ROLE OF ELECTION COMMISSION IN DEMOCRATIC GOVERNANCE OF INDIA: LAW AND PRACTICE

Dissertation submitted to National Law University and Judicial Academy, Assam in partial fulfilment for award of the degree of

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Submitted by

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CERTIFICATE

This is to certify that **Swagat Protim Konwar** has completed his dissertation titled **"ROLE OF ELECTION COMMISSION IN DEMOCRATIC GOVERNANCE OF INDIA: LAW AND PRACTICE"** under my supervision for partial fulfilment of ONE YEAR LL.M DEGREE PROGRAMME at National Law University and Judicial Academy, Assam.

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DECLARATION

I, Swagat Protim Konwar, do hereby declare that the dissertation titled **"ROLE OF ELECTION COMMISSION IN DEMOCRATIC GOVERNANCE OF INDIA: LAW AND PRACTICE"** submitted by me for the award of the degree of ONE YEAR LL.M. DEGREE PROGRAMME of National Law University and Judicial Academy, Assam is a bonafide work and has not been submitted, either in part or full anywhere else for any purpose, academic or otherwise.

Date: 13-07-2022

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1991 - The Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act

2002 - The Delimitation Act

List of Abbreviations

1.	AIR	All India Reporter
2.	Anr	Another
3.	CEC	Chief Election Commissioner
4.	ECI	Election Commission of India
5.	edn	Edition
6.	ELR	Election Law Reports
7.	EVM	Electronic Voting Machine
8.	Gauh L R	Gauhati Law Reports
9.	GOI	Government of India
10.	R.P. Act	The Representation of the People
11.	SCC	Supreme Court Cases
12.	v.	Versus

CHAPTER 1: INTRODUCTION - DEMOCRACY, REPRESENTATION AND ELECTIONS

"In Governance is realised all the forms of renunciation; in Governance is united all the sacraments; in Governance is combined all knowledge; in Governance is centred all the Worlds."[1]

The Mahabharata

1.1 Introduction: Democracy, Representation and Elections

Almost seventy-seven years ago, in October, 1945, an Englishman who had been nominated for the Nobel Prize in Literature in 20 separate years, E.M. Forster, arrived in Delhi, India after a gap of two and a half decades. He noted the biggest change that he noticed was "the increased interest in politics." [2] That modern Indians cannot be understood "unless you realise that politics occupy them passionately and constantly" with an attitude of "First we must find the correct political solution, and then we can deal with other matters." [3] One hundred and sixty-one years ago, in 1861, the British political theorist and philosopher, John Stuart Mill, expressed in his treatise, *Considerations on Representative Government*, "Free Institutions are next to impossible in a country made up of different nationalities. Among people without fellow-feeling, especially if they read and speak

[1] Ramachandra Guha, India after Gandhi (Macmillan 2007).
[2] EM Forster, *Two Cheers for Democracy* (Hodder Education 1972) 315
[3] EM Forster, *Two Cheers for Democracy* (Hodder Education 1972) 316

different languages, the united public opinion, necessary to the working of representative government, cannot exist."[4]. But how does one choose a particular form of government? As J.S. Mill understood, for the first set of political reasoners, the first stage of selecting a form of government is to specify the goals that governments must advance. The next step is to determine which kind of government is most suitable to achieve those goals. The only thing left to do is to get our countrymen, or the people for whom the institutions are intended, to agree with the conclusion we have reached privately, after we have satisfied ourselves on these two points and determined the form of government that combines the most good with the least evil. Another group of political rationalists opposes them; they see government as a type of spontaneous by product and the study of government as a branch (or subset) of natural history since they are so far from seeing it as a machine. They contend that there is no option when it comes to governing structures. We must generally accept them as they are. Governments cannot be created via deliberate planning. They "grow, not are manufactured." As with all other realities of the world, our task in dealing with them is to get familiar with them and adjust to them. According to this school, a people's essential political institutions emerge organically from their nature and way of life; they are the result of their habits, instincts, and unconscious needs and desires, and almost ever of their conscious intentions. Their only goal has been to meet the needs of the moment with the means at hand. If these means are sufficiently in line with national sentiments and character, they will typically last and, when combined, form a polity that is suitable for the people who already have it. However, it would be ineffective to try to impose this polity on any group of people who have not naturally evolved it.

The existing form of democracy in India is an epitome of human effort, unsubscribing from the Divine Right Theory to the adoption of democratic ideas. The realisation that will, not force, is the basis of the state. "If there were a nation of gods it would be governed democratically. So perfect a government is not suitable for men."[5] If the phrase is used strictly, there has never been and never will be real democracy. The natural order does not

[4] John Stuart Mill, *Considerations on Representative Government* (1861).

[5] Jean-Jacques Rousseau and Christopher Betts, *Discourse on Political Economy and the Social Contract* (1994) 102

allow for the majority to rule and the minority to be ruled. None requires as much attention and bravery to retain its shape as none has such a strong and constant propensity to do. More than almost any constitution, this one requires its citizens to equip themselves with tenacity and fortitude, and to recite in their hearts every day that they chose freedom despite all of its risks. But who is to rule in a democracy? A democracy is a system of governance in which all eligible individuals equally participate, whether directly or via elected representatives who formulate and enact laws. It covers the social, economic, and cultural circumstances necessary for the equally free exercise of political self-determination. There are many variations of democracy, but there are only two fundamental types, both of which deal with how the entire population of all eligible individuals carries out its desire. Direct democracy is a kind of democracy under which all eligible individuals actively and directly participate in governing decisions. Representative democracy is the system of exercising political power via elected representatives rather than directly by the entire body of all eligible individuals, as is the case in the majority of contemporary democracies. Democracy has lately been under criticism for not providing adequate political stability. Democracy tends to result in frequent changes to both domestic and foreign policy since governments are constantly chosen and deselected. Even though a political party remains in power, loud, attention-grabbing demonstrations and scathing media criticism are often enough to bring about swift, unanticipated political change. Frequent changes in business and immigration policies are likely to discourage investment, which would impede economic development. Many have argued whether democracy is undesirable in emerging nations where economic development and the eradication of poverty are top concerns.

1.2 Statement of the Problem

India chose to become a democratic State and became a country of equals in 1947. By paying close attention to the current melodies and pitfalls and correcting the same via different public policy actions, it ordained itself to have a government by popular choice.

In the world's largest democracy, with the longest written constitution guided by principles of unity in diversity, the wishes and aspirations of the people are vivid. With the exercise of the franchise[6] of a large number of citizens, larger than the population of three continents combined —Europe, South and Central America and Australia[7] and conventional multi-party political system, the electoral politics in India is peculiar to its own kind, unlike any other democratic country of the world. The Election Commission of India (ECI) is often seen as an institution which reflects the sagacity of the constituent assembly in providing a constitutional body which would guard against self-destructive tendencies within democracies, by performing an oversight function over the conduct of elections.[8]

The Election Commission of India's authority has since come under scrutiny, as well as its interaction with other institutions, particularly the Supreme Court and the Parliament. ECI has been seen as a regulatory body which performs a set of rule enforcement functions pertaining to the conduct of elections, thereby sustaining the vitality of the electoral system. Thus, to maintain democracy the independence of Constitutional institutions is vital. But that does not mean to create a superior power in itself governing the government, it is indeed subject to checks and balances. The problem to tackle the hinder in maintaining such required balance.

[6] Article 326, *The Constitution of India* (1950)

[7] S.Y. Quraishi *Undocumented Wonder: The Story of the World Largest Elections* (Rupa Publications India,2014) 8

[8] A.K. Thiruvengadam, *The constitution of India: A Contextual Analysis* (Delhi, Bloomsbury 2018) 138

1.3 Literature Review

Books

P. Rathna Swamy, *Handbook on Election Law* (2014, LexisNexis)

In this book the author strives to introduce readers to the idea of Indian Election Machinery - Election Commission, election laws and makes comparative study with election legislation of different countries.

K.C. Sunny, *Corrupt Practices in Election Laws* (1996 edn with supplement, 2000, Eastern Book Company, Lucknow- 226 001)

In this book, the author gives a very detailed explanation of the Indian Election Laws related to corrupt practices and their transformation with time. It also elucidates how laws are interpreted by the Courts of India at different times. It also explains the procedure under the Code of Criminal Procedure.

Granvile Austin, *Working a Democratic Constitution: A History of the Indian Experience* (1st published 1999, Oxford University Press).

This book demonstrates the very human story of how the social, political, and day-to-day realities of the Indian people have been reflected in and directed the course of constitutional reforms since 1950. The book also illustrates how these realities have been reflected in and directed the course of constitutional reforms since 1950.

W.J.M. Mackenzie ,*Free Elections : An Elementary Text Book* (2nd edn 1964)

This book is an outcome of the author's experience as a visitor to East and Central Asia in the years 1951 and 1956. Here, the idea of self-government based on the requisite principles guiding free and fair is explained.

Lloyd I. Rudolph & Susanne Hobber Rudolph, 'Redoing the Constitutional Design: From an Interventionist to a Regulatory State' in Atul Kohli, *The Success of India's Democracy* (The Press Syndicate of the University of Cambridge, 2001)

The authors of this work analyse the working of the Constitution, the role of institutions created by the it – President, Judiciary, Election Commission. It gives description of real situations faced and experienced in Indian democracy by these institutions and explains how its working changes due to variable factors such as political and socio-economic. The part on 'Election Commission Activism' is helpful in this research work.

Articles

Ujjwal Kumar Singh & Anupama Roy, 'Regulating the Electoral Domain: The Election Commission of India' (Indian Journal of Public Administration 64(3) 1–13 © 2018 IIPA SAGE Publications)

In this article, the authors divide it into three segments. In first part the Election Commissions of India's powers through a discussion of Article 324 in the constitutional architecture; the second section explores 'legal exceptionalism' during 'election time' and its manifestation in the Model Code of Conduct (MCC); the last section takes up the framework of 'electoral integrity' to see how innovations in 'voter education and awareness', which are often seen through the lens of electoral 'management', have become part of the deliberative content of election alongside the quest for 'procedural certainty' and 'democratic outcomes'. Through these discussions, the article seeks to show how the ECI has become a significant actor in the shared space of democracy in India, actively engaged in framing the rules that constitute both the procedural and substantive aspects of electoral democracy in India.

R. Ramesh ‘Historical Perspectives of The Electoral Reforms in India’ (Proceedings of the Indian History Congress, 2011, Vol. 72, PART-II (2011), pp. 1325-1336 2011)

In this article the writer lists the number of committees that were formed and their recommendation on election law reforms.

Reports and Compilations

Landmark Judgments for Volume I, Volume II, Volume III, Volume IV
<https://eci.gov.in/files/file/6955-landmark-judgments-for-volume-i-volume-ii-volume-iii-volume-iv/> accessed 15 March 2022

Landmark Judgments on Election Law
A compilation of important judgments pronounced by the Supreme Court of India and the High Courts of various States.
<https://eci.gov.in/files/file/12187-landmark-judgments-on-election-law-vol-vi/> accessed 05 April 2022

1.4 Aim

The researcher aims to infer from controversies surrounding, historical and current developments in election mechanism in India and to deduce ways for effective governance of and by the Election Commission.

1.5 Objectives

The research pertains to the following research objectives:

I. To understand the role of the Election Commission in Indian democracy.
II. To understand the laws and procedures pertaining to the election process in India.
III. To observe the recommendations made by various committees regarding election laws.
IV. To analyse the existing provisions and provide suggestions to fill up lacunas, if any.

1.6 Scope and Limitation

The scope of this research is limited to the analysis of legislative provisions, administrative framework, various committee recommendations and prominent precedents surrounding elections in India. In addition, owing to time constraints, complete data collection may not have been feasible, resulting in scientifically irrelevant findings. However, the data and recommendations provided may be helpful.

1.7 Research Questions

This research is a quest to find answers to:

I. Is there scope in existing composition for the credibility of the Election Commission to be questioned?
II. What is the legal extent to curb corrupt practices and the Role of Judiciary in subject matters pertaining to elections?

1.8 Hypothesis

I. Lacuna in existing provisions may pave the way for the Election Commission to be influenced.

II. At instances Election laws lack the binding force.

1.9 Research Methodology

The methodology used to carry out this research is Doctrinal, Analytical, Applied and Conceptual legal research. Analytical legal research as this report is a qualitative inquiry into the legal problems that involves critical thinking and the evaluation of facts and information relative to the research being conducted. Applied legal research methodology as the aim of this research is to find a solution to a pressing practical problem at hand. Conceptual legal research as this research has been conducted by observing and analysing already present information on a given topic.

1.10 Research Design

This research work in segmented into six different Chapters as follows:

Chapter I: Introduction: Democracy, Representation and Elections

This chapter includes brief introduction to the idea of democracy, representation and elections. How society as a whole is making conscious efforts to resolve problems through sound political governance. Furthermore, it contains the statement of problem, objectives of the research, hypothesis literature review, research methodology and chapter design.

Chapter II: The Constituent Assembly and Election Commission

In this chapter the debate in the Constituent Assembly on Part XV – Elections, in taken up in detail. The various suggestions and individual recommendations of the members of the Constituent Assembly are discussed.

Chapter III: Constitutional and Legal Provisions

This segment deals in enumerating the various provisions provided by law for smooth carrying out of election process in the country of India.

Chapter IV: Anatomy of the Election Commission in India: A Legal Analysis

In this chapter, the structure and the power and functions of the Election Commission is analysed. Further it looks into any possibility for improvement in composition and the manner of appointment and removal.

Chapter V: Electoral Corrupt Practices Law and Procedures: Critical Analysis

This chapter deals in enumerating the various laws laid down by Section 123 of the Representation of the People Act, 1951 regarding corrupt practices. Moreover, this chapter analyses the ruling of various courts of the land on such corrupt practices.

Chapter VI: Conclusion and Suggestions

This chapter consist the test of hypothesis of the research and attempts to make sound suggestions for better democratic governance of and by the Election Commission.

CHAPTER 2: THE CONSTITUENT ASSEMBLY AND ELECTION COMMISSION

2.1 Democracy: The Indian Experience

With a population of around 138 crore, India is the second-most populous nation in the world, the seventh-biggest country (by area), and the largest democracy in the world. Many widely held beliefs that impose prerequisites are debunked by the achievement of democracy in India. The distribution of power is the key to understanding Indian democracy. Election is the primary tool for smooth operation of the democratic machinery. If elections are not conducted properly, if people are unable to influence policy and choose their representatives, and if neither control nor efficiency are accomplished via the electoral process, then the whole democratic system is poisoned from the start, and popular democracy becomes a mirage.[9]

The Indian Constitution was drafted during a three-year period,from December 1946 to December 1949, and went into force in January 1950. The Indian Constituent Assembly debated each provision in its draft at this period. The Assembly met for 165 days throughout the course of its eleven sessions. Various committees as well as sub-committees worked on amending and polishing the documents in between meetings. This laid the foundation of guiding principles. The right to vote and elect a representative of one's choice is fundamental in a democracy. The commonwealth notion of representative serves as the central organising principle for Indian elections. Although the representative system of democracy has successfully led the country for the last 75 years, it hasn't yet been completely applied in ordinary routine. Some of the elected officials enjoy all the benefits without being held responsible for their tasks, and their disrespect for Indian democracy is

[9] Jamer Keer Pollock, *Election or Appointment of Public Officials* (1935, The Annals of the American Academy of Political and Social Science, 181(1), Sage Publications, 1993) 74

evident by the way in which they abuse their positions and engage in influence peddling, nepotism, cronyism, and deliberate negligence. Eleven hefty volumes containing the Indian Constituent Assembly's proceedings were produced. They include a wide range of opposing views on the country, its language, the "political and economic systems" it should adhere to, and the moral principles it should support or reject.[10] The Congress had pushed that Indians drafted their own constitution beginning in the early 1930s. Lord Wavell ultimately gave in to the request in 1946. The results of the provincial elections in that year were used to choose the Assembly's members.

2.1.1 The Idea of Strengthening Democracy by Governance

Governance refers to 'the traditions and institutions by which authority in a country is exercised,' including: the processes by which governments are selected, monitored, and replaced; the capacity of the government to effectively formulate and implement sound policies; and the respect of citizens and the state for the institutions that govern social and economic interactions among them.[11] In terms of World Banks it means commitment to government efficiency and accountability. Almost to the point where State shrinkage or discontent is portrayed as identical with democratisation, the State is seen as an alien oppressor, and the reduction of its activity is viewed as a democratic, people-friendly endeavour. Its focus on civil society and its institutions must be seen in the context of bolstering democracy and developing an informal sector that may leverage the entrepreneurial spirit of individuals via community institutions and interpersonal interactions. Democracy emerges as the necessary political framework for successful economic development in the discourse on good governance, and within this discourse, democracy and economic liberalism are conceptually linked. Bad governance equals state intervention while good governance equals democracy and economic liberalism.

[10] Ramachandra Guha, *India after Gandhi Revised and Updated Edition* (Ecco 2019).
[11] Kooiman and Van Vliet, 'Governance and Public Management'. In K.Eliassen and J. Kooiman eds, *Managing Pubic Organisations* (2nd edn, London,Sage,1993) 65

2.2 Indian Elections: The Greatest Democratic Show on Earth

Elections are the primary means by which voters hold governments responsible, both retrospectively for their policies and generally for the way in which they rule. In context of Indian elections - "It is truly the greatest show on earth, an ode to a diverse and democratic ethos, where more than 7000 million of humanity, providing their small part in directing their ancient civilization into the future. It is no less impressive when done in a neighbourhood which includes de-stabilizing & violent Pakistan, China, and Burma……Where all of this is happening, is India and as greater than 1/10th of humanity gets ready to vote, it is an inspiration to the entire world. Good things have happened."[12] as former Chief Election Commissioner S.Y Quraishi puts, "This largest dance of democracy in the world has to be seen to be believed, for the voting public itself is larger than the population of three continents - Europe, South and central America and Australia- combined"[13] Indian democracy and free and fair elections continue to pique attention and wonderment throughout the world, in part owing to their unwavering performance despite the apparent constraints of demographics and geography, but also because of a lack of understanding of the backdrop. The Election Commission of India (ECI), a Constitutional institution, entrusted the role of a "referee institution"[14] with regards to elections.

[12] V. Mitchel *New York Times* (New York, 2 June 2009)

[13] S.Y Quraishi An Undocumented Wonder: Making of the Great Indian Eletions (Rupa Publications India Private Limited 2014)

[14]

2.3 Constituent Assembly on The Election Commission of India

The roots of India's election law, in fact, go back to the British colonial period, before the EC was formed. When the British, in 1919, introduced elections into India under dyarchy, they introduced at the same time a body of election law relating to how elections would be conducted[15]. The Westminster type of parliamentary form of government that exists in the United Kingdom was chosen by the framers of the Indian Constitution with modifications to fit our own requirements after extensive research and analysis of numerous democratic systems of government now in use across the globe. The Indian Constitution was written with moral clarity, political savviness, and legal knowledge in mind. Granville Austin significantly modifies this in the prologue to the 1999 version of his book, referring to unity, social revolution, and democracy as "the three threads of a seamless web". The Objectives Resolution was moved by Nehru on December 13th, 1946, during his first significant address in the Assembly. This declared India to be an "independent sovereign republic" and guaranteed its citizens "justice, social, economic, and political; equality of status; of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association, and action, subject to law and public morality" while also ensuring that "adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes. In introducing the resolution, Nehru cited historical models including the French, American, and Russian revolutions as well as the spirit of Gandhi and the "glorious history of India."[16]

The Election Commission, in particular, completely departed from the Westminster model. The only election body mentioned in the Constituent Assembly of that kind was the one established in Canada in accordance with the Dominion Elections Act of 1920. To build legislative institutions based on free and fair elections, the Constitution's drafters

[15] David Gilmartin, *One day's sultan: T.N. Seshan and Indian democracy* (Indian Sociology 43, 2 (2009): 247–84 SAGE Publications Los Angeles/London/New Delhi/Singapore/Washington)
[16] CAD, vol. 1, pp. 59–61.

considered a number of choices. They debated whether to establish a central electoral management body to oversee elections for the Union Parliament, the President, and the Vice President, and separate electoral management bodies to oversee elections to the various state legislatures, or whether to assign a central electoral management body the duty of overseeing elections for both the Union and the states. They elected to place a unified command in the hands of a single electoral administration organisation to carry out all elections out of concern for the political climate that existed in many states that were split on numerous ethnic, religious, and linguistic concerns. The rationale for the concept of an independent central and federal Election Commission was outlined by B.R. Ambedkar, the Chairman of the Constituent Assembly's Drafting Committee, on June 15, 1949, in the Constituent Assembly while introducing draft Article 289, which later became Article 324 in the final Constitution.

Initially, the idea was to incorporate the provisions of the Election Commission with that of the Fundamental Rights. But later on, the house insisted on inserting it totally as a new part of the constitution. An excerpt from the Constituent Assembly debate dated July 15th, 1949, by Dr. B. R. Ambedkar:

"The House will remember that in a very early stage in the proceedings of the Constituent Assembly, a Committee was appointed to deal with what are called Fundamental Rights. That Committee made a report that it should be recognised that the independence of the elections and the avoidance of any interference by the executive in the elections to the Legislature should be regarded as a fundamental right and provided for in the chapter dealing with Fundamental Rights. When the matter came up before the House, it was the wish of the House that while there was no objection to regard this matter as of fundamental importance, it should be provided for in some other part of the Constitution and not in the Chapter dealing with Fundamental Rights. But the House affirmed without any kind of dissent that in the interest of purity and freedom of elections to the legislative bodies, it was of the utmost importance that they should be freed from any kind of interference from the executive of the day. In pursuance of the decision of the House, the

Drafting Committee removed this question from the category of Fundamental Rights and put it in a separate part containing article 289, 290 and so on. Therefore, so far as the fundamental question is concerned that the election machinery should be outside the control of the executive Government, there has been no dispute."[17]

Originally, Article 289 of the Daft Constitution (now Article 324 of Indian Constitution) had 5 clauses instead of present 6.

Articles in Draft Constitution Part XIII	Rearranged as existing Article in Part XV
289	324
289-A	325
289-B	326
290	327
291	328
291-A	329

Article 289 (1) deals with:

> *"The superintendence, direction and control of the preparation of the electoral rolls for, and the Superintendence, directions and control of elections to be vested in an election commission. conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution, including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections to Parliament and to the Legislatures of States shall be vested in a Commission (referred to in his Constitution as the election Commission) to be appointed by the President."*[18]

[17] CAD, vol. 8, p. 8.105.210

[18] CAD, vol 8.105.204

It is to be noted that existing articles 324 (2) and 324 (3) were a part of Article 298 (2) of the Draft Constitution:

> *"The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may, from time to time appoint, and when any other Election Commissioner is so appointed, the Chief Election Commissioner shall act as the Chairman of the Commission."*[19]

Before the Drafting Committee, there were two options in matters relating to the appointment of members to the Election Commission. The first is to establish the Elections Commission as a permanent body consisting of four or five members. The other option was to allow the President to appoint an ad hoc body while an election is about to take place. "The Committee has chosen to take a middle approach. The Drafting Committee suggests in sub-clause (2) that the Chief Election Commissioner be a permanent member so that the skeletal system is always in place. Elections will, without a doubt, generally occur every five years, although there is the possibility that a bye-election might occur at any moment. Before the Assembly's five-year term is out, it may be dissolved. The electoral rolls will thus need to be continuously updated in order for the fresh election to go without incident. In light of these circumstances, it was decided that having one person designated as the Chief Election Commissioner in permanent session would be adequate. When elections are approaching, the President may add to this list by adding more members to the Election Commission."[20]

"The initial idea for article 289 was to create separate election commissions for each province and state, to be selected by the governor or ruler of the state"[21], and one commission to handle both the Upper and Lower House elections for the Central

[19] Article 289(2) of the Draft Constitution.
[20] Constituent Assembly Debates (Book 3 vol VIII, Lok Sabha Secretariat, 2014) 905
[21] ibid

Legislature. Following that, a significant shift was implemented while bearing in mind how sometimes local executives formed unjustified judgments about individuals based on a variety of factors. This article suggests that the election apparatus be centralised in the hands of a single commission, with assistance from regional commissioners who would operate under the supervision and direction of the Central Election Commission rather than the provincial government. This is unquestionably a significant transformation, as Dr. B.R. Ambedkar mentioned. But given that the population of several Indian regions is now diverse, this transformation has become imperative. There are what may be referred to as a province's native population or original residents. There are also other residents there that are either ethnically, linguistically, or culturally distinct from the majority population that makes up that Province. Drafting Committee as well as the Central Government were made aware of the fact that the executive governments in such provinces were not in compliance with the central government's directives and were directing or administering things in such a way that individuals who do not belong to them, either ethnically, culturally, or linguistically, were being excluded from being placed on the voting registers. The House came to understand the importance of the right to vote in a democracy. The Constitution (Sixty-first Amendment) Act of 1988 lowered the voting age from 21 to 18 for elections to the Lok Sabha and the Legislative Assemblies of States. No one who is eligible to be on the voter list because they are an adult and at least 18 years old, as stated in our Constitution, should be kept off the list merely due to the prejudice of others. That would fundamentally undermine democratic government. Therefore, it is deemed desirable "to depart from the original proposal of having a separate Election Commission for each province"[22] under the direction of the Governor and the local government to make sure that provincial governments don't treat people unfairly who don't live in the province because of their race, language, or culture. As a result, this new change has been implemented, whereby the entire election apparatus "should be under the control of a Central Election Commission, which alone would be permitted to issue directives to returning officers, polling officers, and others involved in the preparation and revision of electoral rolls"[23] in

[22] CAD,vol -8.105.212

[23] Constituent Assembly Debates (Book 3 vol VIII, Lok Sabha Secretariat, 2014) 906

order to prevent any injustice from being done to any Indian citizen who has the right to be on the electoral rolls under the Constitution.

Article 289 (4) of the Draft Constitution deals with the service conditions of the Commissioner to be appointed.

In the Constituent Assembly dated June 16th 1949, Pandit Hriday Nath Kunzru of the United Provinces expressed "*Everything in the new Draft is left to the President; the appointment of the Election Commission will be made by the President; he will appoint the Chief Election Commissioner and decide how many Election Commissioners should be appointed; he will decide the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners that might have to be appointed."*[24] The role entrusted to the President by the constitution is bulky. It is to be noticed in the language of Article 289(4) which is now 324(5), "subject to the provisions of any law made by parliament, the conditions of service and tenure……. shall as the President may by rule determine"[25] However no such law is enacted by the Parliament which faces staunch debate. Such controversial lacunas are dealt with in detail in Chapter 4: "Anatomy of Election Commission in India: A Legal Analysis".

Pandit Hriday Nath Kunzru further added *"But, by leaving a great deal of power in the hands of the President we have given room for the exercise of political influence in the appointment of the Chief Election Commissioner and the other Election Commissioners and officers by the Central Government. The Chief Election Commissioner will have to be appointed on the advice of the Prime Minister, and, if the Prime Minister suggests the appointment of a party-man, the President will have no option but to accept the Prime Minister's nominee, however unsuitable he may be on public grounds."*[26]

Since there will be a fully responsible government in place at the centre, it is unreasonable to expect the President to act at his own discretion in any situation. He is only able to "act

[24] CAD, vol 8
[25] Article 324(5)
[26] CAD, vol 8

on the advice of the Ministry, and when it comes to matters of patronage, when he continues to receive the recommendations of the Prime Minister, the President cannot, if he decides to act as a constitutional Head of the Republic, refuse to recognize them"[27]. He must act in accordance with the recommendations of the Prime Minister. Such was the view of many of the members of the Constituent Assembly, including Pandit Hriday Nath Kunzru. "*....this article does not lay down the qualifications of persons who are chosen as Chief Election Commissioners or as Election Commissioners. And, as I have already pointed out, in the matter of removal, the Election Commissioners are not on the same footing as the Chief Election Commissioner."*[28] "The provisions were initially to have a single member as permanent election commission and rest members may be appointed by the President as and when required. Thus, the constitutional guarantee as to the removal of such other election commissioners other than the Chief Election Commissioner was not made in the same line as that of the latter. The Chief Election Commissioner enjoys constitutional safeguards equivalent to that of the Supreme Court Judge and follows the same removal process. "*.....but then there is no reason why the whole matter should be left in the hands of the President, and why the conditions and tenure of service of the Election Commissioners should be determined by rule by him. These, too, should be determined by law made by Parliament."*[29]

" If the electoral machinery is defective or is not efficient or is worked by people whose integrity cannot be depended upon, democracy will be poisoned at the source; nay, people, instead of learning from elections how they should exercise their vote, how by a judicious use of their vote they can bring about changes in the Constitution and reforms in the administration, will learn only how parties based on intrigues can be formed and what unfair methods they can adopt to secure what they want."[30] This will prevent people from learning. The Central supervision of these elections would be appreciated in serious quarters, and the most essential task of the Commission would be to designate Election officials, the effectiveness, honesty, and independence of which will much rely on the

[27] Constituent Assembly Debates (Book 3 vol VIII, Lok Sabha Secretariat, 2014) 922
[28] CAD, vol 8
[29] ibid
[30] Constituent Assembly Debates (Book 3 vol VIII, Lok Sabha Secretariat, 2014) 923

individuals they choose. It is common knowledge that the privacy of the ballot box is a very significant issue in an election as a means of encouraging the right to vote, and this privacy must be secured in a manner that is both complete and effective. *"We must remember one thing, that after all an election department is not like a judiciary, a quasi independent organ of Government…….A machinery, so independent, cannot be allowed to sit as a kind of Super-Government to decide which Government shall come into power…….Not only it should preserve its independence, but it must retain impartiality."*[31] expressed Shri K.M. Munshi of Bombay.

On June 15th, 1949 during the Constituent Assembly Debate, Professor Shibban Lal Saksena gave a notice for amendment to an amendment to article 289 (Now 324). He proposed the following amendments:

1. That in clause (1) of Article 289, the following words be added-

   "Subject to confirmation by 2/3rd majority in a joint session of both the Houses of Parliament."

2. In clause (2), the following words should be inserted right after the word appoint:—

   "Subject to confirmation by 2/3rd majority in a joint session of both the Houses of Parliament."

3. In clause (3), the words"after consultation with" should be substituted with the words "in concurrence with."

[31] CAD, vol 8, p 44-45

4. In clause (4), the phrase “the President may by rule determine” should be changed to “Parliament may by law determine”.

5. In the proviso (1) to clause (4), replace the terms “Chief Election Commissioner" with “Election Commissioners” in both places.

6. Remove the phrase “any other Election Commissioner or” from the proviso (2) that follows clause (4).

His amendment proposes that the Election Commission should operate in a manner that is entirely separate and distinct from the Executive branch. Professor Shibban Lal Saksena further mentions that “*....but if the President is to appoint this Commission, naturally it means that the Prime Minister appoints this Commission. He will appoint the other Election Commissioners on his recommendations. Now this does not ensure their independence.”*[32] What Professor Saksena intended for was for even the person who was selected initially to be of a calibre that would allow him to have the full trust of all involved parties. Not only should his nomination be approved by a majority, but it should be affirmed by a majority of two-thirds in both Houses. If it is simply a simple majority, then the party that is now in power might vote their confidence in him, but because he desired a two-thirds majority, it implies that the other parties also must agree with the nomination in order to ensure the true independence of the Commission. Appointments of the Commissioners and the Chief Election Commissioner must be made by the President; however, the names proposed by the President should be such that they command the confidence of a two-thirds majority of both Houses of Legislatures. This is done so that no one, not even the opposition, will have anything negative to say about the Commission.

[32] CAD, vol 8, p 9-10

To this recommendation of Professor Saksena, Shri Mahavir Tyagi contented that, *"The majority party will put up its own candidate for the job and issue whips that all should vote for that candidate. Whether he is a Member or outsider he will be a party nominee."* to which Professor Saksena replied that "*.....we cannot be sure that the Prime Minister will always be such a personality. I want that in the future, no Prime Minister may abuse this right, and for this I want to provide that there should be two-thirds majority which should approve the nomination by the President. Of course there is danger where one party is in a huge majority.*"

Professor Saksena's view was that "even a small opposition or perhaps even the few independent members of the Parliament should have the power to dethrone the Prime Minister in front of the global public opinion bar if the Prime minister does choose to select a party member and the choice is up for approval in a joint session. In addition, he said it would be significantly more cost-effective and beneficial to form a permanent Election Commission that included not just the Chief Election Commissioner but also three to five other permanent members. This commission would be responsible for conducting the elections." In his opinion, there won't be a shortage of work since our constitution stipulates that elections will take place at different periods depending on which legislatures have passed a vote of no-confidence, which will lead to the dissolution of those legislatures.

According to the amendment that was proposed by Professor Saksena, there are actually two different aspects that need to be taken into account.

1. The issue of removing the Election Commissioner from their position.
2. The second concern is with regard to the selection of the Commissioner for this Election Commission.

To these aspects, Dr. Ambedkar replied on Thursday, 16th June,1949.

1. Reply to first issue:

"I personally do not think that any change is necessary in the amendment which I have proposed, as the House will see that so far as the removal of the members of the Election Commission is concerned the Chief Commissioner is placed on the same footing as the Judges of the Supreme Court. And I do not know that there exists any measure of greater security in any other constitution which is better than the one we have provided for in the proviso to clause (4)."[33] andso far as removal of other Election Commissioners are concerned while the President still has the authority to remove them, this authority is subject to a very significant restriction, namely that the President may only act on the Chief Election Commissioner's proposal when it comes to the dismissal of the other Commissioners. Therefore, Ambedkar argued that the measures included in his amendment are sufficient and nothing more is required for that purpose insofar as the removal matter is concerned.

2. Reply to second issue:

"My provision—I must admit—does not contain anything to provide against nomination of an unfit person to the post of the Chief Election Commissioner or the other Election Commissioners." - The Honourable Dr. B.R. Ambedkar

Ambedkar acknowledged it to be a crucial matter that has caused him a great lot of pain and would undoubtedly cause this House a significant amount of "headache".

Referring to the United States of America, he stated that the provision in Article 2 Section (2) of their Constitution, which states that certain appointments specified in Section (2) of article 2 cannot be made by the President without the concurrence of the Senate, has allowed them to resolve this issue. As a result, even though the appointment power "is vested in the President, it is subject to a check by the Senate"[34] so that the Senate can make appointments.

[33] CAD, vol 8

[34] Constituent Assembly Debates (Book 3 vol VIII, Lok Sabha Secretariat, 2014) 929

However, it must equally be acknowledged that this is a highly drawn-out and challenging procedure. The appointment must be made immediately without waiting since Parliament may not be in session at the time it is made. Second, the American method probably introduces political concerns into the appointment-making process, and it really does. Consequently, even though Dr. B.R. Ambedkar believed that the American Constitution's provisions are a very welcome check on the President's extravagance in choosing his appointees, they were likely to cause administrative issues, so Dr. Ambedkar unsure whether he should ultimately advise that our Constitution adopt the American provisions. The Drafting Committee had given this issue a lot of thought. As a "*via media*, it was believed that if the Assembly would give or enact what is known as a 'Instrument of Instructions' to the President and provide therein some machinery"[35], the difficulties "felt as resulting from the American Constitution may be obviated and the advantage"[36] contained therein may be secured. Dr. B.R. Ambedkar planned to make certain changes to Amendment No. 99 regarding article 289 (Existing article 324) in response to the criticism of honourable Prof. Saksena and honourable Pandit Kunzru.

The amendments made were:

"That the words 'to be appointed by the President' at the end of clause (1) be deleted."

"In clause (2) in line 4, for the word 'appoint' substitute the word 'fix' after which insert the following" :—

> "The appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in this behalf by Parliament, be made by the President."

[35] ibid
[36] CAD, vol 8

"The rest of the clause from the words 'when any other Election Commissioner is so appointed' etc., should be numbered clause (2a)."

New Article 289-A

"*No person to be ineligible for inclusion in, or to claim to be included in a special, electoralroll on grounds of religion, race, caste or sex.*"

The only purpose of this article was to implement the House's determination that there would no longer be any separate electorates. In actuality, the Drafting Committee intended for this provision to be unnecessary by subsequently amending the provisions in the Draft Constitution that provided for representatives of Muslims, Sikhs, Anglo-Indians, and other groups. As a result, this article was unnecessary.

But it was believed that it would be preferable for the Constitution to expressly mention it because the Constituent Assembly had made a crucial choice that effectively nullifies the past. This change was proposed by Dr. B.R. Ambedkar for that reason.

Article 289-B

"Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage."

The new article 289-C was not moved.

Article 290

> *"Power of Parliament to make provision with respect to elections to Legislatures.—Subject to the provisions of this Constitution,*
>
> *Parliament may from time to time by law make provisions with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including matters necessary for securing the due constitution of such Houses and the delimitation of constituencies"*

Article 291

> *"Power of Legislature of a State to make provision with respect to elections to such Legislature.—Subject to the provisions of this Constitution and in so far as provision in that behalf is not made by Parliament the Legislature of State may from time to time by law make provisions with respect to all matters relating to or in connection with, the elections to the House or either House of the Legislature of the State including matters necessary for securing the due constitution of. such House or Houses"*

Both the articles 290 and 291 are very crucial articles introduced by the Constituent Assembly.

Shri H.V. Kamath was of the view that,

> *"Article 291, following as it does article 290 already adopted, is a corollary to it. Article 291 follows very closely article 290 except with regard to the last matter contained in article 290 relating to the delimitation of constituencies. The question here arises as to the powers which will be vested in Parliament and in the State Legislature……..Are we going to have another Schedule? That is my question. Are we going to have a new Schedule to this Draft Constitution wherein we will*

define the powers of Parliament and the powers of the State Legislature to legislate with regard to matters relating to elections in the States? If we do not define, definitely allocate the functions, I am afraid it might lead to some sort of friction or tension between the Parliament and the State Legislature at some time or other."[37]

He preferred that some election-related matters in the States be permitted to be handled "by the State Legislature directly and that Parliament not be granted full legislative jurisdiction over all issues pertaining to elections to either House of the State Legislature. I believe that the State Legislature should also be granted some clear authority."

To this view of Shri H.V. Kamath, Dr. Ambedkar replied with:

"While 290 gives power to Parliament, 291 says that if there is any matter which is not provided for by Parliament, then it shall be open to the State Legislature to provide for it. This is a sort of residue which Parliament may leave to the State Legislature. This is a residuary article. Beyond that, there is nothing."

It is primarily the responsibility of the legislature to enact provisions under section 290. The responsibility falls solely on Parliament. It shall be the responsibility and obligation of the legislature to enact legislation governing topics covered by section 290. In making provisions for matters specified in section 290, if any matter has not been specifically and expressly provided for by Parliament, then section 291 states that the State Legislature is not precluded from making any provision that Parliament has failed to make with regard to any matter specified in section 290. There are certain issues that are crucial and that Parliament may believe should be handled independently. Other issues could be of such a local nature and subject to regional differences, in the opinion of the Parliament, that it would be best to leave them to the Local Legislature. The discrepancy between 290 and 291 is due to this.

Article 291-A

[37] CAD, vol 8

“Bar to interference by courts in electoral matters” —

“Notwithstanding anything contained in Bar to jurisdiction of this Constitution”—

(a) "the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 290 or article 291 of this Constitution shall not be called in question in any court;"

(b) "no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature;"

(c) "provision may be made by or under any law made by the appropriate Legislature for the finality of proceedings relating to or in connection with any such election at any stage of such election."

Controversies surrounding such provisions are to be covered in chapters to follow.

CHAPTER 3: CONSTITUTIONAL AND LEGAL PROVISIONS

Before India became a republic on January 26, 1950, the Election Commission was already established. The Constitution's Article 324 went into effect on November 26, 1949. A day before the nation became an independent republic on January 26, 1950, the Election Commission was constituted on January 25, 1950, in accordance with this constitutional requirement. Notably, the Indian government has proclaimed January 25 of every year as National Voters' Day as of 2011, at the request of the Election Commission.

3.1 Constitutional Provisions

Part XV of the Indian Constitution, which covers Articles 324 to 329, deals with the provisions relating to elections.

Article 324

(1) "The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission)."

The words "including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections to parliament and to the Legislatures of States" omitted by the Constitution (Nineteenth Amendment) Act, 1966 s. 2 (w.e.f. 11-12-1966).

(2) "The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President."

(3) "When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission."

(4) "Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President may also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the Commission by clause (1)."

(5) "Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine.

Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment."

"Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner."

(6) "The President, or the Governor (Raj Pramukh)[38] of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a

[38] The words "or Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. (w.e.f. 1-11-1956).

Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1).”

Article 325

“No person to be ineligible for inclusion in, or to claim to be included in a special, electoral roll on grounds of religion, race, caste or sex.—There shall be one general electoral roll for every
territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them.”

Article 326

“Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage.— The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than [2][eighteen years] of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election”

Article 327

“Power of Parliament to make provision with respect to elections to Legislatures - Subject to the provisions of this Constitution, Parliament may from time to time by law make provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State

including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses."

Article 328

"Power of Legislature of a State to make provision with respect to elections to such Legislature — Subject to the provisions of this Constitution and in so far as provision in that behalf is not made by Parliament, the Legislature of a State may from time to time by law make provision with respect to all matters relating to, or in connection with, the elections to the House or either House of the Legislature of the State including the preparation of electoral rolls and all other matters necessary for securing the due constitution of such House or Houses"

Article 329

Bar to interference by courts in electoral matters.—

With respect to Article 329 ,two Constitutional Amendment Acts are noteworthy; viz.

Constitution (Thirty-ninth Amendment) Act, 1975 ; and
Constitution (Forty-fourth Amendment) Act, 1978

3.1.1 Constitution (Thirty-ninth Amendment) Act, 1975

In article 329 of the Constitution, for the words "Notwithstanding anything in this Constitution", the words, figures and letter "Notwithstanding anything in this Constitution

but subject to the provisions of article 329A" was substituted by the Constitution (Thirty-ninth Amendment) Act, 1975.

Insertion of new article 329A.

In Part XV of the Constitution, after article 329, the following article shall be inserted, namely:-

"329A. Special provision as to elections to Parliament in the case of Prime Minister and Speaker.

(1) Subject to the provisions of Chapter II of Part V [except sub-clause (e) of clause (1) of article 102], no election-

(a) to either House of Parliament of a person who holds the office of Prime Minister at the time of such election or is appointed as Prime Minister after such election;

(b) to the House of the People of a person who holds the office of Speaker of that House at the time of such election or who is chosen as the Speaker for that House after such election,shall be called in question, except before such authority [not being any such authority as is referred to in clause (b) of article 329] or body and in such manner as may be provided for by or under any law made by Parliament and any such law may provide for all other matters relating to doubts and disputes in relation to such election including the grounds on which such election may be questioned.

(2) The validity of any such law as is referred to in clause (1) and the decision of any authority or body under such law shall not be called in question in any court.

(3) Where any person is appointed as Prime Minister or, as the case may be, chosen to the office of the Speaker of the House of the People, while an election petition referred to in clause (b) of article 329 in respect of his election to either House of Parliament or, as the case may be, to the House of the People is pending, such election petition shall abate upon such person being appointed as Prime Minister or, as the case may be, being chosen to the office of the Speaker of the House of the People, but such election may be called in question under any such law as is referred to in clause (1).

(4) No law made by Parliament before the commencement of the Constitution (Thirty-ninth Amendment) Act, 1975, in so far as it relates to election petitions and matters connected therewith, shall apply or shall be deemed ever to have applied to or in relation to the election to any such person as is referred to in clause (1) to either House of Parliament and such election shall not be deemed to be void or ever to have become void on any ground on which such election could be declared to be void or has, before such commencement, been declared to be void under any such law and notwithstanding any order made by any court, before such commencement, declaring such election to be void, such election shall continue to be valid in all respects and any such order and any finding on which such order is based shall be and shall be deemed always to have been void and of no effect.

(5) Any appeal or cross appeal against any such order of any court as is referred to in clause (4) pending immediately before the commencement of the Constitution (Thirty-ninth Amendment) Act, 1975, before the Supreme Court shall be disposed of in conformity with the provisions of clause (4).

(6) The provisions of this article shall have effect notwithstanding anything contained in this Constitution.".

3.1.2 Constitution (Forty-fourth Amendment) Act, 1978

The words, figures, and letter "but subject to the provisions of article 329A" eliminated from the Article 329 of the Constitution.

Article 329A of the Constitution was omitted

3.2 Legal Provisions

"My point is whether really it is necessary or desirable that all these elaborate details about the method of election, about the Election Commission, etc., are necessary to be included in the Constitution"[39], expressed by Shri H.V. Pataskar of Bombay, member of the Constituent Assembly. Further he added *"but to get an Act passed by the legislative section of the Constituent Assembly. I am told it is likely to meet in September next and it would not have mattered if an Act on the lines of the Canadian Election Act was passed by the Central Legislature. It is not desirable that it should be provided for in the Constitution which is for all time to come. We do not know what conditions may prevail after ten or twenty years. From what is happening in some parts of the country, it is not desirable that our Constitution should be burdened with all these details. I would therefore still appeal—probably it may be without much effect—that all these things and the subsequent provisions which are to follow could have more appropriately found a place in the Act to be passed by the Central Legislature."*[40]

According to the authority granted to it by Article 327 of the constitution "the preparation of electoral registers, the delimitation of seats" and any other related matters are all topics that may be regulated by the laws that can be made by the Parliament.

In order for Parliament to make use of the authority granted to it by Article 327, it has passed the Representation of the Peoples Acts of 1950 and 1951, as well as the Presidential and Vice Presidential Elections Act of 1952 and the Delamination Commission Act of 1952. Article 328 gives the legislatures of the states the same authority as the federal government. The state legislature has the authority to enact laws that pertain to all of the aforementioned issues that are mentioned in Article 327, provided that Parliament does not make any provisions in this regard.

[39] CAD, vol 8
[40] ibid

3.2.1 The Representation of the People Act, 1950

An "Act to regulate the allocation of seats in and the delineation of constituencies for the purpose of elections to the House of the People and the Legislatures of States; the eligibility requirements for voters at such elections; the creation of electoral rolls; the method of filling seats in the Council of States to be filled by representatives of Union territories; and matters related thereto."[41]

1. Part I: Preliminary
2. Part II: Allocation Of Seats And Delimitation Of Constituencies
3. Part IIA: Officers
4. Part IIB: Electoral Rolls For Parliamentary Constituencies
5. Part III: Electoral Rolls For Assembly Constituencies
6. Part IV: Electoral Rolls For Council Constituencies
7. Part V: General
8. THE FIRST SCHEDULE: Allocation of Seats in the House of the People
9. THE SECOND SCHEDULE: Total number of Seats in the Legislative Assemblies
10. THE THIRD SCHEDULE: Allocation of Seats in the Legislative Councils
11. THE FOURTH SCHEDULE: Local authorities for purposes of elections to Legislative Councils
12. THE FIFTH SCHEDULE: Repealed by the Government of Union Territories Act, 1963

[41] Preamble, Representation of the People Act, 1950

13. THE SIXTH SCHEDULE: Repealed by the Representation of the People (Amendment) Act, 1956

14. THE SEVENTH SCHEDULE: Repealed by the Representation of the People (Amendment) Act, 1956

3.2.2 The Representation of the People Act, 1951

"An act to regulate the holding of elections for the Houses of Parliament and the House or Houses of the Legislature of each State, the requirements and exclusions for membership in those Houses, the use of corruption and other illegal activities during or in connection with such elections, and the resolution of questions and disagreements arising from or related to such elections."[42]

The provisions of the statute are as follows:

1. Part I: Preliminary
2. Part II: Qualification and Disqualifications
    - Chapter I: Qualifications for Membership of Parliament
    - Chapter II: Qualifications for Membership of State Legislatures
    - Chapter III: Disqualification for Membership of Parliament and State Legislatures
    - Chapter IV: Disqualification for Voting
3. Part III: Notification of General Elections
4. Part IV: Administrative Machinery for the Conduct of Elections
5. Part IVA: Registration of Political Parties
6. Part V: Conduct of Elections
    - Chapter I: Nomination of Candidates
    - Chapter II: Candidates and their Agent
    - Chapter III: General Procedure at Elections
    - Chapter IV: The Poll
    - Chapter V: Counting of Votes
    - Chapter VI: Multiple Elections
    - Chapter VII: Publications of Elections Results and Nominations
    - Chapter VIIA: Declaration of Assets and Liabilities
    - Chapter VIII: Election Expenses

[42] Preamble, "The Representation of People Act, 1951"

7. “Part VA: Free Supply of Certain Material to Candidates of Recognised Political Parties.”
8. Part VI: Disputes Regarding Elections
    - Chapter I: Interpretation
    - Chapter II: Presentation of Election Petitions to Election Commission
    - Chapter III: Trial of Election Petitions
    - Chapter IV: Withdrawal and Abatement of Election Petitions
    - Chapter IVA: Appeals
    - Chapter V: Costs and Security for Costs
9. Part VII: Corrupt Practices and Electoral Offenses
    - Chapter I: Corrupt Practices
    - Chapter II: Electoral Offenses
10. Part VIII: Disqualifications
    - Chapter I: Disqualification for Membership
    - Chapter II: Disqualification for Voting
    - Chapter III: Other Disqualifications
    - Chapter IV: Powers of Election Commission in connection with inquiries as to disqualification of Members
11. Part IX: Bye-Elections
12. Part X: Miscellaneous
13. Part XI: General

3.2.3 Presidential and Vice-Presidential Elections Act, 1952

1. Part I: Preliminary
2. Part II: Conduct of Presidential and Vice-Presidential Elections
3. Part III:Disputes Regarding Elections
4. Part IV: Miscellaneous
5. The Presidential and Vice-Presidential Election Rules, 1974

3.3.3 The Parliament (Prevention of Disqualification) Act, 1959

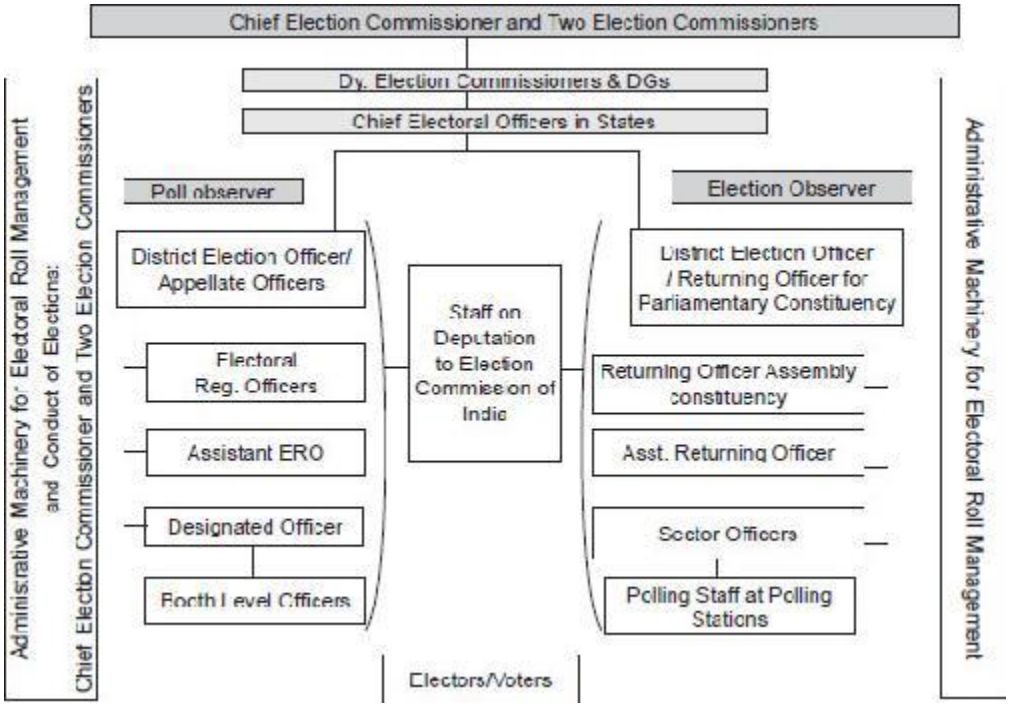
It is an Act to declare that the holders of certain profit-making positions within the Government are not ineligible to be elected to or serve as members of Parliament. It contains 5 sections and one Schedule that contains the list of organisations of which members cannot be a part of.

3.3.4 Delimitation Act, 2002

It is an Act to "provide for the readjustment of the allocation of seats in the House of the People to the States, the total number of seats in the Legislative Assembly of each State, the division of each State and each Union territory having a Legislative Assembly into territorial constituencies for elections to the House of the People and Legislative Assemblies of the States and Union territories and for matters connected therewith."[43]

[43] Delimitation Act, 2002

CHAPTER 4: ANATOMY OF THE ELECTION COMMISSION IN INDIA: A LEGAL ANALYSIS



Source: Election Commission Presentation in Indian International Institute of Democracy and Election Management.

The Supreme Court made the following statement on the purpose and scope of Chapter XV (Articles 324 to 329): The Supreme Court made the following statement on the purpose and scope of Chapter XV (Articles 324 to 329): *"Part XV of the Constitution is truly a code in itself, providing the complete framework for establishing relevant laws and putting up sufficient apparatus for the conduct of elections. Before an election machinery can be brought into operation, there are three requisites which require to be attended to , namely, (1) there should be a set of laws and rules making provisions with respect to all matters relating to or in connection with election and it should be decided as to how these laws and rules are to made; (2) there should be an executive charged with the duty of securing due conduct of election; and (3) there should be a judicial tribunal to deal with disputes arising out of or in connection with election. Articles 327 and 328 deal with the first of these requisites, Art. 324 with second and Art. 329 with third requisite. The other two articles in Part XV, viz., Arts 325 and 326 deal with two matters of principle to which Constitution farmers have attached much importance. They are - (1) in the electoral rolls on grounds of religion, race, caste, sex or any of them, and (2) adult suffrage."*[44]

Election Commission: Article 324 provides for the creation of an independent body which is entrusted with the following exclusive powers;

1. "Superintendence, direction and control of the preparation of the electoral rolls for all elections to Parliament and to the Legislature of every State; and of elections to the offices of President and Vice-President."
2. "Conduct of all the above-mentioned elections."
3. "Advising the President on the question of the *disqualification* of any member of Parliament - Article 103(2) or a Governor on the question of the disqualification of a member of the State Legislature - Article 192(2)."

It is to be noted that, as ruled in T.N. Seshan, Chief Election Commissioner v. Union of India[45], "Election Commission's functions are administrative as well as quasi-judicial".

[44] AIR 1952 SC 64

[45] (1995) 4 SCC 611

Therefore, all of the electoral machinery for the Union as well as for the States is given to a centralised body that is known as the Election Commission. This body is responsible for conducting elections. Only the Commission would have the authority to provide orders to returning officers, polling officers, and anyone involved in the production and revision of electoral rolls. This would ensure that no Indian citizen would be treated unfairly by any of India's local governments.

Regional Commissioners will help the commission.. However, they will not be working under the control of the state governments but rather under the control of the Election Commission, and they will not be liable to be removed except on the recommendation of the Chief Election Commissioner, as is provided for in Proviso (2) of Article 324. This provision is included in the article because it is provided for in the provision that follows Proviso (2) of Article 324 (5).

For the purpose of this research, the following topics are being considered:

1. The scope of jurisdiction of the Election Commission
2. The composition of the Election Commission: On Appointment, Eligibility and Removal

4.1 The Scope of Jurisdiction of the Election Commission

A division bench of the Supreme Court of India in 1985, comprising Justice E. Venkataramiah and Justice R. Mishra, while dealing with a writ petition filed under Article 32 of the Constitution challenging the constitutional validity of the Election Symbols Reservation and Allotment) Order, 1968, which was issued by the Election Commission. The Court made the following observation in para 16 that, *"the power of the Commission under Article 324(1) of the Constitution which is plenary in character can encompass all such provisions, Article 324 of the Constitution operates in areas left unoccupied by legislation and the words 'superintendence', 'direction' and 'control' as well as 'conduct of all elections' are the broadest terms which would include the power to make all such provisions."*[46] which means that the Election Commission has the authority to take action in situations that aren't covered by the law because of the phrase "superintendence, direction, and control."

Whether a recount should be conducted at a polling place was at issue in the Moti Lal v. Mangla[47] case. The Supreme Court ruled in the case of Rajagopalarao v. Chief Election Commissioner[48] that the Election Commissioner has the authority to order a special revision of the electoral roll for any constituency or to correct an electoral roll by deleting areas that do not belong to a particular constituency. The Election Commission may act in accordance with article 342, which serves as a "reservoir of power", to carry out its stated mandate of ensuring a free and fair election, in the absence of explicit legal authority.[49] In a concurring judgement by Justice P.K. Goswami in connection to article 324, he observed

"Since the conduct of all elections to the various legislative bodies and to the offices of the President and the Vice-President is vested under Article 324 (1) in the Election Commission, the framers of the Constitution took care to leave scope for exercise of residuary power by the Commission, in its own right, as a creature of the Constitution, in the infinite variety of situations that may emerge from time to time in such a large

[46] AIR 1986 SC 111
[47] AIR 1958 All 794 (799)
[48] AIR 1968 AP 218 (222)
[49] Durga Das Basu *Commentary on the Constitution of India* 10711

democracy as ours. Every contingency could not be foreseen, or anticipated with precision. That is why there is no hedging in Article 324. The Commission may be required to cope with some situations which may not be provided for in the enacted laws and the rules."[50] In that case, the Court directed the Election Commission to issue directions to candidates to file an affidavit detailing information about themselves under certain specific heads with the intent to stop the criminalisation of politics. But "when Parliament or the State Legislature has made a valid law relating to or in connection with the election, the Commission shall act in conformity with, not in violation of, such provision."[51] The court has also held that "the power conferred on the election commission by article 324 has to be exercised not mindlessly nor mala fide nor with partiality, but in keeping with the guidance of the Rule of Law and not stultifying the presidential notification nor existing legislation."[52]

In A.P.H.L. Conference Shillong v. W.A.Sangama, the court observed that the Election Commission is primarily an administrative body, but it also exercises some adjudicatory functions. It has power under Article 324, read with the relevant provisions of the Election Symbols (Reservation and Allotment) Order, 1968, to adjudicate disputes regarding the recognition of political parties or rival claims to a particular symbol for the purpose of an election. In adjudicating such disputes, the Election Commission is conferred under law with a fraction of the judicial power of the State, and in such cases, the Commission has to act judicially.[53]

However, Parliament is empowered to enact legislation as regards to the conduct of elections nonetheless the responsibility of conducting elections is sole responsibility of the Election Commission. The Election Commission's plenary powers cannot be taken away by legislation enacted by parliament. If Parliament passes such legislation, it will be in

[50] 1978 AIR 851
[51] AIR 2006 SC 3127
[52] (1993) 4 SCC 1
[53] AIR 1977 SC 2155

violation of Parliamentary law. If the Parliament passes such legislation, it will be in violation of Article 324. The Election Commission is responsible for holding periodic, free and fair elections as part of the constitution's core framework. Fixing election dates for the House of the People or the Legislative Assembly is the exclusive responsibility of the Election Commission, especially when this function is not subject to any statute passed by Parliament.[54] Moreover, the Election Commission is entrusted with the power to review its own decision as to the expediency of holding the poll on a particular date, as observed in the cases of Mohd. Yunus Saleem v. Shiv Kumar Sastri[55] and Election Commission v. State of Haryana.[56]

The Commission has the power under this article to issue directives requiring political parties to provide to the Election Commission, for its review, details of expenditure expended by them or agents authorised by the parties in connection with the election of their respective candidates. It was noticed that the Constitution has provided broad provisions under Article 324 to deal with unexpected events, and they function in areas where the law does not exist. The Court found that election purity is vital to democracy and that the Commission may inquire candidates about expenditures paid by candidates and political parties for this reason, in order to limit money power in elections.[57]

The Commission has the power to direct the candidate to file an affidavit at the time of filing his nomination with full particulars about himself since it is an elementary right of a citizen to know before he votes about the details of the candidate, which shall include the criminal background, educational qualifications, assets comprising both movable and immovable, bank balance of himself and that of his/her spouse and that of dependants, liabilities pertaining to any pending criminal case etc. Such a right to know by voters is a fundamental right under Article 19(1)(a) of free speech and expression. The Supreme Court

[54] (2002) 8 SCC 237
[55] AIR 1974 SC 1218
[56] AIR 1984 SC 1406
[57] AIR 1996 SC 3081

directed the Election Commission to issue directions calling for information from the candidates.[58]

Subsequent to the above decision, the parliament amended the Representation of People (Third Amendment) Act, 2002. But this amendment did not satisfy the requirements as directed by the Supreme Court in the Association for Democratic Reforms case. As per the amendment, a candidate is not bound to disclose the cases in which he or she was acquitted and discharged of criminal offences, his or her assets and liabilities and his/her qualifications. The said amendment was again challenged before the Supreme Court. It was contended that the right to know the antecedents by passing such legislation is covered under Article 19(2), which is a reasonable restriction. The Court did not accept the contention holding that the decision in the Association for Democratic Reforms case cannot be nullified by legislation. Hence, the amendment was declared invalid. The Supreme Court held that Parliament has omitted to give effect to the principle which was rightly accepted in the earlier case as a step in aid to promoting integrity in public life.[59] In view of the above decision, the Election Commission's power to call for information about a candidate's particulars before he files his nomination stands.

The Election Commission can order a re-poll for the whole constituency, which can be exercised under the article 324 provided the person acts *bona fide* as necessary to support the free decision of the electorate and the cancellation of the prior poll since it was unable to accomplish the desired objective. It was held that this article had to be "read in the light of the Constitutional Scheme and the Representation of the People Act of 1950 and 1951". It was observed that Article 324 is "broad enough to supplement the powers under the Acts". But, before directing repoll, principles of natural justice must be followed.[60] While exercising the powers of superintendence, direction, and control, the Election Commission

[58] AIR 2002 SC 2112
[59] AIR 2003 SC 2363
[60] AIR 1978 SC 851

can postpone an election, taking into consideration the disturbed conditions prevailing in the State.[61]

The jurisdiction of Courts would not extend to issuing directions to the Election Commission for the conduct of particular polls on particular dates independently of the perceptions by the Commission as to their feasibility and practicality, consistent with what may be needed to ensure purity of the electoral process. "The fixing of dates of polling is a matter for the informed judgement of the Election Commission consistent with its perception of the law and order situation and the ensurement of the requisite precautionary and remedial measures."[62]

The Election Commission also has the function of advising the President or the Governor on the question of disqualifications of any member of parliament provided under article 103(2) for members of Parliament and under 192(2) for the State Legislature. While deciding the question of disqualification of a member of the House of Parliament or of a State Legislature. The Election Commission functions in a quasi-judicial capacity, and it has to follow the principles of natural justice and without bias.[63] Similarly, the Commission acts with quasi-judicial authority, while cancelling a symbol allotted to a political party, as ruled in Uma Ballav Rath v. Maheshwar Mohanty[64] and in the question of supervising the disqualification of a sitting member, as in the case of Election Commission of India v. Dr Subramaniam Swamy.[65] It acts in a similar fashion while giving recognition to political parties and rival claims to a particular symbol for the purpose of elections.[66]

[61] (1993) 4 SCC 175
[62] 1995 (Supp-3) SCC 643
[63] AIR 1996 SC 1810
[64] AIR 1999 SC 1322
[65] AIR 1996 SC 1810
[66] AIR 1977 SC 1810

The words “control”, “conduct of elections", and “superintendence” are the broadest terms which would include the power to make all provisions which are necessary for the smooth conduct of elections,[67] subject to any law made by parliament under articles 327 and 328.[68]

In exercise of the foregoing power, read with the Conduct of Election rules, 1961, made by the central government in consultation with the Election Commission, under section 169 of the Representation of the People Act, 1951, the election commission is competent to make the Symbols Order, and to decide disputes relating to the allotment of symbols to political parties[69] and to de-recognise such parties or to de-recognise them for such purposes.[70] In this context, he has the power to determine the status of rival groups within the same party, and the relevant rule which gives him this power is intra vires. He is entitled to determine the effect of a merger or separation of parties for this purpose or to decide disputes amongst splinter groups within a political party.

The power to issue directions, including the Symbols Order, flows independently from Article 324 and is not dependent on legislation by Parliament.[71] In reality, the power conferred upon the Election Commission, by Article 324(1), is in the nature of a residuary power to deal with a situation which is not dealt with by a law or under an Act made by Parliament.[72]

But the directions issued by the Election Commission to the Electoral Officers, though binding to the latter, cannot create any legal right in favour of any individual, so that an election cannot be invalidated on the ground of violation of any such direction. The reason is that the election commission can act *ex debito justitiae* , to take steps over and above those which it is under an obligation to take under the law.[73]

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[67] AIR 1988 SC 851
[68] AIR 1986 SC 111
[69] AIR 1972 SC 187
[70] AIR 1967 SC 898
[71] AIR 1982 SC 1559
[72] AIR 1972 SC 187
[73] AIR 1985 SC 1233

4.2 The Composition of the Election Commission

Appointment, Eligibility, and Removal of Election Commissioners

Part XV, which deals with elections (Article 324-329) does not explicitly provide for any provision for the procedure of appointment of election commissioners. The Constitution, as well as the election legislation and rules, is silent about the eligibility criteria of persons to be appointed.

Article 324 (2) of the Constitution provides that the "Election Commission consists of the Chief Election Commissioner and such other number of other Election Commissioners as the President may, from time to time, determine". Therefore, the Election Commission might include a single member or many members. Initially, the Commission consisted of a single member, with the Chief Election Commissioner serving as its only head. This remained until October 16, 1989, when, for the first time, the President nominated two Election Commissioners, S.S. Dhanoa and V.S. Seigell, in addition to R.V.S. Peri Sastri, who served as the Chief Election Commissioner. This arrangement did not last long, since on January 1, 1990, another presidential order eliminated the two offices of Election Commissioners, and the Commission was once again turned into a body with a single member.

S.S. Dhanoa challenged this presidential order before the Supreme Court primarily on the grounds that he was appointed for a five-year term in accordance with the service rules established by the President under Article 324 (5) then governing the office of Election Commissioners, and that his term could not be shortened by the presidential order. The Supreme Court, however, did not agree with this argument and upheld the presidential order, stating that the "creation and abolition of posts was the executive's prerogative and that Article 324 (2) gave the President the authority to fix and appoint as many Election Commissioners as he deemed necessary at any given time."[74] The apex court further

[74] 1991 AIR 1745

observed that the President's power to create posts was unrestricted, as was his power to reduce or eliminate them, and that with the abolition of posts, the service rules pertaining to those posts also ceased to apply, so the petitioner could not legitimately claim to continue for the full tenure. In addition, it was noted that the roles of the two Commissioners were not specified. The President of India, taking his lead from these remarks made by the Supreme Court, once again transformed the Election Commission into a multi-member body with an effective date of 1991. This statute established a hierarchy in which the Chief Electoral Commissioner (CEC) is elevated above Election Commissioners in terms of rank, retirement, and perks. The Commission expanded to three members on October 1, 1993, when M.S. Gill and G.V.G. Krishnamurty joined T.N. Seshan, the then-chief election commissioner. Since then, a three-member Commission has been the norm.

According to Article 324's clause (5), the Chief Election Commissioner's and other Election Commissioners' terms of service and terms of office must be governed by law. The Chief Election Commissioner and Other Election Commissioners (Conditions of Service) Act of 1991 went into force on January 25, 1991. Under this Act, the CEC was given a tenure of six years or upto the age of sixty-five, whichever came first, and his salary, allowances, and other perks were to be equivalent to those of a Judge of the Supreme Court; whereas the Election Commissioners were given a tenure of six years but upto the age of sixty-two, and their salaries, allowances, and other perks were to be equivalent to those of a judge of a High Court.

However, with the amendment of the 1991 Act in 1993 and enactment of The Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991, the positions of Chief Election Commissioner and other Election Commissioner were made at par in terms of salary and tenure of service. Yet, under the provision of removal, the Chief Election Commissioner enjoys an edge over his/her peer commissioners by virtue of Proviso (1) of Article 324 (5). In terms of salary, it is provided in Section 3 of The Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991, read as:

"There shall be paid to the Chief Election Commissioner and other Election Commissioners a salary which is equal to the salary of a Judge of the Supreme Court:

Provided that if a person who, immediately before the date of assuming office as the Chief Election Commissioner or, as the case maybe, an Election Commissioner, was in receipt of, or, being eligible so to do, had election to draw, a pension (other than a disability or wound pension) in respect of any previous service under the Government of the Union or under the Government of a State, his salary in respect of service as the Chief Election Commissioner or, as the case may be, an Election Commissioner shall be reduced—

(a) by the amount of that pension; and
(b) if he had, before assuming office, received, in lieu of a portion of the pension due to him in respect of such previous service, the commuted value thereof, by the amount of that portion of the pension."

And in terms of tenure, as provided in Section 4 of The Election Commission (Conditions of Service of Election Commissioners And Transaction Of Business) Act, 1991, read as:

"Term of office-

The Chief Election Commissioner or an Election Commissioner shall hold office for a term of six years from the date on which he assumes his office:

Provided that where the Chief Election Commissioner or an Election Commissioner attains the age of sixty-five years before the expiry of the said term of six years, he shall vacate his office on the date on which he attains the said age:] Provided further that the Chief Election Commissioner or an Election Commissioner may, at any time, by writing under his hand addressed to the President, resign his office.

Explanation. —For the purpose of this section, the term of six years in respect of the Chief Election Commissioner or an Election Commissioner holding office immediately before the commencement of this Act, shall be computed from the date on which he had assumed office."

The way in which Election Commissioners are appointed is crucial to the institution's impartiality and impression of neutrality. Therefore, the majority of nations appoint their commissioners via a system of collegium or other sophisticated procedures. In India, Election Commissioners are selected by the ruling government without any kind of consultation. The Law Minister submits the file to the Prime Minister, who then makes a recommendation to the President. After receiving his consent, the ministry of justice issues the notice. It is a wonder that the appointed incumbents have earned the nation's confidence. There have been several suggestions that the opposition should be consulted during the selection of the CEC and Election Commissioners so that their appointments are more widely accepted. Several collegiums, including the leader of the opposition in Parliament, the Chief Justice of India, and others, are proposed for this purpose. As the former Chief Election Commissioner, S.Y. Quraishi explains in his book, the time has arrived to properly consider these proposals. "My advice would be to include the outgoing CEC too in this process, as he understands the job requirement the best." [75]

T.N. Seshan, who was serving as Chief Election Commissioner at the time, brought a challenge to the Supreme Court regarding the conditions of service that had been implemented in 1993 for both the Chief Election Commissioner and the Election Commissioners. This challenge was, however, rejected by the court on July 14, 1995.

[75] S.Y. Quraishi, *An Undocumented Wonder: The Making of the Great Indian Election* (2014)

Election Reforms Committee on the appointment of Election Commissioners

The government of India established a number of committees to look at various election reform options. The Election Commission has undertaken a number of innovative new measures in an effort to purify the voting process. Some selected committees are elaborated as follows:

1975 - The Tarkunde Committee

In 1974, a committee headed by Justice V.M. Tarkunde was constituted by Jayprakash Narayan on behalf of Citizens For Democracy (CFD) to research and report on a plan for election changes. The committee, also known as the Tarkunde committee or J.P. Committee, was composed of Justice V.M. Tarkunde and M.R. Masai. The Committee noted:

> "As in the case of Judiciary, the Election Commission must not only be independent in theory but also manifestly appear to be so in the exercise of its powers of organising and conducting elections. In the recent years, an impression is gaining ground that the Election Commission is becoming less and less independent of the Executive than in the earlier years of Independence, because the choice of the Chief Election Commissioner has not always been based on criteria, which would command the confidence of all sections of public opinion. The practice of making it a berth for retiring Government officials has, perhaps, been responsible for the feeling that the incumbent so benefited will be beholden to the Government for his office."[76]

[76] R.P. Bhalla, *Elections in India Legacy and Vision,* (New Delhi,1998) 2

The Committee recommended that members of the "Election Commission should be appointed by the President on the advice of a committee, consisting of the Prime Minister, the leader of the Opposition (or a Member of Parliament selected by the Opposition) in Lok Sabha, and the Chief Justice of India"[77]

1990- Dinesh Goswami Committee

On January 9, 1990, Prime Minister Mr. V.P. Singh formed the Committee on Electoral reforms under the leadership of the Law Minister, Mr. Dinesh Goswami. The Committee recommended in Para 1.2 the mode of appointment of the Chief Election Commissioner and two Election Commissioners. It recommended that the appointment of the Chief Election Commissioner and other two Election Commissioners "should be made by the President in consultation with the Chief Justice of India and the Leader of the Opposition (and in case no Leader of the opposition is available, the consultation should be with the leader of the largest opposition group in the Lok Sabha). It further suggested that the "consultation process should have a statutory backing."[78]

The Committee also recommends in Para 2.4 that, after the conclusion of the term of office, "the Chief Election Commissioner and the Election Commissioners should be made ineligible not only for any appointment under the Government but also to any office, including the post of Governor, the appointment to which is made by the President."[79]

[77] A.K. Ranjan, *Electoral Reforms* (Madurai, 2004) 4
[78] Goswami Committee Report on Election Reforms (1990) 9
[79] ibid 10

It further recommended the setting up of an independent Secretariat. As Para. 3 of the report reads:

> "The Committee agrees that in regard to the set up of the secretariat of the Commission, provisions on the lines of Article 98(2) of the Constitution relating to Lok Sabha Secretariat should be made and that till such provision is made, a law of Parliament should be enacted."[80]

A group of 24 ideas for election changes has been identified by the United Front Government. The majority of these initiatives were Dinesh Goswami Committee recommendations that had not yet been carried out. Additionally, the government convened four meetings with political parties between August 1996 and July 1997 where they addressed such recommendations. Separately, the United Front Government was exploring several ideas to strengthen Section 8 of the 1951 Act, which was intended to prevent criminals from running for office. However, the government was unable to make a definitive decision about any of those recommendations. [81]

2004- Election Commission of India and the Proposed Electoral Reforms

Again, in this particular recommendation report, during the tenure of T.S. Krishna Murthy, Chief Election Commissioner of India. In the foreword to the 2004 recommendations, the Chief Election Commissioner noted :

[80] Goswami Committee Report on Electoral Reforms (1990) 11

[81] R. Ramesh "*Historical Perspectives of the Electoral Reforms in India"* , Indian History Congress (2011, Vol. 72, Part II) 1325-1336

> "The electoral reform proposals have been divided into two parts. In the first part, we have set out certain urgent proposals for electoral reforms in areas that have not been taken up in the past by the Commission and which have arisen due to implementation of certain laws enacted or based on certain directions given by the Supreme Court and the High Courts. In the second part, the Commission has reiterated some of the pending proposals that remain unresolved and which, in no way, are less important than the proposals in the first part." - July, 30, 2004, T.S. Krishna Murthy

Thus, in the first part, it included "Composition of Election Commission and Constitutional Protection of all Members of the Commission and Independent Secretariat for the Commission". The Election Commission recommended that Clause (5) of Article 324 of the Constitution, among other things, states that the Chief Election Commissioner shall not be removed from his office except in like manner and on like grounds as a Judge of the Supreme Court. This ensures the independence of the Election Commission and protects it from external influences and pressures. The Election Commissioners are not given the same level of protection under Clause (5) of Article 324, which only states that the Chief Election Commissioner must suggest any removal from office. According to the Election Commission, the clause is insufficient and needs to be amended to provide Election Commissioners the same protection and safeguards against removal from office as are available to the Chief Election Commissioner.[82]

[82] Election Commission of India Proposed Electoral Reforms (2004) 14 https://prsindia.org/files/bills_acts/bills_parliament/2008/bill200_20081202200_Election_Commission_Proposed_Electoral_Reforms.pdf (last accessed 5, July,2022)

2016- Election Commission of India and the Proposed Electoral Reforms

In the tenure of Dr. Nasim Zaidi, Chief Election Commissioner in December, 2016 he forewarned that - "However, there are certain challenges and issues that the electoral system has faced over the years. Trust and confidence of citizens in the electoral system can be affected if these challenges remain unattended. Thus, keeping in view these difficulties the Election Commission of India after conducting extensive study and research recommends certain changes that need to be taken up expeditiously to amend certain provisions of law. Taking forward a step in this direction, the Commission have made several electoral proposals to remove the glaring lacunae in the law. Many of these proposals that have been already put forth by the Commission have remained unresolved. Some of the proposals pertain to areas which have not been taken up previously by the Commission but arose due to the implementation of certain laws or on the directions issued by the Supreme Court and the High Courts. The Commission considers it necessary to put all proposals on electoral reforms in the public domain for the benefit of the people."[83]

4.2.1 Latest Trends

In 2015, a divisional bench of the Supreme Court, Chief Justice J S Khehar and Justice D Y Chandrachud while hearing a plea (Writ Petition (C) No. 104 of 2015) led by one Anoop Baranwal and argued by noted lawyer Prashant Bhushan seeking a direction to the Centre to constitute a "neutral and independent selection committee" to recommend names for the post of Chief Election Commissioner and Election Commissioners. Rayer before the bench was to

i. Issue an appropriate writ, order or direction declaring the practice of appointment of Chief Election Commissioner and Election Commissioner solely by the executive as being violative of Articles 324(2) and 14 of the Constitution of India.

[83] Election Commission of India and the Proposed Electoral Reforms (2016)

ii. Direct the Respondent to implement an independent system for appointment of members of the Election Commission on the lines of recommendation of Law Commission in its 255th report of March 2015; Second Administrative Reform Commission in its fourth Report of January 2007; by the Dr. Dinesh Goswami Committee in its Report of May 1990; and by the Justice Tarkunde Committee in its Report of 1975.

The bench questioned the centre that if there is a formal law and panel to select CBI chief then why not for Chief Election Commissioner and Election Commissioners? The Court was not convinced with the reply of Solicitor General Ranjit Kumar for Centre opposed the courts intervention saying the practice in vogue of PM and President electing them was satisfactory. "The practice of appointing the member to the Election Commission without making law for a fair, just and transparent process of selection by constituting an independent and neutral collegium/selection committee to recommend the name, is in violation of Article 14 and 324(2) of the Constitution of India and is in vogue continuously since adoption of the Constitution," the plea said.

In 2018 this particular issue was referred to a larger constitutional bench. The case is still pending.

CHAPTER 5: ELECTORAL CORRUPT PRACTICES LAW AND PROCEDURES: CRITICAL ANALYSIS

The Representation of the People Act, 1951 in part VII, “Corrupt Practices and Electoral Offences", was substituted by section 65 of the amending Act of 1956, which substituted the title form “Corrupt and Illegal Practices and Electoral Offences”. Thus, the act defines acts which are to constitute electoral offences.

Electoral corrupt practices are categorised into the following:

1. Bribery
2. Undue Influence
3. Religious and Communal Appeals
4. Promoting Enmity and Hatred
5. Publication of False Statements
6. Expenditure Exceeding the Prescribed Limit
7. Procuring the Assistance of Government Servants

5.1 Electoral Corrupt Practices Law

5.1.1 Bribery

The corrupting impact of money on elections impedes the democratic process. This is due to the fact that excessive spending of money, on the whole, has an effect on the final outcome. One unfair way to spend money on an election is to give money as a reward for voting a certain way, running or not running as a candidate, pulling or not pulling a nomination, etc. Paying influential individuals to take a particular position in an election is another improper use of funds.[84] Huge amounts may be spent for refreshment and entertainment, and paid canvassers may also be engaged. "No longer do people volunteer to campaign. They have to be paid in hard cash for taking out processions and shouting slogans."[85] Another item that requires significant spending is the use of vehicles for other purposes as well as for free transportation for voters.

The Representation of the People Act, 1951, prohibits bribery and makes it a corrupt practice. In the context of elections, bribery is "an offence punishable" under Section 171B of the Indian Penal Code. It has got a wider meaning under Section 123(1) of the Representation of the People Act, 1951.

"Bribery", that is to say,

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing —

(a) a person to stand or not to stand as, or to withdraw or not to withdraw] from being a candidate at an election, or
(b) an elector to vote or refrain from voting at an election, or as a reward to-

[84] K.C. Sunny, *Corrupt Practices in Election Law*, (2002)
[85] "*After the Vote*" Hindustan Times, December 21, 1984

(i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or

(ii) an elector for having voted or refrained from voting ;

(B) “the receipt of, or agreement to receive, any gratification, whether as a motive or a reward—

(a) by a person for standing or not standing as, or for withdrawing or not withdrawing from being, a candidate; or

(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw his candidature."

In the explanation it reads: — For the purposes of this clause, the term “gratification” is not restricted to pecuniary gratifications or gratifications estimable in money, and it includes all forms of entertainment and all forms of employment for reward, but it does not include the payment of any expenses bona fide incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in Section 78

5.1.2 Undue Influence

In a participatory democracy, every man, however low his position in society may be, should be able to participate in the political process. If an ordinary elector is not in a position to make his own free choice, the elections will never reflect the true popular will. Definitely, the electors should be aware of the political and social issues involved in the election; the individual pros and cons of the candidates; and the policies and programmes of the political parties. The election campaign ought to be monitored by law in such a direction. The idea is to equip the electors with the power to make a free choice, analysing the political situation and the calibre of candidates. However, a candidate may attempt to exert influence on the elector in such a way as to prevent him from making a free choice. The possibility of such influence is greater in the case of socially and economically backward classes of electors, since they are more susceptible to different kinds of pressures.

Section 123(2) of the 1951 Act read as:

> Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right:
>
> Provided that—
>
> (a) without prejudice to the generality of the provisions of this clause, any such person as is referred to therein who
>
> (i)threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

An influence may amount to undue influence if there is "any direct or indirect interference or an attempt to interfere with the free exercise of the electoral right of a person"[86]. Sub-clause (a) deals with specific instances of undue influence and sub-clause (b) considers exceptional situations.

Fraudulent Device:

Though the term "fraudulent device" is left out by the legislature, the judicial attitude is to treat such actions as undue influence.

[86] Section 123(2), Representation of People Act, 1951

5.1.3 Religious and Communal Appeals

Appeal on the ground of religion, race, caste, community, and the use of or appeal to national symbols constitutes corrupt practice. The relevant provision of the Act reads thus:

Section 123(3) - " The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate".

For analytical purposes, appeals on the grounds of religion and caste are taken together, and appeals to religious or national symbols are dealt with separately.

The provision intends to remove religious and caste factors from the election process. In the English law, this type of corrupt practice is not known. But the peculiar situation that exists in India has compelled the lawmakers to enact such a provision. "The true spirit of the provision may be understood only in the backdrop of the influence of religion in the political behaviour of mankind, and especially the role of caste in Indian politics.

In primitive times, religion was the most important factor in shaping personal development and structuring the social life of mankind. Some religions prescribe even the rules of human conduct. So it is natural that, since ancient times, religions have played a dominant role in the political process as well. The modern theory is that religion has only a limited role, probably related to the other world, and it is an accepted fact that religion should be kept apart from politics.
M.H. Beg J. emphasised this view thus:

> "Primitive man does practically nothing without making it wear a religious garb because his understanding of the physical world, of human nature, and of social needs and realities is limited. He surrounds customary modes of action with an aura of superstitious reverence. He is fearful of departures from these lest he is visited by Divine wrath. Modern man, with his greater range of scientific knowledge and better understanding of his own needs as well as of the nature of the Universe, attempts to confine religion to its proper sphere that where he reaches a satisfying relationship between himself and the Divinity he believes in so as to get an inner strength and a solace which enables him to overcome psychological crises or fears when confronted with disturbing or disrupting events, such as a death, or their prospects. He does permit his religion, which should be essentially his individual affair, to invade what are properly the spheres of law, politics, ethics, aesthetics, economics, and technology, even where its administration is institutionalised and it operates as a social force."[87]

However, in the modern secular state, the role of religion is very limited, especially in the political affairs of the state. In a secular state no state religion exists, and the individuals are permitted to profess, practise and propagate the religion of their choice subject to certain limitations. The religion of a person has no political significance to the possession of political or civil rights, or the capacity to hold any political office. Hence it is legitimate to prohibit a candidate at an election to tell electors that he is better qualified or that his rivals are unfit to act as their representatives on the ground of their religion.

The purpose is to avoid religious issues and to sideline religious standards in the matter of determining people's representatives to democratic institutions. In addition to religion, caste also plays a major role in the Indian social sphere. A rigid caste system has existed for centuries. Even now to a certain extent, caste is a criterion in determining social status and prestige. But the national movement paved the way for attempts at eradicating this social evil. The Constitution also proclaims the concept of egalitarian society and enjoins

[87] AIR 1975 SC 1788

efforts for establishing a society with equal status and opportunity for the development of all sections of society irrespective of caste. However, the sad fact remains that the society is not yet free and the caste factor plays a major role in the election process. Attempts are made to solicit votes by arousing caste feelings. Section 123(3) of the Representation of the People Act, 2015 is intended to prevent election propaganda by appealing to religious or communal feelings of the electors. In Kultar Singh v. Mukhtiar Singh[88] while considering the object of the provision Chief Justice Gajendragadkar observed:

> If these considerations are allowed in any way in the election campaigns, they would vitiate the secular atmosphere of democratic life, and so, Section 123(3) wisely provides a check on this undesirable development by providing that an appeal to any of these factors made in furtherance of the candidature of any candi date as therein prescribed would constitute a corrupt practice and would render the election of the said candidate void.

Ambit of the provision dealing with the corrupt practice of appeal on the ground of religion, race, caste, etc. was considered by a nine-member constitutional Bench of the Supreme Court in S.R. *Bommai v. Union of India*[89]. Though the decision primarily related to the exercise of the powers of the President under Article 356 of the Constitution, the Court incidentally considered the legality of the election campaign practised by political parties by highlighting religious and communal issues. While challenging the validity of the presidential order dismissing the B.J.P.-led Governments in the States of Uttar Pradesh, Madhya Pradesh and Rajasthan on the ground of the failure of the governments in managing the problems that arose as a consequence of the demolition of the disputed structure known as the Babri Masjid-Ram Janmabhoomi, it was argued by Ram Jethmalani, the counsel for one of the petitioners, that Section 123(3) of the Representation of the People Act, 1951 did not prohibit an appeal to religion as such but only applied to the religion of the candidate. But Justice Sawant rejected the contention and observed:

[88] AIR 1965 SC 141
[89] AIR 1994 SC 1918

> Mr. Ram Jethmalani contended that what was prohibited by Section 123(3) was not an appeal to religion as such but an appeal to religion of the candidate and seeking vote in the name of the said religion. According to him, it did not prohibit the candidate from seeking vote in the name of a religion to which the candidate did not belong. With respect, we are unable to accept this contention. Reading subsections (3) and (3-A) of Section 123 together, it is clear that appealing to any religion or seeking votes in the name of any religion is prohibited by the two provisions. To read otherwise is to subvert the intent and purpose of the said provisions, what is more, assuming that the interpretation placed by the learned counsel is correct, it cannot control the content of secularism which is accepted by and is implicit in our Constitution.[90]

Agreeing with the above view, Justice K. Ramaswamy pointed out that the Court had laid the "law though in the context of the contesting candidates, that interpretation lends no licence to a political party to influence the electoral prospects on grounds of religion"[91]. According to him "in a secular democracy, like ours, mingling of religion with politics is unconstitutional, in other words, a flagrant breach of constitutional features of secular democracy". So religion and caste should not be introduced into politics by any political party, association or individual and it is imperative to prevent religious and caste pollution of politics.

Jeevan Reddy J. who considered the question taking into account the role of political parties in constitutional government, observed that "if a party or organisation seeks to fight the elections on the basis of a plank which has the proximate effect of eroding the secular philosophy of the Constitution it would certainly be guilty of following an unconstitutional course of action". The
learned Judge added that "under our Constitution, no party or organisation can simultaneously be

[90] AIR 1994 SC 1918
[91] Ibid

a political and a religious party".

The view appears to be correct. However, the decisions of the Supreme Court and High Courts in election petitions containing the allegations of corrupt practice of appeal on the ground of religion reveals that courts have taken a different approach in this regard. The following observation of the Supreme Court in *Dr. Ramesh Yeshwant Prabhoo v. Prabhakar K. Kunte*[92] reveals this fact.

> It cannot be doubted that a speech with a secular stance alleging discrimination against any particular religion and promising removal of the imbalance cannot be treated as an appeal on the ground of religion as its thrust is for promoting secularism. Instances given in the speech of discrimination against any religion causing the imbalance in the professed goal of secularism, the allegation being against any individual or any political party, cannot be called an appeal on the ground of religion forbidden by sub-section (3). In other words, the mention of religion as such in an election speech is not forbidden by sub-section (3) so long as it does not amount to an appeal to vote for a candidate on the ground of his religion or to refrain from voting for any other candidate on the ground of his religion. When it is said that politics and religion do not mix, it merely means that the religion of a candidate cannot be used for gaining political mileage by seeking votes on the ground of the candidate's religion or alienating the electorate against another candidate on the ground of the other candidate's religion. It also means that the State has no religion and the State practises the policy of neutrality in the matter of religion.

In Abhiram Singh v. C.D. Commachan[93] a three Judge Bench of the Supreme Court found conflict between the decisions in *Manohar Joshi v. Damodar Tatyala*[94] and *Ramesh Yeshwant Prabhoo v. Prabhakar Kashinath Kunte*.[95] According to it, in the former case, it

[92] (1996) 1 SCC 130
[93] (1996) 3 SCC 665
[94] 1991 2 SCC 342
[95] (1996) 1 SCC 130

was held that notice should contain the portions of the petition, written statement, oral and documentary evidence which are sought to be relied upon in support of the said charge or each of the said charges and the prima facie findings thereon, which is the minimum safeguard. In other words, a mini judgement was required to be rendered. The orders referred to in the special leave petitions in the Dr. Prabhoo case were deemed to have been overruled; and in the Prabhoo case, it was held that consent to the speeches of the collaborators by the returned candidate should be inferred and, accordingly, in paragraphs 53 and 57, the Court inferred such consent; but in other cases, it was held that consent is required to be proved. There appears to be some inconsistency in the above view. In any case as to when the case is held proved has not been specifically laid as law. This requires it to be authoritatively decided.Therefore, the Court referred the following question to a larger Bench of five Judges: when and under what circumstances, speeches of the leaders of the political party or the appeal of any other person with the consent by a candidate or his election agent to vote or refrain from voting on the ground of religion, race, caste or community or language, etc. or promotion or an attempt to promote feelings of enmity or hatred between different classes of citizens of India on the ground of religion, race, caste, community or language with the consent of the candidate or his election agent for the furtherance of the prospects of the election of the candidate or prejudicially affect the election of any candidate, constitutes corrupt practice under sub sections (3) or (3-A) of Section 123. Its content and scope also require to be clearly laid down authoritatively lest miscarriage of justice in interpretation of "corrupt practice" involved in every election petition would ensue.

As to the doubts of Constitutional Validity in *Subhash Desai v. Sharad J. Rao*[96] The Supreme Court examined the constitutional validity of the provision. On behalf of the appellant, it was contended that Sections 123(3) and 123(3-A) of the Representation of the People Act,1951 were violative of the right to freedom of religion guaranteed under Article 25 of the Constitution. Rejecting the contention, Justice N.P. Singh observed:

[96] AIR 1994 SC 2277

"When the framers of the Constitution guaranteed every citizen. right to freely profess, practice and propagate his religion, that right does not extend to creating hatred amongst two groups of persons practising different religions. Sub-section (3) and sub-secttion (3A) of Section 123, never purport to curb the right guaranteed by Article 25 of the Constitution. They only purport to curb the appeal on the ground of religion for creating or propagating religion for feeling of enmity or hatred between different classes of citizens of India during the election campaign by the candidate or his agent or any person with his consent for furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any other candidate. Sub-sections (3) and (3-A) of Section (123), in no way are in conflict with Article 25 of the Constitution; both can co-exist, Article 25 enables every citizen of India to profess, practice and propagate his religion, whereas sub-sections (3) and (3-A) of Section 123 purport to ensure that an election is not influenced by considerations for 21 religion, race, caste, community or language."[97]

In *Dr. Ramesh Yeshwant Prabhoo v. Prabhakar K. Kunte*[98] the Court rejected the contention that the provision was violative of the right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution pointing out that "sub-section (3) of Section 123 of the Representation of the People Act,1951 has the protection of clause (2) of Article 19 under the head 'decency' therein.

Different Forms of Religious and Communal Appeal

I. Seeking Votes in the Name of Caste

There are different modes of securing votes through appeal to caste or religion. The most ordinary form is to seek votes for a candidate from electors belonging to the same caste or religion. In such a situation the candidate ignores all other considerations and requests the electorate to cast their votes looking only at his

[97] AIR 1994 SC 2277
[98] (1996) 1 SCC 130

religion or caste. It is to be noted that this mode of campaign would thwart the very foundation of the secular democratic process. However, the mere mention of the caste of the candidate during the election campaign does not constitute corrupt practice.

In *Habib Bhai v. Pyarelal*[99], the candidate, Pyarelal, mentioned the name of his caste in a poster published in connection with the election campaign. The Court approved the practice and held that a person had a right to do so. The Court further pointed out that not a single person had come forward to say that the mere description of the caste in the pamphlet was understood by any ordinary person as an appeal on the ground of caste. The view is highly erroneous as the matter has to be decided by a Court not on the basis of the understanding or even the impact of the appeal on the election.

[99] AIR 1964 MP 62

5.1.4 Promoting Enmity and Hatred

An aggressive form of appeal on the ground of religion, race, caste, community, language, etc.

may promote enmity and hatred between different classes of citizens. However, there are so many other activities which may promote enmity and hatred between different classes. For example, if a candidate takes the initiative to demolish the place of worship of a religion for securing the consolidated support of a rival religious group, that action may result in a communal riot. In this case since there is no appeal but only an action, Section 123 (3) could not be used to treat it as a corrupt practice. Hence a separate provision is included in Section 123(3-A) of the Representation of the People Act,1951. It is to be said that the provision intends to prohibit an evil practice which is more harmful to society than other corrupt practices, since one of the requisites for social development is the existence of peaceful and harmonious relations among different sections of society. Communal tension and religious conflict may damage the peaceful co-ex istence of different classes of people. If the election campaign is used to promote enmity and hatred between different classes of citizens. The consequences will be far reaching.[100]

In *Dr. Ramesh Yeshwant Prabhoo v. Prabhakar K. Kunte*[101], the Supreme Court considered the

constitutional validity of the provision and observed that "sub-section (3-A) of Section 123 is

undoubtedly a provision made in the interests of public order or incitement to an offence". Hence

it is not violative of Article 19(1)(a) of the Constitution.

Difference Between Sections 123(3) and 123(3-A)

[100] 1978 KLT 38

[101] (1996) 1 SCC 130

Some forms of religious appeals prohibited under Section 123(3) would also fall within the purview of Section 123(3-A), since they may also be viewed as attempts to appeal to vote or refrain from voting, promote enmity and hatred among different communities. Promoting enmity and hatred between classes of citizens need not necessarily be in the form of any action, but even an attempt in that direction would constitute corrupt practice under Section 123(3-A).

Appeal to Refrain from Voting

According to the earlier view, the appeal to vote or refrain from voting on the ground that he is the member of a particular caste is sufficient to constitute the corrupt practice under Section 123(3-A) of the Act. *In Bhupendra Narain v. Ek. Narain Lat*[102] it was alleged that the returned candidate, a Yadav by caste, appealed to the voters belonging to his caste to refrain from voting for one of the respondents on the ground of his being a Brahmin and to vote for the returned candidate on the ground that he was a Yadav. It was also alleged that the unwholesome propaganda promoted enmity and hatred between the castes. The Tribunal set aside the election on both counts. On appeal, the Patna High Court upheld the decision.

Promoting Hatred Among the Members of the Same Caste

In Brahma Dutt v. Paripurnanand[103] the facts presented the issue of whether an attempt to create hatred among the members belonging to a single caste was covered by the section. The allegation was that an article published in a newspaper accused the ruling family (to which the second respondent belonged) of having always maltreated other Rajputs. The Court rejected the argument that the article created enmity and hatred between those Rajputs who belonged to the ruling class and other Rajputs on the ground of race or community. It was observed:

[102] AIR 1965 Pat 332
[103] AIR 1972 All 340

> "By stretching a point, it can be said that the article creates hatred between the ruling class and the Rajputs of the constituency, but I feel no doubt that the promotion of hatred is not either on the ground of race or community but hatred is due to the ill-treatment accorded by the ruling family to the Rajputs".

An Attack on Government Policy

The case of Z.B. Bukhari v. B.R. Mehra involved the nature of certain speeches of the appellant that the Congress Government had amended the religious law of Muslims and contained a threat that a battle would be fought in every street as the question of religion had arisen. He also referred to communal riots in which Muslims alone were alleged to have been killed. The Supreme Court held that the speech would amount to corrupt practice both under Section 123(3) and (3-A). It is to be noted that the speech did not contain any direct attack on any other community or religion. It was an attack on government policies on religious grounds. On such a view it is difficult to agree with the finding that the speech was an attempt to create hatred or enmity between different classes of citizens. Another portion of the speech was as follows:

> We have not signed any deed of slavery for the Government. When we feel that this Government is working against us, or rights are being crushed, our religious affairs are being interfered with, then we will rise openly against it. We would rise like a wall cemented with lead. Then who would bang with this wall, would get his head broken. No harm would be done to us.

The above statement was interpreted by the Court to mean that in the appellant's mind the Congress Government constituted Hindu Raj. Hence it was held that the party also promoted enmity and hatred between different classes of citizens on the

ground of religion. The decision, though it appears exceptional in the sense that there was no direct exhortation to promote enmity between the two major communities, is a decision in the right direction as it takes into account veiled or even indirect attempts. Still it is to be said that the learned Judges made no attempt to discuss the corrupt practices under Section 123(3) and (3-A) differently. This apparently robs the decision of its precedential value. The learned Judges ought to have considered the alleged statement under both sub-sections indicating the differences thereof.

Presenting an Organisation as the Enemy of a Religion

In Mohammed Koya v. Muthukoya" both candidates were from the Muslim community and they belonged to the rival groups of the Muslim League. The allegation was that the appellant exhorted the members of the Muslim community not to vote for the respondent on the ground that the party to which he belonged had an electoral alliance with the Jan Sangh, a party alleged to have murdered Muslims and set fire to mosques and educational institutions. The alleged speech contained the statement that the R.S.S. and Jan Sangh were thirsting for Muslim blood. Further, a cartoon was published in the Malayalam daily Chandrika, depicting the Jan Sangh as a dead pig. On one side of the pig the Marxist Party leader E.M.S. Namboodiripad was shown with the flesh of the pig in his right hand and a knife in the left. On the opposite side two Muslims were shown, identified as two prominent leaders of the Party to which the respondent belonged. An inscription at the bottom was to the effect that eating of pig was permissible for the hungry. The Kerala High Court ruled that the speech was adequate to incite animosity and hatred amongst persons of various classes. It was observed that “the consistent and systematic efforts taken were to condemn the R.S.S., Jan Sangh and

Marxists as the enemies of Muslims[104]. Regarding the effect of the cartoon, the Court pointed out that the reaction it would create in the minds of the people who happened to see it should be considered. According to the cartoon, Muslims should treat the Jan Sangh as a pig, and the testimony of witnesses clearly revealed how hateful that animal was to a Muslim. The Court, therefore, concluded the cartoon had the effect of promoting hatred between different classes of citizens and set aside the election. However, on appeal, the Supreme Court reversed the decision. Justice Fazal Ali held that the alleged speech would not come within the purview of Section 123(3-A). The learned Judge accepted the explanation given by the appellant regarding the words "thirsting for Muslim blood", that he had used them in a figurative sense. The reasoning of the learned Judge was as follows:

> In the first place, being the speaker the appellant was the best person to say what he meant by the speech he delivered. Secondly, the petitioner has not produced either the reporter who was present at the meeting when the appellant spoke nor has he called for the script of the speech the extract of which was given in the newspaper. It is very difficult to interpret a part of the speech completely torn from its context. Furthermore, the words 'thirst for Muslim blood' have been used for a particular purpose as explained by the appellant, because the words following, namely, he 'loudly de clared that the community should rest only after completely floor ing this front in the ring of the elections' clearly show that what the speaker meant was that as Jan Sangh and R.S.S. were against the Muslims they should muster all efforts to get them defeated and teach a lesson to the dissident Muslims who had joined the Jan Sangh Party. There does not appear to be any element of hatred or enmity in the extract of the speech of the appellant reported above. There is no exhortation by the speaker to the Muslims to attack the Jana Sangh or the R.S.S. or to do any kind of harm or violence.[105]

[104] 1978 KLT 38
[105] 1978 KLT 669

The reasoning of the Court is clearly erroneous. That part of the statement which contained the allegation that the Jana Sangh was responsible for killing Muslims and burning mosques was not at all adverted to by the learned Judge. There is no doubt that the statement is sufficient to promote hatred in the minds of Muslims against the Jan Sangh. The statement that a section of the people was thirsting for the blood of another section is not a matter to be lightly taken. If such statements would not generate enmity and hatred between two classes of citizens it is difficult to conceive what sort of statements would come within the purview of Section 123(3-A). The Court also erred in not examining the effect such a statement could have on the minds of ordinary men. Unfortunately, the test propounded by the Court was that the speaker was the best person to speak about the meaning of the offending speech. Thus, even the judicial standards and rules of interpretation were ignored by the Court. However, the Court held that the alleged cartoon was an attempt to promote enmity and hatred between Muslims and Hindus. The Court did not view it very seriously on the ground that there was no evidence to prove the consent of the candidate for its publication. Thus, Mohammed Koya represents the high watermark in this area. The reasoning that the speaker has used the words figuratively and not in the real literal sense is of no importance because election law prohibits use of such words to win an election. If the speaker had used the words in the literal sense the ordinary criminal law of the land would have taken care of such a situation.

In *Dr. Ramesh Yeshwant Prabhoo v. Prabhakar K. Kunt*[106] in an election speech Shiv Sena Leader Bal Thackeray made some derogatory reference to Muslims by calling them snakes and referring to them as “land"'. The Supreme Court ordered setting aside of the election on the ground of commission of corrupt practice under Section 123(3 A).

[106] (1996) 1 SCC 130

.Political Party as a Class of Citizens

Another important question is whether political parties having particular ideologies could be treated as classes of citizens as contemplated by Section 123(3-A). The issue assumes importance because certain parties pretend to represent certain religious communities. In *Ebrahim Sulaiman Sait v. M.C. Mohammed*[107] the speech contained allegations against the Jan Sangh and R.S.S. The counsel for the returned candidate contended that a political party could not be described as a "class"in the sense in which the expression "classes of citizens of India" has been used in Section 123(3-A). Justice A.C. Gupta did treat it as a material issue and observed:

> A speech, though its immediate target is a political party, may yet be such as to promote feelings of enmity or hatred between different classes of citizens. It is the likely effect of the speech on the voters that has to be considered.[108]

The Kerala High Court had declared the election void. On appeal, the Supreme Court reversed the decision and held that the allegations of killing Muslims and burning mosques against the Jan Sangh had a communal tone. But the Court was not prepared to view such statements seriously on the ground that formation of communal parties was not prohibited. According to the Court the speech only sought to criticise a wrong policy of the political party. The appeal was allowed. Whether the decision could be understood as implying that the Jan Sangh commits such a criminal offence is not clear. It seems that the Court was not prepared to go to such an extent. It was contended on behalf of the appellant that the allegations contained in the speech against the Jana Sangh were true and so it would not come within the purview of corrupt practice. The Court rejected the contention thus:

[107] AIR 1980 SC 354
[108] ibid

> In our opinion truth is not an answer to a charge of corrupt practice under Section 123(3-A), what is relevant is whether the speech promoted or sought to promote feelings of enmity or hatred as mentioned in that provision. If it is found that this was so, then it is immaterial whether what was said was based on facts or not[109]

False Allegations

Though the publication of false statements in relation to the personal character and conduct of a candidate is another corrupt practice under Section 123(4) of the Act the publication of false allegations intended to promote enmity and hatred between different classes of citizens would attract Section 123(3-A). *In Subhash Desai v. Sharad J. Rao*[110], the appellant was the returned candidate who contested under the Shiv Sena ticket from Goregaon constituency to the Maharashtra Legislative Assembly. The respondent who was the Janata Dal candidate in the election, challenged the validity of the election of the appellant inter alia on the ground of commission of corrupt practice under Sections 123(3) and 123(3-A) of the R.P. Act, 1951. It was alleged that in an election meeting conducted by the appellant, the leader of the Shiv Sena, Bal Thackeray, in the presence of the appellant said that he was "contesting the election in the name of Hindu religion". The petitioner contended that the statement of Bal Thackeray would come within the purview of appeal on the ground of religion. Another allegation contained in the election petition was that in the Marathi daily Samana, certain false statements of fact were published with the consent of the appellant, who was the printer and publisher of the daily. One of the allegations published in the daily was that a pandal erected for offering prayer by Hindu women at the cost of Rs. 50,000 was demolished at the instance of Socialists who were the members of the Janata Dal. Another allegation was that a ceremony conducted in a Hindu temple was disturbed by the respondent and his workers by shouting "Allah Ho Akbar" repeatedly and performing indecent

[109] AIR 1980 354
[110] AIR 1994 SC 2277

dances. According to the view taken by the Supreme Court" the above matters published in the daily would come within the purview of corrupt practices of publication of false statements under Section 123(4) and promoting enmity and hatred between different classes of citizens under Section 123(3-A).

Appeal to Vote for Teaching a Religious Group a Lesson

In *Dr. Das Rao Deshmukh v. Kamal Kishore Nanasaheb*[111] it was proved that a poster published by the returned candidate contained an appeal to vote "to teach the Muslims a lesson". Treating it as corrupt practice under Section 123(3) and (3-A) of the Act, the Supreme Court pointed out that "such appeal to teach a lesson was also likely to bring disharmony between two communities namely Hindus and Muslims and offend the secular structure of the community"

[111] (1995) 5 SCC 123

5.1.6 Publication of False Statements

Publication of statements is an extensively adopted mode of election campaign. The simple form of a statement is a mere appeal to the electors to vote in favour of a candidate. The election promises of the candidate, the policy and programmes of the political party, the qualification and merits of the candidate, etc. are communicated to the electors by way of publishing handbills, pamphlets, booklets, posters, etc. Advertisements through newspapers and periodicals, press statements and election speeches are the other means of communication. Quite often, statements issued at the instance of one candidate may contain severe criticism against the rival candidate. There may be occasions on which the criticism may exceed all permissible limits and may lead to the publication of false statements in relation to the conduct and behaviour of the rival candidate. Since this sort of behaviour may generate unfairconsequences, the Representation of the People Act treats certain kinds of false statements as corrupt practice. The provision reads thus:

(4) "The publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election."[112]

Constitutional Validity: In *Jamuna Prasad v. Lachhi Ram*[113] the Supreme Court had the occasion to examine the constitutional validity of the provision dealing with the corrupt practice of the publication of false statements. The contention of the appellant was that Sections 123(5) and 124(5) of the R.P. Act were ultra vires

[112] Manual on Election Law (2011) 107
[113] AIR 1954 SC 686

Article 19(1)(a) of the Constitution which guarantees freedom of speech and expression. Rejecting the contention, Bose J. observed:

> The right to stand as a candidate and contest an election is not a common law right. It is a special right created by the statute and can only be exercised on the conditions laid down by the statute. The Fundamental Rights Chapter has no bearing on a right like this created by statute. The appellants have no fundamental right to be elected members of Parliament. If they want that they must observe the rules. If they prefer to exercise their right of free speech outside these rules, the impugned sections do not stop them. We hold that these sections are 'intra vires'.

The view is absolutely correct. However, it is to be said that even if the right to contest an election is treated as a fundamental right, Section 123(4) is valid since it could be treated as a part of the law of defamation. The right guaranteed under Article 19(1)(a) is not an absolute right and it is subject to reasonable restrictions which may be imposed on any of the grounds mentioned in Article 19(2). The law governing defamation is a reasonable restriction enumerated in Article 19(2). The relevance of the defamation law is that it is the legal device for protecting the reputation of a person. The publication of false statements relating to personal character and conduct is the usual method adopted for lowering the reputation of a person. Hence a particular statement during an election may attract both the law governing corrupt practice and defamation. However, in light of the fact of corrupt practice, the fundamental question is whether the intention of the publication of the statement was to prejudice the prospects of election of a candidate. But in defamation the crucial question is whether the publisher intended to lower the reputation of a person among the right thinking people of society.

5.1.7 Procuring the Assistance of Government Servants

In a welfare State, the civil service plays a significant role since it carries on the important branch of governmental system-the administration. It has been rightly observed that "however adequately organised the 'political' side of the Government, however wise our political philosophy and high leadership and command, these would be of no effect without a body of officials expert in applying the accumulated supply of power and general wisdom to particular cases, and permanently and specially employed to do so[114].

Though the ultimate decision maker is the political leadership, the role played by the civil service in shaping a decision in connection with the administration is very crucial. Their rapport with political leadership, especially with the members of the ruling party may sometimes result in maladministration and corruption. There exist divergent views regarding the participation of civil servants in active politics. It has been observed:

> "There are different attitudes about the extent to which civil servants may engage in political activities. One view is that a civil servant has the same constitutional rights as other citizens and that It is therefore unconstitutional to attempt to limit these rights other than by the common law. The opposing view is that since civil servants are engaged in the unique function of national government, their integrity and loyalty to their political masters might be affected by active participation in political affairs, and public confidence in their impartiality could be shaken by too close an involvement in contentious matters. Broadly speaking, those countries that traditionally expect a civil servant to behave with complete impartiality and to conform to ministerial policy with energy and goodwill, whether he agrees with the

[114] Herman Finer, *The British Civil Service* (London, 1937) 14

policy or not, expect all civil servants to behave with circumspection in political affairs."

In India, it seems that the second view is accepted since the civil servants are prevented from engaging in active politics, especially in connection with elections.

Rationale of Imposing Restrictions

The rationale for imposing such restriction is that in order to ensure the impartiality of the administration, the civil servants should be kept aloof from active party politics. It is relevant to note that wide discretionary powers are wielded by the senior members of the civil service. In addition, each member of the civil service is part of a machinery vested with the power to take institutional decisions' and the duty to run the machinery. The position of the Minister in the administrative machinery is different from that of the civil servant due to the accountability of the Minister to Parliament and the temporary nature of his tenure.

Electoral Offences in Relation to Election Duties

There are certain electoral offences related to the duties performed in connection with elections such as, breach of official duty[115], and acting as election agent or polling agent[116], and influencing voters[117]. Section 123(7) treats the procuring or obtaining of the assistance of government servants as corrupt practice.

Since the amendment introduced in 1975 made some fundamental changes in the provision, it is necessary to consider the position prior to the amendment and after the amendment separately.

[115] Representation of the People Act, 1951, s. 134
[116] Representation of the People Act, 1951, s. 134A
[117] Representation of the People Act, 1951, s. 129

Prior to the 1975 amendment, the provision was as follows:[118]

> The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the consent of a candidate or his election agent, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the service of the Government and belonging to any of the following classes, namely:
>
> (a) Officers;
> (b) Stipendiary Judges and Magistrates;
> (c) Members of the armed forces of the Union;
> (d) Members of the police forces;
> (e) Excise officers;
> (f) Revenue officers other than village revenue officers known as lambardars, malguzars, patels, deshmukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission, on the amount of land revenue collected by them but who do not discharge any police functions; and
> (g) such other class of persons in the service of the Government as may be prescribed.
>
> Explanation 1-
> In this section the expression "agent" includes an election agent, or polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.(2) For the purpose of clause (7), a person shall be deemed to assist in the furtherance of the prospects of a candidate's election if he acts as an election agent.

[118] Representation of the People Act, 1951, s. 123(7)

Ambit of the Provision

It seems that the provisions prohibit the procuring and obtaining of the assistance of government servants. However, it does not mean that every mode of assistance could be treated as an act coming under Section 123(7). In Mohd. Ibrahim v. Election Tribunal, Mootham CJ. Of the Allahabad High Court examined the ambit of the provision and observed:

> It is not every act which is done by a government servant at the instance of candidate or his agent which comes within the ambit of this clause even though it may result in the furtherance of the former's election, for, were that so, a candidate would be unable to utilise the services of the post office to deliver copies of his election address or of the railway service to travel to a place where he wants to make an election speech. What in my judgement is being struck at by this clause is the furtherance of a candidate's election by obtaining or procuring the assistance of a government servant because the latter is a government servant.[119]

Hence it follows that the assistance should be one which can be given by a government servant alone. However, it is submitted that, if the purpose of seeking the assistance is to make any kind of impact on other electors it may attract the provision. For example, the travelling of the candidate along with the district collector is normally an innocent action. But if the intention of such travelling is to create an impression among the ordinary electors that the collector is a sympathiser of the candidate it may constitute corrupt practice.

"Obtain"

[119] AIR 1957 All 292

In Moti Lal v. Mangla Prasad, the Allahabad High Court exam ined the meaning of the term "obtain" and observed:

> "…the word 'obtain' in Section 123(7) has been used in the sense of the meaning which connotes 'purpose' or 'effort' behind the action of the candidate. The word has not been used in the subsection in the sense of a mere passive receipt of assistance without the candidate being even conscious of the fact that the assistance has been rendered. In order to bring the case under subsection (7) it must be shown that the candidate did some effort or performed some purposeful act in order to get assistance."[120]

Serving under the Government and in the Service of the Government

Since Section 123(7) uses the words, "persons in the service of the Government", the question may arise whether all persons serving under the Government would come within the purview of the provision. In *K.C. Deo Bhanj v. Raghunath Misra*[121], while considering the question whether the Sarpanch of a Gram Panchayat as constituted under the Orissa Gram Panchayats Act could be treated as a person in the service of the Government, the Supreme Court made a distinction between serving under the Government and in the service of the Government. S.J. Imam J. observed:

> "…there is a distinction between 'serving under the Government' and 'in the service of the Government', because while one may serve under a Government, one may not necessarily be in the service of the Government; under the latter expression one not only serves under the Government but is in the service of the Government and it imports the relationship of master and servant. There are… two essentials to this relationship: (1) The servant

[120] AIR 1958 All 794
[121] AIR 1959 SC 589

must be under the duty of rendering personal services to the master or to others in his behalf, and (2) the master must have the right to control the servant's work either personally or by another servant or agent ...."[122]

Pointing out that none of the provisions of the Orissa Act suggests that between the State Government and the Gram Panchayat and its servants there was any relationship of master and servant, the Court reversed the High Court decision and dismissed the election petition. However, out of the seven categories of government servants mentioned in Section 123(7), the following categories, viz., gazetted officers, stipendiary judges and magistrates, members of the armed forces of the Union, members of the police forces, excise officers and such classes of persons as may be prescribed, are well defined. Hence the question whether the person is in the service of the Government or under the service of the Government arises mainly in relation to revenue officials.

In the case of revenue officers, the village revenue officers known as lambardars, malagazars, patels, deshmukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions are an excluded class." Hence, it becomes the duty of the Court to determine whether a particular village officer other than lambardar, malagazar, patel or deshmukh would come within the purview of the provision. However, since the amended provision contains a definite criterion, depending on the mode of payment, for determining the status of the officers, there exists no difficulty.

[122] ibid

Acting as Polling Agent or Counting Agent

Originally, Explanation 2 stated that a person shall be deemed to assist the furtherance of the prospects of a candidate's election if he acted as an election agent or polling agent or counting agent of that candidate. However, through the Amendment Act of 1966 the words "or a polling or a counting agent", are omitted. In Bachan Singh v. Prithvi Singh, while examining the effect of this amendment, Sarkaria J. observed that "since the deletion of the words 'or polling agent or counting agent' from Explanation 2 of Section 123(7) by the amending Act 47 of 1966, a member of the Armed Forces merely by acting as A polling agent is not deemed to assist in the furtherance of the prospects of a candidate's election within the contemplation of Section 123(7)"[123]

The view seems to be correct and falls in line with the rules of interpretation. However, it is to be said that the Amendment Act goes totally against the spirit of the provision and has diluted the effect of the provision. By permitting a government servant to act as a polling agent or counting agent, the civil servant's right to have an active participation in politics has been recognized. It is to be noted that a cursory glance at the law governing the civil servants reveals that the active participation of civil servants in the political process is not contemplated.[124] Since any conduct, other than acting as election agent, was described by the R.P. Act as conduct coming under the purview of Section 123(7), it became the duty of the courts to identify the actions of the civil servants which could be treated as corrupt practice under Section 123(7).

Proposing the Name of the Candidate

[123] (1975) 1 SCC 368
[124] (1975) 1 SCC 368

Section 33 of the Representation of the People Act,1951 requires that the nomination paper should be signed by an elector of the constituency as the proposer. Neither the R.P. Act nor the Conduct of Election Rules prescribes any qualifications for being a proposer except that he should be an elector of the constituency. Whether proposing the name of a candidate by a government servant would constitute corrupt practice was the question before the Supreme Court in *Raj Krushna v. Binod*[125]. Examining the purpose of the provision, S.R. Das J. observed:

> The policy of the law is to keep government servants aloof from politics and also to protect them from being imposed on by those with influence or in a position of authority and power, and to prevent the machinery of Government from being used in furtherance of a candidate's return. But at the same time, it is not the policy of the law to disenfranchise them or to denude them altogether of their rights as ordinary citizens of the land. The balance between the two has, in our opinion, been struck in the manner indicated above.

Amendments shall have retrospective operation so as to apply to and in relation to any election held before the commencement of the Amendment Act, 1975 on 6th August, 1975 to either House of Parliament or to either House of the Legislature of a State, inter alia, in respect of which appeal from any order of any High Court made in any election petition under Section 98 or Section 99 of the 1951 Act was pending before the Supreme Court immediately before such commencement.[126]

[125] AIR 1954 SC 202
[126] AIR 1954 SC 202

Amendment in 1974: Its Background and Implications

The amendment in 1974 was enacted in the background of the decision of the Allahabad High Court in the election petition filed against Smt Indira Gandhi, the then Prime Minister of India. The High Court set aside the election. The decision was based on the finding that Smt Indira Gandhi was a candidate from December 29, 1970 as she held herself out on that date as a candidate. The second finding was that she obtained and procured the assistance of Yashpal Kapur for the furtherance of the election prospects when Yashpal Kapur was serving as a gazetted officer under the Government of India. The High Court found that Yashpal Kapur's resignation from his service, though submitted on January 13, 1971, did not become effective until January 25, 1971 when it was notified. The further finding by the High Court was that Yashpal Kapur under the instructions of Smt Gandhi delivered an election speech on January 7, 1971 at Munshi Gani and another speech at Kalan on January 19, 1971. The third finding by the High Court was that Smt Gandhi and her election agent Yashpal Kapur procured and obtained the assistance of the officers of the State Government, particularly the District Magistrate, the Superintendent of Police, the Executive Engineer, P.W.D. for the construction of rostrums and arrangement for supply of power for loudspeakers at meetings addressed by the appellant on February 1, 1971 and February 25, 1971 and further that the said assistance was for furtherance of the prospects of election of the appellant. The High Court found the returned candidate guilty of corrupt practice under Section 123(7) of the Representation of the People Act,1951. The High Court declared the election of the appellant to be void. The High Court also held the returned candidate to be disqualified for a period of six years from the date of the order. While the appeal was pending, the Election Laws (Amendment) Act,

The returned candidate filed an appeal before the Supreme Court. 1975 was enacted. Section 10 of the Amendment Act enacted that the amendments shall have retrospective operation so as to apply to and in relation to any election held before the commencement of the Amendment Act, 1975 on 6th August, 1975to either House of Parliament or to either House of the Legislature of a State, inter alia in

respect of which appeal from any order of any High Court made in any election petition under Section 89 or 99 of the 1951 Act was pending before the Supreme Court Immediately before such commencement.

Hence the pending appeals were also covered by the Act. The amendment substituted the definition of "candidate" in Section 79(b) of the R.P. Act 1951 as follows:

'Candidate' means a person who has been or claims to have been duly nominated as a candidate at any election. The purpose of the amendment was to exclude the candidature by way of the holding out.

The Amendment Act introduced a proviso and a new Explanation to Section 123(7) of the R.P. Act. In *Indira Nehru Gandhi (Smt) V. Raj Narain*[127], the Supreme Court upheld the validity of the Amendment Act and the findings of the High Court were reconsidered on the basis of the Amendment Act. All the findings of the High Court were reversed on the following grounds:

I. The amendment excluded the concept of candidature by way of holding out, Mrs Indira Gandhi could be regarded as a candidate only from February 1, 1971, namely, the date when she has been duly nominated as a candidate at the election and therefore the finding of the High Court could not be sustained.

II. The resignation of Yashpal Kapur would be effective from January 14, 1971, in the light of the Explanation added to Section 123(7).

III. Since Mrs. Gandhi was not a candidate at the time of the alleged speeches by Mr. Yashpa Kapur, the question of giving consent by the candidate or the election agent did not arise.

[127] AIR 1975 SC 2299

IV. Since the proviso added by the amendment showed that where persons in the service of the Government in the discharge of official duty made any arrangement or provided any facility or did any act or thing in relation to a candidate, such arrangements and facilities should not be deemed to be assistance for furtherance of the prospects of the candidate's election, the service rendered by government servants for construction of rostrums and arrangements for supply of power for loudspeakers could not be considered as acts covered by Section 123(7).

The appeal was allowed and the election was upheld. The decision is correct since mala fides are not grounds for judicial review of legislation. In addition, the Parliament enjoys the power to amend any law with retrospective effect. However, it is submitted that, according to the standards of political morality the amendment could not be justified. It seems that the purpose of the amendment was to legitimise certain actions found to be illegal by the High Court. The then Prime Minister of the country was the interested party in the pending litigation connected with this matter. The ultimate effect of the amendment was that it enabled the Prime Minister to succeed in her election case, before the Supreme Court. Any legislation intended to shield a particular person from the clutches of the existing law is unethical. In the instant case, the amendment related to the enforcement of a statutory political right, viz., right to contest election. In the matter of acquiring this political right, one person was in a dominant position since she was the Prime Minister and was thus able to get the law enacted for her personal gains. In such a context what was needed was to uphold the democratic values rather than to protect individual interest. In the instant case, the latter happened. Such individual oriented law-making, it is to be said, in connection with the electoral process, would cause damage to the very foundation of the democratic process. In such a situation, the remedy lies in the political process, and not in the judicial process.

5.2 Procedural Aspects of Election Petitions

Election petitions submitted to the High Court are used to address disputes involving the execution of corrupt activities. In accordance with Section 81(1) of the Representation of the People Act, 1951, any candidate at such election or by any elector within forty-five days from, but not earlier than the date of election of the returned candidate, or if there is more than one returned candidate at the election, the dissenting A voter may file an election petition challenging the outcome of an election to the High Court on one or more of the grounds specified in subsection (1) of Section 100 and Section 101. The most significant basis indicated in Sections 100(1) and 101 is the commission of corrupt practice. According to Section 82, the following individuals should be included as respondents to the election petition:

a. Where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates;

b. Any other candidate against whom allegations of any corrupt practice are made in the petition.

According to Section 83, the election petition's contents are as follows:

(1) An election petition

a. shall contain a concise statement of the material facts on which the petitioner relies :
b. shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties

alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

c. Shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be

accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

The method of the trial, the required process, the admissibility of documentary evidence, and the preservation of voting secrets are all covered in great detail. Section 95(1) of the Act states that "No witness shall be excused from answering any question as to any matter relevant to

a matter in issue in the trial of an election petition upon the ground that the answer to such question may criminate or may tend to criminate him, or that it may expose or may tend to expose him to any penalty or forfeiture". However, "a witness, who answers truly all questions which he is required to answer shall be entitled to receive a certificate of indemnity from the High Court; and an answer given by a witness to a question put by or before the High Court shall not, except in the case of any criminal proceeding for perjury in respect of the evidence, be admissible in evidence against him in any civil or criminal proceeding."

Any individual who attends to provide testimony may be reimbursed for reasonable costs spent by that person. Recrimination is covered in Section 97. The High Court shall issue an order after the end of the trial for an electoral petition.

a. dismissing the election petition; or

b. declaring the election of (all or any of the returned candidates) to be void; or
c. declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.

In accordance with Section 99, the court is authorised to reach its own independent conclusion about the commission of corrupt practice. Sections 100 and 101, respectively, provide the criteria that must be met in order to declare an election to be null and invalid, as well as the criteria that must be met in order to declare a candidate other than the one who returned ballots to have been elected. As a result, it would seem that there are comprehensive procedures in place that prescribe the process for the hearing of election petitions. One of the most significant drawbacks of the current regulations in this respect is that they provide a great deal of leeway for tossing out election petitions on the basis of technicalities. An election 16 petition may be thrown out of court if its proponents are found to have violated the requirements of Section 81, Section 82, or Section 117, as stated in the first sentence of Section 86(1). In addition to this, the Court will also consider the fact that an election petition was not filed within the time limit specified in Section 83 to be a valid reason to reject the petition.

5.2.1 Applicability of Civil Procedure Code

According to the view taken by the Supreme Court in *Dhartipakar v. Rajeev Gandhi*[128], the election petition not disclosing any cause of action could be dismissed under Order 6, Rule 16 of the Code of Civil Procedure.

It is important to remember that under Section 96(1) of the R.P. Act, an election petition must be dismissed if there is no verification, the petition is presented after the deadline has passed, or there is no deposit of cost security. The Supreme Court held in *Lalit Kishore*

[128] AIR 1987 SC 1577

Chaturvedi v. Jagdish Prasad Thada[129] that even if Section 83 was not included in Section 86, the authority under Order VII, Rule 11 of the CPC might be used to reject election petitions for lack of a triable issue. Therefore, if a petition does not adhere to Section 83's standards, it may be rejected.

The Supreme Court has previously ruled that the trial court or Tribunal should use its authority to request more specific information. Therefore, it was determined that the Tribunal's ruling rejecting the petition completely in *Bhikaji Keshao Joshi v. N.B. Biyani*[130] was incorrect. *Balwan Singh v. Lakshmi NarainI*[131] adopted the same stance.

It was made clear in *Shivamurthy Swami Inamdar v. Agadi Sanganna Andanappa*[132] that a petition for an election could not be dismissed just because the allegations against it lacked specificity.

The Court considered the parameters of giving permission to modify the petition in *Raj Narain v. Indira Nehru Gandhi*[133] in order to include additional details of corrupt acts.

[129] AIR 1990 SC 1731
[130] AIR 1995 SC 610
[131] AIR 1960 SC 770
[132] (1971) 3 SCC 870
[133] AIR 1972 SC 1302

5.2.2 Nature of Pleadings

Section 83 clearly lays down the nature of pleadings. According to the view taken by the Supreme Court in *Hari Chandra v. Triloki Singh*[134] the allegations relating to the commission of corrupt practices should be sufficiently clear and precise to bring home the charges to the candidates. In *Daulat Ram v. Anand Sharma*[135] it was held that the following necessary particulars, statement of facts and essential ingredients must be contained in the pleadings to constitute corrupt practice.

1. Direct and detailed nature of corrupt practice as defined in the Act.
2. Details of every important particular must be stated giving the time, place, name of persons, use of words, expression, etc.
3. It must clearly appear from the allegations that the corrupt practices alleged were indulged by (a) the candidate himself, (b) his authorised election agent or any other person with his express or implied consent.

In *Laxmi Narayan Nayak v. Ramratan Chaturvedi*[136] the Court emphasised that the allegations of corrupt practices should not be vague. In *Quamarul Islam v. S.K. Kanta*[137] it was held that in case of vague pleadings the court should require more reliable evidence to substantiate the allegation. If the corrupt practice alleged is in the nature of a fraud, it is not permissible to plead one kind of fraud or one kind of corrupt practice and prove another though they may be interconnected. The decision of the Supreme Court in *N.C. Zeling v. Aju Newmas*[138] reveals this aspect.

[134] AIR 1957 SC 444
[135] AIR 1984 SC 621
[136] (1990) 2 SCC 173
[137] AIR 1994 SC 1733
[138] AIR 1981 SC 8

5.2.3 Plea of Consent and Plea of Connivance

In the case of *Charanlal Sahu v. Giani Zail Singh*[139], the Supreme Court made an effort to differentiate between pleading permission and pleading connivance. This was done in an effort to clarify the distinction between the two. It was observed:

> "The plea of consent is one thing: the fact that connivance means consent (assuming that it does) is quite another. It is not open to a petitioner in an election petition to plead in terms of synonyms. In these petitions, pleadings have to be precise, specific and unambiguous so as to put the respondent on notice. The rule of pleadings that facts constituting the cause of action must be specifically pleaded is as fundamental as it is elementary. 'Connivance' may in certain situations amount to consent, which explains why the dictionaries give 'consent' as one of the meanings of the word 'connivance'. But it is not true to say that 'connivance' invariably and necessarily means or amounts to consent, that is to say, irrespective of the context of the given situation. The two cannot, therefore, be equated. Consent implies that parties are ad idem. Connivance does not necessarily imply that parties are of one mind. They may or may not be, depending upon the facts of the situation."[140]

In the case of commission of corrupt practice alleged to be committed with the consent of the candidate in the election petition, the consent of the candidate should be specifically pleaded. According to the view taken by the Supreme Court in *Ramakant Mayekar v. Celine D'Silva*[141], in the case of vicarious liability of a candidate for the acts of other persons, the consent to the alleged actions of the other persons could not be implied from the mere fact that the other persons were the leaders of the same political party to which the candidate belonged. It was pointed out by the Court that "there can be no presumption in law that there is consent of every candidate of the political party for every act done by

[139] AIR 1989 SC 309
[140] Ibid, p. 316
[141] (1996) 1 SCC 399

every acknowledged leader of that party"[142]. The same view was taken in *Manohar Joshi v. Nitin Bhaurao Patil*[143], *Prof. Ramachandra G. Kapse v. Haribansh R. Singh*[144], *Chandrakanta Goyal v. Sohan Singh Jodh Singh Kohli*[145] *and Moreshwar Save v. Dwarkadas V. Pathrikar.*[146]

5.2.4 Distinction between Material Facts and Particulars

In accordance with subsections (a) and (b) of Section 83(1), where there is an accusation of a corrupt practise, the election petition must include a brief summary of the material fact upon which the petitioner relies, as well as detailed details of the alleged corrupt practises. In *Roop Lal Sathi v. Nachhatta Singh Gili*[147], the Supreme Court made the following difference between material facts and particulars:

> "…the word 'material' in material facts under Section 83 of the Act means facts necessary for the purpose of formulating a complete cause of action; and if any one 'material' fact is omitted, the statement or plaint is bad; it is liable to be struck out. The function of 'particulars' is quite different, the use of particulars is intended to meet a further and quite separate requirement of pleading imposed in fairness and justice to the returned candidate. Their function is to fill in the picture of the election petitioner's cause of action with information sufficiently detailed to put the returned candidate on his guard as to the case he has to meet and to enable him to prepare for trial in a case where his election is challenged on the ground of any corrupt practice."[148]

[142] Ibid, p. 414
[143] (1996) 1 SCC 169
[144] (1996) 1 SCC 378
[145] (1996) 1 SCC 394
[146] (1996) 1 SCC 394
[147] AIR 1982 SC 1559
[148] ibid

5.2.5 Material Facts and Evidence

In *Mohan Rawale v. Damodar Tatyaba*[149], the Supreme Court ruled that there must be a clear distinction between the material facts and particulars that make up the facts to be proven (facta probanda) and the evidence by which those facts are to be shown (facta probantia). Therefore, the word "complete particulars" does not include the evidence that the petitioner intends to rely upon.

5.2.6 Names of Witnesses

In the case of *Rahim Khan v. Kharshid Ahmed*[150], the Supreme Court held that the name of every witness does not need to be disclosed in the particulars of corrupt conduct, unless his name becomes a required component of the particulars in that case.

5.2.7 Importance of Section 83 of the Act

The Supreme Court was presented with the opportunity to investigate the importance of Section 83 in the case of *Samant N. Balakrishna v. George Fernandez*[151]. It was noticed that

> "The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. There may be some overlapping between material facts and

[149] (1994) 2 scc 392
[150] AIR 1975 SC 290
[151] AIR 1969 SC 1201

particulars but the two are quite distinct. Thus material facts will mention that a statement of fact (which must be set out) was made and it must be alleged that it refers to the character and conduct of the candidate that it is false or which the returned candidate believes to be false or does not believe to be true and that it is calculated to prejudice the chances of the petitioner. In the particulars the name of the person making the statement, with the date, time and place will be mentioned. The material facts thus will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action."[152]

5.2.8 Materials Facts Related with Different Corrupt Practices

In the event of a bribery charge, acceptance of the offer must be specifically asserted. In *Trinath Singh v. Bachitar Singh*[153], it was determined that the evidence and conclusion addressing the matter of election bargaining might extend beyond the pleadings. In *C. Narayanaswamy v. C.K. Jaffer Sharief*[154], it was determined that the pleas "the mass feeding was either planned by the respondent or his election agent or his political party or the individuals with the approval of the respondent or his election agent" were not in compliance with Section 83(1).

In *Lalit Kishore Chaturvedi v. Jagdish Prasad Thada*[155], it was determined that a mere allegation that a candidate exercised undue influence, in the absence of precise facts, namely the nature of such influence, the person on whom it was exercised, and the time and place at which it was exercised, was insufficient to satisfy the legal requirement. In *Shri Krishna v. Sat Narain*[156], it was held that the names of the owners of the hired vehicles and the dates on which payments were made were not essential elements of the allegations

[152] Ibid, p. 1212
[153] AIR 1955 SC 830
[154] 1994 Supp 3 SCC 170
[155] AIR 1990 SC 1731
[156] 37 ELR 13

required to be made or the details to be disclosed in a petition alleging corrupt practices of incurring or authorising expenditure in violation of Section 77.

Regarding the allegation of corrupt practice coming under Section 123(7) of the Act it was held in Hardwari Lal v. Kanwal Singh" that 49 the type of assistance, the manner of assistance, the time of assistance, the persons from whom assistance was sought were all to be set out in the petition.

Concerning the charge of a corrupt practise under Section 123(7) of the Act, it was decided in *Hardwari Lal v. Kanwal Singh*[157] that 49 the kind of help, the mode of assistance, the time of assistance, and the individuals from whom aid was sought must be detailed in the petition.

[157] AIR 1972 SC 515

5.2.9 Joinder of Parties

In accordance with Section 82 of the R.P. Act, any other candidate against whom accusations of corrupt practise are made in the petition must be included as a respondent to the petition. In *Krishnan Chander v. Ram Lal*[158], the Supreme Court evaluated the purpose of the provisions and concluded that the failure to impel the other parties identified in the petition rendered the petition inadmissible. In *Daulut Ram Chuhan v. Anand Sharma*[159], it was said that before Section 82(b) could come into effect, it must be shown whether or not the candidate has been accused of corrupt conduct. According to the Supreme Court's ruling in *Harswarup v. Brij Bhushan*[160], "any other candidate" under Section 82(b) includes a candidate who withdrew from the election under Section 37.

5.2.10 Benefit of Doubt

The allegation of corrupt practice should be established with clear and cogent evidence and should be proved beyond reasonable doubt. According to the view taken by the Supreme Court in *Abdul Hussain v. Shamsul Huda*[161], the benefit of doubt in testimonial matters belongs to the returned candidate. The view was reiterated in *Gajanan Krish naji Bapat v. Dattaji Raghobaji Meghe.*[162]

The use of criminal trial norms on the burden of evidence in an election dispute including an allegation of corrupt behaviour, it is said, does not serve the genuine intent of the statute. A brief examination of the published instances involving accusations of corrupt behaviour demonstrates that it is very difficult to substantiate such charges. During the period between 1952 and 1988, there were less than a hundred instances in which elections were annulled due to the conduct of corrupt practices. However, research indicates that the

[158] AIR (1973) 2 SCC 759
[159] AIR 1984 SC 621
[160] AIR 1967 SC 836
[161] AIR 1975 SC 1612
[162] (1995) 5 SCC 347

conduct of corrupt acts during Indian elections is not uncommon. The overwhelming majority of election petitions fail for lack of proof. The need for rigorous evidence is one of the reasons why it is so difficult to prove the claim. Using the benefit of the doubt, those who engage in corrupt actions evade the grasp of the law.

Therefore, it is necessary to explore the logic for using the rigorous proof norm in electoral processes. The most essential reason for following the norm of stringent evidence is the repercussions of a court's conclusion that a person has engaged in corrupt behaviour. Such findings may result in two civil consequences:

a. the election may be annulled, and
b. the individual who engaged in corrupt behaviour may be barred from running for office for up to five years.

5.2.11 Duty of the Elected Candidate

Although the election petitioner has the burden of proving the charge of corrupt behaviour, the elected candidate is not exempt from his obligation to assist the Court. - *Nani Gopal v. Abdul Hamid*[163] However, the failure of the returning candidate to be questioned or to examine the witnesses he called is not grounds for drawing a negative conclusion.

5.2.12 Evidentiary Value of Newspaper Reports

In the case of *Vimal v. Bhaguji*[164], the claims of corrupt activities under Sections 123(3) and 123(3-A) were founded on media articles. Even when newspaper reporters were

[163] AIR 1959 Ass 200
[164] AIR 1995 SC 1836

questioned, their notes or "tipans" on the purported remarks were not presented to the court. The Supreme Court was of the opinion that "the Court should draw unfavourable inferences about the veracity of the list of utterances" due to the absence of "mentioned notations."

In *Jagmal Singh Yadav v. Aimaduddin Ahmed Khan*[165], the contentious issue was a letter containing allegedly defamatory allegations made by the returning candidate. Nonetheless, because the authenticity of the letter was not established, the court determined that the credibility of the respondent's oral testimony on his publications was diminished.

5.2.13 Evidence and Pleadings

In *Manubhai v. Popatlal*[166], it was determined that the evidence must relate to the allegations made in the complaint. Therefore, no evidence adverse to the pleadings that alters the complexion of corrupt activity may be presented or considered.

5.2.14 Production of Documents

In the matter of production of documents, the Court has discretion to examine expediency, justness and relevancy of the documents in The light of pleadings and full particulars given in the petition. In *Basanagouda v. S.B. Amarkhed*[167] the Supreme Court described the view of the High Court as an erroneous one on the ground that it unnecessarily summoned and examined certain documents.

5.2.15 Evidence of Party Worker

[165] 1994 Supp (2) SCC 308
[166] AIR 1969 SC 1836
[167] AIR 1992 SC 1163

Hardial Singh v. Surinder Singh[168], the Supreme Court declined to accept the testimony of a party worker, arguing that oral testimony, especially if it came from a contaminated source, could not serve as the only proof of corrupt activity.

[168] AIR 1985 SC 89

CHAPTER 6: CONCLUSION AND SUGGESTIONS

Which checking the vacuum and loophole if any, in laws relating to elections, from analysis it is seen that the legal framework pertaining to electoral corrupt practices and electoral offences provided under the Representation of the People Act, 1951, comes into play only after the electoral process is over. While the Model Code of Conduct (MCC) comes into play during election time which ensures direct disciplinary control of the ECI over the political parties. The election petitions under the R.P. Act of 1951 to be made after the election process is over. The MCC cannot be enforced by law, it is an acceptance of the norms by political parties who have consented to abide by the principles embodies in the said code and also binds them to respect and observe it in its letter and spirit. During the elections process corresponding offences under the Indian Penal Code and criminal codes and other laws can be invoked.

6.1 Testing of the hypothesis

1. *Lacuna in measures may pave the way for the Election Commission to be influenced.*

   In the world's largest democracy, India, even after 75 years of independence, on the eve of "Azadi ka Amrit Mahotsav", Parliament has not been able to enact legislation pertaining to those grey areas of the election machinery. As discussed in the Constituent Assembly on its length and breadth of provisions laid in Part XV, especially Article 324, Clause (2) and (5) relating to the scheme of appointment and removal of Election Commissioners. The lacuna observed is explicit power conferred to the President on matters of framing rules pertaining to the appointment of members of the Election Commission. In this case, Prof. Shibban Lal Saksena even mentioned that "if the President is to appoint this Commission, naturally it means that the Prime Minister appoints this Commission. He will appoint the other Election Commissioners on his recommendations. Now this does not ensure their independence." Moreover, in this regard at different instances electoral reforms

have been proposed to maintain the autonomy of the Election Commission to guarantee free and fair elections across the nation. Such committees and reform proposals viz. 1949-Constituent Assembly Debates on Part XV of the Constitution, 1974- The Tarkunde Committee Report, 1990- Dinesh Goswami Committee Report on Electoral Reforms, 2004- Electoral Reforms by Election Commission of India, 2015 -Law Commission's Report-255 titled "Electoral Reforms" , 2018 - Proposed Electoral Reforms by Election Commission of India. All such reforms suggest appointing a collegium system for matters as appointment of members of the Election Commission to be backed by statute passed by the Parliament. Thus it shows the importance of the enactment of laws relating to the appointment and eligibility of Election Commissioners.

Hence this hypothesis is proved.

2. *At instances, Election laws lack the binding force.*

As already discussed in Chapter IV in detail, it is found from observation of the court's decisions that election laws on corrupt practices are not strict in the sense. Moreover, as noted by Durga Das Basu in his commentary, "the election has evolved the Model Code of Conduct laying down norms regulating the conduct of political parties, candidates and various Governments during the period of election. But this Code has a legal force. The Code has only moral value"[169]

Hence this hypothesis is proved.

[169] D.D. Basu, *Commentary of the Constitution of India* (Vol 14, 2016) 10716

6.2 Suggestions

The researcher seeks to conclude the research by advancing a few suggestions:

i. There should be in place a collegium system of appointing Chief Election Commissioners and other Election Commissioners consisting of the President of India, the Prime Minister, Leader of the Opposition of the House as recommended by various committees already discussed. Furthermore, the outgoing Chief Election Commissioner/Election Commissioner should also be consulted. The Bill of 1990 that was introduced in Rajya Sabha which was later dropped in 1993 without assigning any reason may be reconsidered with suggested modifications. Such consultation process is bound to make the institution stronger and make incumbents to the offices feel more confident about their acceptability.

ii. The entire appointment system should have the backing of the law.

iii. As recommended by the Goswami Committee of 1990, a person once appointed as Chief Election Commissioner of Election Commissioner should be made ineligible not only for any appointment under the Government but also to any office, including the post of Governor, to which appointment is made by the President.

iv. There should be a separate secretariat for the Election Commission along the lines of the Lok Sabha, Rajya Sabha and Registries of the Supreme Court and High Courts. An independent Secretariat will enable the Commission to choose and appoint officials considered suitable by the Commission without any interference from the executive.

The Law Commission also in its 255th Report (2015) endorsed the Commission's view and recommended the insertion of Article 324(2A) after sub-section (2) of the Constitution along the following lines:

> "(2A) (1): The Election Commission shall have a separate independent and permanent secretarial staff. (2) The Election Commission may, by rules

prescribed by it, regulate the recruitment, and the conditions of service of persons appointed, to its permanent secretarial staff."

v. The removal of Election Commissioners should be Constitutionally guaranteed at par with the Chief Election Commissioner as existing protection provided to the Election Commissioners is insufficient.

vi. The executives deputed on election duty gets the protection of the Commission only during the elections. There should be legal provisions banning the transfer of election officials for six months before the date of elections without consulting the Election Commission. After elections , upto two years, if any disciplinary action is initiated against any official by the government, consultations with the Commission may be made mandatory.

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