

Constitutional Law and Public Administration in India

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Election Commission & Election Process

The Election Commission of India is a Constitutional authority deriving its powers from the Constitution for the conduct of free and fair elections in a democratic setup. The important legislations for the conduct of elections in India are primarily Article 324 to 329 of the Indian Constitution. The Election Commission of India derives its powers mainly from Article 324 to 329. The Presidential and Vice-Presidential elections act of 1952 and the rules of 1974 deals with the conduct of elections to the office of the President and the Vice President. Another important legislation is the Representation of People Act of 1950 and 1951 and the rules framed under the Act. They form the major role in conducting the free and fair elections and the Election Commission of India also derives its powers from the representation of people act. The Registration of Electors rules 1960 is a very significant Act. The election symbols reservation allotment order of 1968. The election symbols reservation allotment amendment order of 2017 is a very important act for the conduct of elections.

Another significant growth is the Model Code of Conduct framed under Article 324 of the Indian Constitution. As the word says, it is a Code of Conduct, and it is not a legislation but has been framed by the Election Commission for the conduct of free and fair elections. Before analyzing the functions of the Election Commission, it is relevant to understand the concept of delimitation of commission of India. Delimitation literally means the act or process of fixing limits or boundaries of territorial constituencies in a country. For example, India has 550 constituencies for the house of people i.e. Lok Sabha. So, these constituencies are fixed by the delimitation commission. They are the territorial constituencies for which the elections are conducted. The delimitation commission was first formed in 1952 based on the Delimitation Commission Act of 1952. So far, the Commission has been formed four times, once in 1952, 1963, 1973 and 2002.

Once the act is enforced, the union government sets up a delimitation commission based on the delimitation act. The Delimitation Commission of India is a very high-power body whose orders have the force of law, and they cannot be called in question before any court of law either in high court or in the Supreme Court because they have been primarily set

up for the formation of constituencies for which the election has to be conducted. The Delimitation Act of 2002 has been established to govern the allocation and adjustment of seats in the house of people. Now the seats or allocation and adjustment will be made based on the population whenever there is a census conducted and based on that, the delimitation commission readjusts or allocates the constituencies as per the census. Now, if you look into the latest census, the latest delimitation commission was in 2002 and the seats were allocated as of 550 constituencies.

Now, if it is based on the 2026 census, the parliament would consist of 888 MPs based on the new census. Now, when the delimitation commission makes such a proposition for the constituencies, these orders come into force as on the date where the President of India signs and it is tabled in the parliament. The copies of its orders are laid before the house of the people and the state legislative assemblies, but no modifications are permissible therein. The Delimitation Commission has the absolute powers in allocating the constituencies. They frame constituencies for the parliament and for the state legislatures.

So once the act of framing the constituencies has been made, it can only be tabled in the parliament and the state legislatures where no modifications can be made, and it must be passed as an act. The Constitutional provisions of delimitation commission are as follows: the delimitation commission derives its powers from Article 81 which states the composition of the house of the people. Now, the composition of the house of the people changes after every census. So as per the recent census of 2002, we have 550 constituencies. Now, when it further becomes a higher number based on the new census of 2026.

Article 170 talks about the composition of the legislative assemblies in the state. So, wherever there are legislative assemblies, certain states have legislative assemblies and legislative councils, certain states have bicameral legislation. So, in such cases, Article 170 provides the powers to the delimitation commission. Article 82 talks about readjustment after each census according to the population. After every census the delimitation commission allocates the constituencies.

Article 330 talks about reservation of seats for the scheduled castes and scheduled tribes in the house of the people. Now, this is one of the major powers because we are a representative democracy and the representation for all spheres of community must be made and therefore Article 330 provides the reservation of seats for the scheduled castes in the house of people. Article 332 is about the reservation of seats for the scheduled castes and scheduled tribes in the legislative assemblies of the states. So, these are the important Constitutional provisions where the delimitation commission derives its powers for its function. Looking further, who are the members of the delimitation commission? The chairman is a member of the Delimitation Commission. The Delimitation Commission has a chairman. The former Election Commissioner is an ex-officio member. So, whenever any

member is made to the delimitation commission, he must be a former Chief Election Commissioner. So, he is an ex-official member. The other state Election Commissioners are also the ex-officio members of the delimitation commission.

These three form the major members of the delimitation commission. Moving on, Article 324 is the reservoir of powers for the Election Commission. Article 324-1 talks about the powers of the Election Commission which speaks of superintendence, direction, and control. So, these are the three words which mandates the Election Commission for the entire process of conducting the election. The Commission is a Constitutional body having jurisdiction over elections to the parliament, state legislatures, offices of the President and the Vice President. This covers the entire process of elections to the whole of the country. This Article also provides for the appointment of the Election Commission. Now, if we investigate the powers of the Election Commission, the Election Commission is a constituted body, is an autonomous independent body with a view to conduct free and fair elections. Now, for example, there are other Constitutional bodies which are framed under the legislation. There is no separate legislation for the Election Commission.

The Election Commission derives its powers directly from the Constitution and specially from Article 324. So, this is a part of the basic structure because the Election Commission is the authority which conducts the free and fair elections for democracy and democracy is a basic structure of the Constitution. As such the functions of the Election Commissions are the basic structure of the Constitution. The Election Commission states that India is a Constitutional democracy with the parliamentary system of government and at the heart of the system is the commitment to hold regular, free, and fair elections. What is the meaning of regular elections? For example, the elections for the house of people or the Lok Sabha is for 5 years.

So, unless dissolved earlier, so whenever there is a necessity to conduct the elections at regular intervals, the Election Commission shall do so. Now the Rajya Sabha cannot be dissolved. It is a continuous body, but it still the Election Commission conducts the elections for the members of the Rajya Sabha. So, therefore, the mandate says that it is committed to conduct regular, free, and fair elections. The Constitution mandates the Election Commission saying that no constituency shall be unrepresented for many terms. It must be represented either in the house of people that is Lok Sabha or the Rajya Sabha.

The plenary powers of the Election Commission mean the power is absolute and unqualified. This is because the Election Commission derives its powers from the Constitution. So, the matter of the elections is in the part xv of the Constitution. Now, the words superintendence, direct and control has been the subject matter of judicial interpretation in several cases. In numerous cases, the Supreme Court has said that the words superintendence, direct and control has vast meaning, must be made, highest order and must be interpreted in a very broad interpretation so that the Election Commission has

most powers to conduct the elections. The Supreme Court held that Article 324(1) is plenary in character, that is absolute and unqualified and provides wide powers to the election commission in preparing and conducting of elections. Now, there is also another explanation to this word plenary. Now the plenary, the power of plenary comes into picture in the areas which are left unoccupied by the legislation.

When there is no legislation for conduct of elections either by the parliament or by the state legislature, then the Election Commission can make legislation. The example is the election symbols order of 1968. When the Election Commission made this order deriving its powers of election from the Constitution of India and the representation of people's act, this was questioned as to whether Election Commission is a legislative body to make legislations. The court held that the power to make rules, regulations, directions, orders etc., in the areas left unoccupied by the legislation, the Election Commission has the unlimited powers. Now, in representative democracy, the symbols form an important role in the elections.

The political parties have been allotted symbols to identify themselves during the elections and this did not have any legislation either by the parliament or by the state legislature and therefore the Election Commission had to step in to make the election process more transparent and as such the election symbols order of 1968 was made by the Election Commission. This order was upheld by the Supreme Court stating that the Election Commission has unlimited, unqualified, and absolute plenary powers to make such orders. But the Supreme Court also in its interpretation said that certain orders of the Election Commission are subject to judicial review. Certain orders can be questioned in the court of law in a prescribed manner. So, the limitations of the powers of the Election Commission are laid down by an act of the parliament.

The basic limitation is that if there is any act by the parliament, for example, the Representation of People's Act of 1951, the Election Commission follows the enactment and the legislation. But when there is no such enactment, the Election Commission has the powers to frame the law. The Election Commission while making orders, directions or rules or regulations, they shall conform to the rule of law and principles of natural justice .these are the inherent limitations for the Election Commission which the Supreme Court has identified saying that though the Election Commission has the plenary powers to conduct elections, certain limitations like the existence of legislation or the rule of law and the principle of natural justice has to be followed by the Election Commission.

Moving on, Article 324 also talks about the Election Commissioner. For the functioning of the Election Commission, the Election Commissioner is required and clause 2 of the Article 324 provides that the Election Commission shall consist of Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix. There shall be one Chief Election Commissioner, that is the CEC and any number of other election commissioners. Until parliament makes any law on

that behalf, the Chief Election Commissioner and Election Commissioners are appointed by the President. So, this is a Constitutional provision that the Election Commissioner and the Chief election commissioner have to be appointed by the President.

But if there is any such law made by the parliament for the procedure to nominate the election commissioners, then the legislation shall be followed. When any other Election Commissioner is so appointed, the Chief Election Commissioner shall act as the chairman of the Election Commission. For example, the Election Commission of India now has one Chief Election Commissioner and two other Election Commissioners. So, the Chief Election Commissioner acts as the chairman and two other Election Commissioners are the Election Commissioners. So, these form the framework for the Election Commissioners under Article 324.

According to the Election Commission act, the Chief Election Commissioner or an election commissioner shall hold office for a term of 6 years or up to the age of 65 years. The 1991 Election Commission act deals extensively with the term of office, rules of service and conditions. This does not deal with the procedure of nominating the Election Commissioner. Article 324(5) says that subject to the provision of any law made by the parliament, the conditions of service and tenure of office of the Election Commissioner and the regional commissioners shall be such as the President may determine. Now the President has powers in appointing the Election Commissioners and fixing the conditions of service and tenure, but the Election Commissions act of 1991 deals only with the appointment, conditions of service and terms of office. After the 1991 Election Commission Act, a bill in 2023 was introduced in Rajya Sabha which called for the Chief Election Commissioner and the other Election Commissioners appointment, conditions of service, terms of office bill.

The bill is presently in the Rajya Sabha. The proposed legislation repeals the Election Commission act of 1991, and it proposes to be the next law on the appointment of the Election Commissioners. So, there have been certain deviations from the act of 1991. A very important case regarding the functions, conduct and appointment of the Election Commissioner is the *T N Seshan v. Union of India*. He was a celebrated Chief Election Commissioner, and he made a challenge to the government legislation regarding the functions and appointment of the Election Commissioners. In 1993, the then central government passed an ordinance and got the Presidential assent under Article 342 (2) and (3) to deploy two Election Commissioners. Till this act in 1993, there was no provision for other Election Commissioners, the Election Commission had only one Chief Election Commissioner. Under this Act, the government appointed M S Gill and G V G Krishnamurthy as two other commissioners along with the Chief Election Commissioner. The same was challenged by T N Seshan saying that this might dilute the functioning of the Chief Election Commissioner. But the Supreme Court unanimously upheld the Constitutionality of the act equating the status, powers and authority of the two Election

Commissioners to be same as that of the Chief Election Commissioner and does not dilute the powers of the CEC.

So, the Supreme Court held that the appointment of two other Election Commissioners along with the Chief Election Commissioner is a Constitutional mandate already prescribed under Article 324. So, the court held that the Chief Election Commissioner did not enjoy a status superior to the other Election Commissioners. So, when there were differences between, even though there were differences between the service conditions of this CEC and the other Election Commissioners, the powers, and the status of the Election Commissioner and the CEC are equivalent to each other. The scheme of Article 324 clearly provided for the multi-member committee and not an individual CEC. So, this Act of 1993 was upheld by the Supreme Court when challenged by T N Seshan.

Regarding the Election Commission, there were certain recommendations made by certain committees set up for the function. The tenure is for 6 years, and the age of retirement is 65 years, or whichever is earlier. The Goswami committee was formed to examine the electoral reforms in 1990 which also stated that a collegium system should be made for the selection of the Chief Election Commissioner. Already said the Election Commission act of 1991 does not prescribe the procedure for the selection of Election Commissioners. It only talks about the terms, conditions, and the service rules. So, the Goswami Committee made a recommendation stating that in 1990 there must be either a collegium system or a proper procedure for the selection of the Chief Election Commissioners. The Law Commission Report of 255 also suggested formation of a three-members panel composed of CEO and other Election Commissioners. Now, there also were many suggestions saying that 3 members panel of the CEO i.e. The Chief Election Officer and the Election Commissioners should be made for the appointment of the other Election Commissioners.

According to Article 324(2), the power of appointing the Chief Election Commissioners and 2 Election Commissioners is vested in the President of India. This is a Constitutional provision subject to the provisions of law made by the parliament which includes many other legislations and other provisions of the Constitution. As understanding there is no legislation regarding the appointment of the Election Commissioner.

The appointment of Election Commissioner must have either a separate legislation or a separate procedure set up by the parliament. Now, it is the executive of that time whose council of ministers in consultation with the prime minister advises the President based on which the appointment is made. So, it is an understood fact that whoever is in the majority or in the government at that time suggests the names to be made as the Election Commission. But that does not mean that the Election Commission is a biased or an unbiased Constitutional body. It really states that the executive nominates the appointment of the Chief Election Commissioner or the other Election Commissioners. So, the necessity to have a procedure for the appointment of these Election Commissioners is time-tested.

There have always been suggestions since 1990 for setting up a separate procedure or the collegium system. Like how the Supreme Court has a collegium system there may be a process for appointment of these top functionaries and a procedure which should involve the opposition party members to nominate the Election Commissioners. So, these are certain suggestions made by the certain committees so that to conduct free and fair elections the nomination or the appointment of the Election Commissioners should also be free and fair. So that is understandable because a Constitutional authority like Election Commission having unlimited plenary power should also have a proper appointment procedure for top functionaries.

A comparison of the Election Commission Act of 1991 and the proposed bill in 2023 shows certain differences. So, the Election Commission act 1991 was an ordinance in 1993 and then became an act in 1994. Now, the new bill of 2023 proposes to repeal the Election Commission act of 1991. As such there must be evolving legislation considering the time and requirement. The bill specifies the same composition of the Election Commission in 1991.

So when the 1991 act said there shall be one Chief Election Commissioner and other Election Commissioner it retains the same composition. Now, what has improved in terms of the bill of 2023 is that now the President shall appoint the Election Commissioners and the Chief Election Commissioners on the recommendations of a selection committee. This bill proposes the establishment of a selection committee. The selection committee shall consist of the Prime Minister of India, the leader of the opposition in the Lok Sabha and the Union Cabinet minister nominated. But this certainly talks about the executive. The executive is the authority which nominates the top functionaries or Constitutional authority such as the Election Commission. Now, it also states that the leader of the opposition in Lok Sabha has not been recognized. The single largest opposition party will assume the role. Now, these are the functionaries for the selection committee but the selection committee in this manner when proposed by the bill shall be considered that this is also an executive authority. Under the 1991 Act the terms of office mandates that the CEC and the ECS will hold office for a term of 6 years or until the age of 65 years. This is retained in the bill of 2023. Further the bill states that the CEC or the other Election Commissioners shall not be eligible for reappointment. It is a one term office. Now the salaries and allowances are as in the 1991 Act which provides that the salary and allowances for the Election Commissioners will be equal to that of a Supreme Court judge.

This was a major consideration in the bill stating that the salary allowance and service conditions of the Election Commissioners will be the same as that of a cabinet secretary. In this sense, the objectives, and reasons of the bill states that the office of the Election Commissioners is not equivalent to that of a Supreme Court judge but is equivalent to that of a cabinet secretary. Under the conduct of business all business of the Election

Commission is to be conducted unanimously in case of any difference of opinion between CEC and other Election Commissioners it shall be decided through the majority because there is a three-member committee, namely, one CEC and two other Election Commissioners.

The conduct of business shall be held unanimously based on the consensus and in case of differences of opinion the CEC or the Election Commissioners, the decision shall be made through the majority. Now removal and resignation under Article 324 of the Constitution of the CEC will be in a manner like that of a Supreme Court judge.

This has been a Constitutional mandate, and this has been retained by the 2023 bill though the office of the Election Commissioners is not equivalent to that of a Supreme Court judge, but the removal is in a manner like that of a Supreme Court judge. This is done through the order of the President based on the motion passed by both houses of the parliament in the same session. So, the motion of removal must be adopted with majority support of total membership of each house and at least two thirds support from members present and voting, which is the same procedure as for the removal of the Supreme Court judge. The other Election Commissioner can be removed from office on the recommendation of the CEC.

This bill retains the same provision. Under Article 325 are important provisions for the conduct of elections stating that there shall be one general electoral roll for every territorial constituency for example any person who is a citizen of India prescribing the rules for having the right to vote shall have his name in the electoral roll. There shall be a general electoral roll for every territorial constituency. Now every person shall be eligible for inclusion of his or her name in such roll in any such constituencies and he cannot be discriminated against on the grounds of religion, race, caste, sex or any of such limitations. It says that when you have your name in the electoral roll you are eligible for voting.

The elections to the house of the people and to the legislative assembly of every state shall be based on adult suffrage. Adult suffrage means any person who is an adult attaining the age of 18 irrespective of any such other limitations which is not disqualified by law shall have the power to vote. A citizen of India who is not less than 18 years of age under any law made by the central government is eligible to vote either in the state legislature or the parliament or any of the elections conducted for the local bodies. He should not be disqualified under the Constitution, or any law made by the appropriate legislature for example if the representative of people's act of 1951 makes any provision for the disqualification to vote then he shall be disqualified from voting. So, the other reasons for disqualification of voting may be on the ground of non-residence, the unsoundness of mind crime or corrupt or illegal practices.

Now the law states that if you are not disqualified by any provisions of the Constitution or any provisions of the legislation you are eligible to vote provided you are a citizen of India and are the age of 18. Other important provisions are Article 327 and 328. Subject to the provisions of the Constitution the parliament can make law regarding the elections. The parliament may from time to time make law with respect to all matters relating in connection with the elections to the house of parliament or the house of legislatures of the state. Now parliament can make laws regarding the elections of union and the state.

This includes the preparation of electoral rolls and the delimitation of the constituencies. Now electoral rolls are prepared by the Election Commission. The legislature can make any legislation regarding the preparation of electoral rolls. The Election Commission can make any rules and regulations or the orders regarding the electoral rolls. The delimitation of constituencies, the Delimitation Commission of India derives its powers under the delimitation act made by the parliament. Article 328 talks about the provisions of the Constitution if any law is not made by the parliament.

When the parliament does not make law the legislature of the state may from time to time make such provisions. But usually in India for the conduct of elections most legislations are framed by the union parliament. The state legislatures have a very minimum interference in the provisions in the legislations relating to the conduct of elections because it's completely made by the union parliament. In case the union parliament has not made any such provisions or the legislation the state government can make such law relating to the conduct of elections.

But the state government can make laws relating to the conduct of elections with that state which includes the preparation of electoral rolls and all other matters necessary for securing the due Constitution for either house of parliament. Another important aspect is Article 329 which states that bar on jurisdiction. Now any act of the delimitation commission or any act of the Election Commission having made such rules and regulations under Article 324 cannot be questioned in any court of law. The validity of any law relating to the delimitation of constituencies or allotment of seats to such constituencies made under the powers of Article 327 or 328 shall not be called in question by any court of law.

The act of delimitation is purely of an executive nature, and it cannot be questioned in the court of law. Certain things can be questioned in the court of law through a format called an election petition which has an appeal to the Supreme Court. But generally, the delimitation commission has the superior powers in conducting an act of delimitation of constituencies. Any election to either house of parliament or to the house of legislature shall not be called in question except by an election petition presented to such authority. For quite some time there was a presence of election tribunals, but the Supreme Court held that an election petition shall be made to the high court of any state having an appeal to the Supreme Court. The election petition cannot be made under Article 226 which deals with

the fundamental rights, but it can be made as an election petition to the state high court and then subsequently having an appeal to the Supreme Court. So, as a matter of fundamental right the petition cannot be made either to the Supreme Court or to the high court but as an election petition in a prescribed format the question on any election law can be made on any conduct of elections to the Supreme Court.

An important case in this regard is *N P Ponnuswami v. The Returning Officer*, in which the Supreme Court interpreted the word election to have a very vast and wider meaning so that the Election Commission has more superior powers in conducting the elections. The word election is mentioned in Article 329 connotes the entire election process starting with the notification calling the election. Whenever there is any notification saying that this constituency must have an election so this process of election starts from then. It culminates in the declaration of the result. So, summarily the election process starts with the issue of notification calling the election and culminating in the declaration of the result. So, under any circumstances in this election process neither the Supreme Court nor the legislature can interfere when the process of election has already begun.

The only authority which can change the election process which can adjust the election process is the Election Commission. The high court has no jurisdiction under Article 226 of the Constitution to entertain the cases relating to elections but can be made only through election petition. Election petition is a prescribed format to look into the cases of the election and the Supreme Court has categorically said that Article 226 is not the appropriate forum to question the election disputes. In the *Ponnuswami* case the action of the returning officer for rejecting the nomination papers was questioned in the Supreme Court but the court said that the Election Commissioner or the returning officer has the highest authority under the high court and Article 329 which covers all electoral matters; and the high court has no such jurisdiction. Part xv of the Constitution and the representation of the people's act talks about the election petition.

Election petition must consist of any matters which has the effect of officiating the election process. It can be brought under appropriate stage in an appropriate manner and before any special tribunal; there was a special tribunal called the election tribunal but now it is under the high court. Under Article 329B it prescribes a manner and stage at which the other grounds may be raised under the law to call for the election. Now these grounds cannot be urged in any other manner at any other stage before any other court and election petition is only the prescribed and appropriate forum to deal with the electoral offenses or the practices of elections. In case of appeal to the Supreme Court an important case is *Meghraj Kothari v. Delimitation Commission of India*. Meghraj Kothari was a resident of Ujjain. So, he filed a petition before the Madhya Pradesh High Court and this case is a landmark case in ascertaining the Delimitation Commission powers. It challenged the order because the Delimitation Commission has the powers to set aside or ascertain any commission as the parliamentary commission as the constituency for scheduled caste and scheduled tribe.

So, the high court dismissed a petition on the ground that Article 329a of the Constitution and order of the delimitation commission cannot be questioned in any court.

The delimitation commission has the superior powers in such matters. Another landmark case is *Indra Nehru Gandhi v. Raj Narain* which infamously led to the declaration of national emergency in 1975. Here the question was malpractices or the corrupt practices during the election which states that Indra Gandhi had procured the assistance of a gazette officer who was the government servant and he cannot be involved in the process of the election for the very purpose of free and fair elections.

This was made as an election malpractice and corrupt practices for election and when the Allahabad High Court disqualified Indra Gandhi for corrupt practices during the elections and her election was disqualified by the Allahabad High Court and consequently led to the declaration of emergency. In this case particularly the 39th Constitutional Amendment Act was challenged. Another important landmark case is. The Supreme Court in this case held that the Chief Election Commissioner and the Election Commissioner have absolute authority in conducting the elections or postponing the elections or determining the date of the elections.

The order of the Election Commission directing a repoll was a step in the process of election. Directing a repoll to any constituency based on circumstances and condition was a part of the process of election and as such the Election Commission had wider roles. As the election process was still not complete, any writ petition under Article 226 shall not be upheld by the court. The Supreme Court examined the interpretations at length in the provisions of Article 324 in this case. In this case the Supreme Court categorically stated that 324 of the Constitution is a reservoir of power for the Election Commission to act in such areas. So, in such areas where the legislation is not there the Election Commission can make such regulations.

In this case there was a repoll ordered by the Election Commission. This was questioned. The Supreme Court held that litigative challenges to electoral steps taken by the Election Commission is not permissible under the high court or the Supreme Court but only through an election petition but even when the election process has been started it can't be questioned. The term election has a very wide connotation commencing from the notification calling the election and culminating in a final declaration of the returned candidates and this was the definition given by the Supreme Court for the word election and election process.

Another important case is *A C Jose v. Sivan Pillai*, in 1984 about usage of electronic voting machines instead of ballot boxes. Here also the Supreme Court interpreted the Constitutional 324, 327 and 329. It also read with the Representation of People's Act of 1951 section 59, the conduct of election rules 1961 and interpreting all these legislations

the Supreme Court held that ballot also means the electronic machines not just the paper ballot and therefore from this case onwards the electronic voting machines have been legalized by the Supreme Court in this case. The recent addition to the progressive legislations regarding the elections have also been made. In 1968 the Election Commission made the symbols order which provided for the specification of reservation choice and allotment of symbols at elections. Now, it's a very understood fact that when the political parties stand for elections, they must have symbols, and this must be regulated through any order and this order was made by the Election Commission. Paragraph 3 of the order mentions the registration of political parties. It also mentions the recognition of political parties either as a national political party or as a state political party. This election symbols order also provided for resolution of disputes in cases involving splits and recognized parties for example if a larger party wants to become several state parties or smaller parties must become a larger party so as to have a recognition by the Election Commission. Any party to stand for election must have recognition by the Election Commission through a symbol and this the election symbols order talks about the same. Certain symbols are reserved for political parties.

Paragraph 5 of the order distinguishes between a reserved and a free symbol. Reserved symbol is for the political party and a free symbol is for the non-recognized parties or the independent candidates. This helps the people in understanding as to who it has to identify during the elections and whom it has to vote and what are these symbols and the identification of the parties; and therefore, this election symbols order was a very progressive legislation at that time.

The important aspects of the symbols order; the preamble of the election symbols order states that it derives its power from Article 324 as in many cases the Supreme Court has already said 324 is a reservoir of power so the symbols order was made in consonance with powers under Article 324. It also derived its powers from section 29A of the Representation of People's Act because for conducting free and fair elections the identification of political parties as a national party or a state party or an independent party was a very important factor. Election Symbols (Reservation and Allotment) Order, 1968, framed by the central government under section 169 of the Representation of People's Act was also considered. Rule 5 of the Election Rules of 1961 was also considered. The Election Commission specifies the symbols that may be chosen for a candidate in the state assembly and parliamentary elections. The Rule 10 of the Election Rules of 1961 also talks about the task of preparation of a list of contesting candidates. So, whenever an election is declared to be conducted the list of candidates must be made by the Election Commission.

The conduct of election rules empowers the Election Commission of India to have general or specific directions to the returning officer. During the conduct of election, the officer such as the returning officer plays a very important role during the election process so as such his powers are also vast, but the direction had to be in consonance with the allotment.

So, the allotment of symbols under the symbols order plays a very important role for the conduct of elections. The conduct of election rules authorizes the commissions to revise the allotment of the symbols by returning officers. For example, if the state party has a symbol now it becomes a national party; so, the recognition must be made by the Election Commission.

If the national party wants it to be made as a state party the symbols order also talks about such conditions. Another important case is the *Kanhaiya Kumar* case. The Constitutional validity of this symbols order was challenged in the apex court stating that whether the executive in Election Commission can make legislations or orders or directions or regulations. The main object of Article 324 was again reiterated by the Supreme Court saying that it must be interpreted that the Election Commission can issue such orders.

According to Article 327 there is the power to make law where the legislature has not made any such legislation. There was no such legislation regarding the symbols and the recognition of political parties and therefore the Election Commission made such an order. So, the Supreme Court upheld the validity of the order on the grounds that Article 324 provides the Election Commission with vast powers for conducting elections and this power is inherent in the Article. Rule 5 and Rule 10 of the conduct of election rules is in consonance with Article 324. The latest Amendment Act is the 2021 which allows electoral registration offices to require the existing or the prospective electors to provide other numbers. So, this is as the Supreme Court said that the formation of electoral rolls is a continuous process, so they must keep updating the electoral rolls by addition and deletion of names.

This must be made and is a primary function of the Election Commission. The Amendment Act of 2021 provides for the other number to be included in the electoral roll for the purpose of establishing an identity but for the 2021 act this was made a voluntary basis as the matters of right to privacy was considered. So, the Election Commission of India in its instruction dated 2022 launched the program to collect the other numbers of existing and prospective electors on a voluntary basis from august 2022 in all states and unit territories. It is voluntary. As the Election Commission in its own order stated that the link Aadhaar with the voter id card is a voluntary act but it is for Aadhaar identification.

Considering the Supreme Court's judgment on right to privacy the Election Commission held it as a voluntary basis. Now under this act it also states that this is a law for the purpose of electoral rolls. So, this preparation of electoral rolls is a very important function of the Election Commission and all these aspects for preparing electoral rolls, updating the electoral rolls and making such provisions for the identification of the elector's identification of the voters was a very important part of the election process. This act made certain provisions for the technological aspects of the election process. So there has to be a repository known as the Aadhaar data world and Election Commission strictly follows

the guidelines prescribed by the Aadhaar commission and does not store the other numbers in its database. It has its own encrypted machinery to store these databases and it is used only for the authentication purposes and the Election Commission does not retrieve any personal information from the Aadhar database. These provisions were made so that the Election Commission is technologically upgraded; so that the free and fair conduct of elections and the election process is to be held regularly and at appropriate time. So, these are the provisions of the Election Commission. Election Commission forms a very important structure, a basic structure in the democratic process of India.