CHAPTER-III
THE ELECTORAL PROCESS

INTRODUCTION

Elections are a part of the electoral system, which embraces 'all those means whereby a person becomes a member of an elected assembly'. Thus they are a part of a larger political process, of which nominating procedures, campaigning, and the actual voting are only parts — although the most conspicuous, and culminating, parts. (1-a)

Who decides the poll schedule — the Government or the Election Commission? Section 14 of the R.P. Act 1951 says that a general election shall be held for constituting a new Lok Sabha on the expiry of its duration or on its dissolution. In the present chapter an effort has been made to describe the various aspects of electioneering process.

(A) REPRESENTATION AND CONSTITUENCIES

I. Lok Sabha

Article 81 of the Constitution provides that the Lok Sabha shall consist of not more than 530 members directly elected by the voters in the States; not more than 20 members to represent the Union territories and the tribal areas to be chosen in such manner as Parliament may by law
provide; not more than two members belonging to the Anglo-Indian Community appointed by the President under Article 331. Article 81 further provides that:

(a) There shall be allotted to each State a number of seats in the Lok Sabha in such manner that the ratio between that number and the population of the State is, so far as practicable, the same for all States; and

(b) each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it is, so far as practicable, the same throughout the State.

The Thirty-first Amendment Act of 1973 added a proviso to sub-clause (b) of clause (2) of Article 81 to the effect that sub-clause (a) of clause (2) shall not be applicable for the allotment of seats in the House of the People to any State with a population up to six millions.

For the purposes of allotment of seats, the population of States shall be taken to be the same as ascertained at the last census. This is meant to secure uniformity in the scale of representation for the States in the Lok Sabha.
Under Article 330 of the Constitution, seats are to be reserved in the House of the people for the scheduled Castes and the Scheduled Tribes.

2. **State Legislative Assemblies**

   Article 170 of the Constitution lays down that the Legislative Assembly of each State shall consist of not more than five hundred, and not less than sixty, members chosen by direct election from territorial constituencies in the State. Each State shall be divided into territorial constituencies in such a manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the State.

   Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in the State Legislative Assemblies.\(^2\)

3. **Constituency**

   For electoral purposes, the entire country is divided into geographical areas known as parliamentary constituencies each returning one member to the Lok Sabha. There are two types of constituencies: parliamentary constituencies and assembly constituencies. Each
parliamentary constituency consists of an integral number of Assembly constituencies. This number varies from State to State.³

The delimitation of constituencies is done by the Delimitation Commission. Article 82 of the Constitution declares that upon the completion of each census, the allocation of seats in the House of the People to the States and division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine. Clause (3) of Article 170 makes provision in regard to the seats in the State Legislative Assemblies and the division of the States into territorial constituencies. Article 327 gives specific power to Parliament to make elaborate provision for such readjustment including delimitation of constituencies and all other matters connected therewith as also allocations to either House of Parliament.⁴ In the instant case the Supreme Court refused to interfere with an order of the Delimitation Commission, thereby placing beyond doubt the finality of the Commission's authority.

The Delimitation Commission is normally assisted in its work by ten Associate Members—5 Members from the House of the People representing the State and 5 members
from the Legislative Assembly of the State concerned, nominated by the Speakers of the House of people/ the Legislative Assembly, having due regard to the composition of the House or the Assembly concerned. For the purpose of determining the number of seats to be allotted to the States in the Lok Sabha and the seats, if any, to be reserved for Scheduled Castes and Scheduled Tribes, the total population of all the States is divided by the total number of seats in the House of the People. This gives the average population per seat. The population of each State is then divided by this number to arrive at the number of seats to be allotted to that State. A uniformity of representation to Scheduled Castes ad Scheduled Tribes has also been ensured by stipulating that the number of seats reserved in any State or Union Territory for the Scheduled Castes and Scheduled Tribes shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State or Union Territory in the House of the People as the population of the Scheduled Castes or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved, bears to the total population of the State or Union Territory.
(B) ELECTORAL ROLLS

Article 325 provides for a general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State. No person is to be ineligible for inclusion in any such roll or claim to be included in any special electoral roll on grounds only of religion, race, caste, sex or any of them.

The preparations of the electoral rolls is a stupendous task carried out by the Election Commission. The electoral roll for a constituency shall contain the names of all the persons eligible to vote at an election in that constituency. The preparation and maintenance of complete and accurate electoral rolls are essential pre-requisites for the holding of elections.

The electoral roll for each constituency is prepared in the prescribed manner by reference to a qualifying date. Unless otherwise directed by the Election Commission, the roll is revised before each general election and before each bye-election in a constituency. It may also be revised in any year if so directed by the Election Commission. The revision, like the initial preparation is also by reference to the qualifying date.
The roll is not prepared or revised separately for a parliamentary constituency. Its electoral roll consists of the rolls for the assembly constituencies comprised within that parliamentary constituency. In a Union territory where there is no Legislative Assembly and in J & K, rolls are prepared and revised separately for the parliamentary constituencies. While under the Constitution of J & K only permanent residents of the State are entitled to be registered in the electoral rolls for the Assembly constituencies, other citizens of India ordinarily residing in the State are also entitled to be registered as electors for voting in parliamentary constituencies.⁷

Any person whose name is not included in the electoral roll of a constituency may get his name included by making an application to the electoral registration officer of the constituency concerned. No such application will, however, be entertained after the last date for filing the nominations for election in that constituency and before the completion of that election. The condition for such inclusion is that the person should be eligible for inclusion with reference to the qualifying date originally fixed for the preparation or revision of the roll in which he seeks inclusion. A person seeking inclusion of his name in the finally published roll must
deposit the prescribed fee along with his application for inclusion. 8

There are two methods of revising the electoral rolls, (1) intensive revision; and (2) summary revision. Intensive revision is carried out by house to house visits by enumerators who enter the names of all citizens ordinarily residing in a house and who have attained the age of 21 years (now 18 years) and above on the qualifying date. In summary revision, no house to house visits are made. The existing rolls with supplements, if any, are published for inviting claims and objections. After the disposal of claims and objections the rolls are finally published with supplements. (8-a)

At the time of the first general election the names of quite a large number of eligible voters could not be brought on the rolls in spite of all efforts. The reasons were: 9 (I) ignorance and apathy on the part of the common voter, (II) lack of adequate organisation and experience in so far as the political parties were concerned and (III) inexperience and defective organisation of the government machinery in some of the States. The Commission during the preparation of the electoral rolls found that a large number of women voters had been enrolled in some States not by their own names but by the description of the
relationship they bore to their male relations (e.g. A's mother, B's wife, etc.) Out of total of nearly 80 million women voters in the country, nearly 2.8 million failed to disclose their proper names, and the entries relating to them had to be deleted from the rolls.\textsuperscript{10}

The Commission in its first report thus laid the responsibility on the general public for their omissions of names from electoral rolls. However, in the recent past especially during the eighth and nineth Lok Sabha elections the Commission itself has been blamed for depriving a large number of voters from exercising their right to franchise. For example in 1984 Lok Sabha elections thousands of Delhi voters found their names deleted from the electoral rolls. Most disturbing was the deletion of names of a large number of Sikh voters from the electoral rolls in the areas that had witnessed the worst rioting in November 1984. Similar complaints were received in 1989 general elections too. In Jaipur, for instance, Rajmata Gayatri Devi's name was reported to be missing. Film star Sunil Dutt complained that the names of some top film stars were missing from electoral rolls in Bombay.\textsuperscript{11}

Such complaints have been received from different nook and corners of the country. The Commission has sought
to pass on the blame to the voters for not ensuring whether or not their names were included in the electoral rolls.

It has been, however, suggested that the following administrative steps would go a long way to remedying the situation: (1) voters' lists prepared for local bodies and those for assemblies should be constantly compared; (2) recognised associations of civil servants should be asked to help in getting the names of all their members and the members of their families included in the rolls. This could be facilitated by permitting, rather inviting and encouraging group applications for inclusion of names. Copies of draft rolls should be supplied free to such associations, just as they are supplied to candidates and political parties. The recognised parties may also be allowed to submit group applications locality-wise; (3) similar help can be taken from pensioner's organisation; (4) the telephone directories should be looked into to ensure that no person listed in the directory or members of his household (including family members and domestic servants, etc., living in the house) are missed out; (5) the various public sector organisations can also be asked to ensure that all their employees find their names (with families) included. They should also be supplied
copies of electoral rolls free so that they may keep them open for inspection by their employees; (6) all factories registered under the Factories Act should also be asked to ensure that their workmen and other employees are duly registered; (7) technical institutions and Universities should also be associated so that all students who have attained majority may have their names included; (8) other established organisations such as traders' associations, the Rotary Club, the Lions Club and other well-known local clubs and societies should be similarly associated; (9) Municipal Boards and corporations maintain assessment lists for purposes of property taxes. These should also be utilised for checking that no household included in the assessment list is omitted; (10) the draft electoral rolls should be left open for inspection not only in that collectorate but in all offices where fifty or more persons are employed.12

(C) QUALIFICATIONS FOR REGISTRATION

The Constitution under Article 326 confers the right to vote at an election on every adult citizen unless disqualified under the Constitution or law on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice.
The law provides that every person who is not less than eighteen years of age on the qualifying date, and who is ordinarily resident in a constituency is entitled to be registered as a voter in the electoral roll of that constituency.\textsuperscript{13}

(I) **Qualifying date** - The qualifying date is the 1st of January of the year in which the electoral roll is prepared or revised.\textsuperscript{14}

(II) **Ordinarily resident** - The test of ordinary residence is generally the fact of actual residence. The mere owning or possession of a dwelling house in a constituency will not entitle a person to the "ordinary residence" qualification. Temporary absence of a person from his place of ordinary residence will not amount to his ceasing to be ordinarily resident therein. A member of Parliament or of a State Legislature will not, during the term of his office, cease to be ordinarily resident in the constituency where he is registered as a voter, by reason of his absence from that constituency in connection with his duties as such member. A patient in a hospital or a person detained in prison or other legal custody will not for that reason be deemed to be ordinarily resident therein. In cases of doubt as to where a person is ordinarily resident at a particular time the question will
be determined with reference to all the facts of the case and to the rules in this behalf.\textsuperscript{15}

(III) \textbf{Who may not vote} - Persons disqualified for registration as voters are: persons who are not citizens of India, persons who are of unsound mind and stand so declared by a competent court, persons who for the time being are disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections.\textsuperscript{16}

The name of a person who becomes disqualified after registration will be struck off the electoral roll. The name of any person struck off the electoral roll for corrupt practice or other electoral offence will forthwith be reinstated in that roll if the disqualification is removed under any law.\textsuperscript{17}

(IV) \textbf{Service voter} - The following persons (and their wives if they reside with them) have the right to be registered in the electoral rolls of the constituencies in which they would be residing but for their services:

(a) Members of the armed forces of the Union.

(b) Members of a force to which the Army Act, 1950, applies.
(c) Members of an armed police force of a State serving outside the State.

(d) Foreign service personnel and others employed under Government in posts outside India.

They are required to make declarations in the prescribed form giving the addresses at which, but for their service, they would have been residing, and they are then registered accordingly. The declarations are to be sent to the registration officer of the constituency concerned. Special steps are taken with the assistance of the Ministry of Defence and the three Services Headquarters, for the enrolment of the armed forces personnel.¹⁸

(V) Holders of certain offices (Special voters) - The holders of the certain offices (and their wives if they reside with them) are also entitled to be registered in the electoral rolls of the constituencies in which they would be residing but for their holding such offices.¹⁹

(VI) Members of Parliament and State Legislatures - As members of Parliament and State Legislatures are required to remain away from their constituencies for a considerable part of the year in connection with their duties as such members, they may not be in a position to verify whether their names in the electoral rolls are
continued from time to time, particularly when the rolls are revised. The Election Commission has, therefore, a system of special check in regard to their inclusion in the electoral rolls. Exhaustive lists of the names of all sitting members of Parliament and the State Legislatures are prepared in respect of every assembly constituency. The Chief Election Officer sends this list to the electoral registration officer of the constituency concerned. This list is kept up-to-date and the electoral registration officer is kept informed from time to time of all changes therein. At the time of the publication of the draft electoral rolls the electoral registration officer concerned has to certify to the Chief Electoral Officer that the name of every member of Parliament or State Legislature is included in the roll if he continues to be eligible for such inclusion.\textsuperscript{20}

(VII) **One Registration** - No person is entitled to be registered in the electoral roll of more than one constituency; and no one can be registered in any electoral roll more than once.\textsuperscript{21}

(d) **CANDIDATE**

(I) **Disqualifications**

The qualifications for a member of Parliament as laid down under Article 84 of the Constitution are that he
should (i) be a citizen of India, (ii) be not less than 30 years of age in the case of the Council of States and not less than 25 years of age in the case of the House of the people, and (iii) be possessing such other qualifications as may be laid down by Parliament.

The R.P. Act, 1951 requires that his name should be registered in any parliamentary constituency.  

For seats reserved for Scheduled Castes and Scheduled Tribes, a candidate should belong to those castes or tribes. A member of the Scheduled Caste or Scheduled Tribe is, however, not disqualified to contest election from a general seat, i.e., seat not reserved for members of those castes or tribes, if he is otherwise qualified to contest such a seat. A candidate is required to make and subscribe before a person authorised in that behalf by the Election Commission, an oath or affirmation of allegiance to the Constitution and to uphold the sovereignty and integrity of India.

It may be recalled that in support of Article 84, Dr. Ambedkar, Chairman, Drafting Committee, had observed:

... the object of the article is to prescribe qualifications for a person who wants to be a candidate at an election. Generally, the rule is that a person who is a voter, merely by reason of the fact that he is voter, becomes entitled to stand as a candidate for
election. In this article, it is proposed that while being a voter is an essential qualification for being a candidate, a voter who wishes to be a candidate must also satisfy some additional qualifications as laid down in this new article ... The functions that he is required to discharge in the House require experience, certain amount of knowledge and practical experience in the affairs of the world, and I think if these additional qualifications are accepted, we shall be able to secure the proper sort of candidates who would be able to serve the House better than a mere ordinary voter might do.

(II) Disqualifications

Under Article 102 (1), a person is disqualified for being chosen as, and for being, a member of either House of Parliament if he/she (a) holds any office of profit under the central or any state government, other than an office declared by Parliament by law not to disqualify its holder; or (b) is of unsound mind and stands so declared by a competent court; or (c) is an undischarged insolvent; or (d) is not a citizen of India, or has voluntarily acquired the citizenship of a foreign state, or is under any acknowledgement of allegiance or adherence to a foreign state; or (e) is otherwise disqualified by or under any law made by Parliament.

Clause (2) of the Article clarifies that a person shall not be deemed to hold an office of profit by reason
only that he is a Minister either for the Union or for such State. (25-a)

The R.P. Act, 1951 disqualifies a person from the membership of a Legislature if he/she (a) has been convicted or found to have been guilty of any offence or corrupt or illegal practice in an election; (b) has been convicted by a court in India of any offence and sentenced to imprisonment for not less than two years; (c) has failed to lodge a return of election expenses within the time and in the manner required by the Act; (d) has any share or interest in a government contract for the supply of goods, or for the execution of any work, or the performance of any service; (e) is a director, or managing agent, or holds any office of profit in a government corporation; or has been dismissed from government service for corruption or disloyalty to the State. These disqualifications operate for a period of five years only. 27

(III) Selection of Candidates

The selection of candidates has always remained an important but controversial issue. The patterns of selection has undergone tremendous changes in the past four decades. In the early elections, Pandit Nehru used to dominate the political scene of his party. According to
him, "The test must be integrity first, integrity second and integrity third, integrity and ability". On another occasion he said, "We must choose persons who can represent worthily Congress principles and ideals, who are men and women of proved integrity, and who have the ability to discharge the responsibilities of membership of the legislatures. Candidates chosen by us should not only possess integrity but be known to do so ... Any person whose past record is considered to be bad from the congress point of view should not be selected, even though he might be considered locally to have chances of winning the election". The experience, however, shows that almost all political parties take into consideration factors like caste, community, region, minority status and traditional political loyalties. In the recent elections, parties have also tried to bring in popular cine and television stars besides some well-known muscle men. The entry of criminals into politics has criminalised the politics and the ultimate effect is that the corrupt practice of booth-capturing has become a regular feature of our electoral process.

It is said that usually the criteria that are followed are: (1) money contribution; (2) dominant group, caste, or faction; (3) perception of advantages; (4)
ability to win; (5) locality of the candidate; (6) the
candidate's role in post-election ministry-making;
(7) patronage of the central leadership; and (8) the value
of the candidate in the legislature.

(E) NOMINATION

Nomination focusses the attention of the electorate
upon relatively few persons who offer themselves as
candidates and ensures that the successful candidate is
the choice of a substantial part of the electorate.

The electoral process for the elections to the
Parliament starts with Presidential notification calling
upon all the parliamentary constituencies to elect members
to constitute a new House of the People either on the
expiry of the tenure of the existing House or on its
dissolution. As soon as the notification is issued, the
Election Commission shall, by notification, appoint -

(a) the last date for making nominations which shall be
the seventh day after the date of publication of the
notification;

(b) the last date for the withdrawal of candidatures,
which shall be the second day after the date for the
scrutiny of nominations;
(c) the date or dates on which a poll shall, if necessary, be taken, a date not earlier than the twentieth day after the last date for the withdrawal of candidatures, and

(d) the date before which the election shall be completed.\(^{32}\)

On the issue of notification, the returning officer shall give public notice of the intended election in such form and manner as may be prescribed, inviting nominations of candidates for such election and specifying place at which the nomination papers are to be delivered.\(^{33}\) On or before the date appointed under section 30(a), each candidate shall either in person or by his proposer, deliver to the returning officer a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer.\(^{34}\) In a constituency where any seat is reserved, a candidate shall not be deemed to fill that seat unless his nomination paper contains a declaration specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe is a scheduled caste or tribe of the State. Where the candidate is a person, who, having held any office referred to in Section 9\(^{35}\) has been dismissed and a period of five years
has not elapsed since the dismissal, such person shall not be deemed to be duly nominated unless his nomination paper is accompanied by a certificate issued by the Election Commission that he has not been dismissed for corruption or disloyalty to the State. On the presentation of a nomination paper, the returning officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls. Where the candidate is an elector of a different constituency, a copy of the electoral roll of that constituency, or a certified copy of the relevant entries in such roll shall be produced before the returning officer at the time of scrutiny. Not more than four nomination papers shall be accepted by the returning officer in the same constituency. A candidate seeking election to the Parliament is required to deposit as security ₹.500/-. For Scheduled Castes and Scheduled Tribes candidates the amount is ₹.250/-. For those seeking election to a State Legislature the deposit money is ₹.250/-, and 150/- for Scheduled Caste and Scheduled Tribes candidates. The deposit will be refunded if the candidate is elected or has obtained more than one sixth of the total number of valid votes polled in the constituency. In other cases, the deposit will be
forfeited. If a candidate was a contesting candidate in more than one constituency for the same House of a legislature, he is entitled to the refund of only one deposit. If, however, he was contesting an Assembly seat and a Lok Sabha seat simultaneously, he would get a refund of the deposits made in both, provided that he obtains more than one-sixth of the total number of valid votes polled in each constituency. The deposit is intended to ensure that the candidate is a serious contestant. The candidate is also required to make declarations in the nomination form regarding his affiliation to a political party, if any, with name, and the choice of three election symbols in order of his preference. A person can contest a number of seats simultaneously. However, in case he is elected from more than one constituency he must relinquish all except one seat within 14 days from the date of declaration of the result, otherwise all his seats shall become vacant.

(II) Scrutiny of Nominations

On the date fixed for the scrutiny of nominations, the candidates, their election agents, one proposer of each candidate and one other person duly authorised in writing by each candidate may attend the proceedings for scrutiny. The returning officer is given the power to
examine the nomination papers and decide objections which may be made to any nomination. A nomination paper will be rejected if the candidate is either not qualified or is disqualified in law to be such member; the nomination paper has not been submitted in the prescribed manner and within the stipulated time or is not accompanied by the necessary deposit; and the signature of the candidate or the proposer on the nomination paper is not genuine. The returning officer is not authorised to reject any nomination on the ground of any defect which is not of a substantial character. The returning officer is required to record reasons for rejecting a nomination paper.43

(III) Withdrawal of Candidature

Any candidate may withdraw his candidature by a notice in writing either himself or through his proposer or election agent, who should be duly authorised by the candidate to present such notice on the last date fixed for such purpose. The notice of withdrawal is irrevocable.44 Immediately after the expiry of the period within which candidatures may be withdrawn, the returning officer is required to prepare and publish a list of contesting candidates.45

If there is only one duly nominated candidate, the election will be an uncontested one and the returning
officer will declare that candidate elected immediately after the expiry of the time for the withdrawal of candidature. 46

(IV) Death before Poll

If a candidate whose nomination has been found valid on scrutiny and who has not withdrawn his candidature dies and a report of his death is received before the publication of the list of contesting candidates, or if a contesting candidate dies and a report of his death is received before the commencement of the poll, the returning officer is required to countermand the poll and report the fact to the Election Commission. If that happens all proceedings with reference to the election have to commence a new in all respects as if for a new election. 47

However, on January 4, 1992 the President issued an ordinance amending the Representation of the People Act, 1951 to restrict countermanding of elections only on the death of the candidate of a recognised political party and not that of an independent. The Ordinance has been necessitated by the rise in terrorist violence and also the phenomenal increase in the number of independent candidates seeking elections to the Lok Sabha and the State Legislature. 48
Political parties, the life line of modern politics, constitute an integral part of any electoral system, for, they organise and educate voters, select candidates for filling various posts and undertake electioneering on their behalf, formulate legislative programmes and policies, muster parliamentary majority and form Government. However, there is neither any law regulating the formation of political parties in India nor do the Representation of the People Acts contain any reference to political parties. The Representation of the People Acts 1950 and 1951 simply regulate the conduct of elections. It is the Election Commission which determines what political parties will be recognised on both national and State levels and what symbols will be assigned to each party.

At the first general elections the Election Commission established a rule that has been in effect ever since, namely that only those parties which polled at least three per cent of the total valid votes in the previous general election would be recognised as national parties. The Conduct of Elections Rules, 1961, provide that the Election Commission shall, by notification specify the symbols that may be chosen by candidates at
elections and the restrictions to which their choice shall be subject. The Commission has been specifying certain symbols as "reserved" and certain others as "free"; the former are reserved for candidates duly sponsored by recognised political parties and the latter are available for allotment to other candidates.

(G) ELECTION CAMPAIGN

The law provides for an interval of not less than 20 days between the last date fixed for the withdrawal of candidatures and the date of the poll. However, on January 19, 1992 the President issued an ordinance reducing the minimum period of campaign for elections to Parliament and Legislatures from 20 days to 14. This period is utilised by the candidates for canvassing and educating the electors. The candidate and his political supporters canvass householders, address people in the streets, take out processions, hold public meeting and bring out leaflets, pamphlets, handbills, etc., for explaining the policies and programmes of their political parties and solicit their support in making them successful in the election. All bills, leaflets and similar material must, however, bear in the front the name and address of the printer and publisher. The printer of any such document is also required to obtain from the
intending publisher a declaration regarding his identity signed by him and attested by two persons to whom he is personally known. A copy of the printed document is required under the law to be sent to the Chief Election Officer/District Magistrate (within 10 days of its printing as per Commission's instructions).

(I) Campaigning Guidelines

On the eve of every general elections some guidelines are issued by the Election Commission whereby candidates are instructed to follow certain norms in carrying out their election campaign. Some of them, for example, are: Do not appeal to voters to vote or refrain from voting on grounds of religion, race, caste, community or language; do not make use of or appeal to religious symbols or national symbols; do not promote or attempt to promote feelings of enmity or hatred between different classes of citizens on grounds of religion, race, caste, community or language; do not publish false statements in regard to the personal character and conduct of any candidate or in relation to the candidature or withdrawal of any candidate, etc.

(II) Issues and Slogans

The parties generally coin catchy slogans and frame issues for and against one another to make the election
campaign more attractive and attentive. One cannot forget the famous slogan "Gharibi Hatao" (remove poverty) used by Mrs. Gandhi's party in the fifth general elections. As a reaction to "Gharibi" Hatao", the anti-Congress slogan "Indira hatao" (remove Indira) failed to click. In the history of free India, perhaps, the first important election from the point of view of issues and slogans was the post-emergency election of 1977. The captions of some of the posters were: "Talk less, work more", "The twenty-point programme is a blue-print for progress."52

"Our pledge - bread and liberty - vote Janta" was a famous slogan. Other types of slogans were: "Save democracy-vote for Janta Party"; "Problems are plenty, points are twenty, results are empty"; "What do you want - Freedom or Slavery? For freedom elect Janata Party". In Amethi, the constituency of Sanjay Gandhi, Janata Graffiti claimed that the election was a fight between Samajwad and Sanjaywad, democracy and dynasty.53 Such slogans and issues raised by the opposition parties paid rich dividends to them.

However, in 1980 again it was the turn of Mrs. Gandhi. Her slogan "Government that works became very successful and whatever was said against Mrs. Gandhi's party was totally ignored by the electorate because of the failure of Janata Government.
The assassination of Mrs. Indira Gandhi totally changed the complexion of Indian political scene and hence the slogan "Unity and Integrity of the country" or "Strengthen the Hand for Unity" became very appealing in the eight Lok Sabha elections. Rajiv Gandhi's election tour made him so confident of his party's success that he remarked, "After this poll, there will be no opposition". In the ninth and tenth Lok Sabha the Bhartiya Janata Party (BJP) with the active support of its sister organisations like the Vishwa Hindu Parishad (VHP), Akhil Bhartiya Vidyarthi Parishad (ABVP), etc. played the "Hindutva" card in a big way. The Party's campaign for "Ram Rajya", "Ram Janmabhomi", "Ram - Roti" helped the party in Hindi belt.

(H) THE POLL

Following the last date of withdrawal of candidatures to the date of poll when the candidates and political parties are busy in electioneering the District Election Officer/Returning Officer makes necessary arrangements for holding the poll, such as setting up of the polling stations, appointment of polling parties to man the polling stations, etc.
(I) **Polling Stations**

Each constituency is divided into a number of polling areas. For each polling area, one or more polling stations are provided according to the number of voters. A polling station usually caters to the need of 900 to 1000 voters. Where necessary, separate polling stations are provided for women voters; but in such cases the polling stations for men and women voters are located in the same building.

Outside each polling station there will be displayed prominently a notice specifying the polling area, the electors of which are entitled to vote at the polling station and a list of the contesting candidates.55

(II) **Fixing time for poll**

According to Section 56 of the Act, the Election Commission shall notify the hours during which the poll will take place, but the total period allotted on any date for polling in an election of a Parliamentary or Assembly constituency should not be less than eight hours. However, the proceedings at any polling station may be adjourned due to the interruption of riots, violence or on account of any natural calamity, or any other sufficient cause by
the presiding officer for such polling station or the returning officer presiding over such place, as the case may be. When a poll is adjourned, the returning officer shall immediately report the circumstances to the appropriate authority and the Election Commission. The votes cast at the polling station shall not be counted until such adjourned poll is completed. The electors who have already voted shall not be allowed to vote again.

(III) Fresh Poll

If any ballot box used at a polling station is unlawfully taken out of the custody of the Presiding Officer or the Returning Officer, or is accidentally or intentionally destroyed or lost to such an extent that the result of the poll cannot be ascertained; or any voting machine develops a mechanical failure during the course of the recording of votes; or any such error or irregularity in procedure as is likely to vitiate the poll is committed at a polling station, the returning officer shall report the matter to the Election Commission. Thereupon the Election Commission shall, after taking all material circumstances into account, declare the poll at that polling station null and void and notify a new day and fix hours for a fresh poll.
If at any election booth capturing has taken place at a polling station in such a manner that the result of the poll cannot be ascertained; the returning officer shall forthwith report the matter to the Election Commission. The Commission shall, on the receipt of a report from the returning officer and after taking all material circumstances into account, either declare that the poll at that polling station be void, appoint a day for taking fresh poll; or if satisfied that in view of the large number of polling stations involved in booth capturing the result is likely to be affected, countermand the election in that constituency. (57-a)

(IV) Ballot to be Secret

The ballot is secret and the law lays down various safeguards:

(I) Every elector to whom a ballot paper has been issued shall maintain secrecy of voting within the polling station.  

(II) No witness or other person (in an election petition) shall be required to state for whom he has voted at an election.  

(III) Every officer, clerk, agent or other person on election duty who performs any duty in connection with the recording or counting of votes at an election shall
maintain, and aid in maintaining, the secrecy of voting and shall not (except for some purpose authorised by or under any law) communicate to any person any information calculated to violate such secrecy. Any such violation will make him liable to punishment with imprisonment up to three months or with fine or with both. 60

(V) Only one Vote

No person shall vote in more than one constituency of the same class and no person shall vote in the same constituency more than once. 61

(VI) Personation

In order to prevent the same person from personating another voter and voting again, every voter's left forefinger will be marked by one of the polling officers with indelible ink before a ballot paper is issued to him. 62

Any polling agent may challenge the identity of a voter by depositing a sum of Rs. 2 in cash with the presiding officer. The presiding officer will hold a summary inquiry into the challenge. If the challenge succeeds or if the presiding officer is satisfied that the challenge was made in good faith and was not frivolous,
the deposit will be returned to the polling agent immediately after the conclusion of the inquiry. In other cases the deposit will be forfeited to Government.

(VII) Tendered Votes

If a person who is not the real voter comes to a polling station and casts his vote in the name of the real voter, and the real voter comes to the polling station thereafter to cast his vote, he will be asked to vote on a special type of ballot paper. This ballot paper, after it is marked and folded, will not be inserted into the ballot box, but handed over to the presiding officer who will place it in a separate cover. These special votes which are called "tendered votes" will not be counted at the time of counting. They may, however, be scrutinised in connection with an election petition if it is represented that the result of an election has been materially affected by the improper reception of votes. In other words, the court shall take into account the tendered ballot papers and exclude those votes which were cast by persons other than the 'genuine voters'.

(VIII) Voting by Post

The following persons are entitled to vote by post:
(a) **Special Voters**

The holders of the following offices (and their wives if they reside with them) are also entitled to be registered in the electoral rolls of the constituencies in which they would be residing but for their holding such offices: (1) The President of India; (2) The Vice-President of India; (3) Governors of States; (4) Cabinet Ministers of the Union or of any State; (5) Deputy Chairman & Members of the Planning Commission; (6) Ministers and Deputy Ministers; (7) Speakers of the Lok Sabha or of any State Legislative Assembly; (8) Chairman of any State Legislative Council; (9) Lieutenant Governors of Union territories; (10) Deputy Speaker of the Lok Sabha or of any State Legislative Assembly; (11) Deputy Chairman of the Raj Sabha or of any State Legislative Council; (12) Parliamentary Secretaries of the Union or of any State.

(b) **Service Voter**

The following persons (and their wives if they reside with them) have the right to be registered in the electoral rolls of the constituencies in which they would be residing but for their service: Members of the armed forces of the Union; Members of a force to which the Army Act, 1950, applies; (c) Members of an armed police force of a State serving outside the State; (d) Foreign service
personnel and others employed under Government in posts outside India.

Special voters and service voters are required to make declarations in the prescribed form giving the address at which, but for their service, they would have been residing, and they are then registered accordingly. The declarations are to be sent to the registration officer of the constituency concerned. Special steps are taken, with the assistance of the Ministry of Defence and the three Services Headquarters, for the enrolment of the armed forces personnel.

(c) **Voters on Election Duty**

(Polling agent, polling officers, presiding officers or other public servants on election duty).

(d) **Electors subjected to preventive detention**

These voters (other than service voters) are required to intimate the returning officer - of the constituency where they are registered - their wish to vote by postal ballot within a prescribed time: at least 10 days before the poll, in the case of special voters; at least 7 days before the poll or such shorter period as may be allowed by the returning officer, in the case of a person on election duty; and within 15 days of the calling
of an election, in the case of persons under preventive detention. In the case of those under preventive detention, there is also a duty cast on the appropriate government to ascertain and intimate to the returning officer within 15 days of the calling of an election their names and other particulars such as electoral roll numbers, places of detention, etc. The returning officer will in all these cases send to every voter a postal ballot paper.66

In the case of service voters, no individual intimation is required to be sent to the returning officer. The returning officer himself will send the ballot papers to them direct. Service voters are not entitled to vote in person. They can vote only by post.67

(e) Persons not entitled to vote

The following persons are not entitled to vote at an election:

(i) A person whose name is not entered in the electoral roll of any constituency;

(ii) A person who is subject to any disqualification referred to in Section 16 for voting;

(iii) A person who is confined in a prison, whether under a sentence of imprisonment or transportation or
otherwise or is in the lawful custody of the police (other than under preventive detention);

(iv) A person shall not vote at a general election in more than one constituency of the same class, and if a person votes in more than one such constituency, his votes in all such constituencies shall be void;

(v) A person shall not vote in the same constituency more than once, notwithstanding that his name may have been registered in the electoral roll for that constituency more than once, and if he does so vote, all his votes in that constituency shall be void. 68

It shall be the duty of Presiding Officer to close the polling station at the hours fixed for it in the notification. But the electors who are already present at the polling station before the closing time, shall be permitted to cast their votes. 69 If any question arises as to whether a person was present at a polling station or not, the decision of the Presiding Officer shall be final.

At the completion of the poll the Presiding Officer closes the slit of the ballot box, seals it and delivers the sealed ballot boxes and the sealed packets, etc. to the Returning Officer as soon as possible. The sealed packets are kept under safe custody and cannot be opened
without the prior direction of a competent court. This ensures secrecy of the ballot.

(I) **COUNTING OF VOTES**

The votes polled at each constituency are counted by, or under the supervision and direction of, the Returning Officer by counting supervisors and assistants appointed by him. The candidate, his election agent and his counting agents have the right to be present at the counting.70

The Returning Officer will give notice in writing at least one week before the date of poll, of the date, time and place of counting to each candidate or his election agent.71 Each candidate is entitled to appoint as many counting agents as there are counting tables and one more for watching the counting at the table of the Returning Officer. Before commencing the counting of votes, all these persons shall take an oath of 'Maintenance of Secrecy'.72

The postal ballot papers are counted first. This is done by the Returning Officer himself. A postal ballot paper is kept under two covers, the outer cover contain a
declaration in a prescribed form regarding the identity of the voter and the inner cover the ballot paper. The outer cover is opened and the declaration contained in it is scrutinised. If the declaration is not found inside the cover or if the declaration has not been duly signed and attested or attested by an officer not competent to do so or is otherwise substantially defective, the cover containing the ballot paper is rejected. All the declarations which are found in order are kept in a separate sealed packet before the covers containing the postal ballot papers are opened, to ensure the secrecy of the postal ballot paper. Thereafter the inner covers are opened one after another and the validity of each ballot paper is scrutinised and decided. A postal ballot paper is rejected:

(I) If no vote is recorded thereon; or

(II) If vote is given in favour of more candidates than one; or

(III) If it is damaged; or

(IV) If it is spurious ballot paper; or

(V) If it is not returned in the cover sent alongwith it to the elector; or
(VI) If it bears any mark of writing by which the elector can be identified; or

(VII) If the mark indicating the vote is placed in such a way as to make it doubtful to which candidate the vote has been given.  

As regards counting of votes polled at polling stations, first the Returning Officer satisfies himself that the ballot boxes received from the various polling stations are intact and permits the counting agents or the candidates to satisfy themselves on his score.

(I) **Destruction, etc., of ballot papers**

If at any time before the counting of votes is completed any ballot papers used at a polling station are unlawfully taken out of the custody of the returning officer or are accidentally or intentionally destroyed or lost or are damaged or tampered with to such an extent that the result of the poll at that polling station cannot be ascertained, the returning officer shall forthwith report the matter to the Election Commission. The Election Commission will, after taking all material circumstances into account, issue directions to the returning officer either to stop the counting, declare the poll at that polling station to be void, and order a fresh
poll, or if satisfied that a fresh poll at that polling station will not affect the result of the election, to resume and complete the counting. 75

(II) **Rejection of ballot paper**

A ballot paper will be rejected: 76

(I) If it bears any mark or writing by which the elector can be identified; or

(II) If it bears no mark at all or bears a mark made otherwise than with the instrument supplied for the purpose; or

(III) If votes are given on it in favour of more than one candidate;

(IV) If the mark indicating the vote thereon is placed in such manner as to make it doubtful to which candidate the vote has been given; or

(V) If it is a spurious ballot paper; or

(VI) If it is so damaged or mutilated that its identity as a genuine ballot paper cannot be established; or

(VII) If it bears a serial number, or is of a design, different from the serial numbers or, as the case may be, design of the ballot paper authorised for use at the particular polling station; or
(VIII) If it does not bear the distinguishing mark prescribed by the Election Commission and the signature of the presiding officer.

A ballot paper, however, will not be rejected: (I) if the defect mentioned at (VII) or (VIII) above is caused by any mistake or failure on the part of the presiding officer or a polling officer; or (II) on the ground merely that the mark indicating the vote is indistinct or made more than once, if the intention that the vote shall be for a particular candidate clearly appears from the way the paper is marked. Before rejecting any ballot paper as invalid, the counting agents of the candidate will be allowed to inspect the ballot paper. The Returning Officer will endorse on every rejected ballot paper the word 'Rejected' and the grounds of rejection and initial such endorsement. The rejected ballot papers will be kept in a separate bundle.

Interpreting the provision the Supreme Court in *Iqbal Singh v Gurdas Singh* held that if the Returning Officer was satisfied that the failure to affix the stamp or the signature was due to the fault of Presiding Officer, but the ballot paper was itself genuine he could include it among the valid ballot papers. Therefore, merely by giving evidence that the ballot papers did not
contain both the signature and the stamp it would not be established that the ballot paper concerned was not a valid paper.\textsuperscript{79} In Bashir Ahmad Magrey \textit{v} Ghulam Quadir Mir\textsuperscript{80}, the Supreme Court opined that the first proviso to Rule 56(2) which is based upon the principle that a vote validly cast should not be excluded from consideration because of the mistake or omission of the Presiding Officer or Polling Officer, made it plain that where the Returning Officer was satisfied that any defect mentioned had been caused by the mistake or failure on the part of a Presiding Officer or Polling Officer, the ballot paper shall not be rejected merely on the ground of such defect. The fact that the Returning Officer in the present case did not reject the ballot papers in question on the ground that they bore only the initials and not the full signatures of the Presiding Officer would go to show that the Returning Officer was satisfied that the alleged defect was caused by the mistake or failure on the part of the Presiding Officer.\textsuperscript{81}

\textbf{(III) Recording of Result}

After the completion of the counting, the total number of votes polled by each candidate is recorded in a result sheet (in the prescribed form) and is also announced to those present at the counting.\textsuperscript{82}
(IV) **Equality of votes**

If two candidates contesting any seat happen to secure the highest number of votes and their votes are equal in number, the result will be decided by lot.\(^83\)

(V) **Declaration of Result**

When the counting of the votes is finally completed and the Returning Officer has completed and signed the result sheet, he will forthwith declare the candidate who has obtained the largest number of valid votes to be duly elected.\(^84\) The Election Commission may, for any special reason, direct the Returning Officer not to declare the result; and in that event the declaration will be withheld in accordance with such direction.\(^85\)

(VI) **Recount**

When the announcement of the total votes polled by a candidate is made, a candidate or his agent dissatisfied with the counting may, in writing, apply for recounting. The application should give reasons why such recount is asked for. A recount may be demanded when the votes obtained by two candidates are very close and there may be a possibility of a small number of votes changing the result. The Returning Officer's decision on any such application is final.
No demanded for a recount can be made after the Returning Officer has completed and signed the result sheet. The Supreme Court has held that there can never be any hard and fast rule as to the circumstances when an order of recount would be permissible and it should always be dependent upon the circumstances of the case. Discussing the attitude of the Supreme Court in various cases, Sarkaria, J., speaking for the Court in Beliram Bhalaik v J.B. Khachi, observed:

Although no cast-iron rule of universal application can be or has been laid down, yet from a beadroll of the decisions of this Court, two broad guidelines are discernible: that the court would be justified in ordering a recount or permitting inspection of the ballot papers only where (I) all the material facts on which the allegations of irregularity or illegality in counting are founded, are pleaded adequately in the election petition and (II) the Court/Tribunal trying the petition is prima facie satisfied that the marking of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice between the parties.

It be concluded that since an order for recount touches upon the secrecy of the ballot paper, it should not be made lightly or as a matter of course.

(VII) Report of the Result

As soon as may be after the result of an election has been declared, the Returning Officer shall report the
result to the appropriate authority and the Election Commission shall get it published in the official gazette in India. The date on which a candidate is declared by the Returning Officer to have been elected to any House of Parliament or State Legislature, shall be date of election of that candidate.

CONCLUSION

Thus in the present chapter one can find an elaborate and effective system of electoral process designed for holding a fair and free election. It is a process in which the aspiring decision-maker is fully involved, with greater or lesser intensity over time.

Election is the most important exercise of the people in a democracy and it is the responsibility of the Government, the Commission, political parties and the electorate to make the process a success. First of all, questions like poll schedule should be settled on the basis of a clear understanding between the Government and the Commission. Secondly, the Government should extend all help to the commission to conduct fair elections. The question, who is supreme—the Government or the commission—should not arise in this matter.
NOTES & REFERENCES

THE ELECTORAL PROCESS

1. *Encyclopaedia Britannica* 134 (Vol.VIII)

1-b. Article 83 says:

(1) The Council of States ....

(2) The House of the People, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the House:

Provided that the said period may, while a proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

Similar provision exists for duration of States Legislature in Art. 172.

Section 14 of the R.P. Act 1951 says that a general election shall be held for constituting a new Lok Sabha on the expiry of its duration or on its dissolution. It also stipulates that the President shall issue the notification for the election schedule on the date or dates recommended by the Election Commission.

2. See Article 332


3-a. Meghraj Kothari v Delimitation Commission, AIR 1962 S.C. 694


5. *Id* at 3

6. Section 21, R.P. Act, 1950

7. Section 13 D, *Id*

8. Section 23 *Id*

8-a. *Supra* note 3 at 38

10. Id at 73.


12. Ibid.


14. Section 14, Id.

15. Section 20 Id; Supra note 3 at 33.

16. Section 16, Id.

17. Sections 11-A and 11-B of the R.P. Act, 1951, deal with disqualifications for voting:

11-A. If any person, after the commencement of this Act:

(a) is convicted of an offence punishable under section 171 E or section 171 E of the Indian Penal Code, or under section 125 or section 135 or clause (a) of subsection (2) of section 136 of this Act, or

(b) is found guilty of a corrupt practice by an order under section 99, he shall, for a period of six years from the date of the conviction or from the date on which the order takes effect, be disqualified for voting at any election.

11-B. The Election Commission may, for reasons be recorded, remove any disqualification under this Chapter.

18. Section 20, R.P. Act, 1950; Supra note 3 at 34.

19. The following offices have been declared by the President by Notification No. S.D. 959, dated the 18th April, 1960: (1) The President of India (2) The Vice-President of India (3) Governors of States, (4) Cabinet Minister of the Union or of any State (5) Deputy Chairman and Members of the Planning Commission (6) Ministers of State of the Union or of any State (7) Deputy Minister of the Union or of any State (8) Speaker of the House of
the People or of any State Legislative Assembly (9)
Chairman of any State Legislative Council (10)
Lieutenant Governors of Union territories (11)
Deputy Speaker of the House of the people or of any
State Legislative Assembly (12) Deputy Chairman of
the Council of States or of any State Legislative
Council, (13) Parliamentary Secretaries of the
Union or of any State.

20. **Supra note 3 at 35.**

21. **Sections 17 and 18 R.P. Act., 1950.**

22. **Sections 3 and 4, R.P. Act., 1951; See Article 173
of the Constitution and Section 5 of the R.P. Act,
1951 for the qualification of State Legislative
Assembly.**

23. **Section 55, R.P. Act, 1951.**

24. **Articles 84 and 173 and Third Schedule.**

25. **C.A.D. 89 (Vol. VIII, 1949).**

25-a. **In Guru Govinda Basu V Shankari Prasad Ghosal, 25
E.L.R. 77-78, the Supreme Court held that for
holding an office of profit under the Government
one need not be in the service of Government and
there need be no relationship of master and
servant. The Court said that it had "no hesitation
in saying that where the several elements, the
power to appoint, the power to dismiss, the power
to control and give directions as to the manner to
in which the duties of the office are to be
performed, and the power to determine the question
of remuneration are all present in a given case,
the officer in question holds the office under
authority so employed". In the Court's opinion, it
was not necessary that all these factors must
co-exist and each must show subordination to the
Government. The circumstance that the source from
which the remuneration is paid is not from public
revenue is a neutral factor not decisive of the
question**

The Supreme Court in a recent judgment has
ruled that when a person is neither appointed by
the Government nor is removable by it nor paid out
its revenue it cannot be held that he holds an
office of profit and therefore liable to be disqualified being chosen as a member of Parliament or State Legislatures.

The Court held that before a person can be held to be disqualified under Article 19(1) (a) of the Constitution, three things must be proved that (1) he held an office; (2) that it was an office of profit; and (3) that it was an office under the Union Government or the State Government.

"In our opinion, the principle tests for deciding whether an office is under the government, are (1) what authority has the power to make an appointment to the office concerned, (2) what authority can take disciplinary action and remove or dismiss the holder of the office and (3) by whom and from what sources is his remuneration paid", a division bench comprising Mr. Justice K. Jayachandra Reddy and Mr. Justice G.N. Ray said quoting an Apex Court judgment.

The judges observed that "the true test of determination whether a person holds and office of profit depends upon the degree of control the government has over it, the extent of control exercised by other bodies or committees, and its composition, the degree of its dependence on the government for its financial needs and the functional aspect, namely, whether the body is discharging any important governmental function or just some function which is merely optional from the point of view of the government".

Mr. Justice Reddy, who delivered the judgment, said that as a matter of fact Section 10 of the Representation of People Act as well as Article 58 (2) of the Constitution do indicate that all persons employed in such undertakings, corporations or local bodies cannot be deemed to suffer disqualification for contesting the elections except to the extent indicated therein.

Referring to provisions of the Constitution which deals with disqualified of a person being chosen as a member of the Parliament or the State Legislatures respectively on the ground of holding of office of profit under the government, the judges said that generally it is understood that an
office means a position to which certain duties are attached.

An office of profit involves two elements namely that there should be such an office and that it should carry some remunerations. It is not the same as holding a post under the government and therefore for holding an office of profit under the government, a person need not be in the service of the government.

The judges said that it is well-settled now that the object of enacting Articles 102 (1) (a) and 19 (1) (a) is that there should not be any conflict between the duties and interests of an elected member and to see that such an elected member can carry on freely and fearlessly his duties without being subjected to any kind of governmental pressure. "If such an elected person is holding an office which brings him remunerations and if the government has a voice in his functions in that office, there is every likelihood of such person succumbing to the wishes of the government", the judges said.

The judges said that "the law regarding the question whether a person holds an office of profit should be interpreted reasonably having regard to the circumstances of the case and the times with which one is concerned, as also the class of person whose case we are dealing with and not divorced from reality".

In the instant case, Satrucharla Chandrasekhar Raju, the appellant filed an appeal under Section 116-A of the R.P. Act, 1951 against the order of the Andhra Pradesh High Court setting aside the election of the appellant who was elected as a member of the Andhra Pradesh Legislative Assembly on the ground that he was holding an office of profit under the State Government at the relevant time and was thus disqualified under Article 19 (1) (a) of the Constitution for being chosen as a member of the Assembly.

The appellant was appointed as a teacher in a primary school run by the Integrated Tribal Development Agency (ITDA) by its Project Officer. He joined duty in January 1988 and was working in a
school in Jiyammavalasa Mandal in Vizianagaram district. In August 1988, the Tribal Welfare Officer inspected the school and he alleged to have noticed some irregularities and kept the appellant under suspension pending enquiry.

The appellant questioned the same before the Andhra Pradesh Administrative Tribunal by filing a petition but the same was rejected. Thereafter on October 26, 1989, the appellant submitted his resignation to the Project Officer who was the appointing authority. However, the Project Officer made an endorsement on the letter that his resignation cannot be accepted in view of the pending enquiry.

Subsequently, the election to the State Assembly was announced and the appellant was elected on November 27, 1989. Mr. Vyricheria Pradeep Kumar Dev, who lost the election, challenged the election of the appellant on the ground that the appellant was disqualified as he was holding an office of profit not only on the date of filing the nomination but also subsequently.

While allowing the appeal of the appellant against the High Court judgment, the Apex Court said that the government has some control over the ITDA which is set up as a project. Since it provides funds and sanctions the post, the District Collector is appointed as the Project Officer and some officers are ex-officio members of the ITDA which carries out the object of providing the compulsory education in tribal areas.

The judges said that the power to appoint or to remove teachers is not with the government but with the Project Officer. The Government may have control over the appointing authority but has no direct control of the Project Officer. In such a situation the question of any conflict between his duties and interests as an elected member does not arise since it cannot be said that he, as a teacher, can be subjected to any kind of pressure by the government which has neither the power to appoint him nor to remove him from service.

"Taking a practical view of the substance of these factors into consideration, the appellant cannot be held to be holding an office of profit
under the government", the judges ruled while allowing the appeal. See The Hindustan Times, New Delhi, 12.10.1992

26. See Sections 8, 8-A, 9, 9-A, 10 and 10-A of R.P.Act, 1951. Under Section 11, the Election Commission may, for reasons to be recorded, remove or reduce the period of any of these disqualifications except under Section 8-A (disqualification on ground of corrupt practices) of the Act.

27. Similar provisions as regards State Legislatures are provided under Article 191 of the Constitution.


30. Id at 121.
32. Section 30, R.P. Act, 1951.
33. Section 31, Id
34. Section 33 (Cl.1) Id
35. A person who having held an office under the Govt. of India or under the Government of any State has been dismissed for corruption or for disloyalty to the State shall be disqualified for a period of five years from the date of such dismissal.
36. Section 33 (Cl.3) R.P. Act, 1951.
37. Section 33 (Cl.4), Id
38. Section 33 (Cl.5), Id
39. Section 33 (Cl.6) Id
40. Section 34, Id
41. Section 158, Id
42. Section 36, (Cl.2) Id
43. Ibid.
44. Section 37, R.P. Act, 1951.
45. Section 38, Id
46. Section 53, Id
47. Section 52, Id
48. The Delhi High Court issued a show-cause notice to the Union Government on a petition challenging the January 4 Ordinance. It was contented that "The Ordinance seeks to give a differential treatment to an individual in the polity as against such individuals who get themselves buttonholed to a political power group with the avowed aim of sharing power amongst a group of people masquerading as political parties and keeping independents at bay from making equal effort to enter the portals of constitutional governance". See *The Hindustan Times*, New Delhi.(January 17, 1992)


51. Section 30, R.P. Act, 1951. Describing her election campaign Gayatri Devi as Swatantra Party candidate narrates: 'The Swatantra Party had a Star ... all my other helpers, and I spent endless frustrating hours trying to instruct the women about voting for the Star. On the ballot sheet, we said, over and over again, this is where the Maharani's name will appear, and next to it will be a star. But it was not as simple as that. They noticed a symbol showing a horse and rider, agreed with each other that the Maharani rides so that must be her symbol. Repeatedly we said, 'No, no, that's not the right one'. Then they caught sight of the emblem of a flower. Ah, the flower of Jaipur - who else could it mean but the Maharani? "No, no, not the flower". All right, the star, yes, that seems appropriate for the Maharani, but look, here is the sun. If the Maharani is a star, then the sun must certainly mean the Maharaja we'll vote for both". See Gayatri Devi, *A Princess Remembers* 274 (1982).


53. *Id* at 23 - 28.


55. See Section 25, R.P. Act, 1951.

56. Section 57, *Id*

57. Section 58, *Id*

57-a. Section 58-A, *Id*
60. Section 128, Id
61. Section 62, Id
63. Rule 42, Id
64. See Dr. Wilfred D'Souza V Francis Menino Jesass Ferrao, AIR 1977 S.C. 286. In this case the appellant won by a margin of one vote.
66. Rules 19, 20 and 21, Id
68. Section 62, Id
70. Section 621, R.P. Act, 1951.
75. Section 64-A, R.P. Act, 1951.
78. AIR 1976 S.C. 27.
79. Ibid.
83. Section 65, R.P. Act, 1951.
84. Section 66, Id.
86. Rule 63, Id.
90. Section 67, R.P. Act, 1951.
91. Section 67-A, Id.