

# T.N Sheshan to the Present Regime: Critical Analysis of the Election Commission's Independence

Vishwapriya C.<sup>1</sup> Yogendra S<sup>2</sup>

<sup>1</sup> Assistant Professor, Visveswarapura College of Law, V. V. Puram, Bengaluru-560004.

<sup>2</sup> Assistant Professor, Visveswarapura College of Law, V. V. Puram, Bengaluru-560004.

## ABSTRACT

In order to legitimise democracy, free and fair elections must be regulated, and this is where electoral commissions come in. Article 324 of the Indian Constitution establishes the Election Commission of India as an independent body. In India, the strong electoral regulating agency known as the Election Commission of India has a long history of ensuring that elections are free and fair. This paper examines the reforms and policies implemented by Sheshan during his tenure as Chief Election Commissioner (1990–1996). These reforms caused havoc among politicians across India and raised public awareness about the importance of "free and fair elections," the commission's role, and its constitutional powers.

Since 2014, there have been several rumours that the power holders are trying to damage the impartiality of this independent democratic institution. This article seeks to investigate whether the institution has been undermined by focussing on the aftermath of the Sheshan Era to the regime of the incumbent Chief Election Commissioner. The purpose of this article is to examine the Election Commission of India's (ECI) constitutional powers and its independence from other government agencies in order to determine whether or not the independence guaranteed by the Indian Constitution really exists in practice. This paper intends to examine if the institution is bent over to the domination of the ruling regime.

It is vital for the democracy that the Electoral Regulatory Body remains independent and should be allowed to act independently without any interference, control or dominance. This paper concludes with suggestions of changes required in the functioning of Election Commission if the paper finds out that the 'independence' of this democratic institution is compromised.

**Keywords:** Election Commissions, Constitution of India, free and fair elections, Regulatory, independence

## I: Introduction:

The Constitution of India establishes the Election Commission of India as an autonomous, independent, and permanent organisation tasked with ensuring free and fair elections throughout the nation. Any nation's election governing body is crucial, as it is through its work that the government's legitimacy is democratically established. The opposition casts doubt on the veracity of the election results in the majority

<sup>1</sup> Assistant Professor, Visveswarapura College of Law, V. V. Puram, Bengaluru-560004.

<sup>2</sup> Assistant Professor, Visveswarapura College of Law, V. V. Puram, Bengaluru-560004.

of nations. The credibility of India's election results has never been called into question because of how well the Election Commission of India handles the matter. The Union Territories, the Central Government, and the State Governments all share a single Election Commission that is immune to executive, political, and local state pressures. It is in charge of the presidential and vice presidential elections in India as well as those for state legislatures, union territories, and Parliament. Election laws in India are outlined in Articles 324-329A of the country's constitution. Despite the Election Commission of India's constitutional duties and independence, the authority to legislate on election affairs remains with Parliament, even if the commission has grown into a respected democratic institution.

The credibility of the Election Commission of India has taken a hit due to the resurgence of the largest party's majority in the Lok Sabha, questions about whether or not the commission is influenced by the executive branch, and claims that it is working on behalf of the central government. In order to determine if the institution has been compromised and to propose changes, if any, this study centres on the following topics: the Election Commission, the Chief Election Commissioner, the Sheshan Era, and the aftermath of the Sheshan Era.

### **Research Problem:**

Post 2014, the return of single largest party to form the Government has resulted in dominance of the Executive over the Democratic Institutions established by the Constitution of India. Particularly, the conduct of the Chief Election Commissioner and the two Election Commissioners attending the meeting convened by the PMO has brought the institutions reputation of independence, to a bad light. The allegation that the Electronic Voting Machine can be manipulated and the independent private researches on the issue that proves such manipulation possibility, and the silence of Election Commission on the issue makes the allegation against the institution to be fair. This paper intends to examine if the independence of the Election Commission has been compromised post 2014.

### **Research Objective:**

- To analyze the Constitutional Provisions related to the Election Commission of India
- To examine the Sheshan Era 1990-1996
- To find out if the autonomous nature of the Election Commission of India is Compromised to the Executive influence and interference

### **Research Question:**

- Whether the Election Commission of India is under the Executive influence and interference?
- Whether the Election Commission of India has compromised its autonomy and independence to the Executive pressure.

## II: Election Commission of India; Constitutional texts

The Elections provisions are laid forth in Part-XV of the Constitution of India, which include Articles 324-329A. The Election Commission of India is established to "superintend, direct and control" elections in accordance with Article 324 of the Indian Constitution. The composition of the Election Commission is defined in Article 324(2) and includes the Chief Election Commissioner (CEC) and an amount of Election Commissioners (ECs) that the President may appoint periodically. 'The office of the CEC is permanent fixture, but not in the case of ECs, as their appointment is optional with the Central Executive'<sup>3</sup>. If the other ECs are so appointed, the CEC shall act as the Chairman of the Election Commission<sup>4</sup>, by the virtue of Article 324(3) of the Constitution of India. At present, Sushil Chandra is the Chief Election Commissioner of India, and the other two Election Commissioners are Rajiv Kumar and Anup Chandra Pandey.

The President of India, with the advice of the Election Commission, may designate Regional Commissioners to assist the Election Commission of India in carrying out its duties in connection with elections under Article 324(4) of the Indian Constitution. All states with bicameral legislatures have general elections to the Lok Sabha and state legislative assemblies, as well as biennial elections to their respective legislative councils, and these appointments are of a transitory character. Ensuring the CEC is able to carry out his duties without fear, favour, or interference from the Executive, the Constitution of India protects him from removal from office in the same way it protects Supreme Court judges. The powers, functions, and conditions of service of the CEC cannot be varied. A guarantee of CEC's autonomy from political meddling is provided by the option of removal and the constitutional protection.

From its start in 1950 until 1989, the Election Commission was a single-member body comprised of the CEC. R. Venkataraman, India's former president, nominated S.S. Dhanoa and V.S. Seigell to the position of chief electoral commissioner (CEC) to help manage the additional workload caused by the reduction of the voting age from 21 to 18, which was previously set at 21. Under Prime Minister V.P. Singh's National Front government in 1990, the two EC seats were eliminated and the CEC was reconstituted as a single member body of the Election Commission of India. In 1993, the then-prime minister of India, P.V. Narasimha Rao, and the government adopted an ordinance to expand the Election Commission of India from a single-member body to a multi-member one by adding two more members, G.V.G Krishnamurthy and M.S. Gill. This Ordinance was issued all of a sudden, to undermine the absolute authority of CEC, to restrict the supremacy of CEC, particularly the then CEC, T.N Sheshan so as to remove the confrontation created by the decisions by T.N Sheshan. The two so appointed ECs were made known of their appointment all of a sudden. This Ordinance that incapacitated Sheshan pleased the opposition and all the political parties equally. T.N Sheshan as CEC was a nightmare to the politicians of all the parties, as he exercised his absolute authority as an independent body, undermining political interference.

## III. Sheshan Era 1990-1996; Nightmare and the Awareness

'If one Sheshan can cleanse the electoral system in a country of this magnitude, I am confident that many other systems in the Government can be turned with the iron hands of people like you...'<sup>5</sup>, one of the letter in display at Election Commission speaks of the impact of Sheshan Era in the history of Election Commission. In a time when the Money Power and Muscle Power over-ruled the political order of the day,

<sup>3</sup> M.P JAIN, INDIAN CONSTITUTIONAL LAW 876 (LexisNexis 6<sup>th</sup> ed. 2010)

<sup>4</sup> *Id.* At 876

<sup>5</sup> Letter, R.C Mohan to Sheshan, 21 May 1996, Scrapbook of Letters (1996), Library and Resource Centre, Election Commission, Nirvachan Sadan, New Delhi

Tirunellai Narayana Iyer Sheshan, a 1955 batch IAS officer was appointed as the Tenth CEC in the year 1990 who became a source of inspiration of many due to his policies and reforms, slipping away from the political control. Sheshan's commitment, motive and integrity to cleanse the electoral system as an autonomous body, has been criticized by many. Sheshan fought for honesty, truth, and ethics. Appointment of Sheshan as the CEC is the turning point in the Indian Political history. Single party dominance collapse gave rise to a condition for the development of powerful Election Commission of India; CEC began to assert authority over political parties during elections<sup>6</sup>. His aggression and repeated clashes with the Executive made him controversial but he used the expanding news media coverage by briefing press regularly and gained popularity among general public. Sheshan clearly differentiated himself from his predecessors by exercising CECs Constitutional powers<sup>7</sup>. CEC set benchmark by formalizing the Model Code of Conduct in 1990, thus forcing the power seeking politicians to abide by certain rules and pruning the party in power which resulted in reduction of the advantage that the ruling party might take during elections. This irked the then P.V Narasimha Rao government along with the opposition that an Ordinance was issued to clip Sheshan's wings of authority, by appointing two Election Commissioners. The election duration was expanded in 1991, for ensuring clean election and clear results. To ensure neutrality amongst political parties and the politicians, CEC started appointing Chief Election Officer for each State. To ensure violence free elections Sheshan dispatched Central Reserve Police to suppress the ballot box theft or booth capturing, which was common those days. A no-nonsense attitude that ensured checks and balances in the entire election process according to the rule book, with zero tolerance to the Executive interference was his hallmark way of inviting wrath of all political parties<sup>8</sup>. He banned the sale of liquor, seized arms, prohibited religious propaganda, scrutinized election expenses, and stopped election eve bonanza for the government workers at the time of elections. His Model Code of Conduct was so strict that he claimed Election Commissions authority to derecognize any party that blatantly violated the Model Code of Conduct<sup>9</sup>. He cancelled elections and postponed dates when the parties or politicians violated the code, which resulted in curbing the undue influence by the political actors, effectively. The Dinesh Goswami Committee on electoral reforms sought to give statutory backing to the model code of conduct which was not given prominence by the then government<sup>10</sup>. Electoral morality gained popularity and was inculcated among the politicians and the general public by Sheshan during his term. He enforced the Model Code and gave paramount importance to the power of Election Commission to commandeer and control staff for electoral work, setting parameters of election campaign and using its discretionary authority over campaigns through parameters<sup>11</sup>. Other than the Model Codes, it was in his regime the EVM were used for the first time for general elections. His actions and policies are criticized for him being too adamant and his policies being strict. But that paved way to follow his footsteps and upholding the autonomy of the Election Commission by the CEC who were later appointed. Few of them further introduced reforms and oversaw strict implementation of policies. They were not extremely strict as Sheshan was!

Among other CECs who succeeded Sheshan, the impactful CEC was James Michael Lyngdoh. Both Sheshan and Lyngdoh are awarded The Ramon Magsaysay Award, for their excellence in the government service. Lyngdoh, successfully conducted elections in the two troubled states; Gujarat (the communal riots and violence standoff) and Jammu – Kashmir (standoff due to Pakistan backed violence), assuring the people to vote fearlessly in both the states. He was successful in introducing the Voters Identity Cards across the

<sup>6</sup> AMIT AHUJA & SUSAN OSTERMANN, A. Boin et al. (eds) Guardians of Public Value, [https://doi.org/10.1007/978-3-030-51701-4\\_2](https://doi.org/10.1007/978-3-030-51701-4_2)

<sup>7</sup> *Id.* at 45

<sup>8</sup> THE ECONOMIC TIMES, [https://www.google.com/amp/s/m.economicstimes.com/news/politics-and-nation/tn-seshans-bold-initiatives-led-indias-game-changing-electoral-reforms/amp\\_articles/72002688.cms](https://www.google.com/amp/s/m.economicstimes.com/news/politics-and-nation/tn-seshans-bold-initiatives-led-indias-game-changing-electoral-reforms/amp_articles/72002688.cms) (Apr. 17, 2022)

<sup>9</sup> David Gilmartin, *One day's Sultan: T.N. Sheshan & Indian Democracy*, SAGE PUBLICATIONS 247-87 256 (2009)

<sup>10</sup> *Id.* at 252

<sup>11</sup> *Id.* at 254

territory of India. Lyndoh-Modi strain due to Lyngdoh's decision of not conducting elections at the earliest after the Gujarat riots, as Modi had dissolved his assembly right after the riots to face fresh elections is one of his bold step towards safeguarding the autonomous powers of the EC. This issue was referred to the then President of India, Abdul Kalam who sought advice from the Supreme Court on EC's decision of not holding fresh election in Gujarat. The reason cited by the EC is the victims of the riots are in constant fear of backlash and have not healed yet. The Supreme Court in its response to the reference of the President said, it would not interfere with EC's orders upholding powers of CEC. Thus the process of cleaning up of the Electoral system, begin with Sheshan Era and both Sheshan and Lyngdoh upheld the glory of the 'independent Election Commission'.

#### IV. Autonomy Compromised?

Post 2014, the return of single largest party rule has cast doubts on the independence of EC. The coalition governments from late 1980s till 2014 resulted in EC fearlessly performing its constitutional duties that has been accorded by the Constitution of India. 'Post 2019 elections about 66 former bureaucrats sent a letter addressed to the President of India, expressing their concern over EC's independence, fairness, impartiality and efficiency being compromised citing the misuse, abuse and disregard of Model Code of Conduct by the party in rule at the centre'<sup>12</sup>. The numerous accusations relating to the integrity of Electronic Voting Machines and the reports regarding malfunctioning of the Electronic Voting Machines during elections and the accusations of EVM rigging, the demo of the research team in EC, Nirvachan Bhavan, Delhi, on how the EVM could be hacked and rigged<sup>13</sup>, in spite of the allegations and demonstration on how EVMs are vulnerable of being hacked, no rigorous or independent evaluations are conducted by the EC or the Government. These factors are few among other factors that cast doubts on the autonomy of the EC, if it is been compromised, given the fact that the return of single largest party to the power after three decades. The first rigorous security analysis on the EVM was conducted by Dr. Hari K Prasad and his team that collaborated with American experts to research on the security and evaluate if the EVM is tamper-proof. This study ends up suggesting immediate review of the security of EVM should be done and the technology need to be upgraded to avoid tampering<sup>14</sup>. The EC aware of these demonstrations and allegation keeps assuring the general public that the EVMs are safe. The return of single majority party to the government has brought the issue of influence and interference of executive on EC again.

Now the actual question is, is there an executive interference and influence over the Election Commission? The appointment of two other Election Commissioners and making EC a multi-member body initially seemed to be burden reducing exercise by the government in 1989. But the subsequent notification by the then President of India, on January 1<sup>st</sup>, 1990, rescinded the previous notification of 1989 creating the two other posts of EC. The validity of these two notifications was questioned in *Dhanoa v. Union of India*<sup>15</sup>. It is impossible for one individual to carry out critical tasks, as the Supreme Court noted. A more prudent course of action would be to distribute authority among more people. The court ruled that the President's communication is legal since the standing of the Election Commissioners is not equal to that of the CEC. According to Article 324(2), the President of India has the authority to decide, at any moment, how many election commissioners the country needs. To rein in the CEC, Sheshan, who was a political nemesis, the government once again selected two more election commissioners. The decision to form the EC as a multi-member body was reiterated by the Central Government in 1993. Appointments were made for two more

<sup>12</sup> Dr. Mohana Rao Pedada, *Election Commission of India And Its Independence-A Critical Study*, Volume 2, IJLMH, 14, (2019)

<sup>13</sup> Dr. Hari K Prasad & Alex Halderman et al., April 29, 2010, Proceedings of 17<sup>th</sup> ACM Conference on Computer and Communications Security, CCS 2010

<sup>14</sup> Dr. Hari K Prasad & J. Alex Halderman et al., *Security Analysis of India's Electronic Voting Machines*, <https://doi.org/10.1145/1866307.1866309>

<sup>15</sup> *Dhanoa v Union of India*, AIR 1991 SC 1745

election commissioners. In order to trim the CEC's wings, this was done. In the case of T.N. Sheshan v. Union of India, Sheshan argued that this appointment violated the constitution.<sup>16,17</sup> The apex court rejected his argument and held that the appointment is valid, and held that the provision in the notification that required CEC to take unanimous decision or majority decision, valid. The court observed that the power resting with single hand is not desirable in the democracy, as it leads to accountable to none. Thus, the question of if the independence of the institution has been taken away doesn't stand good. Even after the appointment, the CEC could command the political order. So the interference of executive or influence of executive cannot influence the powers of the CEC and other EC's.

But the problem is whether the CEC and other members could fall for executive pressure? Yes. When the integrity of the Electronic Voting Machines is being questioned, it is the utmost duty of the EC to conduct a study on it. While criticizing the descriptive document released by the EC in 2017, defending against all the allegations against the EVM,<sup>18</sup> the authors notes that, the document failed to address the issues like, 'the absence of a mechanism to verify if the code running on the machine is authentic and has not been tampered in any way, and if the security measures is in place to protect the local storage where voting data is stored which can compromise voter secrecy'<sup>19</sup>. The experts feel the EVMs could be hacked. This is denied by the politicians as well as the EC. This conduct spurns up greater doubts about the autonomy of the democratic institution, as the multi-member committee seems to substantiate the government stand rather going on a rigorous evaluation.

## V. Suggestions and Conclusions;

The need for the hour is, the CEC and the other two ECs must uphold the Constitutional Autonomy that the Election Commission of India has been accorded with. Executive inference may return as the single party with majority has come to power since 2014. Though the other two ECs could be removed, the appointment of CEC is constitutionally safeguarded. Thus, the executive interference could not be denied. But it is the duty of the multi-member body ECI to uphold the democratic institutions independency. The technical experts suggesting for upgrading of EVM has to be considered seriously for an evaluation as the duty of the ECI is to conduct, free and fair elections. Our votes should not be tampered.

The ECI is given autonomy to ensure political interference and influence to be tackled by the ECI, and the sanctity of elections be maintained. A massive change that Sheshan Era brought and the subsequent Lyngdoh regime are to be retained. The three organs of the government must ensure that, this independent body should be allowed to act in its true spirit.

---

<sup>16</sup> Supra 1, at 877

<sup>17</sup> T.N. Sheshan v Union of India, (1995) 4 SCC 611 at 625

<sup>18</sup> Pathak Ankush et al., *Design and implementation of a secure and robust voting system based on blockchain*, Volume 4, IJARIT, 869-875 (2018), at 870

<sup>19</sup> Id at 870\