

India: The Embodiment of EMB Independence

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The Election Commission of India (ECI) is widely regarded as a model of an independent EMB. It may be even more appropriate to describe it as a 'fiercely independent' EMB. In 1948–9, the founding fathers of the Indian constitution, while debating the position of the election commission in the Constituent Assembly, ensured that the body responsible for conducting elections in independent India should be a distinct one, separate from the government of the day, and that it should have ample financial and administrative autonomy to conduct its affairs. A combination of the well thought-out, broadly worded provisions contained in article 324 of the Indian constitution, a supportive judiciary, active media and Indian public opinion, coupled with the stature and independent attitude of some of the individuals who have headed the election commission, has resulted in the independence and reputation that the ECI enjoys today.

The Legislative Framework Governing Elections and the EMBs

In addition to the fundamental constitutional provisions, there are two important basic statutes that provide the legal framework for elections. They are known as the Representation of the People Acts, the first passed in 1950 and the second in 1951. The first provides for the basic requisites for elections, such as the allocation of seats for the legislatures at national and state level, the delimitation of electoral boundaries, and the preparation of the electoral registers. The second lays down detailed provisions for the actual conduct of elections. It includes the qualifications for standing as a candidate for different public offices, the rules for registration of political parties, and the procedure for dealing with electoral disputes.

Once the election machinery is set in motion, the electoral process is subject to the administrative supervision of the ECI, and no court of law can stop the process. Only after an election is concluded can an election petition be presented to the High Court. The ECI itself enquires into any allegations of procedural irregularity or violations of the electoral law. This procedure has ensured that the electoral process can be completed on schedule, without getting bogged down in judicial hearings.

To supplement the various provisions of these two statutes, detailed procedures are contained in the Registration of Electors Rules 1960 and the Conduct of Elections Rules 1961, including the instructions and forms to be used on polling and counting days.

The ECI, after consultations with all the political parties, has published a model code of conduct. This code has no legal basis and derives its legitimacy from the consensus of the political parties. It is an attempt to bring about a level playing field where the governing party is prevented from misusing the state machinery to the disadvantage of opposition parties. The ECI has done an excellent job of enforcing its provisions and reining in the governing parties during election periods. At times it has used this code to postpone elections in certain disputed electoral districts in the face of gross violations of the code of conduct.

Institutional Structure

India is a federal polity of 28 states and five union territories. At national level, the Union Parliament has two houses, the lower or popular house, the Lok Sabha, and the upper house, the Rajya Sabha. In addition, each of the states has at least one elected house, the Legislative Assembly, and some of the larger states also have a second house, the Legislative Council. The Indian constitution entrusts the responsibility to conduct elections for all these legislative bodies, at both federal and state level, to the national election commission.

In 1992, through the 73rd amendment to the constitution, a third tier of governance was introduced – district-level bodies (panchayats), which are India's institutions of local self-government. Elections to panchayats are entrusted to the state election commissions, which are separate entities.

Initially, there was a single chief election commissioner. However, the size, complexity and responsibility of the task led to the introduction briefly in 1989 and then from 1993 onwards of a three-member ECI. The president appoints the chief election commissioner and election commissioners. They have a term of office of six years, or up to the age of 65 years, whichever is earlier. They enjoy the same status and receive the same salary and other benefits as judges of the Supreme Court of India. The chief election commissioner can be removed from office only through impeachment by Parliament. Impeachment can take place on two grounds only – proven misbehaviour or incapacity – and requires an elaborate procedure which is also prescribed for the removal of judges of the Supreme Court and the high courts. Other election commissioners cannot be removed from office except on the recommendation of the chief election commissioner.

The ECI exercises total control over the entire election machinery, even though the members of the electoral machinery are not its employees. India has the tradition of a neutral civil service. The key officials at state level are the state chief electoral officers, who are selected by the ECI from a shortlist of federal civil servants posted to the state drawn up by the state government. State chief electoral officers may not be dismissed without the approval of the ECI at national level.

However, the main electoral activity takes place in the 500-odd districts, with an average of 1.3 million registered voters in each district. The office of district magistrate (also known as district collector or deputy commissioner in some parts of India) – an office created by the British – plays the pivotal role for the ECI. As district election officer, the district magistrate performs key electoral duties as the team leader of all district and sub-district level officials. All these officials are legally deemed to be on secondment to the ECI and come under the supervision, discipline and control of the ECI for the duration of an election.

In addition to about 5 million polling staff for about 700,000 polling stations, the ECI demands and gets from the government the services of senior officials who have worked earlier as district election and returning officers to act as electoral observers on its behalf. The ECI thus has immediate access to a large number of impartial and experienced observers without

having either to employ them permanently or to pay them. The observers are provided for in the Representation of the People Act of 1951 by an amendment inserted in 1989. By law they are to be officers of the government (federal or state) and they are vested with the power to stop the count if they are of the opinion that some malpractice has taken place. However, they have to report this to the ECI immediately and then follow the directions given. In practice, the ECI has also empowered them to intervene in several matters, especially the deployment of police forces on voting day, locating polling stations in areas inhabited by weaker and poorer sections of the people, and deciding on re-polls in cases of violence, alleged rigging and so on. Over time the institution of observers has developed into a formidable tool in the hands of the ECI to regulate elections in the field, acting as the eyes and ears of the commission and proving to be another important institution in ensuring the independence of the election machinery in India.

Powers and Functions

The ECI performs routine functions, such as voter registration, deploying and training election officials, printing ballot papers, conducting the actual voting, counting the ballot papers, and declaring the election results. In addition, it allocates free time on the state-owned electronic media to the different national and state parties during the campaign period.

The ECI is not responsible for the delimitation of electoral boundaries: the constitution provides for a separate Delimitation Commission, headed by a sitting or retired judge of the Supreme Court. One of the election commissioners is nominated to be a member of this body. However, because the ECI has the institutional memory and provides secretarial support, it plays an important role in the delimitation process.

The ECI is the watchdog of election expenditure. It appoints financial observers through whom it very closely monitors the expenditure of the candidates during the election campaign period. This has successfully reduced illegal expenditure at election time in India.

The ECI has the power to order a re-poll at polling stations where irregularities have been observed – or indeed in a whole electoral district – if the situation so demands. It may also adjourn any poll for a few days.

Provisions to regulate political parties were originally absent from the electoral law and were introduced only in 1989, giving the ECI the responsibility for registering political parties. Initially, the procedure for registering a political party was quite liberal. Any association or group of persons seeking to form a political party had to apply in a prescribed form giving certain information. This simplified procedure prompted many people to register parties which then existed only in the records of the ECI. To curb this tendency and to facilitate the formation of serious parties, the regulations were tightened, to require that at least 100 members of a proposed party have to give details of their voter registration and swear individual affidavits that they are not members of any other party. The ECI has also prescribed a fee of 10,000 rupees (INR) for registering a new party.

Financing

It is a mark of the ECI's independence that it has not faced any major funding problems. With a staff of about 300 officials at the federal level, it is funded by the government budget through the Consolidated Fund. This pays for staff, technical operations and various office expenses, including the cost of acquiring electronic voting machines (EVMs). However, the

greater part of the expense is borne by the state governments – for example, for staff at the state headquarters and in the districts, the printing and transport of ballot papers, preparing and printing the electoral registers, procuring material for the conduct of elections, training, the salaries of election officials and of security forces deployed for elections, and the expenses of central election supervisors. The cost of time on the state-owned media is borne by the government as the parties are given this time free. The broad powers given to the ECI by the constitution have been liberally and boldly interpreted to make the government pay for any necessary expenses.

The ECI's accounts are subject to audit by the Comptroller and Auditor General and its report is tabled in the Parliament. This ensures the financial accountability of the ECI, and has worked smoothly.

Electoral Reforms

Although no formal procedure exists for proposing electoral (and consequent legislative) reforms, the ECI does have some role in this regard. It has put forward a number of proposals for electoral reform which are sent to the Law and Legislative Affairs Ministry and to the prime minister directly. Many times, to bring pressure on the government and encourage public debate, such proposals are also simultaneously discussed in the media. Calling a meeting of all political parties to create consensus is another effective method used by the ECI. The model code of conduct was adopted through this mechanism. Some important reforms have recently been instigated through the mechanism of public interest litigation, through which an NGO or public-spirited person raises issues before the Supreme Court or the high courts.

Modernization of the Electoral Procedures

The Election Commission, after initial hesitancy, has actively and successfully promoted the application of information technology to elections as a way of handling the mammoth scale of elections in India. Each registered voter is issued with a photographic ID card to enable him/her to vote freely, and at the same time to prevent fraudulent and multiple voting. Copies of the electoral registers are made available to the political parties on CD-ROM for checking and for use on election day. Through the use of computers at over 400 vote-counting centres, the results of the count are processed instantly and made available.

Another technological innovation has been the use of EVMs at all polling stations. Although initially reluctant because of political parties' apprehensions about possible tampering and suspicion among voters resulting from widespread illiteracy, the ECI has actively promoted the use of EVMs. Their use at all polling stations in 2004 meant that the results were available within hours of the count starting.