

Unit-5 - (CoI)

Election commission

Election Commission of India –

Powers and Functions of Election Commission of India

- Election Commission of India is a permanent Constitutional body. Election Commission of India Is established by constitution Of India Directly to ensure free and fair Election in India .
- Originally the commission had only a Chief Election Commissioner.
- Since inception in 1950 And Till 15 October 1989 it was a single Member Body , Consisting Chief Election Commissioner of India .
- In 1989 President of india appoint two more Election Commissioner to Cop with Increased work of election Commission Of India On Account of Lowering voting Age from 21 Years to 18 Years .
- Thereafter Election Commission Worked As Multiple member body .
- But Two posts of Election commission were Again abolished In 1990 And Election commission Was Reverted to Earlier Position of Single member Body.
- Again in 1993 President Appoint two more election commissioners.
- It currently consists of Chief Election Commissioner and two Election Commissioners.

Chief Election Commissioner:

- The President of India appoints the Chief Election Commissioner and two Election Commissioners.

Service conditions of Chief Election Commissioner:

- Chief Election Commission shall be appointed for a term of 6 years or till he attain an age of 65 years or which of the two is earlier.
- He is ineligible for reappointment after his retirement.
- He is ineligible to hold any office of profit under the State after his retirement.

- His salary, allowances and pensions are charged under Consolidated Fund of India (CFI).
- His salaries, allowances and pensions cannot be reduced except during a financial emergency.

Election Commissioner:

- The Election Commissioners are appointed by the President and the President need not have to consult Chief Election Commissioner in this regard.
- However the Election Commissioners shall not be removed except on the recommendation of Chief Election Commissioner.
- An Election Commissioner is appointed for a term of 6 years or till he attains the age of 65 years, whichever is earlier.
- An Election Commissioner is eligible to be appointed as Chief Election Commissioner provided cumulatively his term as CEC and Election Commissioner shall not exceed 6 years.
- He is not eligible to hold any office of profit after his retirement.

The role of the CEC in the removal of an Election Commissioner:

Article 324(5) states that an Election Commissioner shall not be removed except on the recommendation of the Chief Election Commissioner.

Powers and Functions of Election Commission of India:

(i) Demarcation of Constituencies:

- To facilitate the process of elections, a country has to be divided into several constituencies.
- The task of delimiting the constituencies is generally performed by a Delimitation Commission. But the power to delimit parliamentary and Assembly constituencies for the first general elections in 1951 was conferred on the President.
- The President's delimitation order was to be released on the advice of the Election Commission which also consulted Parliamentary Advisory Committees set by the Speaker of Parliament and the

Speaker of the respective legislative Assembly to which the delimitation proposal pertained

- The Election Commission distributed the seats district-wise in each one of the States and directed the Chief Electoral Officers to prepare proposals for the physical demarcation of Constituencies according to the prescribed criteria. As an outcome of the recommendation of the Election Commission the Parliament enacted the Delimitation Act, 1952.
- The Delimitation Commission was to consist of three members, two of whom were to be nominated by the President from serving or retired judges of the Supreme Court or High Courts while the Chief Election Commissioner was to be an ex-office member.

(ii) Electoral Rolls:

- The second important but tedious function of the Election Commission is to prepare for identification the up-to-date list of all the persons who are entitled for voting at the poll.

(iii) Recognition of Political Parties and Allotment of Symbols:

- A new part (Part IV A) has been added to the Representation of the People (Amendment) Act, 1951 on registration of political parties. Section 29 A now inserted provides for registration with the Commission, of associations and bodies of individual citizens of India as political parties for purpose of this Act.
- This provision came into force from June 15, 1989.
- A recognised political party has been classified either as a National Party or a State Party under paragraph 7 of the Elections Symbol Order, 1968.
- Another important function of the Election Commission is to allot symbols to the political parties and the candidates, and also to accord recognition to the political parties.
- The Commission has specified certain symbols as reserved and others as free.
- The reserved symbols are only available for candidates sponsored by the political parties and the free symbols are equally available to other candidates.

(iv) Scrutiny of the Nomination Papers:

- It examines the nomination papers of the candidates.
- These papers are accepted if found in order, but rejected otherwise.
- This duty is performed by the Returning Officer who notifies to all the contesting candidates the date, time and place for the formal scrutiny of nomination papers.
- The Returning Officer summarily but judicially examine all the nomination papers and decides the objection raised.
- He is also to see whether the requisite requirements of security deposit, election symbol, election agent, etc., have also been fulfilled.

(v) The Conduct of the Poll:

- Article 324 confers on the Election Commission necessary powers to conduct the elections including the power to countermand the poll in a constituency and ordering a fresh poll therein because of hooliganism and breakdown of law and order at the time of polling or counting of votes.

(vi) Election Expenses:

- Another most controversial function that the Election Commission has perform is to scrutinise the accounts of election expenses submitted by contestants in elections.
- In India every contesting candidate is required to maintain and file the accounts of his election expenses within a prescribed period after publication of the result of his election.
- Within 10 days from the last date of filing the returns, the Returning Officer submits to the Election Commission, a list of all the candidates and their agents together with their returns as a also his observations in respect of candidates who have failed to lodge returns in the specified time and in accordance with the procedure prescribed by law.
- The Commission scrutinizes the accounts and decides whether the returns are in proper form and whether they have been lodged in time. In case of default, it notifies the candidates or their agents of their disqualification by publishing these in the official Gazette.

(vi) Advice to President:

- Advising the President on the question of disqualification if any member of Parliament or advising the Governor on the question of disqualification of a member of a State legislature.

Commissions for SC/ST/OBC

1. INTRODUCTION

The framers of the Constitution took note of the fact that certain communities in the country were suffering from extreme social, educational and economic backwardness arising out of age-old practice of untouchability and certain others on account of this primitive agricultural practices, lack of infrastructure facilities and geographical isolation, and who need special consideration for safeguarding their interests and for their accelerated socio-economic development. These communities were notified as Scheduled Castes and Scheduled Tribes as per provisions contained in Clause 1 of Articles 341 and 342 of the Constitution respectively.

1.2 With a view to provide safeguards against the exploitation of SCs & STs and to promote and protect their social, educational, economic and cultural interests, special provisions were made in the Constitution. Due to their social disability and economic backwardness, they were grossly handicapped in getting reasonable share in elected offices, Government jobs and educational institutions and, therefore, it was considered necessary to follow a policy of reservations in their favour to ensure their equitable participation in governance. For effective implementation of various safeguards provided in the Constitution for the SCs & STs and various other protective legislations, the Constitution provided for appointment of a Special Officer under Article 338 of the Constitution. The Special Officer who was designated as Commissioner for SCs & STs was assigned the duty to investigate all matters relating to the safeguards for SCs and STs in various statutes and to report to the President upon the working of these safeguards. In order to facilitate effective functioning of

the office of the Commissioner for SCs & STs 17 regional offices of the Commissioner were set up in different parts of the country.

1.3 The first Commission under the Constitution (65th Amendment) Act was constituted on 12-3-1992 replacing the Commissioner for Scheduled Castes and Scheduled Tribes and the Commission set up under the Ministry of Welfare's Resolution of 1987. The first Commission consisted of Shri Ram Dhan as the Chairman, Shri Bandi Oraon as the Vice- Chairman and Shri B. Sammaiah, Dr. Sarojini Mahishi, Choudhary Hari Singh, Shri N. Brahma and Shri Jina Bhai Darjee as Members.

1.4 The second Commission was constituted on 5-10-1995 with Shri H. Hanumanthappa as Chairman and Smt. Omem Moyong Deori as Vice-Chairperson. The Members of the Commission were Shri N.C. Chaturvedi, Shri Anand Mohan Biswas, Ven. Lama Lobzang, Shri Nar Singh Baitha and Shri B. Yadaiah.

1.5 The third Commission was constituted in December, 1998 vide Ministry of Social Justice and Empowerment's Notification No.5035(E) dated 27th January,1999 consisting of Shri Dileep Singh Bhuria as the Chairman, Shri Kameshwar Paswan as the Vice-Chairman and Shri Harinder Singh Khalsa, Ven. Lama Lobzang, Shri Chhotray Majhi and Shri M. Kannan as Members, Smt. Veena Nayyar, Member was also appointed as Member vide Ministry of Social Justice .

1.6 The fourth Commission was constituted in March, 2002 vide Ministry of Social Justice and Empowerment's Notification No. S.O. 351 (E) dated 21-3-2002 consisting of Dr. Bizay Sonkar Shastri as the Chairperson, Ven. Lama Chosphe Zotpa, Vice- Chairperson and Shri Vijay Kumar Choudhary, Shri Narayan Singh Kesari and Shri Tapir Gao as Members, Smt. Veena Premkumar Sharma assumed office on 23-8-2002 as Member and Shri C. Chellappan as Member completed his tenure on 2nd July, 2003. Shri Sampath Kumar assumed office on 30-9-2003 in place of Sh. C. Chellappan.

1.7 Consequent upon the Constitution (Eighty-Ninth Amendment) Act, 2003 coming into force on 19-2-2004 vide Notification of that date the erstwhile National Commission for Scheduled Castes & Scheduled Tribes has been replaced by (1) National Commission for Scheduled Castes, and

(2) National Commission for Scheduled Tribes. The Rules of the National Commission for Scheduled Castes were notified on 20th February, 2004 by the Ministry of Social Justice & Empowerment).

The first National Commission for Scheduled Castes was constituted with S/Shri Suraj Bhan, Chairperson, Fakirbhai Vaghela, Vice-Chairperson, Phool Chand Verma, Member, V. Devendra, Member and Smt. Surekha Lambture as Members. Due to sudden and unexpected demise of Dr. Suraj Bhan, Chairman on 6.8.2006, the duties and function of the Chairman were discharged by Shri Fakirbhai Vaghela, Vice-Chairman of the Commission.

1.8 The second National Commission for Scheduled Castes in series was constituted on 25.05.2007 vide Ministry of Social Justice & Empowerment's letter No.17016/21/2006-SCD-VI with Dr. Buta Singh as the Chairman, Prof. Narendra M. Kamble, the Vice-Chairman and Smt. Satya Bahin, Shri Mrutyunjay Nayak, and Shri Mahendra Boddh respectively as Members.

2. FUNCTIONS AND DUTIES OF THE COMMISSION

2.1 The functions, duties and power of the Commission have been laid down in clauses (5), (8) and (9) of the Article 338 of the Constitution.

Clause (5): It shall be the duty of the Commission: -

- (a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;
- (b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes;
- (c) to participate and advise on the planning process of socio-economic development of the Scheduled Castes and to evaluate the progress of their development under the Union and any State;
- (d) to present to the President, annually and at such other times as the

Commission may deem fit, reports upon the working of those safeguards;

- (e) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio- economic development of the Scheduled Castes; and
- (f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

Clause (8) - The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely:-

- Summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- Requiring the discovery and production of any documents;
- Receiving evidence on affidavits;
- Requisitioning any public record or copy thereof from any court or office;
- Issuing commissions for the examination of witnesses and documents;
- Any other matter which the President may by rule, determine;

Clause (9)- The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Castes.

3. CONSTITUTIONAL SAFEGUARDS

The important Constitutional Safeguards for Scheduled Castes is

mentioned below:-

(A) Development and Protective Safeguards

Article 46 “The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation”.

(B) Social Safeguards

Article 17 “Untouchability” is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law.

Article 23 prohibits traffic in human beings and beggar and other similar forms of forced labour and provides that any contravention of this provision shall be an offence punishable in accordance with law. It does not specifically mention SCs but since majority of bonded labour belong to SCs this Article has a special significance for these communities. In pursuance of this Article,

Article 24 provides that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Article 25(2) (b) provides that Hindu religious institutions of a public character shall be thrown open to all classes and sections of Hindus.

(C) Economic Safeguards: The provisions of Articles 23, 24 and 46 mentioned above also form part of the economic safeguards for Scheduled Castes.

(D) Educational and Cultural Safeguards

Article 15(4) empowers the State to make any special provision for the advancement of any socially and educationally backward classes of citizens or for SCs and STs. This provision was added to the Constitution through the Constitution (First Amendment) Act, 1951, which amended several Articles. This provision has enabled the State to reserve seats for SCs and STs in educational institutions including technical, engineering and medical colleges and in Scientific & Specialized Courses.

(E) Political Safeguards

Article 164(I) provides that in the States of Bihar, Madhya Pradesh and Orissa there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

Article 330 provides for reservation of seats for SCs and STs in the Lok Sabha.

Article 332 provides for reservation of seats for SCs/STs in the State Vidhan Sabhas (Legislative Assemblies).

(F) Service Safeguards

Article 16(4) empowers the State to make “any provision for the reservation in appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State”.

Article 16(4A) specific that nothing in this Article shall prevent the State from making any provision for reservation in matters of promotion, “with consequent seniority” to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State”.

Article 16(4B) –“Specific that nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made.

4. STATUTES AND LEGISLATIONS

There are a number of laws, both Central and State, which provide for safeguards to SCs. Some of these emanate from the various Constitutional provisions. An illustrative list of such laws is given below:

- The Protection of Civil Rights Act, 1955(in respect of Scheduled Castes)
- The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989
- The Bonded Labour System (Abolition) Act, 1976 (in respect of Scheduled Castes)
- The Child Labour (Prohibition and Regulation) Act, 1986 (in respect of Scheduled Castes)

- The Minimum Wages Act 1948 (in respect of Scheduled Castes)
- Acts and regulations in force in different States to prevent alienation of land belonging to SCs. In some States such provision exists in the Land Revenue Code.

5. SOCIO-ECONOMIC DEVELOPMENT

5.1 Section (9) of the Article 338 of the Constitution reads as follows:

“The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Castes.”

6. PROCEDURE FOR INQUIRY

The Commission is required to inquire into specific complaints with respect to the deprivation of rights and safeguards of Scheduled Castes. In order to enable the Commission to perform this function effectively and efficiently, the Commission would like the members of Scheduled Castes to know that it will be helpful to inquire into their grievances if they substantiate their complaints with supporting documents and quote the relevant provisions of the Act or Rules directions which have been violated.

6.1 The following aspect may be kept in mind while filing complaints before the Commission.

- (a) The complaint should be directly addressed to the Chairman/Vice-Chairman/Secretary, National Commission for Scheduled Castes, New Delhi or the heads of its State Offices.
- (b) The complaints should disclose his full identity and give his full address and should sign the representation.
- (c) Complaints should be legibly written or typed and, where necessary, supported by authenticated documents.
- (d) No action will be taken on matters, which are subjudice. Hence subjudice matter need not be referred to the Commission as complaint(s).
- (e) Cases pending in courts or cases in which a court has already given its final verdict may not be taken up afresh with the Commission.
- (f) If Commission, prima facie, feels that there is instance of allegation-
- Thorough enquiry may be conducted by the Commission through its Investigation Officer & report of the said inquiry may be placed before the Court before final decision taken by the Court.

- Courts are not enquiry agencies. They depend upon IOs i.e. Police, Vigilance, CBI officers.
- Commission may also act as a supporting agency of the prosecution in the case initially investigated by NCSC.
- (g) The cases of transfer/posting in the Govt. service of the members of Scheduled Castes should not be considered in the Commission unless the specific instance of violation of Rules instructions leading to discrimination against the complainant come to the notice of NCSC.

6.2 Inquiry into cases of atrocities

6.2.1 Whenever information is received in the Commission about any incident of atrocity against a person belonging to Scheduled Castes, the Commission would immediately get in touch with the law enforcing and administrative machinery of the State and the district to ascertain the details of incident and the action taken by the district administration. If after detailed inquiry/investigation; the Commission finds substance in the allegation/complaint regarding atrocity, the Commission may file an FIR against the accused with the concerned law-enforcing agency of the State/District.

6.2.2 The Commission ensures the following while by monitoring and issuing instructions to the concerned authorities.

- (i) Whether the scene of occurrence of the crime has been visited immediately by Collector and Supdt. of Police of the district on receipt of information.
- (ii) Whether proper FIR is registered in local Police Station.
- (iii) Whether names of all the persons involved/cited by the complainant has been included in the FIR.
- (iv) Whether investigation has been taken up by a Senior Police Officer as per provisions of SCs & STs (POA) Act, 1989.
- (v) Whether culprits has been apprehended and booked without loss of time.
- (vi) Whether proper charge sheet is filed mentioning the relevant sections of IPC together with the PCR Act, 1955 and SCs & STs (POA) Act, 1989 in Court.
- (vii) Whether the cases are tried by the Special Courts.
- (viii) Whether special Public Prosecutors are appointed to handle these

cases.

- (ix) Whether Police assists the courts in bringing forward witnesses and see that the culprits are suitably punished by the courts.

6.2.3-The Commission will also monitor that

- (i) the victims are provided with suitable medical assistance and on time;
- (ii) Adequate protection is arranged for the victims of such incidents by providing police protection by stationing a police party, by patrolling, etc;
- (iii) To see that proper compensation is paid to the victims as per provisions of law.

6.3 Powers of the Commission to act as a Civil Court

While investigating any matter referred to in sub-clause (a) or inquiring into specific complaints under sub-clause (b) of the clause (5) of Article 338 of the Constitution, the Commission shall have the powers of a Civil Court trying a suit and in particular in respect of the following matters:

- (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning of any public record or copy thereof from any court of office;
- (e) issuing commissions for the examination of witnesses the documents;
- (f) Any other matter which the President may, by rule, determine.

National commission for women

The National Commission for Women was set up in 1992 under the National Commission Act, 1990.

1. The first commission was constituted on 31st January 1992 as Jayanti Patnaik as the chairperson. Ms. Lalitha Kumaramangalam is the present Chairperson of National Commission for Women (NCW). Alok Rawat IAS is the first male member of the National Commission for Women (NCW).
2. **COMPOSITION** The commission shall consist of a chairperson, a member secretary, and other five members. Chairperson: The chairperson should be nominated by the central government. Five members: The five members are also to be nominated by the central government. They should possess an experience in various fields like law or legislation, trade unionism, management of industry potential of women, women's voluntary organization, education, administration, economic development and social good-being. Member secretary: Member secretary is also nominated by the central government. He/ she should be either an expert in the field of management, organization or an officer who is a member.
3. **FUNCTIONS OF NATIONAL COMMISSION FOR WOMEN** The Commission shall perform all or any of the following functions:
 1. **Investigation and Examination:** Investigate and examine all the matters relating to the safeguards provided to the women under the Constitution and other laws
 2. **Presentation of Reports:** commission present a reports to the Central Government, every year or any other times as the Commission may deem fit, related to the Working of those safeguards• It enjoys all the powers of a civil court. • It recommends the remedial legislative measures, facilitates redressal of grievances and advises the government on all policy matters affecting the women. • This body was established to review the constitutional and legal safeguards for women. • It has no actual legislative powers. It only has the powers to suggest amendments and submit reports which are not obligatory on state or Union Governments. •
 3. **Recommendations:** Make recommendations in such report for the effective accomplishment of those safeguards for enhancing the conditions of the women by the Union or any State.
 4. **Cases of Violation:** Commission take the cases related to the infringement of the provisions of the Constitution and any other laws relating to the women with the relevant authorities.

5. **Suo Motu Notice:** It looks complaints, and Suo Motto notice of matters relating to deprivation of women's rights, Non-implementation of the laws and Non-compliance of the policy decisions guaranteeing the welfare for women society.

6. **Research and inspection:** It Undertake the promotional and educational research so as to ensure the representation of the women in all fields and investigate jail, remand home of women or other place of guardianship where ladies are kept as detainees.

7. **Participation and Evaluation**– It recommend women to take part and give advice on the planning process of socio-economic development of women and also – assess the progress of the development of women society under the Union and State.

8. **Funding** – It provides fund for litigation process, relating to issues affecting a large body of women.

9. **Legal Intervention**-The Parivarik Mahila Lok Adalat, (PMLA) is an innovative component with its roots in the traditional Nyaya Panchayats. It is created by NCW for the redressal and speedy disposal of cases. It has taken up 7500 cases so far. The essential feature of PMLA is cordial mutual settlement and flexibility in implementation, aiming to empower women in the justice delivery mechanism.

OBJECTIVES OF NCW

1. Review the constitutional and legal safeguards for protection of women and suggesting measures to Government for their effective implementation.
2. Take up cases of violation of rights of with appropriate authorities.
3. Advice the Government on policy matters affecting women.

DRAWBACKS OF NCW

The National Commission is the primary body involved in protecting the interests of women however it is imperative that social conditions that restrict the development of women must also be amended, this is essential because as seen earlier women have been victims of social ostracization and neglect and in the name of religion they have been deprived their basic rights to life and personal liberty.

.Therefore it is essential that women must be made a part in these discussions so that their perspectives and opinions can be considered equally.

- The need of the hour is to give the commission more powers to deal with the ever increasing atrocities against women.

- The jurisdiction of the commission is not operating in Jammu and Kashmir and considering the current political unrest and human rights infringements in the region, the presence of commission is vital.

SUGGESTIONS

- It is depend on financial assistance from the Union Government and this could compromise the independence of the Commission.
- It does not have the power to choose its own members. The power selecting members is vested with the Union Government and the nature of country's volatile political scenario tends the commission to be politicized.