

General Elections in India and the Role of the Election Commission

■ **Dr. M.N. Buch**

With 543 seats in the House of the People (Lok Sabha) and an electorate in excess of 800 million people the average number of voters per constituency is almost one and a half million. By comparison the number of voters in a British Parliamentary Constituency ranges from fifty thousand to seventy thousand, which is about less than half the number of voters in a State Legislature constituency. Apart from constituencies in the metropolitan areas where the population is highly concentrated, the average size of a constituency in India ranges between six thousand square kilometres and ten thousand square kilometres. In terms of the number of voters and the sheer physical size of the constituency, conducting an election is an extremely complex matter in India, which is the world's largest democracy. It is complex because of the scale of arrangements to be made in conducting the election and it is complex in terms of the sheer numbers of voters and the size of the constituency which each candidate has to cover. One of the reasons why elections are so expensive in India is that to travel around the whole constituency and to interact with so many voters each candidate requires a number of vehicles and assistants and associates who will help him cover the entire constituency.

One calculation indicates that a minimum of ten to twelve vehicles is needed to tour the constituency constantly for about a month and the candidate would probably have to visit over a thousand villages just to familiarise people with his face. The candidate will need about four thousand to five thousand volunteers to man the polling stations as his polling agents so that they can keep an eye on the progress of voting on the date of the poll and subsequently at the time when the votes are counted. Even without spending any money on anything in excess of the permissible maximum, rupees five million per constituency would be needed per candidate to just meet the administrative requirements of such a large constituency. It is possible to run a campaign within the financial limits prescribed by the Election Commission. Even this amount is clearly beyond the capacity of an average citizen. Therefore, either a candidate needs financial assistance or he will end up by not being able to conduct a worthwhile campaign. In order that a fair chance may be given to the average citizen to fight an election it is necessary that we work out the minimum expenditure which has to be incurred by a candidate whose nomination paper has been accepted by the Returning Officer and then provide for State funding of expenditure up to that limit. This is the minimum that we expect by way of electoral reforms if we are to eliminate or at least reduce substantially the role of money power in an election.

Another major factor in the large expenditure on elections is the cost of mobilising a huge army of polling staff and security forces to enable an election to be held. Many parts of the country have serious law and order problems on account of social tension, communal strife, insurgency, Naxalite militancy, etc. To provide adequate protection to candidates, polling parties and the voters the Election Commission has to mobilise large numbers of policemen so that there is adequate coverage in terms of manpower and weaponry. Recent incidents in the Bastar region of Chhattisgarh in which polling parties and police personnel were targeted by the Naxalites and suffered heavy casualties are indicative of how delicate the situation is. What has also to be guarded against is bias of local polling personnel, which is why in sensitive areas polling parties have elements of personnel from other areas and the Election Commission also appoints a large number of neutral observers to ensure that polling is fair and free. One way which the Election Commission tries to ensure that polling is incident free is to divide voting into phases and to stagger the day of

polls in different States. In the 2014 elections the Election Commission has divided polling into nine phases so that security personnel and election personnel can be deployed in a staggered manner and be shifted from one segment to another as needed. The logistics involved in this are almost the same as those in conducting a war in different theatres so that there is optimum utilisation of manpower and resources. Expenditure on this cannot be reduced because any compromise would definitely affect the impartiality of an electoral process which is recognised throughout the world as being absolutely outstanding

Our founding fathers, at the time of the framing of the Constitution, recognised that for democracy to take roots and become firmly entrenched the conduct of elections would have to be such that not only are elections above board but also that people have confidence in the electoral process whereby they are convinced that nothing would come in the way of their exercising their franchise freely and fairly. That is why Part XV of the Constitution was introduced and through Article 324 firmly placed the superintendence, direction and control of elections in the Election Commission which is totally independent of every other organ of the State. That is why the Chief Election Commissioner enjoys the same status as a judge of a Supreme Court in the matter of removal from office, which means that without impeachment he cannot be removed. The Election Commission, therefore, cannot be touched by the Executive, which is a sine qua non of free and fair elections. What is more, under Article 324 (6) the President of India or the Governor of a State is required to make available to the Election Commission all the staff necessary for the discharge of the functions conferred on the Election Commission. That is why under section 13 CC of Representation of the People Act, 1950 the Chief Electoral Officers, District Election Officers and any other officer or staff employed in connection with conduct of a Parliament or State Legislature election will be deemed to be on deputation to the Election Commission and be subject to the control, superintendence and discipline of the Election Commission. This covers the All India Service officers also. It is under this provision of law that the Election Commission directs the State Governments on the deployment of officers and staff and has the authority to order transfers and redeployment, such orders being binding. Under section 20 of the Representation of the People Act, 1951, subject to the superintendence, direction and control of the Election Commission, the Chief Electoral Officer of each State will supervise the conduct of all elections in the State under this Act. Under section 20 A of the Act similar powers are conferred on the District Election Officer for every district and under section 24 the Returning Officer is required to effectually conduct the election according to the Act, Rules, Orders and such directions as the District Election Officer, the Chief Electoral Officer or the Election Commission may give by general or special orders. The powers of the Election Commission are almost absolute in this behalf and, therefore, regardless of the State, by and large the election machinery right down to the level of the presiding officer of a polling station functions according to law. This is an amazing achievement, considering the size of our electorate and the physical spread of the country.

Part IV of the Representation of the People Act, 1951, inserted by Act I of 1989 gives further powers to the Election Commission by making it mandatory for any association or body of citizens calling itself a political party to register itself with the Commission under section 29 A. The Commission has the right to accept or reject the application for registration. Perhaps T.N. Seshan used this provision to force the Model Code of Conduct on to parties, with a threat to withdraw registration unless the parties fall in line. The Model Code of Conduct has now come to stay, though from time to time people like Mulayam Singh Yadav, Azam Khan, Mamata Banerji and Jayalalitha have tried to show defiance. For example, recently Mamata refused to immediately obey the Election Commission's orders regarding the posting of a District Magistrate and five police officers in West Bengal. What she forgot was that apart from section 13 CC of the Representation of People

Act, 1950, under section 28 A of the Act of 1951 the Returning Officer, etc., and every police officer in any way connected with elections would be deemed to be on deputation with the Election Commission and subject to its control, superintendence and discipline. The State Government has no discretion in this behalf because it is as if these officers are not working under the control of the State Government for the period of election.

There is need to codify the Model Code of Conduct by making suitable amendments in the Representation of the People Act, 1951 so that any ambiguity in this behalf is removed. This has been suggested by the author of this article to Chief Election Commissioners from T.N. Seshan onwards and perhaps in the interest of elections in the future the Election Commission might like to suggest to government the amendments needed so that government could move Parliament for giving legal status to the Model Code of Conduct. This would give the Election Commission even greater power to ensure that during the period of elections the ruling party and government would be totally unable to use the authority of office in any way to influence the elections. As it is the system of elections in India and the manner in which the Commission has functioned, have both ensured that the Indian elections are conducted with great impartiality and efficiency. The system is so strong that when grave objection was raised by the political parties to the appointment of Navin Chawla, first as Election Commissioner and then as Chief Election Commissioner, the fact remained that the Election Commission functioned with great impartiality and, to give him full credit, Navin Chawla upheld the high traditions of the total lack of bias of the office of the Chief Election Commissioner. Whilst this reflects well on him it also shows that the constitutional arrangement for the conduct of elections is built on very firm foundation, which can survive any cataclysm. One can think of no other country in the world which has a system as strong as this.

There has been criticism of the overzealous enforcement of the Model Code of Conduct which has brought even the normal routine of government to a halt. For example, the tenure of Vice Chancellors of many Central Universities, the Directors of the Indian Institute of Management at Lucknow and Ranchi and of the Indian Institutes of Information Technology and Management at Gwalior, just to mention a few, has ended and these bodies are almost headless. The process of selection of Directors has been halted and in the case of IITM, Gwalior thought the present Director, Prof. S.G. Deshmukh, has been recommended by a search committee for a second term, the HRD Ministry in the Department of Higher Education is not passing final orders. The new Schools of Planning and Architecture, for example the one at Bhopal, are unable to award degrees because the draft legislation cleared by the Cabinet has not been brought forward for enactment, not even as an ordinance, nor have these institutions been given the status of a deemed university under section 3 of UGC Act. Surely it would not be the purpose of the Election Commission to stop decision making in a purely academic matter under the guise of the Model Code of Conduct, thus adversely affecting the future of students. This specific matter is mentioned because after the results of the 2014 elections the Election Commission must seriously consider defining what acts of government come under the stay imposed by the Model Code of Conduct and in which areas of governance can the government take decisions because they are non political and do not influence the conduct of elections. The task would not be easy because it can be argued that each and every action of the ruling party can bend the voters in its direction, but surely the distinction can be drawn because one is fairly confident that paralysis of government has never been aimed at by the Election Commission when issuing directions under the Model Code of Conduct.

In this behalf it might be worth having a quick review of elections in India from the time of Independence onwards. In those days there was almost a virtual monopoly of the Congress Party and, therefore, the pressure on officials to promote the interests of one party against another was not discernible. The leadership was also more austere, more influenced by Gandhian morality than the

politicians of today and, therefore, the conduct of elections were also fairly easy. There was a marked absence of violence and the leadership itself acted in a responsible manner. It is in 1967, when the politics of defection by purchase made power a commodity which could be bought and sold, that politics took a completely different turn. With power being converted from an instrument of governance for the promotion of the welfare of the people to a means of acquiring authority for promoting one's self interests, election became the process by which power could be acquired and bribery became the process by which power could be retained. Now no holds are barred, no moral practice willingly eschewed, no unfair means rejected by political parties and suddenly the Election Commission had to become a policeman. It took some years for T.N. Seshan to become the Chief Election Commissioner and introduce the Model Code of Conduct as a concept. Seshan was by nature a bully and he preferred wielding the big stick to discipline the political parties, though not always with success. It took N. Gopalaswamy as the first Chief Election Commissioner to exercise the finesse which was both inherent and acquired during service to make the Election Commission a truly effective instrument for the conduct of elections in a civilised environment. This reflects great credit on the man who was responsible for the first ever free and fair election in Jammu & Kashmir, a heroic task well performed by Gopalaswamy. The introduction of the Electronic Voting Machine (EVM), was a tremendous step forward because the ballot paper became irrelevant and a virtually tamper proof EVM replaced it. Of course losing parties and candidates always make allegations about rigging of EVMs, but the truth is that whereas some rigging may be possible if the polling staff conspires in this behalf and the polling agents of political parties absent themselves, on the whole the EVM has been a major step forward in ensuring that Indian elections are above board. Furthermore, because individual ballots no longer have to be counted and the EVM disgorges the results locked in it at the click of a button the results of an election covering 800 plus million voters are declared fastest in the world.

Coming to the 2014 elections, it is clear that at least in Madhya Pradesh the Election Commission has been able to ensure that walls are not disfigured by election slogans, election meetings are held at venues and at the time permitted by the authorities and that the former ear shattering cacophony of elections is relatively muted. Of course there has been a great deal of exchange of abuse between leaders of political parties, especially Congress and BJP, leaving considerable scope for post election review of the role of debate, with the aim of making the political parties agree to a certain civilised level of debate and discussion. There is also scope for trying to eliminate from the system the religious or caste polarisation of voters as attempted by different political parties. In fact it is such polarisation which is the real danger to the security of India and the sanctity of elections. Hopefully the Election Commission will seriously take up this matter with the political parties so that in the next general election to come there is a definite improvement in the environment and manner of electioneering. That would be the Election Commission's next big task.

In the balance how would one weigh the Indian elections? We have an effective and constantly improving Election Commission which is exercising a very healthy influence on the system of elections. The conduct of elections itself is efficient and effective. Our political parties, unfortunately, are the absolute pits and they need intensive disciplining by the people and by the Election Commission. That would be the greatest challenge for the Election Commission so that by the time we go into next general election the environment in which elections are held shows substantive improvement.
