

Strengthening the Election Commission

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This article by the author, a Lecturer in Political Science, Bangalore University, was written before the Chief Election Commissioner's latest bombshell. Nevertheless, the contents of the article being relevant in the present context, it is being published here for the benefit of our readers.

—Editor

Ever since T.N. Seshan was appointed the Chief Election Commissioner in December 1990, the office of the Chief Election Commissioner has been the focus of media attention, academic debate and parliamentary scrutiny as never before. Several actions of the Chief Election Commissioner, over the past two years, have provoked strong reactions in political and legal circles. Seshan's appointment was, in the first place, embroiled in controversy and he soon came to be labelled as a guardian of the electoral interests of the Congress party. This image has recently undergone a dramatic change as a result of the tensions and differences that have developed between the Chief Election Commissioner and the Congress Chief Ministers of Assam, Andhra Pradesh and Haryana. Added to this was the fact that during the Tripura Assembly elections, Seshan had expressed his displeasure over a Central Minister interfering in the conduct of the elections. Seshan is also believed to have objected to a public statement that was made by a senior Minister in the Central Cabinet that elections to the State Assemblies of UP, Madhya Pradesh, Rajasthan and Himachal Pradesh would be held within a year of the imposition of President's Rule. The antagonism of the Opposition parties towards Seshan has found open expression on various occasions. The statements of the Chief Minister of Bihar, Laloo Prasad Yadav, and the cold war between the Chief Election Commissioner and the Government of West Bengal bear ample testimony to this fact. The most recent decisions of the Chief Election Commissioner relating to the cancellation of the Ranipet (Tamil Nadu) and Kalka (Haryana) Assembly by-elections and postponement of the Ottapallam (Kerala) Lok Sabha by-election have resulted in the demand for the impeachment of Chief Election Commissioner gaining further momentum.

It needs to be borne in mind that the Election Commissioner is one of the few institutions in our parliamentary system that has, by and large, refused to buckle to the dictates of the executive.

Much of the anger directed towards the Chief Election Commissioner can be explained in the context of the fact that in India political parties in general, and politicians in particular, have been accustomed to living and operating in an environment in which public accountability has been largely illusory and in most cases inconsequential. Thus, when an assertive Chief Election Commissioner attempts to do what is his *dharma* and discipline political parties it evokes a spontaneous adverse reaction (from the political parties) as such action is something that has been alien to them. It becomes imperative in this context to strengthen the independence of the Election Commission and increase its effectiveness in combating political interference in the electoral process. A few areas of reform need to be focussed upon.

The existence of an impartial and independent authority to conduct elections is the bedrock of any system of democratic governance. In the Constituent Assembly, during the debate relating to the Election Commission, there was unanimity amongst the members that the independence of the electoral process and the non-interference of the executive in the elections was a fundamental right of the citizens of India and special provisions had to be made in this regard. By according the Election Commission a constitutional status, the Constituent Assembly unequivocally demonstrated its commitment to ensuring that the 'superintendence, direction and control of the electoral rolls and of all elections to Parliament and the legislatures of States' was entrusted to a body that was independent of and outside the executive.



IN the light of the four decades of experience and experimentation with parliamentary democracy and with a view to strengthen the commitment of the system to democratic values and principles, a review of the organisation and functions of the Election Commission has today become necessary.

The first issue that needs to be addressed is whether the country should have a single or multi-member election Commission. The Constitution stipulates that the Election Commission shall consist of a Chief Election Commissioner and such other Commissioners as the President may, from time to time, fix. In the debate in the Constituent Assembly, Dr Ambedkar had opined that the Election Commission could consist of the Chief Election Commissioner and 'when elections are coming up, the President may further *add to the machinery by appointing other members to the Election Commission*'. (emphasis added) This sentiment was sought to be used as justification by the Congress Government headed by Rajiv Gandhi, when on October 16, 1989, a few days prior to the announcement of the general elections, two Additional Election Commissioners, Dhanoia and Seigell, were appointed. The political compulsions that triggered off the appointment was the attitude of the then Chief Election Commissioner, R.V. Peri Shastri, who refused to knuckle under political pressures. It was hoped by the government that the appointment of the Additional Election Commissioners would act as an effective counter-weight to Peri Shastri. However, the term of the Additional Election Commissioners was short-lived—only 79 days—as the National Front Government which came to power after the general elections removed them from office in view of the political controversies that tainted their appointment. The Election Commission—save for this brief period of 79 days—has always had a single Chief Election Commissioner. While it would be advisable to have a multi-member Election Commission, as such an arrangement would result in sharing of power and prevent the possible abuse of authority by a single Chief Election Commissioner, the danger of this provision being misused by the government—as in 1989 to serve partisan political ends cannot be glossed over. Such abuse of authority can be prevented if suitable changes are made in the procedure followed for the appointment of the Chief Election Commissioner/Additional Election Commissioners.

As per the existing constitutional arrangement, they are appointed by the President on the advice of the Council of Ministers. Such a provision permits political considerations to play a dominant role in such appointments. In the Constituent Assembly the suggestion was made by Prof Shibban Lal Saksena that the appointment of the Chief Election

Commissioner, which is to be made by the President, should be subject to confirmation by a two-thirds majority at a joint session of both Houses of Parliament. Prof Saksena believed that such a provision would prevent a staunch party-man from being appointed to the position and if the Prime Minister ever did recommend the name of a party-man it could be rejected 'before the bar of public opinion'. Dr Ambedkar did not favour Prof Saksena's recommendation as it would, he felt, 'introduce political considerations' in the procedure to be followed for the appointment of the Chief Election Commissioner.

All the nine Chief Election Commissioners appointed till now have been retired or senior civil servants. The first Chief Election Commissioner, Sukumar Sen, had served earlier as the Chief Secretary of West Bengal. The second and third Chief Election Commissioners, K.V.K. Sundaram and S.P. Sen Verma, were Secretaries in the Ministry of Law. The fourth Chief Election Commissioner, Nagendra Singh, had earlier worked as the Secretary to the President. T. Swaminathan, who was the fifth Chief Election Commissioner, had earlier been the Cabinet Secretary. The sixth Chief Election Commissioner, S.L. Shakhder, had served earlier as the Secretary-General of the Lok Sabha. R.K. Trivedi, the seventh Chief Election Commissioner, had retired as the Secretary, Department of Personnel and Administrative Reforms. R.V. S. Peri Shastri was, prior to becoming the Chief Election Commissioner, the Secretary in the Ministry of Law. The present Chief Election Commissioner, Seshan, had earlier been the Cabinet Secretary and a Member, Planning Commission. Two of the Chief Election Commissioners were appointed to important positions after they relinquished office. Sen Verma was appointed a Member of the Law Commission when he completed his term as the Governor of Gujarat after serving as the Chief Election Commissioner.



TO maintain the independence of the office of the Chief Election Commissioner and to ensure that political considerations do not influence the choice of the Chief Election Commissioner/Additional Election Commissioners it has today become imperative to provide for a system wherein the President makes the appointment to the office not on the basis of the recommendation of the Council

of Ministers but a body that is representative of different shades of political opinion. Two suggestions can be mooted in this regard. The President could appoint the Chief Election Commissioner/Additional Election Commissioners on the basis of the advice tendered by the a Committee consisting of the Prime Minister, Speaker of the Lok Sabha, Union Law Minister, Leader of the Opposition in the Lok Sabha and the Leader of the Opposition in the Rajya Sabha. Alternatively, the President could act on the advice tendered by the Inter-State Council which consists of the Prime Minister as the Chairman, a few senior Union Ministers and the Chief Ministers of all the States. Such a provision would reduce the risk of politicisation of the office of the Chief Election Commissioner/Additional Election Commissioners.

The absence of an independent staff for the Election Commission has also been responsible for generating friction between the Election Commission and the Union/State Governments from time to time. The practice followed today is that in every State there is a Chief Electoral Officer appointed by the Chief Election Commissioner in consultation with the State Government on the basis of the names suggested by the State Government. The officer is invariably of the rank of the Chief Secretary or Secretary in the State administration. The other staff appointed to work in the office of the Election Commission in the State are also sent on deputation by the concerned State Government. Thus the Election Commission is dependent on the State Government for providing staff to man important administrative positions in the Commission at the State level. Dr Ambedkar had sought to defend the practice of not providing an independent staff for the Election Commission on the ground that it would result in the duplication of administrative machinery and lead to unnecessary administrative expenditure. One of the members of the Constituent Assembly, R.K. Sidhwa, had rightly warned during the debate in the Constituent Assembly that borrowing staff from the provinces would be detrimental to the independence of the Election Commission. It has today become imperative to provide for an independent staff for the Election Commission. Such a step would go a long way in protecting the independence of the Commission.

Attention also needs to be focussed on the manner in which the ruling party at the Centre has frequently sought to time Lok Sabha and State Assembly elections to suit its advantage. Suitable

changes need to be made in the Representation of People's Act (1951) which outlines the procedure to be followed for the notification and conduct of elections to the Lok Sabha and the State Assemblies. It has often been noticed that the ruling party at the Centre has sought to time the Lok Sabha elections to its political advantage. The Representation of the People's Act should be so amended as to ensure that a clear time-table is laid down for the conduct of the elections. In the event of the Lok Sabha completing its stipulated five-year term, it must be provided in the Act that the general elections to the new Lok Sabha should be held a week prior to the completion of the term of the existing House. In the event of the dissolution of the Lok Sabha it must be stipulated in the law that the mid-term election must be held within two months of the dissolution. Such a provision would minimise the possibility of the ruling party being in a position to time the election to its benefit. It would also indirectly strengthen the Election Commission which would have a clear time-table for the conduct of the elections outlined in the Representation of People's Act itself.

Of equally serious significance is the manner in which the Central Government has attempted to, time and again, hold elections to the State Legislative Assemblies at its convenience. In Uttar Pradesh, Madhya Pradesh, Rajasthan and Himachal Pradesh the Assemblies were dissolved in December 1992 and President's Rule imposed. The Central Government and the Congress party have made it amply clear that elections would be held in these States only when the situation is normal—which actually means a situation when they are reasonably confident of winning the elections. Timing an election in a State on the basis of the political calculations of the ruling party at the Centre is violative of the basic norms of democratic governance and a serious aberration in a democratic polity. Article 356 needs to be suitably amended to ensure that in the event of President's Rule being declared in a State and the Legislative Assembly being dissolved, elections must be held within two months of the dissolution of the House. If for whatever reason the election cannot be held, the two Houses of Parliament by a two-thirds majority should approve the postponement of the elections. Such a provision would go a long way towards minimising the risk of abuse of authority by the Central Government and indirectly strengthen the hands of the Election Commission.

The last area where reforms are long overdue

relates to the holding of by-elections to the Lok Sabha and State Assemblies. The Representation of People's Act clearly specifies that the responsibility of notifying the time, date and manner of the conduct of the by-elections is the exclusive responsibility of the Election Commission. Experience has shown that in some cases the Election Commission has acted with great alacrity and by-elections have been held within 45 days of the seat falling vacant. However, there have also been cases where the by-elections were not held even after two years of the seat following vacant. With regard to by-elections too, the Representation of People's Act needs to be suitably amended to

ensure that a by-election is held within three months of the seat falling vacant.

Strengthening the foundations of Indian democracy necessarily involves ensuring as free and fair an electoral system as is possible. This could be realised by strengthening the hands of the Election Commission and plugging those loopholes that permit the executive to interfere with the working of the Commission. An Election Commission that is able to assert its role and stand up to the political pressures exerted by the government of the day would significantly contribute to enriching the quality and content of Indian democracy. ■