to proceed with the registration of electors in anticipation of the law yet to be enacted.

The situation was now ripe for conducting the first-ever general elections in independent India. For conducting these elections, it was now necessary for Parliament to enact a further law governing all aspects of the electoral process. Such a law came in the form of the Representation of the People Act, 1950 (on 12 May 1950) and the Representation of the People Act, 1951 (on 17 July 1951). The former dealt exclusively with the matters of the electoral rolls. The Act of 1951 governed the conduct of the electoral process and the qualifications and disqualifications for contesting elections (in addition

to those which were already prescribed in the Constitution itself), specified corrupt practices during elections and electoral offences and provided for a legal mechanism for resolution of all doubts and disputes in connection with elections.

This Act also provided for determining the territorial extent of parliamentary and assembly constituencies by the President on the recommendation of the Election Commission. The President passed necessary orders delimiting the parliamentary and assembly constituencies on 13 August 1951 which formed the basis for conducting the first general elections to the House of the People and Legislative Assemblies in 1951–52. Before these delimitation orders came into force, an enumeration of electors had already been done by electoral registration authorities district-wise and the enumerated electors were thereafter assigned to the constituencies concerned where they were ordinarily residents. Polling stations were set up at convenient places as close as possible to the places of residence of electors and the electoral rolls already prepared were subdivided into convenient parts for each polling station.

The formal process of elections commenced on 10 September 1951 with the issue of the notification by the President calling for general elections to the House of the People. Polls were held in various phases, starting with the first phase on 25 October 1951 in the high altitudes of Chini and Pangi assembly constituencies in Himachal Pradesh before the onset of winter and closure of the high passes in those regions. In all, polls were held throughout India on sixty-eight days, that is, in sixty-eight phases; ending with the last phase of elections on 21 February 1952 in Uttar Pradesh.

As many as 1,96,084 polling stations were set up throughout the length and breadth of the country, of which 27,527 were exclusively reserved for women. The total electorate of the country then stood at 17,32,12,343 of whom 10,59,50,083 voted. The world wondered how elections would be held in India where the literacy rate at that time was hardly about 16

per cent. To enable an overwhelming majority of the population who were illiterate to cast their votes, the Commission had to devise a system whereby such electors could exercise their franchise with due regard to secrecy. The Commission, after great deliberations, decided to adopt the balloting system of voting. Each contesting candidate was allotted a separate ballot box in the polling station on which his name and election symbol was labelled. A voter had to simply insert the ballot paper given to him in the ballot box of the candidate of his choice in the voting compartment. All these ballot papers were centrally printed by the Election Commission at the Government of India Security Press at Nasik where the Indian currency was printed. After the counting of votes and the declaration of results, the first House of the People was constituted by the Election Commission on 2 April 1952.

Elections were also held to the State Legislative Assemblies around the same time. Soon after the constitution of the State Legislative Assemblies, elections were also held to the Council of States for which the electorates consisted of elected members of State Legislative Assemblies. On the basis of these elections held in March 1952, the Council of States was first constituted on 3 April 1952. Now there was a regular Parliament to replace the interim Parliament which held its last sitting on 5 March 1952.

Empowerment of the Election Commission

There are seven pillars on which the strong edifice of the Election Commission is solidly built:

1. The Constitution of India
2. Parliament which formulates acts
3. Supreme Court of India and various High Courts
4. Political parties who formulated the Model Code of Conduct

5. The bureaucracy that conducts the mammoth exercise fearlessly
6. The media that acts as the eyes and ears of the Commission
7. The people of India, who repose full trust in the Commission

The Election Commission owes its empowerment to these seven sources.

Empowerment by the Constitution

Around the same time when the Constitution of India was under preparation, the United Nations had also embarked on an exercise of codifying basic human rights with a view to strengthening democracy in different parts of the world. The Universal Declaration of Human Rights, 1948, provided that:

- Everyone has the right to take part in the government of their country, directly or through freely chosen representatives (UDHR Article 21.1).
- The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures (UDHR Article 21.3).

The prerequisite for realizing these basic democratic rights is the conduct of free and fair elections in which the people are in a position to express their will fearlessly and according to their own free choice, in a fully secure and secret manner. This was the mandate given to the Election Commission by the founding fathers of the Constitution of India. They took further care to ensure that the Commission was vested with all necessary powers to discharge its functions independently and that it was insulated from interference or pressures from the political executive of the day. The Constitution empowers the Commission with complete freedom in its allotted domain. Parliament is the authority that formulates laws under Article

327 of the Constitution 'with respect to all matters relating to, or in connection with, elections to either House of the Parliament or to the House or either House of a Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the Due Constitution of such House or Houses'. However, this power of Parliament to make laws is 'subject to the provisions of this Constitution', which includes Article 324.

Thus, Parliament cannot make any law which may have the effect of diluting or whittling down the powers given to the Commission by the Constitution. In fact, any such law may amount to affecting the basic structure of the constitution, as the Commission was also formed as a part of the Constitution's basic structure. In this context, the Supreme Court observed in Special Reference No.1 of 2002 (AIR 2003 SC 87) that: 'The Parliament is empowered to frame laws as regards conduct of elections but conducting elections is the sole responsibility of the Election Commission. As a matter of Constitutional mandate, the plenary powers of the Election Commission cannot be taken away by law framed by Parliament. If Parliament makes any such law, it would be repugnant to Article 324.' What the Constitution has vested, by Article 324, in the Election Commission is the 'superintendence, direction and control' of elections to Parliament and state legislatures and to the offices of President and Vice President of India. The Supreme Court held in Mohinder Singh Gill and another versus Chief Election Commissioner and Others (AIR 1978 SC 851) that the words 'superintendence, direction and control' are the broadest terms and Article 324 is a plenary provision vesting the whole responsibility of national and state elections in the Election Commission. Further, the apex court held that where any law made by Parliament is silent, Article 324 gives power to the Commission to act in such a vacuous area. The apex court's landmark verdict (see box) sums up, most graphically, the sweeping powers of the Commission:

Not to fold hands and pray to
God for divine inspiration

The framers of the Constitution took care to leaving scope for exercise of residuary power by the Election Commission in its own right, as a creature of the Constitution, in the infinite variety of situations that may emerge from time to time in such a large democracy as ours. Every contingency could not be foreseen or anticipated with precision. That is why there is no hedging in Art. 324. The Commission may be required to cope with some situation which may not be provided for in the enacted laws and the rules. That seems to be the *raison d'être* for the opening clause in Arts. 327 and 328 which leave the exercise of powers under Art. 324 operative and effective when it is reasonably called for in a vacuous area. Where the existing laws are absent and yet a situation has to be tackled, the CEC has not to fold his hands and pray to God for divine inspiration to enable him to exercise his functions and to perform his duties or to look to any external authority for the grant of powers to deal with the situation. He must lawfully exercise his power independently, in all matters relating to the conduct of elections, and see that the election process is completed properly in a free and fair manner.

—Hon'ble Supreme Court, 1978

It is in exercising such inherent powers under Article 324 that the Election Commission promulgated the Election Symbols (Reservation and Allotment) Order, 1968 governing, inter alia, the recognition of political parties as national and state parties.

Empowerment by Parliament

The Parliament, by exercising its law-making power, has made all necessary provisions in the laws governing the conduct of elections, mainly, the Representation of the People Act of 1950

and 1951* and the Presidential and Vice Presidential Act, 1952 and the rules made under these Acts, to strengthen the Election Commission and to effectuate its powers. Wherever these legal provisions were found wanting in any respect, amendments were made from time to time to overcome them. For instance, under Section 159 of the Representation of the People Act, 1951, as originally enacted, the Commission could requisition the services of employees of only local authorities, in addition to government servants, for deployment on election duties as they would be subject to the control and discipline of the government at all times. Employees from the private sector were deliberately kept out of election duties as no administrative control could be exercised over them once the elections were over. But the Commission found on experience that government servants and employees of local authorities were far less in number than the actual requirement. On the recommendation of the Commission, Section 159 was amended in 1997 to provide that the services of employees of universities established by the central, provincial or state acts or any other institution, concern or undertaking, including a government company, controlled or financed wholly or substantially by funds provided directly or indirectly by the central government or state government, could also be utilized for polling duties.

The Commission also felt handicapped in disciplining officers and other staff members deployed on election duties for any acts of omission or commission in performing their election related duties on account of lack of any express provision in the law as such officers and staff were governed by their own service rules.

Though the Constitution makers had intended that all election machinery shall work subject to the superintendence,

*It is intriguing how the same title was used for two different Acts. The former deals exclusively with electoral rolls issues, the latter with the conduct of elections.

direction and control of the Election Commission, some institutions pleaded that their officers were subject to their disciplinary control and the Commission could not directly seek explanations from them or subject them to any disciplinary proceedings for any lapse on their part in performing their election related duties. Here, too, the Parliament amended the law in 1988, inserting Section 13CC in the Representation of the People Act, 1950 and Section 28A in the Representation of the People Act, 1951, mandating that all officers deployed on election duties shall be deemed to be on deputation to the Election Commission during the period of such deployment and that they shall be subject to the control and discipline of the Commission during that period.

Likewise, when the Commission decided to use electronic voting machines for the recording and counting of votes during elections to the House of the People and State Legislative Assemblies, legislative sanction for the use of such machines was provided by Parliament in 1989 by making necessary provisions in Section 61A of the Representation of the People Act, 1951. Earlier, the Supreme Court had held in 1984 that such machines could not be used by the Commission in the absence of a law providing for their use, and Parliament removed that legal obstacle by amending the law. There are several other examples where Parliament came to the aid of the Commission to arm it with necessary powers to discharge its functions more effectively.

Empowerment by the Supreme Court

The authority that the Commission wields and the respect it enjoys today comes, to a very great extent, from the Supreme Court's benevolent interpretation of the various provisions in the Constitution and the laws relating to elections and the Election Commission. The Supreme Court interpreted the word 'election' in Clause (b) of Article 329 as the entire process starting with the issue of the notification calling the elections

and culminating in the declaration of result, in N.P. Ponnuswami versus Returning Officer, Namakkal (AIR 1952 SC 64) in 1952. It also placed a bar on the interference by courts in electoral matters, and these steps have gone a long way in helping the Election Commission conduct elections and bye-elections. In the very early stages of a nascent democracy, that is, at the time of the first general elections in the country, this interpretation was rendered by a Constitution bench of the Supreme Court and the conduct of elections has been left to the Election Commission according to the timetable set by it.

There were doubts in the minds of certain authorities whether the election schedule drawn by the Election Commission was binding on the President and Governors, who have to issue notifications setting the electoral process in motion, or if the Council of Ministers at the centre and in the states could make any alterations in such schedule, as under the Constitution, the President and Governors have otherwise to act on the aid and advice of their Council of Ministers. This doubt was set at rest by the Supreme Court in Special Reference No.1 of 2002 (AIR 2003 SC 87). The Supreme Court held that, 'So far as the framing of the schedule or calendar for election [...] is concerned, the same is in the exclusive domain of the Election Commission, which is not subject to any law framed by the Parliament.' This was done so that the ruling party or ruling alliance was not in a position to take undue advantage of its incumbency. In most countries the date of the elections is decided by the political executive, except where the date is permanently fixed (like in the USA). In UK, the decision on the date of elections had been the domain of the Prime Minister since 1715. In 2011, however, the Act was amended to create a fixed term Parliament. It has now been decided to hold the future general elections on 7 May every five years, starting from 7 May 2015.

Some other important examples of similar far-reaching interpretations by the Supreme Court need mention. The

direction given by the Supreme Court in 1993 to the government that the Commission's perceptions of the law and order situation be given due regard and the Commission be provided with the services of central police forces for ensuring the requisite precautionary and remedial measures during polls led to peaceful polls. Its seal of approval on the agreement between the Commission and the government that the Commission will have disciplinary control over all the government personnel seconded to it for deployment on election duties, including the power to suspend and transfer them has ensured that the officials deployed for elections remain non-partisan. Again, approving that the Model Code of Conduct will come into force from the date of announcement of the election schedule by the Commission has ensured clean and orderly campaigning. Upholding the constitutional validity of the Election Symbols (Reservation and Allotment) Order, 1968 which provides for, *inter alia*, the recognition of political parties as national and state parties confirmed the power of the Election Commission to make subordinate legislation.

Empowerment by Political Parties

Though in the Constitution, as originally enacted and in the laws framed thereunder, there was no mention of political parties, yet the Election Commission recognized their role in the functioning of a democracy as envisaged in the Constitution from the very beginning. From the very first general elections in 1951–52, it recognized a number of political formations functioning at the national, regional and state levels under its own powers of Article 324. Political parties are one of the main stakeholders in the electoral process and, but for their satisfaction, no electoral outcome can receive general acceptance essentially needed for smooth and orderly transfer of power. It is gratifying to note that political parties have all along accepted electoral verdicts gracefully and also appreciated the role which the Election Commission has played in ensuring free

AN UNDOCUMENTED WONDER

and fair elections. This has been one of the greatest sources of the Commission's empowerment.

The faith reposed in the Election Commission by political parties is evident from the fact that enforcement of the Model Code of Conduct has been entrusted by them to the Election Commission. The Model Code of Conduct is a unique device evolved by political parties themselves which binds them to observe certain exemplary good practices in their election campaigns so as to maintain a healthy decorum for clean elections, to provide a level playing field among them and to place restrictions on the use of government power and machinery by the ruling parties for their partisan ends. Generally, the political parties have shown strict adherence to the Code and wherever the Commission has, on observing any infraction or breach of the Code, asked for any explanation from the person or authority concerned, the explanation has come forthwith irrespective of the post or position held by the said person, together with an assurance that such breach would not be repeated. It is worth noting that any decision rendered by the Commission in such cases has been promptly, and without demur, accepted and complied with.

Empowerment by Bureaucracy

The admirable manner in which the bureaucracy has responded to the call of duty and stood by the Commission to assist it in the discharge of its onerous duty undoubtedly deserves a special mention. The way it has looked to the Election Commission to observe and adhere to its directions and instructions, ignoring sometimes even the threats of political bosses, is noteworthy. Bimal Jalan, former Governor of the Reserve Bank of India once remarked that the same bureaucracy which is otherwise much maligned renders perfect elections when it comes under the command of the Election Commission. The large number of observers and micro-observers deployed by the Commission act as its eyes and ears in the field. In my capacity as a former

head of the Election Commission, I would be failing in my duty if I do not acknowledge the crucial role played by the Indian bureaucracy, including the IAS, IPS, IRS and other services, in conducting free, fair, peaceful and smooth elections, paving the way for smooth transfer of power after elections. The bureaucracy's brightness and constant innovations have made the ECI a powerful and effective body.

Empowerment by the Media

The Commission has always accepted the media as its ally. With its wide reach in every nook and corner of the country, the media is more vigilant and often quicker in noticing and highlighting malpractices resorted to by candidates and political parties in their political campaigns. Quite often, it is through the media that the Commission observes or becomes aware of violations of the Model Code of Conduct or other corrupt or illegal practices being indulged in by certain candidates and their supporters and workers. In all such cases the Commission promptly and without loss of time directs urgent remedial action; it does not wait for a formal complaint from any other source for launching any investigation or inquiry in such matters. That apart, the Commission heavily depends on the media's power to inform and educate all stakeholders about its directions and instructions as well as its programmes, election schedules and awareness campaigns. It is because of the media that the Commission effectively implements the Model Code of Conduct, as it is the fear of adverse publicity that makes political parties and candidates wary of violations of the Code. Public censure through the media is the sanction behind the Model Code of Conduct.

Unfortunately, a disturbing phenomenon has been noticed recently which has acquired the nickname of 'paid news'. This phenomenon has been discussed in detail in Chapter 11. Hopefully this is an aberration that will be tackled largely by the media itself through its vigilance and self-regulation.

Empowerment by the People

The foremost source of the Commission's empowerment is the faith reposed in it by the people of India. The way they have respected the electoral verdicts during the last fifteen general elections to the House of the People, 348 general elections to State Legislative Assemblies and thousands of bye-elections to Parliament and state legislatures bears ample testimony to the fact that the Commission has not failed the people of the country in performing the sacred duty imposed on it by the Constitution. It has been working consistently to safeguard and increase the political strength of ordinary voters and citizens.