



## State Election Commission's Autonomy

This article is based on [Securing Election Commission's autonomy](#) published in The Indian Express on 26/05/2020. It talks about the challenges with the functioning of the election commission institution in India.

Free and fair elections form the bedrock of a democratic country. In India, the constitution envisages an [Election Commission of India](#) (ECI) and State Election Commissions (SEC) for every state to safeguard the free and fair election and grants them with certain constitutional safeguards to secure their independent functioning.

However, the recent **removal of Andhra Pradesh State Election Commissioner via an ordinance route** is an example encroaching upon the independence of the Constitutional body especially in the light of political accusations and vested interests.

This development not only threatens institutional autonomy but also falls foul of the constitutional provisions. Though the Election Commission of India is facing issues of autonomy due to political interference, the situation at the level of state election commission is more grim.

### Note:

The ordinance promulgated by Andhra Pradesh Governor reduced the term of State Election Commissioner in the state from five years to three years and altered the qualifications (only those who served as a High Court judge can now occupy the post, earlier it was an officer of the rank of Principal Secretary & above) required to be the SEC.

## Significance of Election Commission Institution

- It is the **guardian** of free and reasonable elections in India.
- It enforces the [Model Code of Conduct \(MCC\)](#) before every election to be followed by the different candidates and parties so that the decorum of the electoral process is maintained well.
- It creates awareness about the electoral process and electoral governance amongst stakeholders namely, voters, political parties, election functionaries, candidates and people at large; and to enhance and strengthen confidence and trust in the electoral system of this country.
- The Election Commission prescribes the limits of campaign expenditure by the candidates and parties and monitors the spending too.
- The body also mandates that the political parties submit their audited financial reports regularly.

## State Election Commissions (SECs)

- The State Election Commission has been entrusted with the function of conducting free, fair and impartial elections to the local bodies in the state.

- **Article 243K(1):** It states that the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats (Municipalities under Article 243ZA) shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.
- **Article 243K(2):** It states that the tenure and appointment will be directed as per the law made by the state legislature. However, State Election Commissioner shall not be removed from his/her office except in like manner and on the like grounds as a Judge of a High Court.

## Challenges With Functioning of Election Commission Institution

- **Lack of Autonomy:** Although the state election commission on many occasions tried to exercise its duties enshrined in the constitution of India, they struggled to assert their independence. For example:
  - In Maharashtra, SEC had asserted that he should have the power to hold elections to the offices of mayor, deputy mayor, sarpanch and deputy sarpanch.
  - On the contrary, he was arrested and sent to jail for two days in March 2008 after the Legislative Assembly found him guilty of breach of privilege in an alleged conflict over his jurisdiction and powers.
- **Lack of Safeguard for SEC:** Though the State Election Commissioner shall not be removed from his/her office except in like manner and on the like grounds as a Judge of a High Court (Art 243K(2)), yet it has been diluted on many instances.
  - In the **Aparnita Prasad Singh vs. State of U.P.** (2007) the Allahabad High Court held that if the Governor has power to fix or prescribe tenure by rule, he also enjoys the power to amend the rule, either for extending the term of the tenure or reducing the same.
  - Once the prescribed tenure comes to end, the incumbent SEC must cease to hold office and this shall not amount to removal from office.
- **Non Uniform Service Conditions for SECs:** Article 243K(2) states that the tenure and appointment will be directed as per the law made by the state legislature and thus each SEC is governed by a separate state Act.
  - This gives power to states to amend rules unilaterally and even sometimes take ordinance routes to bypass legislative scrutiny like the recent example of Andhra Pradesh SEC.

## Steps To Be Taken

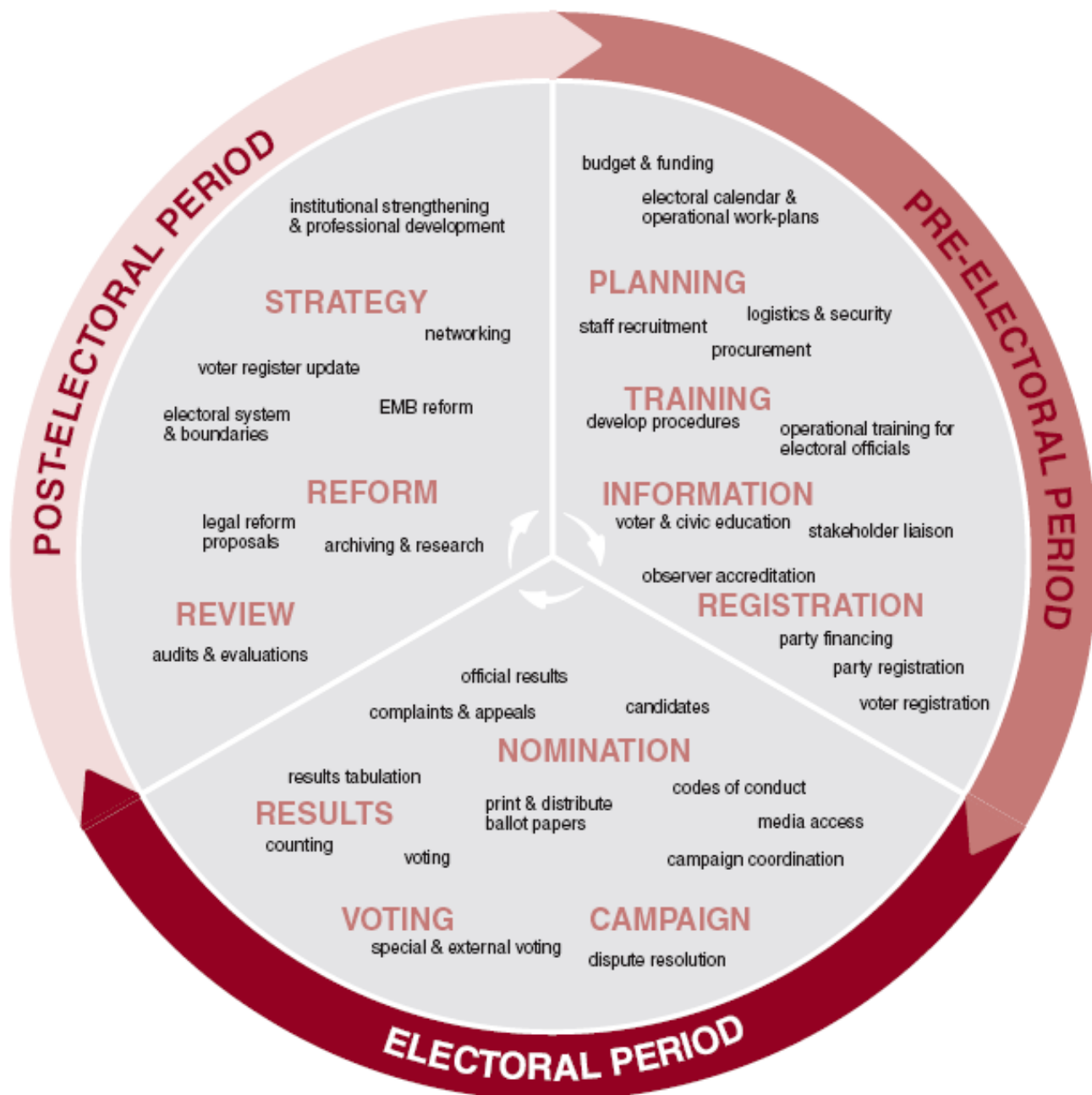
- **Supreme Court Directive**
  - The state governments need to follow the guidelines given by the Supreme Court in **Kishan Singh Tomar vs Municipal Corporation** of Ahmedabad case:
    - The provisions of Article 243K of the Constitution, which provides for setting up of SECs, are almost identical to those of Article 324 related to the ECI.
    - Also, the state governments should abide by orders of the SECs during the conduct of the panchayat and municipal elections, just like they follow the instructions of the EC during Assembly and Parliament polls.
- **Second Administrative Reforms Commission Recommendation**
  - **Constitution of the State Election Commission:** The State Election Commissioner should be appointed by the Governor on the recommendation of a collegium, comprising the Chief Minister, the Speaker of the State Legislative Assembly and the Leader of Opposition in the Legislative Assembly.
  - An institutional mechanism should be created to bring the Election Commission of India and the SECs on a common platform for coordination, learning from each other's experiences and sharing of resources.
- **Law Commission 255<sup>th</sup> Report on Electoral Reforms**
  - It recommended, to add a new sub-clause to Article 324 of the Constitution to provide for a separate independent and permanent Secretariat for the ECI along the lines of the Lok Sabha/Rajya Sabha Secretariats under Article 98 of the Constitution.
  - Similar provisions can also be made for the State Election Commissions to ensure autonomy, and free and fair local body election.

## Conclusion

Election commissions are one of the bulwarks of the democratic system in India and thus securing their institutional integrity is a task that falls on all three branches —executive, judiciary and legislature. The unwarranted interference by one organ of the state in the functioning of others should be discouraged to achieve a robust electoral system.

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# Electoral Cycle



### ***Drishti Mains Question***

“Free and fair elections form the bedrock of a democratic country.” In the light of the statement critically analyse the role of the election authorities in India.

This editorial is based on [“Unlocking Justice”](#) which was published in The Indian Express on May 27<sup>th</sup>, 2020. Now watch this on our Youtube channel.

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