CHAPTER - II

HISTORICAL PERSPECTIVE

The Principle of representation, and in an indirect way of election, was first incorporated in the Indian Councils Act of 1892.¹

The most striking feature of the Councils Act of 1892 was that it cautiously introduced elective element in the Councils. Although the framers of the Act deliberately avoided the use of the word 'election' in the Act but the provisions of the Act contained a scheme which required that all the members of the Legislative Councils were not to be nominated by the Government. A certain number of them were to be non-official members nominated by the Head of the Government from amongst the panel recommended by the local bodies, such as Municipal Committees, District Boards, Chambers of Commerce, Zamindars and University Senates. The Supreme Legislative Council was to accept the non-official members recommended by the Provincial Council of Madras, Bombay, Bengal and North-West Province and also one representative of the Chamber of Commerce at Calcutta.

Thus the system of indirect election was introduced by the Act of 1892 for the inclusion of non-official members in
the Legislative Councils of India. Considered from this standpoint, the Act was a step forward as compared to the earlier Councils Act of 1861 which introduced the system of nomination without any elective element in it.² By conceeding the principle of elections and by giving the Legislative Councils some control over the Executive, the Indian Councils Act of 1892 paved the way for further reforms in India.³

THE INDIAN COUNCILS ACT 1909

The Indian Councils Act 1909 (known as Morley-Minto Reforms) constitutes a landmark in the constitutional history of India. The most important aspect of the Act was the increase of the representative element in the Legislative Councils and the extension of their powers. An elective principle having been introduced under the Act of 1892, the Act of 1909 extended that principle somewhat further.⁴

The Act greatly increased the strength of the Supreme Legislative Councils. The number of "Additional Members" which was not more than sixteen under the Act of 1892 was raised to sixty. The total strength of the Supreme Council was thus fixed at sixynine including the Governor General, six ordinary members of his Council, the
Commander-in-Chief and the Governor of the Province where the meeting took place. Like the Supreme Legislative Council, the strength of the Provincial Legislatures was also increased.

The Indian Councils Act 1909 introduced the principle of election in the Supreme and the Provincial Legislative Councils. Twenty-seven out of sixty-nine members of the Central Legislative Council were elected from different electorates. Similarly the Provincial Councils were also to have a fixed number of elected members as was determined by the Regulations. Thus the elective principle which was hitherto cautiously and deliberately avoided was now conceded to Indians by the Act of 1909. The system of election was, however, indirect. The people elected the members for their local bodies like Municipalities, District Board, etc. These local bodies in turn elected the members for the Provincial Legislative Councils. The members so elected to the Provincial Councils, further chose the members for the Supreme Legislative Councils. Thus the election to the Supreme Legislative Council was by a double indirect method and people had no direct contact with these members.

Another important feature of the Indian Councils Act 1909 was the introduction of separate and special
electorates for providing representation to certain classes and communities with a view to safeguarding their interests. Thus, twentyseven elected members of the Supreme Legislative Council consisted of six members of special landlord constituencies, six of separate Mohammedan Constituencies, two of special electorates and thirteen of general electorates.\textsuperscript{7}

Under the provisions of the Act the Governor General was empowered to make regulations for the purpose of elections to the Councils. Accordingly the regulation created three types of electorates, namely:\textsuperscript{8}

(a) General Electorates: Consisting of non-official members either of Provincial Legislative Councils or of Municipal and District Boards.

(b) Class Electorates: Consisting of landlord and Mohammedans.

(c) Special Electorates: Consisting of Presidency Corporations, Universities, Chamber of Commerce and trade and business interests.

The franchise was extremely narrow and limited. The number of voters was small. In some cases the number of voters in a constituency did not exceed nine or ten. Women
were completely barred from voting. The qualifications for the voters for Supreme Legislative Council were rigid. Only the landlord with specified income or minimum land revenue payment of Rs.10,000 or more, or those with high titles or honorary offices were conferred voting rights. The qualifications fixed for voting in case of Provincial Councils were also rigid and comparatively restricted. Although the principle of election was introduced by the Act of 1909, the system of nomination was not altogether abandoned. No special qualifications were, however, laid for the nomination of non-official members. In case of nominated official members some were to be ex-officio members like the Head of the Government and Members of the Executive Council and some were to be nominated by the Head of the Government. The Act provided for the first time the appointment of Indians to the India-Council and the Governor-General's Executive Council.

**THE GOVERNMENT OF INDIA ACT 1919**

On the 20th August 1917, the British Government made a pronouncement that its policy vis-a-vis India was "that of increasing association of Indians in every branch of the administration, and the gradual development of self-governing institutions, with a view to the
progressive realization of responsible government in India as an integral part of the British Empire". Then followed an inquiry by the Secretary of State, Edwin S. Montagu and the Viceroy of India, Lord Chelmsford. The results of the inquiry were published in 1918 in their Report on Indian Constitutional Reform. The Act of 1919 was enacted by the British Parliament as a step towards the fulfilment of the above objective which conceded a little more power to the Indian hands. The Act initiated a 'sort of responsible government' in the Provinces. The Act also introduced dyarchy in the Provinces. Matters of administration were first divided between the Centre and the Provinces and then the Provincial subjects were further bifurcated into the 'transferred', and 'reserved' subjects. The 'transferred' subjects were to be administered by the Governor with the aid of the Ministers responsible to the Legislative Council composed mainly of elected members. Thus, responsible government was sought to be created in a Limited sphere. The 'reserved' subjects were to remain the responsibility of the Governor and his Executive Council, which was not responsible to the Legislature. The Governor could override both the Ministers and the Executive Council. But no element of responsible
government was introduced at the Centre. The governor General in Council continued to be responsible as before to the British Parliament through the Secretary of State for India. There was an intention however to make the Central Executive more responsible to the Legislature.14

The main effect of the Act of 1919 as regards the Legislative Councils was :- (a) to introduce the bi-cameral or two-chamber system in the Indian Legislative Council; (b) to increase the size of the Provincial Legislative Councils and in particular, the number of the elected members in each; (c) to substitute direct for indirect election; and (d) to enlarge the electorate.15

The normal duration of the Legislative Council was three years. However the Governor could dissolve it at time, or extend its life for one year in special circumstances.

The Provincial Councils set up under the Act of 1919 consisted of members who were directly elected by the people. The scheme of franchise was based generally upon the principle of residence within the constituency and the possession of certain property qualifications as evidenced by the payment of land revenue, rent or local rates in
rural areas, municipal rates in urban areas, and income-tax. Thus, franchise was widened and extended to all tax payers. Women also got the right to vote for all Legislatures except the Council of States.\textsuperscript{16}

In addition to the special qualifications for members and electors, there were also some general qualifications. A person was not eligible for election to a legislative body if he was not a British subject, or had been adjudged by a competent court to be of unsound mind, or was under twentyfive years of age, or had been guilty of certain crimes. A man could not be a member of more than one legislative body of the same time. The residential restriction was imposed in Bombay, the Punjab, and Central Provinces, but not in the others.\textsuperscript{17} There were also general qualifications for electors. No person was entitled to be registered on the electoral roll if he was not a British subject, or was of unsound mind, or had been declared guilty of certain offences, or was under twentyone years of age, Under certain conditions, subjects of Native States were not disqualified. No person was entitled to vote in more than one general constituency. Plural voting was thus only permitted in cases where a man voted in a general constituency and also in a special
constituency such as a Chambers of Commerce or a University.\textsuperscript{18}

The principle of communal representation, which was accepted under the Morely-Minto scheme of reform, was not only retained, but even extended in its application. There were also a small number of seats for Europeans in all Councils except Punjab, Assam and Central Provinces. In the Punjab Council, there were some seats for the Sikh Community. In the Madras Council, a certain number of seats were reserved for non-Brahmans, Christians and Anglo-Indians, in the Bombay Council for the Mahratta Community, and in Bengal for the Anglo-Indians.\textsuperscript{19}

Thus India came to have for the first time in her history an elected parliament with power to influence largely her administration.\textsuperscript{20}

\textbf{THE GOVERNMENT OF INDIA ACT, 1935}

The Government of India Act, 1935, for the first time introduced federation in India comprising the Provinces and the Indian States. While under all the previous Government of India Act, the Government of India was unitary, the Act of 1935 prescribed a federal structure for India, distributing legislative and other
powers between the Centre and the Provinces. The composition of the Legislatures also underwent a significant change and the principle of bicameralism was introduced at the Centre and some of the Provinces. The Central Legislature under the 1935 Act was bicameral consisting of the King represented by the Governor General and two House known as the Federal Assembly and the Council of State. The Council was a Permanent body consisting of 260 members, 1/3rd of its members retiring every three years. The Assembly had a maximum duration of five years. The Council had 156 members for the British India, and upto 104 members for the States. All members from the British India were to be directly elected, except for six members who were to be nominated by the Governor-General so as to secure due representation for the scheduled classes, women and minority communities. The Federal Assembly was to have 250 representatives from the British India and not more than 125 members from the Indian States. The elective seats in the House were divided among General seats, Sikh seats and Muhammadan seats. Some seats were reserved for Scheduled castes and women. Some seats were reserved for Anglo-Indians, Europeans and Indian Christians. Again, some seats were reserved for commerce and industry, landholders and labour. The representative of
the British India were not to be directly elected but were indirectly elected by Provincial Assemblies, the various communities voting separately for their own representatives in accordance with the system of proportional representation with single transferable vote.22

The Central Legislature was never constituted under the provisions of the Government of India Act 1935. It continued to function under the provisions of the previous Act of 1919, because the Indian States showed reluctance to join the federation and then the Second World War intervened. The Provisional Legislatures were however constituted, and they did function for some time, under the Act of 1935, the first elections being held for them in 1937. But their functioning was interrupted by the resignation of the Congress Ministries in 1939 in furtherance of the objective to gain independence for India.23

Thus, as far as election is concerned, the Government of India Act retained separate electorates for the minorities in the Provinces. Section 291 of the said Act further provided that in so far as proviso with respect to matters mentioned in the said Act had not been
made, the Sovereign namely, his Majesty in Council might, from time to time, make provision with respect to those matters or any of them dealing with that franchise in elections, namely, (a) de-limitation of territorial constituencies for the purpose of elections under the Act; (b) qualifications entitling persons to vote in territorial or other constituencies at such elections and preparation of electoral rolls; (c) qualifications for being elected at such elections as a member of a legislative body and (d) the filling of casual vacancies in any such body and other matters namely, conduct of election, expenses of candidates and corrupt practices and other offences connected with elections, dealing with the position of doubts and disputes arising out of or in connection with elections and other ancillary matters relating to the above. The right of adult franchise as a constitutional right was not recognised and the legislature was free to impose conditions for enlistment as a voter or to exercise his franchise. Under the Act, thereafter the right of franchise was conferred on the qualification of either of property, or of education or of tax. It is stated that electorate totalled about 30 millions in 1937 under the Government of India Act, 1935.
CONSTITUENT ASSEMBLY AND ELECTIONS

On December 9, 1946, the Constituent Assembly was set up to draft a constitution for Independent India. The members of the Constituent Assembly were elected by the members of the Provincial Assemblies. The members of each provincial Assembly were to be divided into two groups, General and Muslim, except in Punjab where they were to be divided into three groups - General, Muslim and Sikh. Each group was to elect its own representatives to the Constituent Assembly by the method of proportional representation with single transferable vote. The number of representatives allotted to each Province and community was to be proportional to its population, in the ratio of one to a million. The total number of representatives from the Provinces was to be 292. Four members were to be added to represent the Chief Commissioner's Provinces and upto 93 members were to be added to represent the Indian States. When later a decision was taken to bifurcate India into India and Pakistan, the members representing Pakistan went out of the Constituent Assembly for India and formed a separate Constituent Assembly for Pakistan.25

After the passage of the Indian Independence Act 1947, the Central Legislature ceased to exist on the
14th August, 1947. Henceforth, the Constituent Assembly was to function as the Central Legislature of India as well until the new Constitution was framed and thereafter until a new Legislature was constituted under the new Constitution. In other words, after the Independence, the Constituent Assembly discharged a dual function — constituent as well as legislative.

When the members of the Constituent Assembly considered the legislative provisions of the Draft Constitution, from January to May 1949, they agreed quickly on the desirability of electing members of the lower house of the central legislature by direct, universal suffrage, by a single vote system and mainly in single member constituencies. The question of the reservation of seats for communal minorities was debated at greater length, and eventually it was agreed that separate electorates for communal groups, which had existed ever since 1909, should be abolished. Special provisions were made for scheduled Castes, Scheduled Tribes, certain other 'backward classes' and minority groups, but not on the basis of separate electorates. There was little support for the election of members of the lower House by proportional representation, as advocated by some members of the Assembly, but rather
complicated forms of this rather complicated system were adopted for the election of members of the Council of States (the upper House of the national Parliament) and the Legislative Councils in those States which were to have an upper House, and also of the President and Vice-President of India.\textsuperscript{28}

During the discussions in the Constituent Assembly, there emerged almost from the very beginning a consensus of opinion that the right to vote should be treated as a fundamental right of the adult citizen; and in order to enable him to exercise this right freely, an independent machinery to control the elections should be set up, free from local pressures and political influences.\textsuperscript{29} K.M. Munshi's draft Article on Fundamental Rights included the following clauses:

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.\textsuperscript{30}

The above clause was again considered by the Fundamental Rights Sub-Committee at its meeting held on March 29, 1947.
The Committee came unanimously to the conclusion that:

(1) Universal adult suffrage must be guaranteed by the Constitution, (2) Elections shall be free, secret and periodical, and (3) Elections shall be managed by an independent Commission set-up under Union Law. The Fundamental Rights Sub-Committee and the Minorities Sub-Committee were agreed that the following should be included in the list of fundamental rights:

(1) Every citizen not below 21 years of age shall have the right to vote at any election to the Legislature of the Union and of any unit thereof, or, where the legislature is bicameral, to the lower chamber of the legislature, subject to such disqualifications on the ground of mental incapacity, corrupt practice or crime as may be imposed, and subject to such qualifications relating to residence within the appropriate constituency as may be required, by or under the law.

(2) The law shall provide for free and secret voting and for periodical elections to the Legislature.

(3) The superintendence, direction and control of all elections to the Legislature, whether of the Union or of a unit, including the appointment of election tribunals,
shall be vested in an election commission for the Union or
the unit, as the case may be, appointed, in all cases, in
accordance with the law of the Union.

Nevertheless, the Advisory Committee, on Minorities,
Fundamental Rights, while agreeing in principle with this
clause, "recommended that instead of being included in the
list of fundamental rights, it should find a place in some
other part of the Constitution". 33

This specific recommendation was made to the
Constituent Assembly on 2nd May 1947 and it was
adopted. 34 Accordingly, the Clause 24 relating to
superintendence, direction and control of elections was
inserted in the Report of the Union Constitution
Committee as follows:

The superintendence, direction and control of
all elections, whether Federal or Provincial
under this Constitution, including the
appointment of election tribunals for
decision of doubts and disputes arising out
of, or in connection with such elections,
shall be vested in a Commission to be
appointed by the President. 35

At one stage, during the framing of the Constitution
by the Constituent Assembly, the idea was mooted that an
Election Commission might be set up for the federal
elections only, while there might be a separate Election
Commission in each state for elections to the State Legislature. In the end, however, a single Commission was provided for to be in charge of all elections to the Central and State Legislatures.³⁶

The Constituent Assembly, framed the Indian Constitution, though elected under limited franchise provided by the provisions of the Indian Independence Act, 1947 aimed at securing national and social revolution by adopting what has been termed as a Democratic Constitution for a free India.³⁷ The Assembly's adoption of a democratic, centralised, parliamentary constitution meant the members believed that to achieve the objective of social revolution India must become a modern state.³⁸

THE ELECTION COMMISSION

The provisions of the Constitution relating to citizenship (Articles 5, 6, 7, 8 and 9) and Article 324 regarding the setting up of the Election Commission were brought into force on the 26th November, 1949, while the rest of the Constitution came into force on the 26th January, 1950. The Chief Election Commissioner assumed charge on the 21st March, 1950. The Office of the Election Commission had already been set up on the 25th January, 1950.³⁹
ENACTMENT OF ELECTORAL LAWS

The Constitutional did not make exhaustive provisions to cover the details of the law of elections. These details were left to be laid down by subsequent legislation. Parliament passed two major measures laying down the detailed law under which elections were to be conducted. The first of these measures was the Representation of the People Act, 1950 which was passed by Parliament on the 20th April, 1950. This Act mainly covered the preparation and publication of the electoral rolls and the delimitation of Constituencies. The Act also allocated the number of seats in the House of the People to the several States and fixed the number of seats in each State Legislature.40

Provisions for the actual conduct of elections and matters ancillary thereto were left to be covered by a subsequent piece of legislation. Thus the second of these measures was the Representation of the People Act, 1951, the provisions of which covered the following important matters:41

1. qualifications and disqualifications for membership of Legislatures;
2. notifications for election to the Legislature;

3. administrative machinery for conducting the elections;

4. conduct of elections and the various stages thereof;

5. elections agents;

6. procedure for elections in constituencies where seats are reserved for the Scheduled Castes or the Scheduled Tribes;

7. the poll;

8. counting of votes;

9. publication of election results;

10. election expenses;

11. disputes regarding elections - election petitions and Election Tribunals;

12. corrupt and illegal practices;

13. electoral offences;

14. incurring of disqualifications and their removal;

15. bye - elections.

**STATUTORY RULES**

Under each of these two Acts, statutory rules were made by the Central Government. These were respectively
called the Representation of the People (Preparation of Electoral Rolls) Rules, 1950 and the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951.42

AMENDMENTS

Subsequently, the two Acts were amended by the following measures:43

1. The Representation of the People (Amendment) Act, 1950.

2. The Representation of the People (Amendment) Act, 1951.

3. The Representation of the People (Second Amendment) Act, 1951.

Amendments were made in the Rules from time to time as and when necessary. Thus the law came by instalments, as occasion arose. It was within the above frame-work of law that the first general elections were held in the country.

The plenary powers, thus, vested in the Election Commission by the Constitution for the conduct of elections are supplemented further by Acts of Parliament, namely R.P. Acts, 1950 and 1951, the Presidential and Vice-Presidential Elections Act, 1952, the Government of
Union Territories Act, 1963, the Delhi Administration Act, 1966 and the Rules and Orders made thereunder. These laws enacted by Parliament effectuate the powers of the Commission and cannot whittle down its inherent powers vested by Article 324. 

INDIA'S GENERAL ELECTIONS

As has been noted the Constitution entered into effect on 26th January, 1950. It provided for direct election to Lok Sabha and State Legislative Assemblies on the basis of universal adult franchise. Preparations were immediately begun to hold these elections. Pandit Nehru who was then heading the Government wrote to the Chief Ministers of States:

I think the sooner we have general elections for Parliament and the provincial Legislatures, the better. I am very anxious that this should not be delayed ... It would be exceedingly unfortunate if, for some reason or other, these elections have to be postponed even by a few months.

Inspite of all best efforts the elections were not held until some two years later, in late 1951 and early 1952 as the details of the law and procedure for holding the elections had to be made by taking appropriate legislative measures.
The first General Elections attracted a good deal of enthusiasm and attention in the country as well as abroad. In its report the Election Commission of India observed that it was "a great and fateful experiment unique in the world in its stupendousness and complexities. The carrying out of this unprecedented experiment attracted world-wide attention and journalists, politicians and other observers came from numerous foreign countries to study its working at first hand ... It appears probable that the main features of our system of elections will be adopted in future years by many of these countries".  

The voting was scheduled at different times in different places, extending over a period of some four months, from 25 October 1951 to 21 February 1952, although most of the voters went to the polls in January 1952. The size of the electorate was 173 million and nearly 88 million of them actually voted. The total number of seats was 489. The first Lok Sabha was constituted on 17 April, 1952. In the first Lok Sabha, 489 seats were filled by persons chosen by direct election from territorial constituencies by adult suffrage, 2 by persons nominated by the President under a constitutional provision and 8 by persons nominated by the President under special circumstances.
In its report on the first general elections the Election Commission observed: "The successful completion of the General elections in India can be said to constitute an important land-mark in the history of democracy. Never before has such a vast electorate gone to the polls. The future of the democratic way of life in India depends very largely on the success of the experiment as also on the extent to which these elections could evoke public enthusiasm and satisfaction".  

Thus the First Lok Sabha was duly constituted in 1952 after the First General Elections. The new Lok Sabha constituted on 20 June, 1991 is the Tenth.
NOTES AND REFERENCES


7. *Id.* at 301-302.


12. *Id.* at 549.


16. *Id* at 551.


19. *Id* at 550.

20. *Supra* note 3


22. *Id.* at 553-54.

23. *Id* at 554.


26. Id at 555.
28. Ibid.
31. Id at 130.
32. Id at 295-296.
33. Id at 296.
34. Constituent Assembly Debates, Vol. 3 at 531-532.
39. Supra note 36 at 22.
40. Id. at 4-5, 23.
41. Id at 5.
42. Id at 6.
43. Ibid.
44. Subhash C. Kashyap, The Ten Lok Sabhas 3(1992)
45. Supra note 36 at 10-11.
48. Article 331 which says: Notwithstanding anything in Article 81, the President may, if he is of opinion that the Anglo-Indian Community is not adequately
represented in the House of the People nominate not more than two members of that community to the House of the People.


50. Supra note 36 at 208.