

THE POST AND THE PERSON: ON STRENGTHENING THE EC

Relevant for: Indian Polity & Constitution | Topic: Electoral Reforms in India

The Constitution Bench of the Supreme Court is examining a public interest litigation (PIL) that could be critical for Indian democracy. The PIL, which seeks the strengthening of the Election Commission of India (ECI), includes a proposal to create an independent mechanism to appoint the Chief Election Commissioner (CEC) and Election Commissioners (ECs) who are, at present, simply appointed by the government of the day, without any defined criteria or processes.

That electoral democracy became a reality in India owes a great deal to the foresight of the Constituent Assembly. However, the Assembly could not have anticipated the extent to which the very political class that framed the Constitution would later attempt to subvert it. As this political dynamic unfolded, at certain crucial junctures, the judiciary and the leadership of the ECI saved democracy.

When the Constituent Assembly debated how free and fair elections should be ensured, three important questions arose. The first was whether free and fair elections should be made a part of fundamental rights or an independent institution, outside the executive, should be established to conduct the elections. The Assembly opted for the latter and created the ECI. With legal back up and the resources to develop and enforce a transparent electoral system, the ECI made free and fair elections a reality.

The second critical decision was to have a single, centralised body for elections to the Lok Sabha and State legislatures. One proposal was that the ECI be confined to federal elections, and separate institutions be set up to conduct elections to State legislatures. However, with increasing tension among communities, the Assembly feared partisan action in the States and opted for a single national institution, the ECI. The implications of this decision were complex. On the one hand, Central institutions have generally been more robust than State institutions. For example, State Election Commissions lack autonomy, are short on manpower and funds, and are frequently subject to attempts by State governments to manipulate elections. On the other, this decision could have led to an autocratic institution being established and possibly manipulated by powerful national actors. But this possibility was contained because elections became subject to judicial review. Originally, the Constitution had provided for tribunals set up by the ECI to hear election petitions. But aggrieved parties approached the courts, and the courts decided to hear election petitions. Then the ECI itself recommended that election petitions be heard by the judiciary, and in 1966, the law was changed accordingly.

The third question concerned ensuring the independence of the ECI. As the manner of appointment of the CEC and ECs was debated, Shibban Lal Saxena presciently argued that while the then Prime Minister was a man of independence, this may not always be the case, and proposed ratification of the CEC's appointment by the legislature. But the Assembly disagreed, and provided simply for the CEC to be appointed by the President, leaving it to the legislature to enact a suitable law, which never happened. The Constituent Assembly did provide, though, that the CEC could only be removed through impeachment. For the ECs, even this safeguard was not provided, which is also a subject of the above-mentioned PIL.

The history of elections shows that this remains a major shortcoming of the ECI. From 1967 to 1991, the election process deteriorated as the Congress lost its dominance, political competition intensified, and political actors stepped up violence and electoral malpractices. The ECI could

not arrest this deterioration. Several State governments made large-scale transfers on the eve of elections and posted pliable officials in key positions, who sometimes flouted the ECI's orders. This deterioration could have continued. Instead, during the 1996 general election, the ECI restored the credibility of the election process. The CEC, T.N. Seshan, reinterpreted the ECI's role and powers, and provided combative, forceful leadership. He publicly reprimanded politicians for violating the Model Code of Conduct, postponed/ cancelled elections if their credibility was compromised, intensified supervision of elections, and insisted on action against errant officials. Because of constitutional safeguards, he could not be removed. But the ECI got the right leadership accidentally, not by design. Though the ECI has since become an institution of some authority, there have been controversies over appointments of ECs, allegations of partisanship, and new problems such as of voter bribery and paid news, which the ECI has not been able to address so far.

As history shows, inadequate leadership is the bane of our public institutions. Safeguards to ensure that ethical and capable people head them are crucial.

Rashmi Sharma is a former IAS officer

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