

members, there were also non-official members nominated by the Governor. Thus representation was provided by means of nomination for the Depressed Classes, Europeans, Indian Christians, Anglo-Indians and Labour. The franchise was extended by lowering the property qualification yet it remained limited to a small section of the people. Under the new Act separate representation was provided for Indian Christians, Anglo-Indians, Europeans and Shikhs also. There was also provisions for electorates representing special interests- universities, Trade and Commerce and Landholder.

One of the most significant of the Act of 1919 was the creation of a direct and popular electorate. Doubts had often been raised regarding the success of an experiment of introducing representative institutions of India. Though in the beginning a sufficiently high property qualification had been fixed for enfranchising the people still some peasants, labourers, and artists got the right to vote Only 5.3 million of people out of a total population of 241.7 millions in British India were enfranchised.

The Preamble of the GOI Act of 1919 had promised the grant of full responsible government by successive stages, the British Parliament remaining the judge of each stage. It was in pursuance of this promise that the Statutory Commission, commonly called the Simon Commission, was appointed to report on the working of the Reforms of 1919, and make recommendations with regard to the future Constitution of India. The 1919 Act was not according to the expectations of the Indians. The Indian National Congress spearheading the freedom movement described it as inadequate unsatisfactory and disappointing in its Annual Session of 1919. In May 1928, an all-party seminar was held in Bombay, and a committee was appointed under the Chairmanship of Shri Motilal Nehru to decide the principles for a Constitution of independent India. The committee inter alia, proposed the political status of India as being the same as that of other British dominions-Australia, Canada, South Africa- a bicameral Parliament for India, universal adult franchise, joint electorates with reservation of seats for minorities on the basis of population, and so on. Due to the dissatisfaction of the Indian people from the Act, the British government held a series of Round Table Conferences with the Indian leaders. It then published a White Paper in March 1933, proposing a new constitutional order for India with diarchy at the Centre and a accountable government in the provinces.

STUDENT STUDY PROJECT
ON
ROLE OF ELECTION COMMISSION IN INDIA ISSUES
AND CHALLENGES



Submitted to
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CERTIFICATE

This is to certify that the project work entitled Department of Political Science is a bonafide work done by K. Balakrishna, G. Shireesha, Sailu, K.Raju, Raghu, P. Ayyappa the students of VI semester B.A (HEP) T/M, under my supervision during academic year 2022-23 and the work has not been submitted in any other college or University either part or full for the award of any degree..

Place: Jadcherla
Date: 18/5/23


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Signature of External Examiner


Signature of Internal Examiner

DECLARATION

We hereby declare that the project work entitled with "ROLE OF ELECTION COMMISSION IN INDIA ISSUES AND CHALLENGES" is a genuine work done by us under the supervision of Dr. P Nanda Kishore, Lecturer in Political Science Dr.BRR Govt. Degree College, and it has not been under the submission to any other Institute /University either in part or in full, for the award of any degree.

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ROLE OF ELECTION COMMISSION IN INDIA ISSUES AND CHALLENGES

CHAPTER – 1 INTRODUCTION

Democracy is the essential characteristic of the Constitution of India. As declared by the Preamble to the Constitution, India is a Democratic Republic nation. The expression Democracy is originated from the Greek expression democratic, which combined of demos, means masses, and krates in means power. In a democracy power or authority vests in the people. In some special sense democracy is a popular Government; the peoples government. According to Abraham Lincoln Government is of the people, for the people and by the people. Purity of elections can only promise growth of a democratic polity of any country. Only purity and sanctity of electoral process can permit the common people living in a democratic country to establish the government of the country. Peaceful transfer of power can be possible only through free and fair elections.

It is the freedom of the people to contribute in the electoral practice which places the winner in the seat of power. The Vedic Age is the root of Indian democracy and is very old. The Rig Veda is supposed to be the first identified literary work of the human contains metaphors of democratic deliberative bodies called the sabha or samiti. The expression gana accurately connotation numbers, they were either elected or limited. In the time of Mahabharata elder son of the acting

„King“⁷ was appointed as King. Dhritrashtra was elder but blind so Pandu got the throne. However, when Pandu abdicated the throne, Dhritrashtra became the king. The sense and importance of kingship altered with time, and there was a complete change under the control of Buddhism. It is found that the prosperity of the tribe depended on the sacrifices of the chief of tribal and he also used to make the orders for other matters.⁸ Pali literature make available interesting information of how the assemblies of republics in the post-Vedic time functioned like parliaments and followed highly complicated measures. The chief had to work according to dharma, which was same as today's rule of law. However, parliamentary scheme in its modern implication owed its origin and growth to India's British association for some two centuries.¹⁰

In *Rajbala & Others v. State of Haryana & Other* apex court stated:

“Even prior to advent of the Constitution of India under the Government of India Act, 1935 certain local bodies with elected representatives were functioning. Such local bodies did not, however, have constitutional status. They owed their existence, constitution and functioning to statutes and had been subject to the overall control of provincial governments.

The choice of the parliamentary model however was deliberate. Before the Constitution coming into force on Twenty Sixth January 1950 and even before 14-15 August 1947 transfer of power from, British to India hands, some sort of parliamentary institutions were already functioning in India both at the central and provincial levels. The founding fathers of the Indian Republic chose to build further on the foundations of institutions which already existed and which they had known and worked.¹⁴ The constitution rejected British rule over India but not the institutions and the system of governance that had grown on the Indian soil during the British rule. To some extent, it was also natural that we looked up to the system and the institutions of our rulers as the best. In fact, the beginnings of the system of parliamentary democracy and its institutions in India could be seen in the successive stages of the freedom movement the nationalist demands for representative, responsive and responsible institutions.

Meaning and Definition of Election

Election means a chance for the voters to cleave to elected officials answerable¹⁶ for the steps taken by them or to choose among the contending candidates. Electoral process is a mean for drawing opinion of the public which is supposed to be the foundation of and steer to know what public official or political leaders are supposed to do. In any democracy it is required that the contesting candidates should go between the voters for knowing their needs and their expectations from their representatives. So, elections are a way of telling to an elected candidate that he has been elected by the voters. Thus, elections are very important for any democratic polity. Elections are very important for getting the mandate for making the government, which is very important for the functioning of the country. After getting the majority, the elected members control the government, ascertain the opinion of the voters on the important matters and choose legislatures periodically.

Nature of the Right to Vote or Contest an Election

During Constituent Assembly Debates, there was harmony of view that the Right to Vote should be treated as a Fundamental Right of the people; and to conduct free and fair elections an

independent authority should be established to ensure exercise this right without any influence. The "Fundamental Rights Sub-Committee" and the "Ministers Sub-Committee" were very concern regarding this issue. Draft article of Sri K.M. Munshi on fundamental rights was as under: "Every citizen has the right to choose the Government and the legislators of the Union and his State on the footing of equality in accordance with the law of the Union or the unit, as the case may be, in free, secret and periodic elections. The right to elect representatives to govern is neither a fundamental right nor a common law right but a special right created by the statute or a political right or privilege and not a natural, absolute or vested right. The Constitution confers powers on Parliament and the Legislatures of the States to make provisions by law, subject to the provisions of the Constitution with respect to all matters relating to or in connection with elections to either House of Parliament or to State Legislature including the preparation.

Importance of Elections

Purity and sanctity of electoral process is the basis of the success of the Indian democracy. Indian elections are conducted by "universal adult suffrage"; in this manner the voter who has attained the age of eighteen years can cast his or her vote. In India first general election was conducted in 1951-52 and till now 17 Lok Sabhas have been elected. Elections are method through which the citizens of India elect their representatives. They choose their leaders by using their right to vote and casting the vote to the person to whom they want to see as their representative. Elected candidates represent their respective constituencies. Ruling party can be thrown from power by defeating it in the elections. Under the democratic country like ours the ultimate authority is in the hands of the common people. New issues relating to the common people can be raised in public. If any voter wants to contest an election and no party is ready to give him or her ticket then in such a case the voter can fill his or her nomination as an "independently" candidate and can contest an election. In India general elections are conducted after every five years. The ruling parties make the policies and laws according to the requirements of the nation. The policies made and the steps taken for the welfare of the people are the main factors which ensure the power to any political party. India is a very large country divided in twenty eight states and seven U.Ts, having inhabitants of over 1.2 billion (as per 2011 census), we have a system of elections which is overwhelming and excellent.

Election Commission of India and its Historical Background

History of Indian Election Commission can be traced back from debates of Constituency Assembly. Our founding fathers were of the view that the election process of the country should be free and fair, in furtherance of this the following

Clause 24 was added in the "Report of the Union Constitution Committee". This is as under:

"The superintendence, direction and control of all elections, whether Federal or provincial, under this Constitution including the appointment of election tribunal for decision on doubts and disputes arise out of, or in connection with such elections, shall be vested in a Commission to be appointed by the President.

While introducing this clause in the Constituent Assembly on 29th July, 1947 Sir Gopalaswami Ayyanger observed that. The object of this clause was to ensure as far as possible that elections in the country, Federal Provincial, were conducted in an "impartial manner". The very idea behind the clause was to set-up a Commission appointed by the President under whose auspices all these various aspects of election activities and post-election activities would be regulated and controlled, Sir Ayyanger was conscious of the abuse of election procedure of the election machinery and the rampancy of corruption in elections. Hence, he stressed the need for a common centralized independent control. On July 18, 1947, the provisions as suggested in the model "Provincial Constitution" came up for discussion before the Constituent Assembly. The Assembly agreed to Sri K.M. Munshi's proposal which was "to omit the clause vesting in the Governor acting in his direction the powers of superintendence, direction and control over the Provincial elections, as the Union Constitution to exercise control over Provincial as well as Federal elections." In the Course of general discussion that followed on the above clause, the Honorable Dr. B.R. Ambedkar⁵⁵ strongly supported and asserted that

The clause was, thus, adopted subject to the amendment proposed by Sri. Pataskar. In this way, it was seen that Article 289 of the Draft Constitution merely gave effect to decision already arrived at by the Assembly as embodied in the above clause. In the interest of the country, the members of the constitution-making felt that the elections to the Legislatures of these States must be brought within the preview of this Central Commission. But the severest flaw in the above article was that the provision in the Draft Constitution virtually contemplated the different Election Commission for the Centre and for every State. There was a growing feeling that the new India should have one Central Election Commission controlling all the elections of the nation- both the Central and Provincial, if the new Constitution of India was also to be an integral part of the Constitution. It had been suggested that only one electoral

power scheming all the elections in India would be standardized for all the units of the Union. It was also realized that it would be appropriate and worthwhile that the Central Commission be entrusted with the power of appointing Regional Commissioners to be in-charge of the elections in several units.

The Draft Constitution under Article 289, as proposed by the Committee on Feb. 21, 1948, made the arrangement regarding establishment of different Election Commission for the States and the Centre. However, it was mentioned that: The interest of the whole country would be best served if there were only one all-India Commission controlling all elections, central as well as provincial. It was strongly in favor of a single electoral authority controlling all the elections in India in order to have uniform electoral procedural, practices and laws for all the units of the India Union. The Draft Committee happily accepted the suggestion. When the matter came up for discussion in the Constituent Assembly on June 15, 1949, Dr. Ambedkar introduced a new Article which was accepted. It, thus made a provision in Article 289 providing for a single Central Election Commission to be in-charge of Central and State elections.

It may be recalled here that the need of the above idea was felt as the electoral work regarding the printing of the rolls was progressing satisfactorily in some Provinces, but the matter which required careful consideration at that time was that some Provincial Governments, as some section of the press had hinted, were showing more anxiety for registration of their own supporters in the electoral rolls than for registration of those who were opposed to them. Even in bye-elections held for some Provincial Assemblies, there had been allegations by the defeated members that the

Provincial Government concerned had taken „undue advantage“ of their position in the conduct of the elections. It was then felt the need of correctness of these allegations, and was readily conceded by the Framers of the Constitution that the machinery to be set-up to direct and control the elections under the new Constitution should be „an impartial and independent body“, above party politics, so as to avoid giving ground for a suspicion for the nature mentioned above. It also accepted the suggestion proposed by the Minorities Sub-Committee that the Election Commission should be given *quasi-judicial* powers and it should also be insulated from the influence of the government of the day.

On June 15, 1949, Dr. B.R. Ambedkar suggested that there should be only one Commission called as “Central Election Commission” for whole of the nation. The main feature of the Article was as following:

"The Article introduced a Central Election Commission⁶² for superintendence, direction, control and preparation of electoral rolls and also for the conduct of all elections to Parliament and the State Legislatures and of elections of President, Vice-President, including the appointment of election tribunals. The States and the Union shall provide the staff to the Commission."

It is, however, necessary to point out here that the provision in the "Draft Constitution" with respect to the "All-India Election Commission" was primarily followed from the provision mentioned in the Canadian Dominion Election Act of 1920, under which there was a "Chief Electoral Officer" to do all necessary activities which includes supervision of the elections for the conduct of elections with a view to ensuring fairness and impartiality. Section 19 of the above Act provides "he shall not hold office on the same tenure, be removable only for cause and in the same manner and be from time to time paid the same salary and superannuation allowance as a *puisne* judge of the Supreme Court of Canada." Our Constituent Assembly discussed certain aspects of the changes in the electoral machinery brought about by the Canadian Election Act of 1920 and inserted the features if it in the new Constitution of India.

The first of these requirements is dealt with by the Articles 327 and 328, second is dealt with under Article 324 and Article 329 deals with the third essential. Articles 325 and 326 (Part XV), deal with two matters or principle to which founding fathers have given very importance. Firstly, "Prohibition against any discrimination in the preparation of or eligibility for inclusion in the electoral rolls on grounds of religion, race, caste, sex or any of them, and secondly, Adult suffrage." The entire electoral system of the Union and of the States, thus located at the under "Central Election Commission." This was done to avoid any injustice to the people of India by any local government. It was provided the only the Central Election Commission have the power regarding giving the orders to polling officers, returning officers, and to the persons engaged for the purpose of making or editing the roll of voters. The Commission will, of course, be assisted by Regional Commissioners, but they will be working not according to the State Governments but under the instructions of the ECI and they can be removed from the office only on the reference of the CEC.⁶⁷ The EC shall be independent of executive control in as much as members of the EC shall not be removed by the President except the provisions of the Article 324(4) of the Indian Constitution.

The main object "underlying these provisions is to ensure an election free from the control of the Party in power for the time being, without which representative democracy becomes meaningless. In order to ensure free, fair and impartial election, the Constitution establishes the Election Commission, a body autonomous in character and insulated from political pressures or executive influence. Care has been taken to ensure that the Commission

functions as an independent agency free from external pressures from the Party in power or the executive of the day.”

According to learned author Granville Austin,

“The members of the Assembly agreed with Rau- though the idea cannot be credited entirely to him which the control and supervision of election should be in the hands of an independent body. The Draft Constitution provided for an Election Commission to assume the task. This Commission, though appointed by the President, is non-Party, quasi- judicial body and like Public Service Commission it has not suffered from political interference in the performance of its duties.”

The founding fathers had one largest aim when enacting the provisions relating to elections was to establish harmony in the society in the area or politics for the nation. They framed provisions to do this by uniting Indians into one mass electorate providing “universal adult suffrage” and also by providing the provisions relating to the direct contribution of the voters through “direct representation” in authentically accepted state legislatures. Unexceptional as this programme for a newly independent State may now seem, it meant in 1947 that the Constituent Assembly had to overturn the Constitutional pattern left by British Rule. The Executive and Judicial provisions of the 1935 Act were adapted to India’s needs by the Assembly with some major changes of substance, but with few of form; not so with legislative provision. These had to be entirely re-made. Dr. B.R. Ambedkar introduced a new Article which provided for a “Central Election Commission” to control the elections for the whole of the nation.⁷⁴ According to the draft “the President would be empowered to appoint the Election Commissioners and Regional Commissions. Further the tenure of such Chief Election Commissioner and other Commissioners was secured.

In order to ensure the purity of election process the duty of conducting impartial elections is given to the Election Commission of India, and it was ensured that such body should be insulated from political influence. With the object of conducting fair elections the founding fathers have provided for Election Commission under Indian Constitution.⁷⁷ Where law is silent, Article 324 of the Constitution provides the Commission powers for the smooth conduct of elections.⁷⁸ The Election Commission for the whole of the country was appointed to protect the interest of mixed population in different states. It was done to protect the right of the minorities.⁷⁹ In *S.S Dhanoa v. Union of India*,⁸⁰ the apex court has provided for the

provisions regarding the number of the members in the Commission. Before 1989, there was only member in the Commission i.e. was the Chief Election Commissioner. In 1989, the Commission was converted into a multimember body by appointing Election Commissioners. It was done only to put the restrictions on the powers of the Chief Election Commissioner.

Concept of Free and Fair Elections

In a country like ours which is a democratic country, self-governing power is in the general public. The general public decides that who shall govern them. For any democracy it is necessary that there must be purity in the electoral process. For enjoying the right to vote and contest an election it is necessary that the voters should not be influenced in any manner. As a result our founding fathers have adopted *universal adult franchise*, through which every person attaining the age of 18 years has right to vote. Under the concept of *universal adult franchise* there is right to vote to every person and there is concept of one man one vote.

Everyone has right to vote and contest an election, and this is the mean which ensures every Indian his or her participation in the formation of the government. "The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."¹¹⁰ This concept includes amendment of electoral rolls, preparation, revision and many others things such as delimitation of constituencies. Fairness of the electoral process is necessary for the sustainability of the democracy. There are a lot of things to say about the free and fair election but it cannot be defined in a precise manner. When the people use their his right to vote, it is ensured that there should not be any influence on the voter such as of party discipline, language, caste, creed, sex, religion or language. Most importantly it is ensured that the voter is not under the influence of corrupt practices. In this way, the fairness of elections is *sine qua non* for the success any democracy. It is very necessary for any democracy that the elections should as per its schedule, even though social and financial democratic system may require to a great extent additional.

Part XV of the Indian constitution lays down the fundamental requirements regarding elections. Constitution itself provides the method for the election of the President and the Vice-President the method for election to legislature of the Union and States Legislature. Article 82 of Constitution of India empowers Parliament to divide the state in constituencies for the purpose of conduct of elections. Article 324 provides for an independent authority i.e. an EC, empowered to conduct all elections in the country.

The Indian judiciary through its various judgments and also by giving directions to the EC plays a key role in ensuring fairness of electoral process. The Supreme Court of India from time to time announced the judgments and interpreted the laws which proved to be very beneficial for the existence of the democracy in India. In *Union of India v. Association for Democratic Reforms* the Court held that "The Right to Know" is a salient facet, and the foundation for the meaningful exercise of the freedom of speech and expression guaranteed to all citizens under Article 19(1) (a) of the Constitution." In this case the court directed the Commission to demand for affidavit regarding the antecedents of the candidates at time of filling the nomination for contesting election. Again in the case of *PUCL v. Union of India* the court declared section 33B of the RP Act, 1951 as unconstitutional.

Problem Profile

Periodic elections are the most important for the modern democracy. Elections compose the signboard of democracy. Election is the process through which the people can change the government whenever there is any need. Regular elections are very important for the sustainability of democracy in any country. The most significant aspect of a democratic country is the free and fair elections. Any influence

from outside, whether it is of the government in power or otherwise which affects the poll results is dangerous for the survival of the democracy. Some acts which are not good for a healthy democracy are mentioned as "corrupt practices" in the election laws. For purity and sanctity of electoral process it is necessary that the candidates should not indulge in the practices which are barred by the law of the land.

The word corrupt as an adjective has been mentioned as "involving bribery, guilty of dishonesty, unlawful and without integrity." The expression „Corrupt Practices" as used in the old English Act includes bribery, treating, undue influence, personating and intentionally giving a forged statement regarding election expenditures. Corrupt practices are enumerated and defined under the RP Act of 1951.

Incurring or authorization of any expenditure on electioneering for the purpose of election of a candidate without authorization the latter, the issue of any spherical or hoarding or advertisement for the purpose of election without the name and address of the publishers, and the hiring of, or letting, any premises which is used for the sale of the liquor, were declared to illegal practices. The Representation of the People (Amendment) Act, 1956, simplified the law relating to corrupt practices by eliminating the distinction between three sets of corrupt practices, the minor corrupt practices, the major corrupt practices, and the illegal practices.

It may be pointed out that the said amendment did away with the distinction between different kinds of corrupt practices and laid down the "corrupt practices" in section 123 of the existing the RP Act of 1951. But the provisions regarding illegal activities in the earlier Act did not altogether disappear as they are embodied in section 171A to 171-I of the IPC. Chapter IX-A of the IPC from Sections 171-A to 171-I deals with the However, under the amended Act, i.e. under the existing section 123 of RP Act of 1951 the following "corrupt practices" are recognized and defined:

(i) Bribery (ii) Undue Influence (iii) Appeal on Grounds of Caste, Race, Community or Religion (iv) Promoting Hatred or Enmity on the Ground of Religion (v) Publication of False Statements (vi) Free Conveyance of Voters (vii) Obtaining Services of Government Servant (viii) Booth Capturing and Use of Muscle Power.

Criminalization of politics, marketability and defections, money power in elections are also a very big problem for the purity of elections in our country. Despite provisions to curb the criminalization of politics and also to curb the commission of corrupt practices there are many instances of violation of election laws. The Model Code of Conduct (MCC) is the set of directions to be followed by the political parties. These are relating to the general conduct of political parties and candidates; Election meetings and processions; Conduct of all concerned on the polling day; Entry into the polling booth and the conduct of the party in power whether in the Center or in the State. There are more than 510 cases of violation of MCC during the 17th Lok Sabha elections. During the Lok Sabha (17th) elections, repeatedly violation of the MCC, the ECI admitted before the apex court that it is toothless in taking any action against the candidates. It has no any power to de-register a registered political party if the candidate of such political party or the party itself violates the MCC

Criminalization of politics is the biggest challenge for the Indian democracy. According to the Association of Democratic Reforms (a Non-Government Organization): "Half of the newly elected Lok Sabha (17th Lok Sabha) members have criminal charges against them, a 26% increase as compared to 16th Lo Sabha. Out of these nearly 29% cases are related to rape, murder, and attempt to murder or crime against women. In addition to the above and due to increase in population and development in science & technology different methods are being used to corrupt the process of elections and to violate the Model Code of Conduct."¹⁵⁸

CHAPTER –II

Review of Literature

As we know that Indian democracy is the world's largest democracy. Its population makes it a challenge for the Commission to conduct free and fair elections. Conducting free and fair elections are the toughest work for the Commission ever since 1951. Election Commission plays an important role in conducting free and fair elections in the country. There are many books, research papers and reports available on internet or otherwise relating to the working of the Election Commission both the national and international writers have written about the elections. A short history of the literature relating to Election Laws and Role of Election Commission accessible so far is explained in the following study:

Books

Book titled "Democracy and Election Laws" written by Anand Ballabh Kafaltiya has comprehensively analyzed about the democracy and election laws. This book contains eight chapters which elaborately discuss the concept of Indian democracy and election laws. First chapter of the book is of introductory nature which gives introduction about democracy and its goals.

Narender Kumar in his book „Constitutional Law of India has discussed in detail about Election Commission and Election Laws in India. In Chapter- XXXII of the book the author has discussed about elections which is very useful for my research work. The author provides that the EC is empowered by Article 324 to "superintend, direct and control the elections." ECI is responsible for purity of elections for whole of the country. The Commission is constituted as an autonomous and independent body with a view, to ensure the freeness and fairness of elections, which is held to be a "basic structure of the Constitution."

Further author explains the establishment of the EC and provides that "the Election Commission shall consist of the CEC and such number of other ECs, if any, as the President may from time to time fix". The CEC and other ECs are appointed by the President of India the author further explains that "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 its functions."

The author also provides the important aspects relating to Election Commission such as multi-member Election Commission, independence of the EC, staff of the EC, functions of the Commission, superintendence, direction, control of elections and delimitation Commission etc. In this book the author has given a good account of information relating to my thesis which would be helpful to my research work.

Book titled "Criminalization of Politics" edited by Susheela Bhan elucidately discusses the criminalization of politics such as communalism, muscle power, money power etc. Chapter II of the book deals with criminalization of politics that include showing of muscle power and communalism.

The book titled "Indian Constitutional Law" written by M.P.Jain makes sincere effort in discussing fundamental principles of election mentioned under Articles 325 and 326. Chapter- XIX of the book discusses the right to vote and contest an election with the help of relevant case laws. This chapter also discusses about EC as a permanent and Constitutional body under Article 324(1) of the Indian constitution. Our Founding Fathers have taken care that this institution should be protected from outside influence. The author describes EC as a multi-member body and discusses that the ECI was a single member body until 1989. In 1989, the Government in power appointed two other ECs. This was done to curb the powers of CEC because T.N. Seshen did not work according to will of the Central Government at that time. The author discusses the case of T.N. Seshen in detail and also discusses the present status of EC and lastly highlights the powers of the Commission. This book also contains very important material relating to my research topic.

Articles

Article written by S.Y. Qureshi "Electoral Reforms Through the Years" gives an elucidative approach regarding electoral reforms. It highlights that elections in India is the very important for the establishment of the democracy. In this article the author describes the Election Commission innovative steps taken for the purity and sanctity of elections. The writer also highlights criminalization in electoral process.²⁰⁵ In the end the author provides the list of steps which are taken for transparency by the EC through election reforms such as recall, compulsory voting, relevancy of First-

Past the Post (FPTP), misuse of religion for electoral gain, paid news, penalty for electoral offences to be more deterrent.

Article written by S.N. Sharma "Criminalization of Politics and convictional disqualification"

explains about the purity and sanctity of electoral process is necessary for a sound system of governance. In this article the author describes how the corrupt practices have been used during the time of election and provides suggestions to overcome the entry of criminal background netas in the politics.

Article written by Sumandeep Kaur "Electoral Reforms in India: Role of Election Commission" expresses that: "one of the most important democratic polity is election at regular intervals. Election constitutes the signpost of democracy. These are the medium through which the attitudes, values and belief of the people towards their political environment are reflected." Through this article the model conduct of elections, expenses incurred by candidates for the campaigning, use of scientific and technological advancement e.g. EVMs etc. have been discussed.

Article written by Jagdeep S. Chokkar "The Citizen's Right to Know Electoral Reforms: Key to Effective Democracy" gives a brief approach about Indian democracy and explains about the concerns for the purity of electoral process. The writer also discusses about the election process in India and states that "if democracy has anything to do with freedom-and freedom with responsibility- then the electoral system might well be the very heart of democracy." The author has explained the bill drafted by the Law Ministry to amend the RP Act of 1951. The author has expressed his concern about the criminalization in politics and about the steps taken by the EC and Supreme Court in making necessary reforms.

Article written by Kaushik Bhattacharya "Hyper Popularity of Candidates and Indian Electoral Reforms" provides that due to pure and secure elections democracy in India is very famous in rest of the world. Article highlights an aspect of the Indian electoral process. The author highlights increasing number of candidates and also the concept of clone candidates. The author also discusses the cases where Election Commission has taken action against "dummy" candidates. Article written by Varun Israni "Election Commission of India- Functions and Working" provides the details of working of Election Commission. In the inception of the article the writer discusses about the history of the provisions relating to elections in Constitution of India and states that "the Constitution of India ushered in a democratic republic for the free people of the country. The founding fathers of the Constitution took solemn care to devote a special chapter to elections niched safely in Part XV of the Constitution. The draft of Art 289 of the Constitution of India (which on adoption later became the present Art 324 in Part XV of the Constitution) was introduced in the Constituent Assembly on 15 June 1949 by Dr. B.R. Ambedkar."

The writer mentions the constitution and functioning of the Election Commission with relevant Supreme Court judgments and relevant provisions. While discussing about powers of Election Commission the writer gives the observation in *M.S. Gill and Anor v. CEC and Ors.* The apex court observed that "Article 324 is a plenary provision vesting the whole responsibility for national and State elections in the Election Commission and the words (superintendence, direction and control) used in Art 324 are the broadest terms". The writer has explained the powers and responsibility of the EC very elaborately in his article which is very important for my research topic.

Article written by Ruchika Singh „Black Money and Elections: Who Will Bell the Cat?“ Provide elucidative approach with respect to use of black money in elections. The writer says that "there is a need to take comprehensive steps and corroborate financial information received for both parties and candidates from various sources, in order to ensure transparency and accountability in raising and spending money. The writer mentions the data of 2014 general elections and mentions that various studies suggest that this was the most expensive election in Indian history. The biggest portion of this expense was the money spent by candidates and parties on election campaigning. According to official data, until April 15, 2014, the Election Commission of India (ECI) had seized over Rs.217 crores in cash all over the country. Of this, Rs.118 crores was seized in Andhra Pradesh alone, followed by Rs.18.31 crores in Tamil Nadu, Rs.14.40 crores in Maharashtra, Rs.10.46 crores in Uttar Pradesh and over Rs.4 crores in Punjab including numerous other small seizures in the rest of the States." The author states that there is need of a drastic change in the election laws and these reforms require political will and action.

The above discussed articles are indeed of very important for my thesis as these articles provide very credible information for my research work which would prove to be very useful for my study.

Objectives of the Study

The present study will be conducted with the following objectives:

- To trace the historical evolution of election and electoral systems in different countries viz., United Kingdom, United States of America and India.
- To analyze the legal and constitutional provisions relating to the powers of Election Commission in India.

- To evaluate the role of judiciary with reference to electoral malpractices and other corrupt practices in elections.
- To critically analyses the role of Election Commission of India in curbing corrupt practices in elections and

Research Hypothesis

The existing constitutional and statutory framework regarding power and functions of ECI is inadequate. There are lots of hurdles in the way of Election Commission of India in conducting free and fair elections.

Research Methodology

In any research work research methodology plays a very important role. The present research shall be conducted by using doctrinal research for which the researcher will analyze the constitutional provisions, text books, journals, commentaries, case laws, articles, reports of the national committees on election reforms, suggestions given by the law commission of India for election reforms and all other available literature for arranging and systemizing the legal propositions.

Importance of the Study

The Election Commission has taken several new initiatives in the recent past to promote participation of the voter and ensure free and fair elections despite that majority of the voters are being influenced by the contesting candidates or their agents by using different methods. In our established parliamentary democracy, our leaders have failed to impart political education to the people who even lack the basic literary education. Democratic system in India has been established and accepted as an indispensable part of Indian political life; yet we have to recognize that in practice, there have been serious shortcomings.

The present study will help the Election Commission to strengthen the democracy. It will help to the administrators, judges, research scholars, politicians and voters etc. to understand the issues and challenges faced by Election Commission in purity and sanctity of electoral process in India and will also suggest some measures to handle these problems.

CHAPTER - III

HISTORICAL DEVELOPMENT OF ELECTIONS IN INDIA

Indian democracy is the world's famous and biggest democracy. In a democratic country the government is always in the hands of the public representatives. Hence, the representatives are chosen by the public by expressing their faith. Democratic form of government ensures overall growth of all the people without any discrimination. The essence of any democracy is the peaceful environment for the conduct of elections. People choose their representatives through elections for the purpose of governing them. Elections in the present scenario are very technical and well planned. Every democratic country has its own election system. The fundamental aim of these rules is to establish fairness and purity of elections.

History of Elections in India

India is familiar with concept of elections from very ancient times. It is evident from the available literature that in the ancient time the people used to deal with their problems and also make important decisions regarding the family matters or the decisions relating to the community by majority decisions. Our very old scriptures dating back to the "Vedic" age provides the references to "republics and democracies" established in different areas of the country. Ancient historians have mentioned that there were elections to choose of the head, "ganapaties" of the great "Vaishaliganarajya", thousands years back, for the purpose of deciding any dispute. They were assisted by other intelligent people in their decision making, like the present "council of ministers."

Although all the descriptions relating to the working of republican type of government in the early age of India are not available but the historians are of the view that only adult male person had the right to vote in the matters relating to the family or community matters or matters relating to the public. Due to the swell of inhabitants and change of the problems and choices of the society, it was very difficult to deal with the affairs of the society by the ancient way. The need of reforms was felt by the citizens and the government and it was felt that it is possible only through the representative government. We find many references relating to elections in the ancient literature of "Hindu polity". A vote was recognized as "chhand", which exactly means a "wish". "Multicolored voting tickets" were used, called "shalaks" (pins) for the casting of vote in the assembly. These tickets were circulated to members when a union was called and were composed by a "special officer" of the assembly, known as "shalakagrahak". Such "special officer" was appointed by the general public for the purpose of

collection of votes.

In later days, they went by the name of village *panchayats* and having very vast powers. During the Muslim period, the dealings of the trade corporations and the villages sustained to be carted on by popular assemblies.¹³ A basic change came with the British government when legal affairs and revenue, judicial were centralized conducted away from the villages.¹⁴ Representative legislative assemblies as we know them today are of rather modern source. Montesquieu observed that "the ancients had no notion of legislative assembly composed of representatives of the people."¹⁵

The beginning of the modern representative system is found in the folk-moots of the early Teutons of Germany. These were assemblies of the natural leaders of the tribes, who determined the more important questions of common interest to the tribe. Elections are the essential part of modern representative democracy, without periodical elections the idea of representative system cannot be conceived. There are more admirers of democracy than to any other system of government, if democracy is the best type of government, if democracy is the best type of government then elections is the foundation and pillars on which democracy stands.

Development of the Indian Representative System under the British Rule

Democracy in modern India, in the sense of a system of government under which the people exercise the governing power either directly, or through elected, representatives is a recent growth, having been introduced and developed by the British Government. The influences which favoured this development were: "the tradition in which Englishmen themselves had been nurtured, the familiarity of English-educated class in India with the British political ideals and institutions." It is important; however, that democracy in India owes its commencement not only to the democratic wisdom of Englishmen or of the English-educated Indians, but also to strict requirement. The Mutiny clearly confirmed to the British the unfeasibility of prevailing India without associating Indians with management. Hence, the various Indian Councils Acts passed in the "post-mutiny period". Associating Indians with the government were not so much the outcome of a desire on the part of the Britishers to establish parliamentary institutions in this country as due to a necessity of efficient administration.

The Act of 1858 dealt only with the transfer of authority from the Company to the Crown. It did not touch the administrative structure in India, which was highly centralized and completely devoid of the association of Indians with it. In fact, the concentration of authority

had begun with the Regulating Act of 1773 when it had reached its logical limits in the Charter Act of 1833 when all legislative powers were withdrawn from the Provincial Councils and were vested completely with the Governor-General-in-Council. Before 1899, the executive and Legislative functions were exercised by one and the same body. The Governor-General and Council at the Centre and the Governor and Council in the Presidencies administered the country and made laws. However, it was the Charter- Act of 1833 which first made a distinction between the executive and legislative functions of Governor-General's Council. In the exercise of its lawmaking power, the Governor-General Council was enlarged for legislative purposes by adding a Law Member. This was a significant change, as it was the first step in the development of a legislative council distinct from the executive. In 1853, the Governor-General's Council was again enlarged for legislative purposes by the addition of the Chief-Justice and one other judge of the SC and four members drawn from the Council legal experience and local knowledge in the framing of laws.

Right of the Indian People to Representation:

The British Crown directly undertook the responsibilities for the Government of India in 1858. For the purpose of effective administration, the British rule emphasized on making of the provisions relating to involving Indian people in the legislature process through their representatives. This is known as the „policy of association“ which was put into action by way of enacting the Indian Council Act, 1861. The Act, in fact, sought to establish some kind of contact between the rulers and the ruled. The Governor-General and the Governors, under Sections 10 and 16 of this Act were empowered to enlarge their Councils by nominating some persons to be known as Non-Official Members. It was then expected that the Additional members would keep contact with the masses and act as a via-media between the Government and the people, although these persons had failed, as the working of the Act showed, to act as focus of public opinion in the Councils.

The awakening of political consciousness in India was a synthesis of the sentiments affected by socio-religious reforms and inspiration derived from the impact of western political thought, which virtually generated the feeling of nationhood by demanding racial equality and liberalization of the political institutions. It was the INC which undertook this task by creating public opinion in India and in Britain, and demanded in its resolution that the “Supreme and other existing local Legislative Councils” be expanded by the admission of a substantial amount of elected members. It was the Indian Councils Act of 1861, which for the first time recognized the right of the Indian people to representation in the legislative

bodies (though the executive principle was conceded later). The Act of 1861 was passed primarily because the Mutiny had widened the gulf that existed between the rulers and the ruled and some means had to be provided to bridge that gulf. It is to be remembered, that the Legislative Council was far from being a parliament, there was no executive principle and there was no popular representation. While introducing the Act of 1861 in the British House of Commons, Sir Charles Wood had said to talk of native representation is to talk of that which is simply and utterly impossible.

For the legislative purposes the Governor-General's Council was enlarged by additional members not less than six and not more than twelve, nominated by the Governor-General and holding office for two years. But the Act did not transfer any substantial power into the hands of Indians. The Legislative Council remained merely an expansion of the Executive Council and it was dominated by nominated official members. Not a single Indian representative was there in the Legislative Council. However, the Act of 1861 is of great importance. For full three decades it was the Statute Law according to which India was governed. It marks the beginning of association of Indians with the task of administration. All later enactments were made within the framework of this Act. The Act of 1861 is also important as it clearly reversed the policy of centralization begun by the Regulation Act of 1773 and began the decentralization which is the cornerstone of federalism.²⁴ During this period great change were taking place, which were to some extent a direct result of Western System of education on which Indians were being educated. While such religious movements as the Arya Samaj and Theosophical Society were doing their best to improve the literacy of the country and teaching people the lesson of nationalism and patriotism, there also came a political awakening among the people.²⁵

Lord Ripon (Viceroy from 1880 to 1885) was, indeed, the harbinger of the idea of self-government and put it into operation. This gave Indians an opportunity to learn the rudiments of practical administration in the District and Municipal Boards to which they were now appointed.²⁶ He did so because he believed that the aim of England's rule in India was to enable the Indians to rule themselves and he sowed the seeds of Self-government.²⁷ Around this period the first non-official attempt to organize an all Indian political institution was made. In 1885, the first session of the Indian National Congress was held for which the name of A.O. Hume will go down in Indian history as that of a great benefactor of India. At its very first session it passed a resolution demanding reform and expansion of the Central and Provincial Legislative Councils by including a considerable number of elected members and by extending its functions to include consideration of budget and the asking the questions to the executive in regard to all branches of administration. As a result of the agitation carried on by the Congress, the

question of reform of the councils began to exercise the attention of the government of Lord Dufferin.

The committee recommended the enlargement of the Councils to include members of Indian gentry and nobility besides a certain number of officials.²⁹ For this purpose it recommended the use of elections, as far as possible partly direct on a high property qualification and partly indirect by local bodies and universities. Thus the recommendations of the committee were marked with breath of outlook and wisdom was in accordance with the spirit of the times. However, the Secretary of State rejected the cardinal recommendations of the Government of India and argued that the system of election was unfamiliar in India and, therefore, it would be unwise to introduce it.

Indian Councils Act of 1892

Among the Constitutional Acts the Indian Councils Act of 1892 is very important. The Montague-Chelmsford Report describes the British attitude towards the Indian Constitutional problems in the following words:

“Whereas in 1861 men said „we had better hear what a few Indians of our own choosing have to say, about our laws“ they said in 1892, our laws have politically benefited by Indian advice and criticism, let us have more of it and if possible, let the people choose the men, they send to advise us.

Lord Dufferin in his dispatch to the Secretary of State in London had recommended that for the popular element in the Councils recourse should be as far as possible, to the principle of elections. The Secretary of State, Lord Cross was originally opposed to the introduction of the elective principle, but he had to agree to an amendment by Lord Northbrook in the House of Lords. This was in the form of famous Kimberley Clause, which was couched in such language that although apparently it did not provide for elections, yet, if the Government of India chose to do so, they might have recourse to election for the appointment of additional members. However, as no mention was made in the Bill, Mr. Schwann moved an amendment to the following effect, “no reform of the Indian Councils which does not embody the executive principle will prove satisfactory to the Indian people or compatible with the good government of India.” To this Mr. Curzon replied that the Bill under consideration did not exclude some such principle, if he thought fit. Representative bodies such as the Zamindars of Bengal, Chambers of Commerce, and Municipalities etc. would very well serve as channels of

representation of Indian Public opinion. Mr. Curzon held that no other scheme of representation was practicable in India. According to him the People of India were the voiceless millions, whose life was not one of political aspirations? He said that the Congress Party did not represent even the educated people and in relation to the people of India it was "a minute and almost a microscopic minority." On the advice of Mr. Gladstone the Kimberley Clause was adopted and the Act of 1892 was passed by the Parliament of Britain.

The Indian Councils Act, 1892 was an Act of the Parliament of the U.K. that provided an increase in the size of the various legislative councils in British India. It was the beginning of the parliamentary System in India. The Indian Council Act, 1892 gave the members right to ask questions on Budget or matters of public interest after giving six days' notice. But members were not given right to ask supplementary questions. This Act is considered to be the first step towards the beginning of the parliamentary system in India. The provisions of the Act are as following: "The Act increased the number of the additional (non-official) members in councils to between 10 and 16. The Council now had 6 officials, 5 nominated non-officials, 4 nominated by the provincial legislative councils of Bengal Presidency, Bombay Presidency, Madras Presidency and North-Western Provinces and 1 nominated by the chambers of commerce in Calcutta. The law member was made a permanent member. In case of Bombay and Madras 8-20 and in case of Bengal 20 and in case of North Western province and Oudh 15. In 1892, the council consisted 24 members, only five Indians. the Indian point of view. His repressive and reactionary measures were crowned by the absurdity of his parting kick in the form of Partition of Bengal which hurled upon the people's head in the teeth of bitterest opposition.

The Indian Councils Act, 1909 (Morley-Minto Reforms)

In November 1905, Lord Minto replaced Lord Curzon and in December Lord Morley became the Secretary of State for India. Distrust and flouting of public opinion, the two cardinal features of the Curzonian regime, inevitably resulted in the alienation of sympathies, and the extremists failing to capture the Congress left it in a body at Surat in 1907. The movements of Swadeshi and Boycott, Political dacoities and murder of officials, mainly Europeans, darkened the political horizon in India. Lord Minto tried to put down extremism by repression but this only fanned it into a conflagration. With the coming of the Liberal Party into power in Britain, Lord Morley at the head of the India office opened some prospect of peace. In 1909 he brought forward his bill, which became the Indian Councils Act of 1909, popularly known

as the Morley-Minto Reforms.

The Act of 1909, provided for a number of reforms, changes and modifications in the existing Governmental machinery. The size of the legislative councils was materially enlarged by according more representation to the various classes of persons and bodies. In case of the Governor-General's Council at the Centre, the total membership was raised from 16 to 60 members. The maximum number of members for Provincial Councils of Bengal, Bombay and Madras was increased from 20 to 50. Bihar and Orissa were to have 50 members in its Council and Punjab, Burma and Assam were to have a limit of 30 members in their legislative councils.

The Act of 1909 provided that Councils were to consist of four categories of members:

- (a) Ex-officio members: who by virtue of office held by them in the government were to be given membership;
- (b) Nominated officials : The Governor-General was empowered to nominate Civil Servants who became members after nomination;
- (c) Nominated non-official members: The nominated of non-officials who provided as a means of representing special interests and to secure men of special qualifications such as experts;
- (d) The elected members: These were members from Landholders, District Boards, Chambers and Universities, etc.

Under the Indian Councils Act of 1909 provisions were made regarding separate electorate for the Muslims.⁴¹ The Indian Councils Act, 1909 was not according to the expectation of the Indians. The Council Act of 1909 was a significant improvement in certain respects on the Councils Act of 1892. In the provinces, a non-official majority was provided for, and though it could not prove much useful because of the nominated non-officials always siding with the Government, the principle of the importance of the non-officials was asserted, and the time could not be far being when it would be actually realized. The principle of election also came more clearly on the surface.

There were certain defects in the Act which were too glaring to overlook. The greatest defect of the Act was the introduction of communal electorates for Muslims by which, according to Jawaharlal Nehru "a political barrier was created round them isolating them from the rest of India and reversing the unifying and amalgamating process which had been going on for centuries.

Government of India Act, 1919 (Montague-Chelmsford' Reforms)

The Government of India Act of 1919 (hereinafter GOI Act of 1919) popularly known as

“Montague-Chelmsford” was a new era in the history of elections during the British period. The idea of Dyarchy was introduced in the administrative set up of India. The GOI Act of 1919 made significant changes in the Central Legislative Council of India and which was a single-Chamber legislature was converted into Bicameral Legislature, consisting of a Legislative Assembly which was the Council of State and a Lower House which corresponded to an Upper House. The principles of direct election were introduced and in each of the Chambers voted members were to be in a majority

The basic scheme of the Act embodied four general principles:

- (a) Complete accepted control, as far as possible, in the field of Local Government.
- (b) The Provincial Governments to be in a large measure independent of the Government of India and to be responsible in some measure to popular representatives.
- (c) The Government of India to remain responsible to Parliament; yet the Indian Legislative Council to be enlarged and popular representation and influence in it to be enhanced.
- (d) The control of Parliament and the Secretary of State over the Government of India (GOI) and the Provinces to be relaxed in proportion to the above changes.

The legislative bodies created under the Indian Councils Act 1909 continued up to 1915, when the GOI Act of 1915 superseded the previous Act. This Act 1915 was further amended by the GOI Act of 1919 to bring in the reforms, known as Montagu-Chelmsford Reforms, suggested by Mr. Edwin Montagu, the then Secretary of State for India, and Lord Chelmsford, the then Governor-General. The 1919 Act was considered to be some improvement over the earlier set-up under the 1909 Act. However, it also continued the old practice of reservation of seats for Muslims and separate electorates for them. In addition, for the first time, this Act provided for further reservation for Shikhs. Under this Act, a bicameral lawmaking body was shaped at the Centre.⁴⁶ For the first time, the elected members constituted the majority in each of the Houses. The Central Legislative assembly was to consist of 145 members, of which 105 were to be elected and the remaining to be nominated.⁴⁷

Under the present Act there were following number of members and the scheme for their elections: “The Legislative Assembly, the lower or the popular House of the Central Legislature

was to consist of 145 members, of whom 105 were elected by the people, 26 were official members and 14 were nominated non-officials, of the elected members 53 were General, 30 Muslims, 2 Sikhs, 9 Europeans, 7 landlords and 4 representative of the Indian Commerce. The nominated non-official members included one each from amongst the Depressed Classes, Anglo-Indians, Indian Christians, and Associated Chambers of Commerce and Labour interests. The tenure of the Assembly was to be three years. The Council of State was to have 60 members, of which 34 were to be elected, and the rest would be the Governor-General's nominees. Though the Act provided for direct elections from the constituencies to both the Houses, only a limited number of persons were granted the right to vote on the basis of certain high qualifications like, the ownership or property, or payment of income tax, or payment of municipal tax, or the holding of land, etc.⁵¹ The franchise to the Council was far more restricted. Property qualifications had been pitched so high as to secure the representation of only the wealthy landowners and merchants. For other interests for whom seats were reserved, previous experience in a Central or provincial legislature, service in the chair of a municipal Council, membership of university senate and similar tests of personal standing and experience in public affairs were necessary qualifications for a vote.

The maximum strength of the upper house or the Council of State was fixed at sixty of whom thirty four were elected and the rest nominated, of the nominated members not more than twenty could be officials and of the elected members, nineteen were elected by general constituencies, 11 by Muslims, 1 by Sikhs and 3 by Europeans, the elected seats were thus distributed : Madras 5, Bombay 6, Bengal 6, United Provinces 5, Punjab 4, Bihar and Orissa 3, Central Provinces and Assam 1 each, Burma 2.

The duration of the Council of State was for 5 yrs. and for the Legislative Assembly 3 yrs. As regards qualifications to vote for the Central-Legislature, the Act provided that those who paid a certain amount of Income Tax, Municipal Tax, and Land revenue would only were entitled to vote. Thus the franchise was very limited. In the sphere of provincial legislatures very important changes were made. All the provincial legislatures were increased. Their statistical numbers, however, varied from region to region. Madras was given 132 members, Bombay 114, Bengal 140, United Provinces 123, Punjab 94, Bihar and Orissa 103, Central Provinces 73, Assam 53 and Burma 103. Of these not more than 20 percent could be official members and not less than 70 percent elected. Thus in each province the Legislative Council was to have a substantial majority of selected members. Besides the official and elected

Government of India Act, 1935

The Government of India Act of 1935 (hereinafter GOI Act of 1935), which was a very lengthy statute consisting of three hundred and twenty one sections and ten schedules, was in its material, drawn from the following sources: "(i) The Nehru Committee Report (ii) The White Paper (iii) Simon Commission Report (iv) The discussions held at the Round Table Conferences (v) The Joint Select Committee Report and (vi) The Lothian Report." In addition to others there were 2 special causes, why the Act so extended: "Firstly it had to deal with a very complex type of Government, and second, it tried to provide legal safeguards against the wrong use of power by Legislators and Ministers.

The GOI Act of 1935 was passed by the British Parliament, based generally on the recommendations of the Simon Commission and the report of the Joint Parliamentary Committee. According to the Act of 1935, the Federal Legislature was to consist of His Majesty, represented by Governor-General, and 2 Chambers, to be identified respectively as the Council of States and the House of Assembly (generally called the Federal Assembly).

Division of the Constituencies under Government of India Act, 1935

The total number of members of the Council of State was 260, consisting of one hundred fifty six representatives of British India and one hundred four representatives of the Indian States. The number of States representatives depended upon the number of States according to the Federation. The 104 members of the Council of State allotted to the States were to be selected by the rulers of the respective States. Out of these 156 members allotted to the British India, 6 were to be selected by the Governor-General and the rest were to be chosen.

The 150 seats in the Council of State, fixed to British India, was distributed thus: Madras, Bengal and United Provinces 20 each; Bombay, Punjab and Bihar 16 each; Central Provinces and Berar 8; Assam, North-West Frontier Province, Orissa and Sind 5 each; British Baluchistan, Delhi, Ajmer, Mewar and Coorg 1 each; while Europeans had 7, Indian Christians 2 and Anglo-Indians 1 seat on a non-Provincial basis. According to the Communal award, various minority communities, Muslims, Europeans, Shikhs, Christians got separate representation through their own electorates. Women were also to be represented from every important Community.

Composition of the Council of State under the Act of 1935

Sr. Provinces & No. Communities	Total	General	Sch. Castes	Sikhs	Muslims	Women
1. Madras	20	14	1	--	4	1
2. Bombay	16	10	1	--	4	1
3. Bengal	20	8	1	--	10	1
4. Uttar Pradesh	20	11	1	--	7	1
5. Punjab	16	3	1	4	8	1
6. Bihar	16	10	--	--	4	1
7. C.P. and Berar	8	6	1	--	1	--
8. Assam	5	3	1	--	2	--
9. N.W.F.P.	5	1	--	--	4	--
10. Orissa	5	4	--	--	1	--
11. Sind	5	2	--	--	3	--
12. British Bluchistan	1	--	--	--	1	--
13. Delhi	1	1	--	--	--	--
14. Ajmer Merwara	1	1	--	--	--	--
15. Coorg	1	1	--	--	--	--
16. Anglo-Indians	1	--	--	--	--	--
17. Europeans	7	--	--	--	--	--
18. Indian Christians	2	--	--	--	--	--
19. Nominated by the Governor General	6	--	--	--	--	--
Total	156	75	7	4	49	6

The franchise for election to the Council of State was sufficiently high, which meant that only a small portion of Communities could get the right to vote. The

Council of State was to be permanent body, One-third of it being renewed (by partial renewal system) after every three years, and thus each member, after the first elections would hold his seat for a period of nine years.

There were 375 members in the Federal Assembly. Out of 375 members 250 were to represent British Indian Provinces and 125 members were to represent Indian States. Every Indian Prince was given full freedom to make a decision how the representatives of his State would be sent to the Federal Assembly, whether through nomination by the ruler himself or through some kind of election. So there had not been prescribed any uniform system of representation for all States, some rulers might adopt the system of nomination by themselves, while others might introduce popular election. This was a very defective system as it ignored the subjects of the Indian States in the matter. In the case of British India a kind of uniformity had been adopted.

The representatives of British India, numbering 250, had been distributed thus: Madras, Bengal and United Provinces had 37 each; Bombay, Bihar and Punjab 30 each; Central Provinces 15; Assam 10; North-West Frontier Province, Orissa and Sind 5 each; Delhi 2; Baluchistan, Ajmer-Mewar Coorg 1 each and there were 4 non-Provincial seats for Commerce, industry and labour.⁶⁸ The British Indian representatives were to be indirectly elected by members of the Provincial Assemblies by the method of "Single-transferable vote system of proportional representation and not by the primary voters from territorial constituencies." The majority of the seats were distributed on a communal basis. The composition of the Federal Assembly was most undemocratic. The States, Muslims and other smaller minorities got secured weightage beyond their deserts. And above all, contrary to the precedent and democratic principle the Upper Chamber, the Council of States, was voted directly and the Lower House, the Federal Assembly indirectly, and the Chamber which was voted directly was made permanent and that chosen indirectly was made dissoluble.⁶⁹ The Diarchy in the provinces was replaced by provincial autonomy the Act of 1935 was remarkable in extending and liberalizing the right of franchise and thereby making the provinces truly representative in character.

The candidates for the legislature in every province, besides possessing residential qualifications were to have certain property and literacy qualifications. Those possessing educational qualification not below the primary stage had the right to vote and those paying a fixed sum of tax or rent, or those paying with certain fixed minimum amount of rent were entitled to vote.⁷¹ The minimum age for voters was 21 while for contesting an election for the assembly the minimum was 25 years and for the Legislative Council 30.⁷² Despite of the

severe criticism of the electoral system introduced under the Act of 1919, the GOI Act of 1935 did not introduce the system of universal suffrage.

The British statesmen while taking political advantage of the Communal Award of 1932, transformed the Indian electorates into disparate groups divided into Hindus, Muslims, Sikhs, Anglo-Indians, Indians Christians, landlords and capitalists and so forth. This undemocratic handiwork of the then British Prime Minister, Mr. Ramsay MacDonald, was incorporated into the Act of 1935 to give deadly blow to the national unity and to instigate the forces of disintegration. Anyhow, it must be accepted that the above Act was one riddled with communalism. The most objectionable feature of the composition of this assembly was the adoption of indirect election for its constitution, because in no country of the world the popular House is indirectly constituted.

Evolution of the Modern Election System

Indian Constitution is a democratic republic for the free people of the country. The drafting committee of the Indian Constitution drafted a special chapter in Part XV of the Constitution. Introducing draft Article 289 of the Indian Constitution in the Constituent Assembly on 15 June 1949, Dr. B.R. Ambedkar stated:

“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. The Committee made a report that it should be recognized 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 free 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 in a separate part containing Article 289, 290 and so on.

It was ensured that the election machinery should be out of the influence of executive. The provision contained in sub-clause (1), Sub- Clause (2) under Draft Article 289 says that "there shall be a Chief Election Commissioner and such other Election Commissioners as the President may from time to time appoint. Democracy and elections have a congenital, inseparable relationship. In India they have been conjoined ever since the country became republic. The country went for its first general elections in 1952. The new Constitution of independent India which came into existence on 26 January 1950 has 395 articles in 18 parts 12 schedules and with a detailed list of fundamental rights and a fairly long series of "directive principles of state policy" that the state is obliged to promote. It also prescribes another shortlist of fundamental duties for citizens. The exercise took a very long time and the Constituent Assembly sat continuously for 2 yrs. 11 months and 17 days to complete the draft, resolving many conflicting issues along the way. It created an elaborate constitutional architecture with bicameral, federal legislative structure, state assemblies, an independent judiciary and, crucially, the Election Commission.

Draft Proposals and Debates of the Constituent Assembly

The first draft of the Indian Constitution made provision for a common centralized authority for elections for both Central and State Legislatures. H.V. Pateska's amendment wanted to hand over the liability of parliamentary elections to EC and that of State elections to separate machinery. K.M. Munshi went to the extent of saying that "certain provincial government could not be trusted to be as impartial in election as they should be in this connection, Dr. B.R. Ambedkar while participating in the debate said.

"The original proposal under Article 289⁸⁵ was that there should be one Commission to deal with the elections to the Central Legislature, both the Upper and the Lower House, and there should be a separate Election Commission for each province and each State, to be appointed by the Governor or the Ruler of the State. Comparing that with the present Article 289, there is undoubtedly, a radical change. This Article proposes to centralize the election machinery in the hands of a single Commission. No person who is entitled to be brought into the electoral rolls on the grounds which we have already mentioned in our Constitution, namely, an adult of 21 years of age, should be excluded merely as a result of the prejudice of a local Government, or the whim of an officer. That would cut at the very root of democratic Government.

Free and fair elections require an independent body to hold, supervise, direct and conduct the elections. Indian Constitution under Article 324 shows that the framers of our Constitution entrusted the "superintendence, direction and conduct" of elections to the EC. There were

different views and proposals on the constitution of EC before the Drafting Committee. The Drafting Committee adopted for a single member Commission, namely the CEC, permanently in office

Centralized Election Machinery under the Central Election Commission

The original proposal under Article 289 was that there should be one Commission to deal with the elections to the Central Legislature, both the Upper and Lower Houses, and that there should be a separate Election Commission for each Province and each State, to be appointed by the Governor or the Ruler of the State. Comparing that with the present Article 289, there is undoubtedly a radical change. This Article proposes to centralize the Election machinery in the hands of a single Commission to be assisted by Regional Commissioners, not working under the Provincial Government, but working under the superintendence and control of the Central Election Commission.

The Draft Committee noticed that some people who are not connected to the regional or local government are being excluded from coming on the electoral rolls. The local governments are biased for the voters who are not connected to the government of the day. Most of these people were poor people and down trodden people. The above explains the desire for vesting the conduct of elections in an independent authority under the Indian Constitution and the creation of the EC as such authority. The apex court in *T. N. Seshan v. Union of India and Ors* that fully insulated so that it can function as an independent agency free from external pressures from the party in power or executive of the day. This objective is achieved by the setting up of an Election Commission, a permanent body, under Article 324 (1) of the Constitution.

Constituent Assembly on Appointment of Chief Election Commissioner

Even in Constituent Assembly debates one finds a flicker of doubts among members about the appointment of the Chief Election Commissioner by the executive. The members of Constituent Assembly pointed out to the Constituent Assembly Chairman, Ambedkar, stated that "there was lacuna; that is; there was absolutely no check on the executive's power to appoint a person to an office as important as that of the Chief Election Commissioner Chief Election Commissioner. Appointment to this post made exclusive on ministerial advice, it was feared might make room for the exercise of political influence. Such apprehensions were expressed by H.N.M. Kunzru and Shibban Lal Saxena on the floor of the Constituent

Assembly.

Since the Election Commission is concerned with elections to the State Legislature also, the choice of the CEC has a federal aspect, and from this angle consultation with the Chairman of the Council of States (the Rajya Sabha) would be particularly appropriate, in addition to discussion with the leader, or a nominee of the Opposition parties in the Lok Sabha. The procedure suggested above would avoid the possible objection that government of the day at the Centre had been influenced by narrow considerations in choosing the Chairman of Commission. At the earlier stages of the proceedings, the Constituent Assembly had thought of leaving it to each State to have its own Commission.

It was only in 1949 that for ensuring "uniformity of electoral procedure and practice in all the units" and for "the greatest safeguard for purity of elections" it was decided that there should be an All-India Election Commission with jurisdiction over both the Union and State elections. Even at that stage the "federalists", K. Santhanam and H.N. Kunzru, expressed reservations about what they considered to be an encroachment of the legislative sphere of the States. Ultimately, the State Legislatures were left only with the powers mentioned in Article 328 of Constitution, that if the method of selection proposed above is adopted, the States, including those with Ministries with a political complexion different from that at the Centre, would have full confidence in the Commission and would extend to it the willing cooperation so essential for the discharge of the Commission's diverse responsibility.

Another suggestion, contained in the Tarkunde Report, expressed the need of the appointment of members of the Election Commission by the President on the advice of a Committee consisting of the Prime Minister, the Leader of the opposition in the Lok Sabha and the CJI.⁹⁹ Also Ramkrishana Hegde pointed out that "the leaders of the opposition parties in a Joint Statement on 17 June 1982 demanded that the government should consult the opposition in the appointment of the CEC." Provision for such consultation can appropriately be made in the law envisaged in Article 324 (2). Making a reference to Ambedkar discussion in the Constituent Assembly on the appointment procedure of the CEC, Hedge further says that: "Ambedkar clearly envisaged legislation in regard to the appointment of Chief Election Commissioner. The proposal for an Instrument of Instructions to the President in regard to the appointment of persons to high offices was eventually dropped. Ambedkar had intended the instrument to serve as a check on the executive's powers in the appointment of the Chief

no legislation has been made, either.

The framers of the Constitution intended that the appointment of the CEC and ECs shall be made in this behalf by Parliament. But the deliberate failure to enact any legislation has resulted in leaving the power of appointment wholly unregulated in the hands of the executive at the center. Goswami Report suggests that "the appointment of the CEC should be made by the President in consultation with the leader of the opposition was available, the consultation should be with the leader of the largest opposition group in the Lok Sabha. Thus there is a widespread support in favour of change in the present mode of the Chief Election Commissioner's appointment. However this view does not go uncontested, there is an equally strong view that does not favour change in the present mode of appointment and considers the present procedure of appointment as satisfactory. It is interesting to note that none of the ex-Chief Election Commissioners wanted any change in the appointment procedure of the CEC. All of them argued in favour of retaining the present procedure of the appointment."¹⁰⁴

Evolution of the Election Commission of India

The present provisions regarding the constitution of the EC under the Constitution of India is the result of very vast debates in the Constituent Assembly. As evident from the Constituent Assembly Debates: "The original thinking visualized of a central electoral authority-one body to conduct election to the Parliament and each state to have its own set-up for similar purposes. The President of India was to appoint the Central Election Commission and the Governor to appoint a similar body for his state. The Draft Constitution of India had such a conception of the apex level body. The superintendence, direction and control of all elections to Parliament and of elections of the offices of the President and Vice-President held under the Constitution, including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with the elections to Parliament, was to be vested in a Commission to be appointed by the President." The "superintendence, direction and control" of all elections to the House of People, Legislature of a State was given to EC of India. The Commission was given a constitutional duty to conduct free and fair elections for whole of the nation. Independence of Election Commission

The Chairman of the Drafting Committee, B.R. Ambedkar, however did not agree to the suggestion on the grounds that it would be an unnecessary duplication of administrative machinery; and that it would involve avoidable expense. Actually our founding fathers were of

the view that the Commission to be an ally of the government with independence in day to-day business. to regulate its domestic procedure for the proper and efficient performance of its duties. The Chief Election Commissioner has been declared as the head of the department and shown in Schedule I of Delegation of Financial Powers Rules, 1978 under Legislative Department, Ministry of Law, Justice and Company affairs along with other attached and subordinate offices. The CEC has been delegated the power of creation of posts, incurring of contingent expenditure up to the level of the Ministers, but with the concurrence of the Associate Financial Advisor only. Exercise of this power is also according to the instructions of the government.

Although the election machinery has and large acquitted it with the elections held so far and has earned a lot of praise both in India and abroad, political and local pulls and pressures cannot be ruled out. It was therefore; felt that it was necessary that maximum possible supervision and vigilance should be exercised over the election staff at all levels so that they may do their duties regarding the updation and preparation of the electoral roll smoothly. For these reasons, that was felt that this would create an independent election department. It was felt that this would strengthen in the officers of the election department a sense of security, independence and impartiality and induce them to attend to election work with zeal and enthusiasm. A recommendation to this effect was made to the government in 1970. The Joint Committee of Parliament which considered this proposal, however, felt that the creation of a big centralized machinery for this purpose would both obviate the need for dependence on state machinery in this huge task and that the effective implementation of the Commission's proposal would involve considerable expenditure. The Joint Committee was, therefore, not in favour of this proposal.

Taking into consideration the view of the Joint Committee on the question of setting up an independent All India Election Department, the Commission put forward a modified proposal to the government in 1977. It pointed out that while the election department in each State/Union Territory is responsible to the Commission in so far as the conduct of elections is concerned, the State/Union Territory Governments exercise administrative as well as partial functional control over the election department. This often created a suspicion in the minds of the people that the State Governments might interfere with the impartial functioning of the election machinery in the field. In fact, allegations to this effect have often been made. To avoid the emergence of such an embarrassing situation as well as to build up faith of the general public in the election machinery the Commission proposed that

administrative and full functional control over the election departments at the State level should vest in the Election Commission rather than the State Government.

In the office of Chief Electoral Officers of each State/Union Territory, there is permanent staff for election work and expenditure on that staff is shared by the both level of governments i.e. central and state governments. Placing such staff under the Commission would, therefore, involve any further sizeable expenditure as feared by the Joint Committee of Parliament, but will instead lead to efficiency, better coordination and impartial working of the election department. The need for giving more powers to the Commission has been stressed off and on by political parties etc. The Commission feels that in order to ensure independent and impartial functioning of the Election Department as well as to build the confidence of the general public in the Electoral machinery at the field level, full administrative and functional control over the Election Departments in the State/Union Territories should vest in the Election Commission. The SC made it clear that "the words „superintendence, direction and control" are meant to supplant the law and, therefore, cannot be availed of against a valid law of Parliament or State Legislature concerning election matters.

Constitutional Provisions for Election Commission

After the discussion, our founding fathers adopted Part XV of the Constitution which exclusively deals with elections. Article 324(1) provides that "the superintendence, direction and control of the preparation of electoral rolls, the conduct of all elections to the Parliament or to the Legislature of every State and of elections to the office of the President and Vice-President held under the Constitution shall be vested in the Election Commission. Article 324(2) provides that 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 these executives shall be made by the President subject to the provisions of any law made in that behalf by Parliament. Article 324 (4), provides that, if found necessary after consultation with the EC, the President may also appoint Regional Commissioners to assist the Commission." The Constituent Assembly was of view that there should be permanently one man in the office of the EC i.e. CEC, so that the election staff and machinery would function under the direction and guidance of EC which would ensure the continuity and functioning of the EC as it was in the fitness of things. The President has power to appoint Regional Commissioners, after consultation with the EC, if he may consider

necessary to assist the EC in the performance of its functions set-out in clause (1) of Article 324.

It is clear from constitutional provisions provided under Article 324(4) that the EC consists of the CEC and the ECs as and when appointed by the President. The office of the CEC is envisaged to be a permanent fixture, but that cannot be said for the EC, as their appointment is optional with the Central Executive. There cannot be an EC without the CEC but same is not the case with the ECs. Their number can vary from time to time. Article 324 (2) contemplates a statute to define the conditions of services of the CEC and the ECs. The President may make rules to determine the conditions of services and tenure of office of the ECs and the Regional Commissioner. This, however, is subject to any law made by Parliament. The tenure of the CEC is independent of the executive judgment for he cannot be removed from his office except in the like manner and on the like grounds of a Judge of the Supreme Court.¹³⁰ No such safeguard is provided to the ECs. These provisions of the Constitution thus grant a security of term to the CEC similar to a Judge of the Supreme Court. He can, therefore, discharge his functions without fear, favour or pressure from the executive or the party in power. The tenure of other ECs and the

Regional Commissioners is also free of the executive control in so far as none of them can be removed from office except on the recommendation of the CEC.

It is an obligation of the respective governments either Central Government or the State Government to provide necessary men power for conduct of the elections when requested by the EC. As elections are held at intervals, therefore, the EC does not employ a large staff on permanent basis. Accordingly, the EC has been given the power to requisition staff as and when it needs from the Central and State Governments. Clause (6) refers to such staff only as falls under the disciplinary control of these governments. The staff working under the statutory authority cannot be called for the election duty.

Organizational Structure of the Election Commission

The ECI is an "independent constitutional authority" constituted under Article 324 of the Constitution. Clause (2) and (3) of Article 324 state that "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. The appointment of the CEC and other ECs shall, subject to the provisions of any law in that regard by the Parliament, be made by the President. When any other Election Commissioner is appointed, the Chief Election Commissioner shall act as the Chairman of the Election Commission." This, thus provides for the compulsory appointment of the CEC and ECs from time to time if the

President so wishes.

Further, Clause (4) of Article 324 of the Constitution provides for "the appointment of Regional Commissioners at the time general elections to the Lok Sabha or the Legislative Assemblies of the States, to assist the Election Commission in its functioning. It also stipulates that the Regional Election Commissioner cannot be removed except on the recommendation of the Chief Election Commissioner, which places the position of the Regional Election Commissioner at a level subordinate to the Chief Election Commissioner." The rationale for such a Clause can best be understood if one considers that founding fathers of the Constitution, presumably wanted to avoid the possibility of a constitutional stalemate at the height of election activity. Accordingly, two Regional Commissioners were appointed on the eve of the 1st general elections in the country for a brief period of 6 months. No Regional Commissioner was ever appointed on the eve of any subsequently general elections because that would have made the organization too heavy, besides it was too much to expect Regional Commissioners to sort out local problems. Further, during the general elections to Legislative Assemblies in 1982-83, the Commission faced some serious problems of inquiry relating to the illegal use of government machinery, inaction on the part of some of the state governments in regard to the maintenance of peace and security and the not following the Commission's directions in election related matters, As a consequence, the Commission recommended to the government that it invoke the provision of appointing a Regional Commissioner in every State three months prior to the holding of a General Election. The then Chief Election Commissioner Shri R.K. Trivedi had at the time further suggested to the government that six posts of Regional Commissioners be created to oversee the functioning of the election machinery. The government accepted the proposal but no such post was filled for want of persons suitable for such a delicate assignment.

However, in 1956, two posts of Deputy Election Commissioners were created for assisting the Election Commission in the transaction of day-to-day administrative business and have been an integral part of the Commission ever since, a Deputy Election Commissioner is empowered to perform any of the functions of the Election Commission, unless directed to the contrary, under Section 19A of the RP Act of 1951. In fact, the office of the Dy EC has been found so useful that the EC in its Annual Report in 1986-87 suggested that six such posts be created for effective supervision and coordination in the field.

Tenure of the Election Commissioners

A fixed tenure for this high functionary that is the CEC is necessary to enable him to function independently without any fear of the executive or the legislature. The tenure of the CEC has earlier, however, been determined under the rules made by the President in 1972. The CEC could hold office for five years or till he attained the age of 65 years, whichever was earlier. Now under the CEC and other Election Commissioners (Conditions of Service) Act, 1991, the term of his office has been extended up to 6 years, according to the his date of joining of the office or till he attains the age of sixty five years of age, whichever is earlier. Since by the aforesaid Act, the terms of the CEC have been regulated, there does not seem to be any justification to make any further changes in regard to the tenure of the office of the CEC. As far as removal of the CEC is concerned, the Constitution has, however, made the method of removal of the CEC as difficult as that of the judges of the Supreme Court. A CEC thus shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House present and voting has been presented to the president in the same session for such removal on the ground of proved misbehavior or incapacity.

Removal of Election Commissioners from Office

As mentioned earlier, in order to ensure the independence of the EC and to insulate it from Executive interference, the Constitution provides that the CEC can be removed from office in the same manner as a judge of Supreme Court can be removed. It is, however, paradoxical that the same protection in the matter of their removal from office has not been provided to the EC. Only limited protection is available to them in that they cannot be removed from office except on the recommendations of Chief Election Commissioner. The Commission has been insisting with the government for several years that the ECs be placed at par with the CEC in the matter of their removal from office, as the underlying intention and object of creating an autonomous EC is to ensure the independence of the Commission as an institution and not only of the CEC. Clause 2 of Article 324 of the Constitution envisages that the EC may consist of the CEC and such number of other ECs as may be fixed from time to time. The appointment of the CEC and other ECs are to be made by the President.

Constitution of India under Article 324 neither prescribes any qualifications- administrative, legal or judicial- for eligibility to the post of the CEC nor does it lay down any instructions

regarding the appointment of the CEC. This matter has been given to President of India till the Parliament of India enacts any law relating to the appointment of the CEC. In the form of government like ours, obtaining in India, this amounts to leaving the appointment of this high functionary to the government of the day, that is, to the Cabinet with the Prime Minister at its head.

Chief Electoral Officer

Before 1956, there was no any provisions relating to the appointment of the Chief Electoral Officer (hereinafter CEO) in the state under the RP Act of 1950 and 1951, but there was an officer for the purpose of preparation and updating of the electoral roll in the State. They were appointed by the state governments concerned under the provisions of the Representation of the People (Preparation of electoral Rolls) Rules 1950. The EC was of the view that the appointment of the CEO should be made in consultation of the EC. Accordingly, the 1950 Act and 1951 Act were amended by the Representation of the People (Amendment) Act 1956 to make provisions to that effect. It was provided that "there shall be a chief electoral officer for each state who shall be such officer of government as the election Commission may, in consultation with the government, designate or nominate in this behalf. Further it was provided that his duty is to prepare and revise the electoral roll and to conduct all the elections to Parliament and state legislature in the state under the supervision of the Election Commission. The chief electoral officers are appointed from the national civil services as it is felt that the functions of the chief electoral officer are fundamentally executive in nature. Every chief electoral officer has a separate officer at the state level manned by certain other officers, as appointed by the EC from time to time.

CHAPTER-IV

ISSUES AND CHALLENGES BEFORE ELECTION COMMISSION OF INDIA

In the world's largest democracy, one of the major challenges that have remained in perpetual prosperity and existence is the absence of free and fair elections leaving scope for various ill-practices, corruption, manipulation or voting rights and crisis of competitive and healthy political competition, instead focusing on the display of brute power. Despite Supreme Court orders and strictness of the Election Commission, changes are only panacea to protect the dilapidated state of Indian democracy. An inherent notion of free and fair justice is enshrined in the principle of

'Equal political rights' which are placed at a relatively higher pedestal than social and economic rights. This is because from the equality to choose one's leader one can aim at achieving economic and social equality which shall flow from the process of good governance itself. The principle of one man in one vote is the description of how worldwide mature license is the source of a healthy democracy and hence, every great nation has empowered its people through Universal Adult Franchise before ushering the title of being great.

The election Commission on 15 March 2019, held a meeting (at New Delhi) of the Multi-Department Committee on Election Intelligence, comprising representatives of the heads of tax boards, regulation implementation organizations, Central paramilitary forces and economic organizations, to review the measures being taken to check abuse of money power for influencing voters. During the meeting the Chief Election commissioner said that –Conducting clean elections is now one of the biggest challenges in our democracy given the prevalent abuse of money power, particularly when it manifest in inducement of voters. The Commission said that –The expenditure monitoring mechanism with its two thrust areas of keeping pathway of the legal expenses incurred by candidates and political parties for movements ensuring that there was no unlawful use of cash and other items for purchasing of votes was vital to ensuring clean elections.

There are many problems and challenges before the Election Commission in managing free and unbiased elections. The electoral offences are specified both in the Indian Penal Code, 1860⁵ and in the Representation of the People Act, 1951. These relate to the step of conduct of elections. There are also a few crimes which may be dedicated during planning, reconsideration

and alteration of voting roll. They are individually prescribed under the Representation of the People Act, 1950. The election crimes under the IPC are enumerated in –Chapter IXA of that Code under the heading ‘_Of Offences Relating to Elections’. This chapter was inserted in that Code more than 85 years ago in 1920 by the Indian Elections Offences and Inquiries, Act 1920, when concept of elections in a limited way was introduced in some of the statutory organizations under the Government of India Act 1919. The quantum of punishment, particularly the amount of fine, prescribed under some of the provisions of that chapter may be considered extremely low in the context of the present scenario, but the same was considered quite a deterrent during that period. It is felt that the punitive provisions for these electoral offences need a fresh look as to meet the expectations of the present electorate and some of these offences call for sterner punishment

Issue of Electronic Voting Machine Tempering

Introduced for the first time in 1998 in the Assembly elections of Madhya Pradesh, Rajasthan and Delhi. But it was formally introduced at the pan-India level in 2004 Lok Sabha elections. However, the controversy started after the mammoth landslide victory of the BJP which formed the 16th Lok Sabha with NDA alliance. And since then the issue has remained grim with each political party trying its best to revive the earlier system or paper ballot. Various regional and state-level political parties have been trying hard to manoeuvre into eliminating the VVPAT-EVMs. The EC, however, in its notification dated 21st January 2019 cleared the air re-affirming that EVMs are non-temper able. The notification said that ECI-EVMs are also regularly tested for code authentication and verification the Supreme Court in an order published in December 2018 brushed away any ‘_motivated’ allegations against the EVMs. It reinstated the authenticity and neutrality in the Election Commission and the electoral process as well.¹⁵³

The Election Commission implicitly criticised political groups for expressing apprehensions on the fairness and validity of the EVMs and said, –The EVMs are being treated like a football (by some political parties). These are good if result is X and not good if it produces Y result. It’s you and I who are voting, not the EVM. So no point in going over this again. In an interview to The Hindu newspaper the former CEC said that –there is no question of going back to the paper ballot. EVMS are good and they have done India proud. However, they are machines-some-times they malfunction. Out of 20 lakh machines in operation, a few hundred or thousand can malfunction. For these there is a clearly defined protocol: replace them with half an hour. The ECI is globally acknowledged as a "Gold Standard" in conduct of free and

fair elections with integrity in India. Over the last 20 years, the EC has successfully conducted 107 State Legislative Assembly elections and 03 Lok Sabha elections using EVMs. The introduction of EVMs in 90's was a positive electoral reform by the Commission. According to newspaper —some complaints and suggestions were received by Commission after declaration of results of five State Assembly elections. The Commission duly examined these complaints and asked for evidence and credible material information supporting the claims, but so far no evidence has been provided by complainants to ECI. A group of thirteen political parties met the Commission on 10th April, 2017 and expressed certain reservations about the use of EVMs. Some political parties also raised queries about incidents relating to VVPATs used on 31/3/17 during demonstration (NOT in actual poll) at Bhind (M.P) and Dholpur (Rajasthan) Bye-elections held in the first week of April, 2017.

To understand the concerns of political parties, Commission convened an all- party meeting on 12th May. A press statement was also issued by ECI the same day to the following effects.

The Commission stated before political parties that —all future elections will be mandatorily held with VVPATs. The Commission firmly believes that use of VVPAT machines along with the EVMs in all polling stations, in all future elections, will bring utmost transparency and credibility in the EVM-based voting system. This will enable each voter to see for himself in VVPAT whether his or her vote has gone to the right candidate. After press of button on BU, name and symbol the concerned candidate will appear on the screen of VVPAT machine and paper slip bearing name and symbol will be dropped in a sealed box connected with VVPAT. These slips will serve as audit trail of the vote cast by voter on EVM. Audit trail will enhance confidence and trust of voters. Use of VVPATs with EVMs must conclusively put to rest all misinformed doubts and misgivings regarding EVMs. It will also be a matter of pride that India will become the first country to deploy 100% VVPATs or paper trail in the world, an element that was missing in many countries including Netherland, Germany and Ireland. Funds for procuring the required VVPATs for 100% deployment have already been sanctioned and production is to begin in August, 2017 and will be completed by September, 2018.

Voter Verifiable Paper Audit Trail (VVPAT)

The demand for a voter verifiable paper audit trail (VVPAT) in the EVMs has been approximately for some years, VVPAT allows voters to verify that their vote was cast correctly, and to provide way to audit the stored electronic results. It includes a direct

recording electronic voting machine (DRE) and a printer to print the ballot recorded in the electronic memory. It was first demonstrated in New York City in March 2001 and first used in Sacramento, California in 2002. In a VVPAT system the voter can check a physical ballot to confirm that the electronic voting system exactly recorded his or her vote. In addition, the election officials may by hand recount ballots in the event of a difference of opinion.

Enforcement of Model Code of Conduct (MCC)

The story of the model code dates back to 1960, when on the eve of the general elections to the Legislative Assembly, Kerala's state administration took the initiative of evolving a code of conduct for organized political parties within that state. A draft code was prepared, discussed and voluntarily approved by the leading political parties in the State. This code covered all important aspect of electioneering, such as public meetings and processions, speeches and slogans, posters and placards. In 1979, EC, in discussion with political parties, further improved the code, adding new section insertion limitations on the parties in power, so as to avoid them from getting unnecessary gain over another parties and candidates. This code was again consolidated and re-issued in 1991. It was from the tenth general elections to the Lok Sabha in 1991 that the EC started taking proactive measures to ensure strict compliance to the code by all concerned in both letter and spirit.

Code of Conduct came into effect, in just the first two phases this time, money power has so reared its ugly head that seizures made of unaccounted cash, liquor, bullion and drugs amounting to Rs.2,600 crore have already surpasses the entire seizures made in the nine phases of the general election in 2014. They have been detected by the Election Commission's machinery acting on the basis of tip-offs, or else by the vigilance of electoral officials in the States. As a country we need to ask ourselves some hard questions. When every rule in the book is being broken, when there is not transparency on how political parties collect or spend their funds, when limits of candidate spending are exceeded in every single case, then the time has come to debate whether we need to re-examine our rule book. One modus operandi used by ruling parties to misuse authority is appointing pliable officers in key positions.

CHAPTER- V

CONCLUSION AND SUGGESTIONS

- There is need of well defined electoral laws instead of Election Commission using its plenary powers under Article 324 of the Indian Constitution.
- The Adhar Card should be seeded with the voter Identity Card to avoid booth capturing and bogus voting.
- Citizen participation should be increased because "Politically illiterate is worst illiterate"
- The provisions relating to party funding and spending should be transparent and within the reach of the common people.
- The updation of the poll roll should be done by the proper trained staff and accountability should be fixed in case of any discrepancies.
- The voters should be educated regarding the right to vote and its importance.
- All political parties should be under the ambit of the Right to Information Act, 2005.
- There should be proper laws to deal with the menace of paid news and proper punishment should be provided in case of violation.
- Step should be taken by the Commission regarding providing the facility of voting to the labour or employee wherever he is.
- The power regarding de-registering the political party should be given to the election Commission in proper cases.
- A person against whom charges in heinous crimes have been framed by the competent court should be banned from contesting elections.
- The polling staff including the police force should be trained well before sending them on polling duty. Such training should be must; no exemption should be given from the training.
- There should be proper law to stop the manufacturing and supply of illegal/country made arms/weapons.
- More paramilitary forces should be deployed at the polling stations on the day of poll especially in the disturbed and sensitive areas.

- The deployment of the local administration including the state police should be less near or at the polling station.
- The law relating to the misuse of religion, caste, community for the political benefit should be stricter and well defined.
- In case of any violence during the elections, the accountability should be fixed and the accused person or political party should be made responsible to pay the damages caused to the public or private property or compensation to the victim apart from the criminal punishment.
- The election cases should be decided by the competent court in a prescribed time limit.
- In case of making any decision by the Election Commission, both accenting and dissenting views of the Chief Election Commissioners and other Election Commissioners should be given importance.
- Road shows and motorcycle rallies, by the political parties and candidates should be banned.
- The law relating to the exemption from income tax should be revised and such exemption should be given only to the active political parties and not to the political parties only on papers.
- The political parties which do not contest the elections should be de-registered by the Election Commission by proper verification and procedure.
- If there is any cancellation of poll for commission of the corrupt practice then in such a case the expenses of re-election should be borne by the accused political party or the candidate.
- If any political party or individual leader doubts the procedure of the conduct of the election including EVM/VVPAT then in such a case their doubt(s) should be removed and after such removal, such person or political party/parties should appear in the public and explain the fairness of the procedure and affirm his or her faith in the electoral process.
- There should be state funding for the political parties and for that some criteria should be fixed.
- There should be auditing of the accounts of the political parties and such auditing should

be done by the auditors of the Commission engaged for this purpose.

- There should be proper law relating to the transparency in the internal democracy in the political parties.
- The dummy candidates should be stopped by enacting proper law and the expenditure of such candidates should be included in the expenditure of the candidates/political parties for whom they are working.
- The misuse of religion for the electoral gain should be considered as religious fanaticism is serious threat to free and fair election and needs to be handled with tough hands.
- The law relating to the paid news should be amended and it should be made an electoral offence and minimum punishment of two years should provide for this.
- Offences relating to bribing and undue influence provided under section 171B and 171C of IPC should be coupled with a punishment of minimum for three years.
- There should be proper provisions relating to the use of religion for the political gain and it should be clarified that what would be the status of an appeal made by any other person or supporter during the election campaign which is not with the consent of the candidate.
- Time to time the election Commission gives its recommendations for the electoral reforms but only a few are considered by the government of the day. There should be law regarding the laying every recommendation of the Commission before the Parliament and giving the report of implementation in the Parliament.
- The expenditures incurred by a candidate before the filing of the nomination papers should be counted and should be included in the total expenses of such candidate.
- There should be proper laws relating to the appointment and removal of the Election Commissioners, it should not be done by the government of the day.
- The personnel for conducting the elections should be recruited from the non-government employees also and after proper training they should be made part of the electoral process so that the trust of the general public in the electoral process should be maintained.
- There should be a permanent Election Reform Commission for updating and reforming the election laws in the country.

- There should be mobile polling stations to allow the electorate to cast their votes where the proper polling station could not be organized.
- The electorate should be permitted to cast their votes through internet.
- The existing definition of election expenses and the limit of election expenses should be periodically reviewed and revised.
- There should be an independent election department for the preparation and revision of the electoral roll.
- The Election Commission of India should be empowered to regulate the internal functioning of political parties.
- How the political parties raise funds and spend them should be regulated by enacting proper law and the accounts of the political parties should be in the reach of the general public.
- The existing laws relating to use of media for getting votes is not adequate. There should be proper defined and properly framed laws relating use of media(both print and digital) by the political parties for campaigning.
- The MCC should be backed by proper law of the land and in case of violation, clear law should be there to tackle such a situation.

CHAPTER - VI BIBLIOGRAPHY

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