CHAPTER 4

ELECTION COMMISSION AND PRACTICES
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In a vast country like India, the election machinery and its functioning cannot be compared with the any other governmental machinery and its functioning whether set up under the Constitution or otherwise. The reasons are very simple. First of all the election machinery has to deal with vast and rather scattered electorate. According to G.G.Mirchandani “The total electorate of this country in 1980 was over 360 million which is one and a half times the population of United States”.\(^1\) Seventy-five per cent of this vast electorate lives in more than five lakh villages spread throughout the length and breadth of India. The remaining 25 percent are concentrated in the thousands of cities, towns and small townships. Therefore work in connection with elections in which such a vast electorate spread over such a vast country is involved can be concentrated neither in the capital of the country nor state capitals. Secondly, the democratic set up still in its infancy demanded that elections based on adult suffrage should be free and fair. In the words of S.P. Sen Verma the then Chief Election Commissioner, “In order that elections based on adult suffrage may be free and fair, it is essential that the election work should be spread throughout the length and breadth of the country and that even in the remotest villages, this work should be done in a manner so as to inspire the confidence of the people”. Hence an increase of a few top-level officials either in the Election Commission or in the state election departments is hardly of any avail and cannot even touch the fringe of the problem. It may even act as a hindrance to efficient and speedy work. From what he has stated above, it follows that the election machinery should be broad-based and pyramidal and not top heavy and conical. The election machinery

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should be such that it may function efficiently in every village, town any city in an independent, impartial and fair manner.\textsuperscript{2}

The draft of the Constitution as settled by the Drafting Committee on Feb. 21, 1948 provided for separate Election Commission for the centre and for each of the states. This was in accordance with the decisions taken by the Constituent assembly while it was considering the Reports of the Union Constitution committee and the Provincial Constitution Committee.

The Secretariat of the Constituent Assembly in a note dated May 14, 1949 pointed out that there was a growing feeling that the interests of the country would be best served if there were only one all-India Commission controlling all elections, central as well as provincial. A single electoral authority controlling all elections in India would have the advantage of uniformity for all the units of the Union. The Drafting Committee accepted the suggestion. When the matter came up for discussion in the Constituent Assembly on June 15, 1949, B.R. Ambedkar introduced a new article which made provision for a single central election Commission to be in charge of central and state elections.\textsuperscript{3}

The provisions regarding the conduct of elections, composition of Election Commission, electoral procedure and other details deals in detail in The Representation of the people Act 1951 enacted on 17\textsuperscript{th} July 1951 (Parliament Act No. 43 of 1951).

The “Act provides for the conduct of election to the Houses of Parliament and to the House or Houses of the Legislature of each state, the qualifications and disqualifications for membership of these houses, the concept, practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections”.\textsuperscript{4}

\textsuperscript{2} Extracts from the letter of Sri S.P. Sen-Vurma, CEC to Dr L.M.Singvi
\textsuperscript{3} Shiva Rao, B., “The Framing of India’s Constitution”, Select Documents, IIPA, 1968
4.1 Notification for Election

Issuance of notification for election marks the first step in electoral procedure in India. Section 14 (1) of The Representation of the people Act 1951 makes a mention of Notification for the general elections to the House of the people. A general election is to be held for the purpose of constituting a new House for the people, on the expiration of the duration of the existing House or on its dissolution.

Under Section 14 (2) of this Act, the President of India by one or more notifications published in the Gazette of India on such date as may be recommended by the Election Commission can call upon all Parliamentary Constituencies to elect members in accordance with the provisions of this Act and the rules and orders made thereunder.

The general practice is that the election Commission consults the State Governments before recommending the date or dates of poll to the President, for election to the House of people from the constituencies situated within the state or states concerned.

"As per provisions of Article 83(2) of the Constitution, the normal tenure of the Lok Sabha is five years from the date appointed for its first meeting and this term can be extended only when a proclamation of emergency is in operation and the parliament by law resolves to extend the term (refer to the 44th Amendment Constitution of India)".5

4.2 Allocation of Constituencies

For election purposes, each state and union territory is divided into territorial units called Parliamentary constituencies each returning one member to the Lok Sabha. The allocation of seats in the Lok Sabha to the states and the division of states and union territories into constituencies is determined by the Delimitation Commission constituted under an Act of Parliament following the publication of the Census Report every ten years.6

5 Art.83(2) of The Constitution of India.
To ensure uniformity of representation to the State in the Lok Sabha and uniformity in the physical demarcation of constituencies, the Constitution lays down that the ratio between the number of seats allotted to a state and the population of the state will as far as practicable, be the same for all states and that 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 is, as far as practicable, the same throughout the state. This formula does not apply to smaller states having a population of less than six million.

The constituencies for the Lok Sabha elections in 1980 were the same as those for the election in March 1977. For the latter, the constituencies were determined by a Delimitation Commission constituted under the Delimitation Act 1972. The Delimitation Commission divided the country into 542 single member Parliamentary constituencies, including 78 reserved for SC and 38 for ST, and allocated them to the 22 states and 9 union territories. Subsequently, the seats reserved for SC were increased from 78 to 79 and for scheduled tribes from 38 to 40 in accordance with the provision in the scheduled castes and scheduled tribes orders (Amendment) Act, 1976. At present there are 544 single member Parliamentary constituencies which can be increased to 545. Thus 22 per cent of the strength of the Lok Sabha is reserved for scheduled castes and scheduled tribes. This is based on the proportion of the scheduled castes and tribes to the population of the country. To determine the number of seats for each state, the total population of the country.

The electoral rolls of all constituencies are normally revised before a general election and a by –election with reference to a qualifying date, which is the first day of January of the year in which the rolls are revised. The rolls are also revised in any particular year when so directed by the Election Commission. The electoral rolls for the January 1980 elections were revised with reference to January 1, 1979, as the qualifying date. They were published on November 30, 1979. For the 84 elections, the rolls were further revised.
The electorate numbered 361,753,971 as against 321,174,327 on the eve of parliamentary elections in March 1977. This shows an increase of 40 million between 1977 and 1980.\(^7\)

It would be worthwhile to make a reference of the provisions of Delimitation Act. This “Act provides for the readjustment of the total number of seats in the Legislative Assembly of each state, the division of each State and Union Territory having a Legislative Assembly and the Union Territory of Delhi into territorial constituencies for election to the House of the People and Legislative Assemblies of the states and Union Territories and Metropolitan Council of Delhi and for matters concerned therewith”.\(^8\)

Further Section 9 of the Delimitation Act 1972 provides for the distribution of the seats in the House of the people allocated to each State and the seats assigned to the Legislative Assembly of each State to single member territorial constituencies and delimit them on the basis of the latest census figures having regard to the processions of the Constitution and the provisions of the acts specified in Section 8 and some other relevant provisions.

(a) All constituencies shall, as far as practicable be geographically compact areas. Physical features, existing boundaries of administrative units, facilities of communication and public convenience are given consideration while delimiting these constituencies.

(b) Every Assembly constituency is so delimited as to fall wholly within one Parliamentary constituency.

(c) Constituencies in which seats are reserved for the scheduled castes are required to be distributed in the different parts of the states and located as far as practicable in those areas where the proportion of their population to the total is comparatively large, and

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(d) Constituencies in which seats are reserved for the scheduled tribes are as far as practicable located in areas where the proportion of their population to the total is largest.  

4.3 Administrative Machinery for the Conduct of Elections: The Election Commission - The Centralised System

In this part we will discuss the administrative machinery that has been prescribed by the law for the conduct of elections. The officials etc., referred to in various sections connected with the elections. There are many more functions connected with the conduct of elections which are performed by functionaries not referred to in the Act, examples are Police and other staff for maintenance of law and order and also ministerial staff for making transport arrangements for the staff etc. deputed for election work and observers of Election Commission.  

Article 324 of the Constitution vests the authority for conducting all elections to Parliament and State Legislatures and to the offices of President and Vice-President in the Election Commission, which is a permanent constitutional body. The Chief Election Commissioner is an independent constitutional authority with security of tenure like that of a Supreme Court Judge. He is free from the control of the Executive and the Legislature.  

Election Commission enjoys all powers and functions with regard to the superintendence, direction and control of the preparation of electoral rolls for and the conduct of elections to Parliament and to the Legislature of every state, besides elections to the offices of the President and the Vice-President.  

Clause (2) of Article 324 contemplates the setting up of an Election Commission consisting of the Chief Election Commissioner and all such members of other election commissioner if any, as the President may from time to time fix. 

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9 The Delimitation Act, 1972, Ibid, Sec. 9, p.3.  
Clause (3) provides that when any election commissioner is appointed the Chief Election Commissioner would act as the Chairman of the Commission. There is provision under Clause (4) for the appointment, in addition, of Regional Commissioners before each general elections to assist the Election Commission in the performance of its functions.\(^\text{12}\)

The immensities of the task of Election Commission and the complexities of the duties it is called upon to discharge are too obvious to require any elaboration.\(^\text{13}\)

The main question raised is, as to how effectively the Election Commission as now constituted, can supervise the conduct of elections in a vast country like India. The mid-term polls in a number of states marked the beginning of a new era in our political life. The Election Commission has to be overhauled so that it can ensure its worth becoming enforceable throughout the country.

The Election Commission has functioned since its inception in 1951, as a single man Commission, the Chief Election Commissioner being the sole authority in all matters pertaining to elections. Unfortunately the scheme of the Election Commission, as visualized in the Constitution, has not so far been evolved to provide the country with machinery adequate for the proper conduct of elections.

It is inconceivable that such a heavy responsibility can be borne satisfactorily by single individual.

For the 1952 general elections two regional commissioners were appointed. In 1957, 1962 and 1967 there were two Deputy Election Commissioners to assist the Election Commission. Similarly in the mid term elections held in 1969, there was only one Deputy Election Commissioner to assist the Chief Election Commissioner.

Until 1966, the powers of superintendence direction and control vested in the Commission could be exercise by the Chief Election Commissioner only. In the light of experience the law was amended in that year to provide

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\(^{13}\) Shiva Rao, B., "Election Practices and Machinery Need for Reforms".
that the functions of the commission under the constitution and the election law may be performed, subject to any general or special directions of the Commission also by a Deputy Election Commissioner or by the Secretary of the Commission.

While this has enabled the delegation of functions in appropriate cases to a Deputy Election Commissioner or to the Secretary, it has not changed the constitutional and legal position and the Chief Election Commissioner continues to be the sole authority in all matters pertaining to the preparation of electoral rolls and the conduct of elections to Parliament and the State Legislatures and to the offices of the President and Vice-President.

4.4 The State Election Machinery

In the Constituent Assembly there was a strong section of opinion which advocated the setting up of separate election Commissions for the states. But ultimately the view prevailed that there should be a single Election Commission in charged of all central and state election with provision for the appointment of Regional Commissioners.

It is a single unified central law (the two Representation of the people Acts of 1950 and 1951) made under Article 327 of the Constitution, that has governed elections to both Parliament and the State Legislatures.

Though under Article 328 power has been given to a State Legislature to make supplementary laws with respect to election in that state, no state Legislature has found it necessary so far to make any such laws. It is beyond doubt that the existence of such a single parliamentary law of this nature has ensured uniformity in the electoral processes and practices throughout the country.

For every state there is a Chief Electoral Officer designated or nominated by the Election Commission in consultation with the State Government. He is usually a senior executive or judicial officer of the State Government.

The Chief Electoral Officer has District Election Officers, usually one for each district, to assist him in the electoral work.
The responsibility for the preparation and revision of electoral rolls is vested in an officer called the Electoral Registration Officer. He may have under him Assistant Electoral Registration Officers. For the conduct of the elections there is a Returning Officer for every Parliamentary and every Assembly constituency. He may also have Assistant Returning Officers. Then, there are the Presiding Officers, Polling Officers, etc., all forming a part of the vast electoral organisation.

From the Chief Electoral Officer down to the Presiding Officers, though these are mostly State Government Officials (or in some cases officials of local bodies) every one is answerable to the Election Commission for every act of his commission or omission. The great importance that the Constitution makers attached to the provision of an adequate and independent machinery to assist the Election Commission in the discharge of its functions properly is evident from Clause (6) of Article 324. Under this clause, the President and the Governors of the states are enjoined, when so requested by the Election Commission, to make available to the Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Commission.

In addition to the superintendence, control and direction of election, to the various Legislatures, the Election Commission has also been assigned certain quasi-judicial functions, particularly in regard to references by the president and the Governors under Articles 130 and 192 of the Constitution respectively.

In the absence of express provisions either in the Constitution or in the Representation of the People Act, prescribing the procedure to be followed by the Commission with regard to such references, it has at times felt handicapped to discharge its duty to the desired extent. “The Commission, therefore, suggested in its second report in 1957, that it should be given the powers of an ordinary court of law for securing the material evidence which
would enable it to tender a satisfactory opinion in the matter. The law should be amended so as to give to the Commission the necessary legal power.14

4.5 Delegation of Functions of Election Commission

"The functions of the Election Commission under the Constitution, the Representation of the Peoples Act, 1950 (43 of 1950) and 1951 (Section 19-K) or under the rules made thereunder may, subject to such general to special directions, if any, as may be given by the Election Commission in this behalf, be performed also by a Deputy Election Commissioner or by the Secretary to the Election Commission".15

This section permits delegation of the functions of the Election Commission, to the Deputy Election Commissioner or the Secretary to the Election Commission. It is pertinent to note that no such delegation is permissible of the functions of Chief Election Officer to his assistants viz., Additional Chief Electoral Officer, Joint Chief Electoral Officer, Deputy Chief Electoral Officer or Assistant Chief Electoral Officer.

Inspite of several defects, and inadequate machinery and staff to aid it in the discharge of its duties, the Election Commission has done commendable service to the nation for the past 4 decades.

Time is appropriate for action under Article 324 for expanding the Election Commission, so that such a Commission will be in a position to withstand political pressures and inspire greater public confidence.

An enlarged Commission will avoid the possibility of arbitrary action by a single individual.

Regarding the conditions of service and the term of office of the Chief Election Commissioner, the Constitution makers demonstrated their anxiety to favour only persons of unquestionable integrity and the highest judicial probability for this high office. Different Commissions, leaders of political parties, Election Commission and others have given their opinions in this regard.

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In August 1974, Mr. Jaya Prakash Narayan on behalf of the "Citizen's for Democracy" appointed a Committee to study and report on a scheme for electoral reforms. The members of the Committee were Mr. V. M. Tarakunde, Mr. M R. Masani, Mr. P.G. Mavalankar, M.P., Mr. A. G. Noorani, Prof. R. D. Desai and Mr. E. P.W. Decosta (Convener).

It opined that the position and authority of the Election Commission is integral to a system of fair and free elections. As in the case of the judiciary, the Election Commission must not only be independent in theory but also manifestly appear to be so in the exercise of its powers of organizing and conducting elections.

In recent years an impression has gained the ground that the Election Commission is becoming less and less independent of the executive than in the earlier years of independent, because the choice of the Chief Election Commissioner has not always been based on the criteria which would command the confidence of all sections of public opinion. The practice of making it a berth for retiring Government officials has, perhaps, been responsible for the feeling that the incumbent so benefited will be beholden to the Government for his office. When this is viewed in the context of the various complaints made during the elections about alleged irregularities in polling and the subsequent counting and declaration of results, rumours, not all of them unfounded are circulated. This undermines the prestige and confidence which the Election Commission should enjoy with all sections of the electorate.

The Tarkunde Committee held that "It is, therefore, necessary to ensure that the election commission, is so constituted that its integrity and fairness are unimpeachable".

Regarding the position of the Election Commission, the Tarkunde committee said, "is somewhat analogous to that of the Union Public Service Commission at the centre and in the states which consist of several members. A commission consisting of a body of three members can arrive at a consensus on major controversial problems of organising elections which is
decidedly a superior method of ensuring impartiality to the individual decision of a single chief election commissioner”.

Equally important is the manner of appointing them members of the commission and the choice of the Chief Election Commissioner. The constitution provides that the appointment should be made by the President. While this may be in keeping with the basic features of cabinet responsibility under the parliamentary system of government, appointment to this high office by the executive of the day is always open to suspicion and cannot command the prestige and confidence that should be associated with the office.

The committee felt that the tendency of the Government ‘is not’ to look for the qualities of independence and impartiality which would satisfy the public regarding the fairness of the electoral process. Moreover ‘it is necessary to ensure that the person’ appointed has no sense of obligation to the Government for his position.

The Tarkunde Committee suggested that members of the Election Commission should be appointed by the President on the advice of a committee consisting of the Prime Minister, the Leader of the opposition in the Lok Sabha and the Chief Justice.  

The election commission has recommended to the Union Government to vest it with legal powers to proceed against officials responsible for duties connected with electoral matters for their acts of omission and commission.

According to Mr. K. Ganesan, Secretary to the Election Commission, such powers should not be exercised by the concerned state governments having control over the officers. Barring the staff of the commissions secretariat, practically the entire electoral machinery is under the administrative control of the respective State Government. The commission, therefore, has no power at present to initiate disciplinary proceedings on its own against officials responsible for duties connected with electoral matters. Mr. Ganesan said in an interview that during the year under review, it was found necessary to take action against several

*16 Extracts from Shiv Lal: Elections and the Constitution: The Question of Amendment, New Delhi, 1977, pp. 189-191*
government servants for irregularities such as non-maintenance of ballot paper account by the presiding officers, failure to put signatures on the back of ballot papers, and for canvassing for a particular candidate.

Citing an instance, Mr. Ganesan said that on inquiry made into a complaint relating to the general election to Bihar legislative assembly, 1980 from Khapauti (SC) constituency it was revealed that one of the presiding officers did not maintain the ballot paper account properly and that the presiding officer of another polling station failed to put his signatures on the back of 140 ballot papers. The returning officer of the constituency also failed to examine the presiding officers diaries and report the case of abnormal poll to the commission. The chief Electoral Officer, Bihar was directed to issues written warning to the concerned officers. In its judgement dated March 5, 1980 the High Court at Patna observed that a block development officer canvassed votes in favour of the elected candidate and also moved in his company on several occasions.

The commission directed the Chief Secretary to the Government of Bihar to relieve the officer immediately of his election duties and to initiate disciplinary action against him. The Commission also directed that an entry should be made in the confidential character roll of the officer concerned to this effect.

The Chief Electoral Officer reported that papers relating to the disciplinary proceedings were called for from Personnel Department and were carefully perused. Examination revealed that action was taken by the Departmental Enquiry Commissioner and the law department was also consulted the points were thoroughly examined but none of the allegations against the officer was proved.

Therefore, the department proceedings were withdrawn giving the benefit of doubt to the Defaulting Officer.

Mr. Ganesan said that on the advice of the Commission, the Governments of Tamil Nadu, Karnataka, and Andhra Pradesh issued orders that government officials nominated on authorities such as notified area Committees should not take part in elections from the local authorities.
constituencies. This is intended to keep government officials clear of politics and political affiliations. During 1983, the Commission tendered its opinion in eleven cases either to the President or to Governors in regard to the alleged disqualification of members of Parliament or members of legislative Assemblies or Councils. Of them, four had been referred to the Commission by the President and the remaining seven by the Governors.17

4.6 Administrative Machinery for the Conduct of Elections at the State Level

In each state, a senior officer of the State Government is designated or nominated as the Chief Electoral Officer by the Election Commission in consultation with the State Government. He is subject to the control of the Election Commission. For each district in a State other than a Union Territory, an officer of Government is designated or nominated as the District Election Officer by the Election Commission in consultation with the State Government. In a Union Territory, these functions are discharged by the Returning Officer of the constituency concerned.

The Section 20 of the Representation of the People Act, 1951 relates to the general duties of Chief Electoral Officers. The Section reads — “Subject to the superintendence, direction and control the Election Commission, the Chief Electoral Officer of each state shall supervise the conduct of all elections in the state under this Act”.

The office of the Chief Electoral officer is a creation of Section 13A of the Representation of the People Act 1950 which reads as under: Section 13A (43of 1950) Chief Electoral Officers:

(i) There shall be for each state a Chief Electoral Officer who shall be such officer of the Government as the Election Commission may, in consultation with that Government designate or nominate in this behalf.

17 “Election Body Seeks more Powers”. "The Times of India", May 21, 1984, New Delhi, May 20, PTI.
"Subject to superintendence, direction and control of the Election Commission, the Chief Electoral Officer shall supervise the preparation, revision and correction of electoral rolls in the state under this Act".  

The main duties of the Chief Electoral Officer are thus Supervision of the preparation etc. of the electoral rolls and the conduct of the elections. As he has very few statutory powers and he exercises his authority in his capacity of a senior officer of the State Government in election matters, he works directly under the Election Commission of India and not the State Government concerned even though he is an officer of the State Government.

As regards the general duties of district Election Officer according to Section 20A the District Election Officer, subject to the superintendence, direction and control of the Chief Electoral Officer shall coordinate and supervise all work in the district or in the area within his jurisdiction in connection with the conduct of all elections to the Parliament and the Legislature of the state.

Further the District Election Officer shall also perform such other functions as may be entrusted to him by the Election Commission and the Chief Electoral Officer.

The office of District Election Officer is a creation of Section 13AA of the Representation of the People Act 1950.

The District Election Officers function is to supervise the preparation of electoral rolls, to coordinate and conduct elections to Parliament and the Legislature of the State. In fact he has no functions as regards the conduct of elections to Rajya Sabha. Though sub-section (2) speaks of performances of such other functions as may be entrusted to a District Election Officer by the Election Commission and or by the chief Electoral Officer but, in practice this provision has never been invoked. In fact it is not clear as to what other functions can really be entrusted to the District Election officer.

\[^{18}\] The R.P. Act, 1951, op-cit, Sec. 20
\[^{19}\] Ibid, Sec.20(A).
In fact this section needs to be read along with Sections 24, 25, 26, 31, 33, 35, 36, 37, 38, 57, 58, 64, 65, 66, 67 and 78 which deal with the scheme relating to the functions of the District Election Officer and the Returning Officer. Broadly speaking, the administrative part of the conduct of election is the responsibility of the District Election Officer which comprises of inter alia, appointment of polling staff and making provision for polling stations and coordinating the activities of the Returning Officers.

The functions of the Returning Officer comprise of receipt of nominations and their scrutiny, counting of votes and declaration of results. It is however, not necessary that the District Election Officer and the Returning Officer should be two different persons. One and the same person can be both a District Election Officer and a Returning Officer.

The main function of the Returning Officer is the conduct of election to the House of the People (Lok Sabha), Council of States (Rajya Sabha), Legislative Assembly (Vidhan Sabha) and Vidhan Parishad. He can be appointed by designation or by name. He has necessarily to be an officer of the Government or of a local authority. He can be appointed for more constituencies than one. The term local authority has not been defined in the Act. Its definition will be governed by the General clauses Act.

The Secretary of State Legislative Assembly can be appointed as Returning Officer at election for Rajya Sabha. Officers of the State Legislature could be treated as Officers of Government for purposes of this section.

The Election Commission can appoint one or more persons to assist any returning Officer in the performance of his functions provided that every such person shall be an officer of government or of a local authority.

Every Assistant Returning Officer, subject to the control of the Returning Officer, is competent to perform all or any of the functions of the Returning Officer.

20 Ibid, Sec.21, Act 47 of 1966.
But no Assistant Returning Officer can perform any of the functions of the Returning Officer which relate to the scrutiny of nominations when the Returning Officer is unavoidably prevented from performing the said functions.

Returning Officer to include Assistant Returning Officers performing the functions of the Returning Officer. Reference in this act to the Returning Officer shall, unless the context other wise requires, be deemed to include an Assistant Returning Officer performing any function which he is authorized to perform under sub-section (2) of section 22.\textsuperscript{22}

Section 22 has to be read with Section 23 though there has to be one Returning Officer for a constituency, there can be more than one Assistant Returning Officer in a constituency to assist the former. An Assistant Returning Officer performs these functions of the Returning Officer which are specifically assigned to him by an order which should be passed in writing by the Returning Officer.

An Assistant Returning Officer cannot normally perform the functions of the Returning Officer, pertaining to scrutiny of nominations but an Assistant Returning Officer can do so only if the Returning Officer is unavoidably prevented from performing the said functions. In practice the function relating to the receipt of nominations and declaration of elections results are performed by Returning Officers.

Like Returning Officers an Assistant Returning Officer has to be an officer of state Government or local authority.

"It shall be the general duty of the Returning Officer to do all such acts and things as may be necessary for effectually conducting the elections in the manner provided for by this act and rules or orders made thereunder. The functions of the Returning Officer are of quasi-judicial nature.\textsuperscript{23}

In the above provisions regarding the duties of Election Commissioner and Election Officers, several defects were observed during implementation. These defects were studied and discussed in the Parliamentary Joint

\textsuperscript{22} The R P Act, 1951, Ibid, Sec.23.
\textsuperscript{23} The R P Act, 1951, Ibid, Sec.24.
Committee as well as by the Election Commission and recommendations have been made in this regard from time to time.

The Constitution provides that before each general election to the Lok Sabha and Legislative Assembly, the President may also appoint Regional Election Commissioners. This has been ignored with the result that an independent and efficient machinery is not available at the state level for the proper conduct of Election simultaneously to the Lok Sabha and the state Assemblies over the far fielding areas of the country comprising an electorate now touching more than the 380 million mark. The Election Commission has not been able to look promptly into all the complaints of irregularities made between the calling of an election and the polling date.

It further suggested that at the time of elections, the state commissioner should have the responsibility of appointing the Election Officers, Returning Officers and Polling Officers for various constituencies. The choice of these officers need not be restricted to government servants. The office of the state commissioner should be of a permanent nature and it should discharge such duties as the periodic revision of electoral rolls and maintenance of election records.²⁴

Section 13A(1) of the 1950 Act provides that for each district in a state, other than a union territory the Election Commission shall, in consultation, with the Government of the State, designate or nominate a District Election Officer who shall be an officer of Government. The District Election Officer holds an important position in the electoral system. He supervises and co-ordinates the work of electoral registration officer as well as of Returning Officers. Though the intention was that the District Magistrate himself should be appointed as the District Magistrate himself should be appointed as the District Election Officers, in some states this is not actually done. Sometimes subordinate officers are appointed as District Election Officers with the result that they are not able to exercise effective supervision and control either on the Electoral Registration Officers or on the Returning Officers.

Under the executive instructions and directions practically, the Collector in every district is appointed as the District Election Officer. But exceptions are still there and the Election Commission has suggested that the District Election Officer should invariably be the Collector of the District. And subject to the superintendence, direction and control of the Chief Electoral Officer, he should coordinate and supervise all work in the area within his jurisdiction not only in connection with preparation and revision of voters lists but also in connection with the correction and maintenance of up-to-date electoral rolls and all matters relating thereto. The committee agreed with this view and recommended that section 13AA of the 1950 Act be amended accordingly.

Section 13B of the 1950 Act provides that electoral rolls in each constituency shall be prepared and revised by an Electoral Registration Officer who shall be such officer of Government of a local authority as the Election Commission may, in consultation with the Government of the State concerned, designate or nominate in this behalf.

According to these provisions, even an officer of a local authority can be appointed as an electoral registration officer. Although in actual practice, no such officer is known to have been appointed so far, the committee is in agreement with the suggestion of the Election Commission that section 13B is suitably amended to avoid even such a possibility since an officer of a local authority is not expected to have the same independence as is expected from a permanent employee of the Government.

Further the expression "Prepared and Revised" does not simply lay emphasis on the electoral rolls being corrected and kept up-to-date. It demands performing such other functions in relation to the preparation of electoral roll of a constituency as required under the 1950 Act.

For the purpose, the committee has suggested an amendment to Section 13B of the 1950 Act.
4.7 Commission Reports - a Content Analysis

Matters relating to the development and proper functioning of a pyramidal electoral machinery at the Central, State, District and local levels have been engaging the attention of the election commission, since the very beginning.

In its second report, the commission had recommended that the Chief Electoral Officer should be given an adequate and appropriate secretariat status in the State Government. The commission did not have any objection to his being a part-time officer but recommended that in every such case, a junior whole time Deputy Electoral Officer should invariably be made available to him for the sake of efficiency and continuity of policy and procedure.

The commission expressed concern over frequent changes of the Chief Electoral Officers or their deputies and suggested that this should be avoided as far as practicable.

As regards electoral officers at the district and sub-divisional levels, it noted that the machinery there should be put on a more satisfactory and well-thought out basis.

A separate nucleus election office with adequate permanent staff on a whole-time basis should be set up in every district and sub-division, with provision for temporary but adequate additional hands at the time of an election.

These suggestions were repeated by the commission in its third report 1962. By then the commission had come to realise that provision should be made in the law for an election officer in each district who would be responsible for coordinating and supervising all election work in his district. The incumbents could also be assigned the various functions then performed by registration and Returning Officers or by the Chief Electoral Officer. The commission also stressed the need for coordination between the administrative machinery responsible for the conduct of elections to the local bodies in each state and the machinery responsible for the conduct of elections to Parliament and to the State Legislatures. This coordination if
emphasised should be effected at the state level as well as at the district level.

By 1967 the time when the Fourth General Elections were held, the Government had brought about most of the changes in the machinery of elections. The commission in its fourth report, therefore, noted with satisfaction that by then Chief Electoral Officers in the state were being assisted by permanent and whole time deputies who were in changes of the election office and maintained continuity of supervision and control.

Besides, the district Election Officer in each district in the state was subject to the control of the Chief Electoral Officer of the state concerned, empowered to coordinate and supervise the work in connection with the preparation and revision of electoral rolls, conduct of elections and custody of papers relating to all elections in his district. This meant, from the practical point of view, the establishment of a separate election office in each district and its continuance on an organised permanent footing.

With a view to making the electoral machinery fool-proof, as far as possible, against complaints of favouratism etc. the commission recommended in its report on the mid-term general elections held during 1969, that officers of local authorities should not be appointed as Returning Officers. It recommended instead that a Returning Officer must be a permanent government officer so that he may have some measure of independence in the conduct of election. An officer of a local authority, the commission said, could not be expected to have as much independence as a permanent government officer.

It also deprecated the tendency of transferring returning officers, etc. when an election was in prospect. The commission recommended that a new provision should be inserted after Section 24 of the Representation of the Peoples Act. 1951, for banning the transfer of District Election Officers an Returning Officers while an elections was in progress.25

4.8 Election Commission Reports

An up-to-date list of voters, called electoral rolls, constitutes the very basis of an election. The various reports of the election Commission contain a number of valuable recommendations regarding their preparation and revision. It has throughout stressed the need for devising simpler and quicker procedures for this purpose and thus saving much avoidable labour, money and time. In its first report 1952, the commission suggested that the practice of preparing separate electoral rolls for Assembly and Parliamentary constituencies should be done away with, because duplication of work served no useful purpose.

It further said that electoral rolls need not be 'prepared' every year and that it should be sufficient to 'revise' them every year. It urged the Government to give to the Election Commission wider discretionary powers, enabling it to order a summary revision of the electoral rolls for the local authorities constituencies whenever necessary.

In its third report 1962 also the commission pointed out that it was a waste of time and money to revise all the electoral rolls during the year of a general election and next two years on the off chance of by-elections cropping up in a few constituencies. As the object of this annual revision was only to provide for any by-election that might crop up during this period, the commission felt that it should not be difficult to revise intensively the rolls of a particular constituency as and when a by-election was to be held there.

With a view to facilitating the preparation of accurate electoral rolls in rural areas, the commission recommended that state legislation should provide for the proper maintenance by every village Panchayat of an adult citizen register. It further observed that at election time, applications for inclusion of names in the electoral roll of a constituency should not be permitted after the last date for making nominations.

It also pointed out that it was expensive and wasteful to require the duplication of an electoral roll in another language simply because in a particular area there was a substantial minority speaking that language.
The amended provisions however did not come up to the election commission's expectations particularly with regard to the 'qualifying date' for the revision of electoral rolls. In its reports on the mid-term general elections, the commission, therefore, observed that as an electoral roll, after it had been finally published on preparation or revision on the 1\textsuperscript{st} January of each year, continued to be in force till a new roll was prepared or revised before a by-election or a general election or till a new roll was prepared or revised under the direction of the election commission, it meant that, many persons who completed the age of 21 years in the mean-time would not get an opportunity to have their names included in the electoral roll.

It pointed out another serious lacuna, namely, the absence of a provision for annual preparation of annual revision of electoral rolls which quite often caused avoidable delay in holding a by-election and also a general election. The commission recommended that an electoral roll should not only be prepared and revised but should also be maintained up-to-date.

With this in view, the Commission proposed to amend the definition of 'qualifying date'. It recommended that instead of one date, namely, the 1\textsuperscript{st} day of April, the 1\textsuperscript{st} day of July, and the 1\textsuperscript{st} day of October, should be provided.

The report on the mid-term general elections also contained a recommendation to the effect that the existing sections 22 and 23 of the Representation of the Peoples Act 1950, relating to correction of entries should be drastically changed. The power of correction of entries in electoral rolls including deletion of entries therefrom and the power of inclusion of names in the electoral rolls may be exercised by the electoral registration officer even on his own motion and, if necessary, in suitable cases even after the last date for making nominations.

Further, officers charged with registration of deaths may be empowered to forward to the Electoral Registration Officer at stated intervals a list of names, etc. of electors who have died in the constituency.

If the above recommendations were accepted by the Government and Parliament, the Commission felt, it would be definitely possible to hold a general election within a period of about 45 days from the date of dissolution.
of the House of the People or of a State Legislative Assembly and by-election within a period of about 35 days from the date of occurrence of a casual vacancy.

4.9 Independence Of The Election Commission

The independence of the Election Commission is as important as that of the judiciary, the former is expected to ensure free and fair election, just at the latter is entrusted with the task of dispensing justice without fear or favour. In both cases it is important that the peoples confidence in their impartiality should be maintained, because even the slightest suspicion that the Election Commission or the judiciary is subjected to political or other pressure of the Government of the day, will erode the very basis of the Constitution. Therefore, the impartiality of the Election Commission and the peoples implicit confidence that the Election Commission is above all extraneous considerations, is essential for the entire fabric of our democracy. The discussion in the Constituent Assembly made it abundantly clear that the framers of the Constitution wanted the Election Commission to be truly independent body, free from any kind of control or interference from the Government of the day. And, the core of this thinking is, no doubt, reflected in Clause (5) of Article 324 of the Constitution, which reads: "Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine:

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

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

This provision ensures the independence of the working of the Election Commission from both the legislative and executive organs. Article 324 (5)
shows that the President may make rules to determine the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners. This, however, is subject to any law made by Parliament. The election Commission must enjoy a fixed and secured tenure in order to be able to function independently and impartially without any fear of legislative or executive disapproval. Till 1972, the Chief Election Commissioner could be appointed for any period of time. His Tenure could also be further extended. This is what has actually happened in the cases of two former Chief Election Commissioners. Mr. Sukumar Sen and Mr. K.V.K. Sundaram. Both of them held office for approximately 8 years, though initially each of them had been appointed for a period of five years only. In 1972, the terms and conditions of service for the post of Chief Election Commissioner were prescribed by rules made by the President. As per these rules, the Chief Election Commissioner had to hold office up to the age of sixty-five years or for a period of five years, whichever was less. But in 1991, an Act, namely, the Chief Election Commissioner and other Election Commissioners (Conditions of Service) Act, 1991 has been passed to determine the conditions of Service of the Chief Election Commissioner and other Election Commissioners and for matters connected therewith or incidental thereto. Section 4 of this Act makes provision regarding the tenure of the Chief Election Commissioners, which provides:

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

(i) The Chief Election Commissioner attains the age of sixty-five years; or

(ii) An Election Commissioner attains the age of sixty-two years, before the expiry of the said term of six years he shall vacate his office on the date on which he attains the said age: Provided further that the Chief Election Commissioner or an Election Commissioner may, at any time, by writing under his hand addressed to the President, resign his office".
And, Article 324 (5) of the Constitution, as stated earlier, provides security of tenure to the Chief Election Commissioner, other Election Commissioners and Regional Commissioners. First Proviso to Article 324 (5) says that, “the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a judge of the Supreme Court.” This takes us to Article 124(4) of the Constitution which says, “A judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.” Thus, it is obvious that in order to secure the independence of the Chief Election Commissioner, the tenure of the Chief Election Commissioner is free from the interference of the executive. The tenure of Election Commissioners and Regional Commissioners is also free of executive control as none of them shall be removed from office by the President except on the recommendation of the Chief Election Commissioner. It is provided further that “the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment. These provisions aim, evidently, at keeping the Election Commission independent of the influence of the Government of the day. The following questions however, arise with regard to the independence of the Election Commission:

*Is the independence of the Election Commission the same as that of the Supreme Court?*

It may be pointed out that the independence guaranteed to the Election Commission is not altogether of the same order as that of the Supreme Court.

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26 Second Proviso to Art. 324(5) of the Constitution of India.
27 First Proviso to Art. 324(5), Ibid.
Firstly, the judge of the Supreme Court, once appointed holds office until he reaches the age of retirement. The Chief Election Commissioners and other Election Commissioners, on the other hand, are appointed for a limited period. It is, therefore, submitted that the Constitution-makers did not provide the Election Commission, the same independence as that of the Judiciary as the Chief Election Commissioner does not have the same permanency of tenure as are provided for the Supreme Court Judges. But the Chief Election Commissioner is absolutely independent of the executive and enjoys the same status as that of the judges of the Supreme Court so far as his removability from office is concerned. It is evident that the intention of the Constitution makers was that the Election Commission should be independent but it should not become "a kingdom within a kingdom, and that it should not sit as a super Government". Secondly, whereas the salaries and allowances of the judges of the Supreme Court have been determined by the Constitution, that of the Chief Election Commissioner and other Election Commissioners have been left to be fixed by the President subject to statutory regulations and the constitutional guarantee that the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment. However, recently, the Parliament has passed 'The Chief Election Commissioner and other Election Commissioners (Conditions of Service) Act, 1991'. Section 3 of this Act provides that the Chief Election Commissioner and an Election Commissioner shall be paid a salary equal to the salary of a judge of the Supreme Court and a judge of a High Court respectively. Thirdly, the Election Commission has been denied the right to recruit and regulate the conditions of service of its secretarial staff while this right is available to the Supreme Court. Besides this, the Constitution does not make any special provisions as regards the recruitment of the conditions of service of the officers and staff employed in the secretariat of the Election Commission. These matters are, therefore, regulated by the same rules and orders as are applicable to the general body of the employees of the Government of India. Fourthly, no provision has been made with regard to the budget of the Election Commission. The Drafting Committee of the
Constituent Assembly had proposed a specific provision that the expenses of the Commission including salaries, allowances and pension of the members and staff of the Commission shall be charged on the revenues of India, or of the State as the case may be (At that stage separate Commissions for the States were contemplated). But such a provision was not adopted in the final draft of the Constitution. Nor was provision made for a separate office of the Commission under its exclusive control. In both matters provisions ought to be made by suitable legislation, following the provisions of Article 146 of the Constitution, which deals with officers and servants, and the expenses of the Supreme Court. It appears to be inconsistent with the concept of the Commission's independence and autonomy because in such matters its position is that of a subordinate wing of a Ministry. At present, the Election Commission is, however, directly under the Law Ministry so ultimately it is regulated or controlled by the Government. It is highly desirable that the Election Commission should be made an independent branch like that of judiciary.

Is the appointment of the Chief Election Commissioner and other Election Commissioners free from Political bias?

The mode of appointment of the Chief Election Commissioner and other Election Commissioners is of utmost importance. Under the existing constitutional provision, as stated earlier, the Chief Election Commissioner who is the custodian of the Election Commission and other Election Commissioners are appointed by the President, but it is apparent that the appointment will have to be made after consulting the Prime Minister. Hence, a person who is a favourite of the Prime Minister of India is likely to be selected and his prejudices might possibly affect the impartiality and fairness of elections. Such a suspicion was anticipated even at the time of the making of the Constitution and indeed in the course of the debates in the Constituent Assembly on the Articles relating to elections and Election Commission. It may be pointed out that at the time of the adoption of the Article relating to the Election Commission by the Constituent Assembly, Shri H.N. Kunzru felt that
those provisions gave room for the exercise of political influence by the Central Government. And, Dr. K.M. Munshi suggested that in order to meet Shri Kunzru’s criticism, the Article could be amended to provide that the appointment of the Chief Election Commissioner and other Election Commissioners would be subject to law made by Parliament. This suggestion was accepted and the necessary amendment was made. But Parliament has not so far made any such law. A parliamentary law on the point is very essential. It is otherwise that so far, Chief Election Commissioners have been men of ability and unquestionable integrity. Yet the question has been raised whether the manner of the appointment of the Chief Election Commissioner does not, potentially if not actually expose the Chief Election Commissioner to some degree of influence from the Government of the day in matters falling within his discretionary powers. To clear such doubts the method of the appointment of the Chief Election Commissioner needs a fresh look. It is submitted that there would be no room for any such question if the Chief Election Commissioner is appointed by the President in consultation with the five-member committee. Comprising the Chief Justice of India, Prime Minister of India, Speaker of the Lok Sabha, Chairperson of the Rajya Sabha, and the leader of the opposition in the Lok Sabha or a member of Lok Sabha chosen by all the opposition parties. And, in case of appointment of other Election Commissioner the Chief Election Commissioner should also be consulted. There is no doubt that a suitable involvement of the opposition and the Chief Justice in the appointment of Chief Election Commissioner and other Election Commissioners would serve to infuse confidence among all. It would avoid the possible complaint that the party in power at the Centre had been influenced by narrow considerations in choosing the Chief Election Commissioner and all the States including those with Ministries with a political complexion different from that at the Centre, would have full confidence in the Commission and consequently, they would extend their full-cooperation to the Commission which is essential for the discharge of the Commission’s constitutional responsibilities entrusted to it by Article 324(1) of the Constitution.
Should a person to be appointed as a Chief Election Commissioner satisfy the qualifications prescribed for a judge of the Supreme Court?

A perusal of article 324 reveals that the Constitution does not prescribe any qualifications- administrative, legal or judicial for eligibility to the post of Chief Election Commissioner. However, in Bhagwati Pd. Dixit v. Rajeev Gandhi, one of grounds on which the appellant questioned the validity of the election of the respondent was that Shri R.K. Trivedi who was then functioning as the Chief Election Commissioner was not qualified to be appointed as the Chief Election Commissioner and therefore, the entire elections held throughout the country including the election of the respondent were void. It was contended that since the Chief Election Commissioner could not be removed from his office except in like manner and on the like grounds as a judge of the Supreme Court of India as provided by Clause (5) of article 324 of the Constitution, no person who was not eligible to be appointed as a judge of the supreme court could be appointed as the Chief Election Commissioner. And, as Shri R.K. Trivedi was not qualified to be appointed as a judge of the Supreme Court, he could not be appointed as the Chief Election Commissioner. The question, therefore, before the Supreme Court was: Should a person to be appointed as a Chief Election Commissioner satisfy the qualifications prescribed for a judge of the Supreme court? The Supreme Court answered:

"This ground is only to be stated to be rejected. It is true that the first proviso to article 324(5) provides that the Chief Election Commissioner can be removed only in accordance with the procedure prescribed for the removal of a Supreme Court judge. But it does not follow from that provision, however, liberal our construction of that provision may be, that the Constitution of India provides that a person to be appointed as a Chief Election Commissioner should satisfy the qualifications prescribed for a judge of the Supreme Court of India."

AIR, 1986, SC 1534.
It is, submitted that the Chief Election Commissioner has not only to be a person who has knowledge of law but a person who can also command the administration, in other words, he should be trained not only in one area, i.e. in the legal area but he should be a person who can also interact with the administration. This is so because the Chief Election Commissioner is not there like the Supreme Court handing out judgements. No doubt, the Chief Election Commissioner has also to exercise judicial powers and give judgements like a judge but that is very negligible part of his work. Most of his functions are administrative in nature. Anyway, it is desirable that the Chief Election Commissioner should be drawn from the highest organs of the judiciary in the country.

Should there be a bar to the appointment of the Chief Election Commissioner to any other office in Government after the end of his tenure?

There has been a suggestion by different individuals and bodies that there should be a bar to the appointment of the Chief Election Commissioner to any other office in Government after the expiry of his tenure. In 1969, Mr. S.N. Mishra, through a Private Member Bill in the Lok Sabha, sought to add a new proviso to clause (2) of Article 324 providing for a ban on the re-employment of a person in the Government who has held the office of the Chief Election Commissioner. This would be desirable because even in the judiciary, which is supposed to be independent, there is no lack of ambition. On the other hand, it is also true that the Country is by no means devoid of honest judges or constitutional functionaries. But when the standards are going down and the public faith in the individuals and institution is crumbling it is natural to raise the question: Should the Chief Election Commissioner be debarred from holding an office in Government after the end of his tenure? Putting the case of Chief Election Commission at par with the judges in the highest court the bar of appointment in the Government after the end of tenure may not be workable. Firstly, by Clause (5) of Article 324 of the
Constitution. The Chief Election Commissioner has been placed on the same footing as the judges of the Supreme Court, and there is not such prohibition for the judges of the Supreme Court and High Courts. Secondly, those who adorn high offices as that of the Chief Election Commissioner and the judges of the Supreme Court, are usually talented individuals and the society should not be deprived of their services after retirement if they continue to be physically fit. Thirdly, the denial of the right to re-employment after retirement may not induce men with the high qualifications and considerable reputation to accept the office of Chief Election Commissioner. Lastly, these may have also been the reasons why the Constituent Assembly itself did not consider such a ban on reemployment of the Chief Election Commissioner after the end of his tenure.

Is Separate Staff Essential for Securing the Impartiality of the Election Commission?

As has already been pointed out earlier, the Election Commission does not have an independent staff of its own for the preparation of electoral rolls as well as for the conduct of elections to the electoral offices. The Commission is dependent for its staff requirement on the Central and State Governments. Although these officials render a fair degree of co-operation in all election work with the Commission, yet the dual responsibility of the administrative staff, to the Government for ordinary administration and to the Election Commission for electoral administration, is, in general, conducive neither to impartiality nor to efficiency. Because the Staff of the Central and State Governments, though temporarily placed under the supervision and control of the Election Commission for the period of election, would otherwise be responsible to the executive and do such act according to its commands. It is doubtful that officials dependent upon their superiors for promotion etc, will during the brief period of elections, strictly follow the orders of their transitory superior, i.e. the Election Commission. Again, these officers, generally,

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29 See The Hindustan Times, New Delhi, May 1, 1969, p. 12.
overburdened with their own administrative duties are not in a position to devote sufficient time or labour on election work. The Chief Electoral Officer in most cases is a senior officials of the respective State Government, performing this job in additions to his main portfolio. In many cases, the Chief Secretary doubles as the Chief Electoral Officer, which leaves him with little time, for the latter job. These are the reasons that there has been from time to time on particular occasions, criticism of the electoral machinery at the State level from responsible quarters. The bulk of such criticism appears to be to the effect that the electoral machinery in the State has been misused by the party in power.\textsuperscript{30} In this background it becomes necessary to consider whether a separate staff is essential for securing the impartiality of the Election Commission? In other words, whether a whole time full staffed electoral machinery should be maintained at the State level for election work? From time to time, it is insisted that separate staff is essential for securing the independence and impartiality of the Commission. In 1990, the Election Commission had mooted a proposal to create an Indian Election Service (IES) to maintain a permanent machinery at the field level, i.e. the State level to deal with the various exigencies of electoral work. The then Chief Election Commissioner Mr. R.V.S. Peri Sastri said that the creation of such a service has become imperative in view of the changed circumstances in recent years that have rendered the conducting and supervision of elections an increasingly difficult proposition. It was suggested that the personnel for the IES could be drawn from the various all-India and other services on a deputation basis. These personnel could thus constitute a cadre to perform on the spot supervisory functions at the field level. The idea was that the IES should consist of the Chief Electoral Officer in every State and his officers, apart from supervisory officers of appropriate status. One such officer could be appointed for every two or three districts.\textsuperscript{31} But the Commission did not stick to this proposal in view of periodicity of the election. In its report for 1986 and 1987 it expressed the view that “As an election work is periodical……. It

\textsuperscript{31} See, The Hindustan Times, New Delhi, January 14, 1990, p.10
is not feasible to maintain a whole time full staffed electoral machinery or Service". The second argument of the Commission was that, "though the bulk of the 'army' required for election work is recruited from amongst the employees of the Government and local authorities on an ad hoc basis, whenever there is election work, by and large, the machinery has been found to be adequate to cope with the work."

It may be pointed out that our constitution-makers, who devised our electoral machinery were not unaware of the criticism that the electoral machinery in the State may be misused by the party in power. This criticism was anticipated at the time of the making of the constitution and indeed in the course of the debates in the Constituent Assembly, in the Articles relating to elections and Election Commission. But it seems that the constitution-makers were guided by the practical and policy consideration, i.e. by the unavoidable reality that in the ultimate analysis, it is for the Governments of the day to hold the elections and maintain the proper conditions for holding free and fair election. The following observation of Dr. K.M. Munshi bring out clearly the practical and policy considerations which were taken into account by our constitution-makers:

"We must remember one thing that after all an election department is not like a judiciary, a quasi-independent organ of Government. It is the duty and function of the Government of the day to hold the election. The huge electorate which we are putting up now, the voting list which will run into several crores - all these must necessarily require a large army of election officers, of clerks, of persons to control the booths and all the rest of them. Now all this army cannot be set up as a machinery independent of Government which can only be provided by the Central Government, by the Provincial Government or by the local authorities as now. It is not possible nor advisable to have a kingdom within a kingdom, so that election matters could be left to an entirely independent organ of the Government."

32 Supra, n. 30, pp. 3-4.
33 Ibid, p. 4.
Dr. Munshi also envisaged that “the Election Commission while preserving its independence and retaining its impartiality” must remain to a large extent “an ally of the Government”. Dr. Ambedkar, however, was more emphatic on the point and failed that a separate staff for Commission was neither necessary nor desirable on two principal grounds: First, it would be an unnecessary duplication of administrative machinery. Secondly, it would involve avoidable expense. It was contended that election being only a periodic affair, a separate and independent machinery for its conduct and management would impose an unnecessary burden on the exchequer. Thus, the framers of the constitution wanted the Commission to be an ally of the Government, with independence in its day to day business. These views of our founding fathers have been supported by experts like Mackenzie and Smith. The judiciary has also been of the opinion that the appointment of a Government officer does not affect the impartiality of elections. Here, it would also be relevant to mention that a former Chief Election Commissioner, Mr. S.P. Sen Verma, however, saw no reason for the staff on election duty to succumb to political pressure or influence. In his presidential address to the ‘All India Election Officers’, Conference, 1971, he said, “In the first place, since as election officers you are officers of the Commission, the Commission will stand by your side in your difficulty provided you are on the right lines. In the second place, the Commission takes special care in appointing by and large only permanent officers of Government as election officers. As permanent officers of Government you cannot be dislodged from your service at the sweet-will of any politician. The Public Service Commission will surely stand by you in just cases. I agree that it requires strong moral courage for an officer to say ‘No’ to his political boss even when the boss asks him to do something wrong or contrary to the law. The boss may not be able to dismiss you from service but he may harass you in many respects. He may arrange for your transfer to a so-called bad or penal station where facilities for the education of your children may not exist or he may seek to stop your

promotion by various means and methods and so on and so forth. These are genuine difficulties and there is the rub as to why officials sometimes succumb to the unjust orders of their political bosses. But herein comes the question of your mustering moral courage.\(^\text{38}\)

However, it is submitted that it is not good for the health of our democratic system to adopt a complacent attitude. Every effort should be made to eliminate scope for such type of criticism that there is misuse of the electoral machinery at the State level by the party in power. There is, no doubt that a separate staff for the Election Commission is neither necessary nor desirable. Because it would cause unnecessary duplication of administrative machinery and consequently avoidable expenses. The remedy, therefore, lies in making some other provisions. In view of the changed circumstances the junior electoral personnel could be drawn from the States on deputation, the Chief Electoral Officer for every State should be permanent officials of the Election Commission. The Commission should be made less dependent upon the State Government in the choice of personnel to work under it, and it should be authorised to take disciplinary action against officers on election work during the period of their deemed deputation. It is further submitted that much depends upon the evolution of healthy traditions under which Minister would refrain from pressurising officials on election duty and the officials would have the courage to resist and so forth.

**Jurisdiction Of Courts Over The Election Commission-To What Extent Courts Can Interfere In A Decision Of The Election Commission?**

The Election Commission in the exercise of its powers and discharge of its functions and duties under Article 324 of the Constitution of India takes a variety of actions and decisions. These actions and decisions some times relate to particular individuals but also effect political parties, contesting candidates, voters at large, etc. It would be asking for the impossible to

\(^{38}\) T.E. Smith, *Elections in Developing Countries*, p.3

\(^{39}\) Inaugural Address to the First All India Conference of Election Officers, New Delhi, Nov 3 & 4, 1971, p.14.
expect that everyone would invariably be satisfied with the decisions and actions of the Commission as dissent in a democratic set-up is only natural. The aggrieved parties agitate the matters before the judicial forums, i.e. the High Courts and the Supreme Court.

**Jurisdiction of High Court over the Election Commission**

It is to be noted that prior to 6th of October, 1963 since the jurisdiction of a High Court was confined to tribunals situated within the territory in relation to which it exercises its jurisdiction, no High Court in India, other than the High Court of Punjab, had local jurisdiction over the Election Commission located in Delhi. This inconvenience has been removed by the Constitution (Fifteenth Amendment) Act, 1963 by proving that the jurisdiction under Article 226 shall be exercisable by any High Court within which 'the cause of action, wholly or in part, arises for the exercise of such a power'. Hence, after this amendment, though the decision of the Election commission is issued from Delhi, if the order of the Election Commission is sought to be carried out in another State, the party aggrieved shall be at liberty to apply under Article 226 to the High Court of that State.

It is apparent that the High Court shall be competent to interfere with the order of the Election Commission where it is without jurisdiction or contravenes any constitutional or statutory provision, or violates natural justice. But this jurisdiction will be barred by Article 329 (b) of the Constitution where it is sought to be used for 'calling into question' an election which can be done only by an election petition. In Election Commission of India v. State of Haryana, the facts were that a difference arose between the Government of Haryana and the Election Commission as to whether the position of law and order in Haryana was such as to render it undesirable to hold the proposed by-election at the particular point of time. A day before the notification was due to be issued, the State of Haryana approached the High Court under Article 226 of the Constitution and obtained an exparte interim

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stay order. The High Court considered it proper to issue a writ preventing the election from being held, there by interfering with the decision of the election Commission. However, the Supreme Court on appeal held that from the correspondence, it appeared that the Election Commission, before coming to its decision, had taken all facts into account. In the circumstances it was not in the power of the High Court to decide whether the law and order situation was such as not to warrant the holding of a by-election. The High Court could not substitute its opinion for that of an authority duly appointed for a specific purpose by the law and the Constitution. Different people might hold different views on public issues. But the judge cannot project his personal view as to the situation of law and order. Recently, in Faizabad District case, the Allahabad High Court held on 17th of November, 1993 that the Election Commission had no power to declare dry days in connection with the elections. A Division Bench comprising Mr. Justice Brijesh Kumar and Mr. Justice I.S. Mathur said only the district magistrate, the licensing authority, could declare dry days.

**Jurisdiction of the Supreme Court over the Election Commission**

The Election Commission is a 'tribunal' within the meaning of Article 136(1) of the Constitution of India. Thus, appeal lies to the Supreme Court, by special leave, from a decision of the Election Commission. However, the question whether the Election Commission is a tribunal within the meaning of Article 136 (1) of the Constitution was raised before the Supreme Court for the first time in All Party Hill Leaders' Conference, Shillong v. Captain W.A. Sangma. The Supreme Court in this case observed that several tests have been laid down by the Supreme Court to determine whether a particular body or authority is a tribunal within the ambit of Article 136(1) of the Constitution. The tests are not exhaustive in all cases. It is also well settled that all the tests laid down may not be present in a given case. While some tests may be present others may be lacking. It is, however, absolutely necessary that the

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41 AIR 1977, SC 2155.
authority in order to come within the ambit of Article 136(1) as tribunal must be constituted by the State and invested with some function of judicial power of the State. This particular test is an unfailing one while some of the other tests may or may not be present at the same time. The Election Commission is created under the Constitution and is invested under the law with not only administrative powers but also with certain judicial powers of the State, however, fractional it may be. The Election Commission exclusively resolves disputes inter alia, between rival parties with regard to claims for being a recognised political party for the purpose of the electoral symbol. Therefore, the Election Commission fulfils the essential tests of a tribunal and falls squarely within the ambit of Article 136(1) of the Constitution.

Now the question arises: To what extent the Courts can interfere in a decision of the Election Commission? The Election Commission has to work within the framework of Article 324 of the Constitution of India and subject to the mandatory provisions of constitutional law and statutory rules and a court can interfere if those provisions are violated. If the Election Commission acts within these limits, the court cannot interfere with its orders unless the order is perverse, arbitrary or against the principles of natural justice. But, it is clear that Article 324 of the Constitution not only imposes duties but also confers powers, so that an order of the Election Commission relating to the conduct of elections cannot be set aside on the mere ground that it is not specifically authorised by any law. It is the duty of the courts to protect and preserve the integrity of all constitutional institutions like the Election Commission, which are devised to foster democracy. And when the method of their functioning is questioned, which it is open to the citizen to do, Court must examine the allegations with more than ordinary care. The presumption, be it remembered, is always of the existence of bona fides in the discharge of constitutional and statutory functions. Until that presumption is displaced, it is not just or proper to act on pre-conceived notions and to prevent them from discharging functions which are clothed upon them.

It may be pointed out that in a recent judgement the Supreme Court has made it clear that the orders of the Election Commission are subject to
judicial review and erroneous decisions of the Election Commission can be quashed by the Court, as its powers are not "unbridled". The Court said that the Election Commission cannot defy the law armed by Article 324 of the Constitution. Likewise, its functions are subject to the norms of fairness and it cannot act arbitrarily.\textsuperscript{42}

The above account shows that the courts can interfere in a decision of the Election Commission if: (I) any provision of constitutional law or statutory law is violated; or (ii) the principles of natural justice are not observed; or (iii) the decision or order is arbitrary or without jurisdiction.

\textbf{4.10 Summing Up}

The credibility, i.e. the unimpeachable impartiality and independence of the Election Commission is one of the main ingredients of our faith in democracy and is also a fundamental prerequisite for the functioning of our democracy and electoral process. So whatever may be the structure of the Commission, and howsoever adequate may be the powers conferred on it, its success in fulfilling its constitutional responsibility to ensure free and fair elections would depend, in a considerable measure, on the confidence it enjoys of the public including electorate, candidates and all the political parties. The Election Commission within a period of more than four decades of its existence has, no doubt, acquired a unique position in the constitutional structure of the governance of this country. It has been able to engender in the people of India and attitude of confidence and faith in, and respect for the Election Commission. It has given the people confidence that electoral process would bring a Government of their choice. Major changes of power have been accepted peacefully because its integrity has never been questioned. The entire process of election bears an imprint of the efficiency, impartiality and independence of the Election Commission. As a matter of fact this is one of the institutions that has earned India considerable credit at home and abroad.

However, the Election Commission is not entirely free from blemishes. There has been, from time to time, the criticism of the Election Commission. The bulk of the criticism appears to be that the Commission has, on occasions, been favouring the party-in-power at the Centre. The scope for alleging such influences arises from the very nature and mode of selection and appointment of the Chief Election Commissioner. Which give theoretical basis for criticising the Election Commission. In this connection, it may be of interest to note that even the Federal Election Commission of the United States of America, which consists of two officials (who do not have a right to vote), three representatives of one party and three representatives of the other party, has not escaped the criticism of favouring the party-in-power. According to William C. Oldakar, who served as the Counsel for Federal Election Commission for several years:

"many view its enforcement actions as being dictated by the political party in power at the time despite the three-three split by party in the body of Commissioners. Indeed this charge has been levelled by the Republicans during the Carter Administration and by the Democrats during the Reagan Administration."43

It is, however, not good for the health of our democratic system to adopt a complacent attitude. Every effort should be made to eliminate scope for such criticism against the Election Commission. As a “committed” Election Commission would defeat the very aim of holding free and fair elections in the country. And, such type of criticism may generate a feeling in the minds of the people that the elections held hitherto in our country over more than the past forty years under the superintendence, direction and control of successive Chief Election Commissioners as custodian of the Election Commission have been a pretence and a façade. The people ought to carry any such impression and the voters must go to the ballot-box undeterred by the sense of frustration in their minds.

It may be pointed out that in no general elections held previously has there been such a high visibility of the Election Commission as in the last one, i.e. the tenth General Election. Previously, one had been hardly aware of the Election Commission's presence once the programme had been laid down. The reason may be that there were more violence during the last general election than ever before, but at the same time there is no doubt that a number of controversial decisions taken by the Election Commission have also much to do with this. The last general election of 1991 will definitely be remembered for the controversies it generated regarding the existing Chief Election Commissioner, Mr. T.N. Seshan. There was never a day when Mr. Seshan did not hit the headlines of dailies across the country. Actually, the controversies started soon after Mr. Seshan took over as the Chief Election Commissioner and is still continuing. Mr. S.Nihal Singh, columnist has described Mr. Seshan as the most controversial Chief Election Commissioner in India's electoral history.

Similarly, Mr. Alok Tiwary has observed: “This has not been the Indian tradition. The country's first Chief Election Commissioner, Sukumar Sen, built up an institution which become an example to the newly-free countries in the '50s and 60s'. The conduct of subsequent incumbents too mostly has been beyond suspicion. Even as the political culture steadily deteriorated, the election machinery by and large remained free of controversy. The arrival of Seshan changed all that.”

He critically examined the role of Mr. T.N. Seshan as Chief Election Commissioner. He said: “No matter how hasty his decisions seem, they smack of courage. There is more violence in India elections than ever before and Seshan’s Cowboy tactics can perhaps put the fear of God in the hearts of the goons. History alone will judge whether Seshan has taken credibility of the Commission, as his critics charge, or has made an active watchdog of an indifferent guardian, as he himself believes. What will remain in memory is his

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harsh image and the unfortunate impression that the Commission is no longer above the fray". 46

Again, the recent by-election in the country have brought into question not only the credibility of the Election Commission but also its powers. They threw up several questions, some old and some new, about the powers of the Election Commission, as have already been discussed earlier. That is the reason that recently, the Times of India wrote in its editorial column that, "If the dignity and effectiveness of an institution depend on its success in avoiding controversy, the Election Commission under Mr. T.N.Seshan has been an obvious failure. Irrespective of the nature of the disputes in which he has the habit of becoming embroiled, the almost uninterrupted sequence of poll deferments and cancellations, court cases and running battles with State Governments over jurisdictional matters cannot but undermine the Commission’s prestige and authority". 47

The above account shows that why there has been a move to seek impeachment of the existing Chief Election Commissioner, Mr. T.N. Seshan, which is very unfortunate for our democratic system. The impartiality of the Election Commission which is like that of the judiciary should never be questioned either in the Parliament or in the press. Therefore, in order to remove the controversies regarding the functions and powers of the Election Commission to make the independence of the Commission the same as that the Supreme Court, and to make the appointment of the Commission free from political bias and ultimately to create faith of all the political parties and public at large including the electorate and the candidates, there is need of parliamentary legislation. However, it is submitted that there is no doubt that the recent by-elections of the State Assemblies have strengthened the faith of the public at large including political parties, candidates and electorates, in the Election Commission. Many decisions and actions of the existing Chief Election Commissioner are found to be clearly motivated by a desire to ensure free and fair elections. For example, his strict insistence on the

46 Ibid.
47 The Times of India, New Delhi, May 14, 1993, p.8.
observance of the model code of conduct, various other orders and instructions in order to conduct the elections in free and fair manner, decision for introduction of identity cards and electronic voting machines, and recent move to check malpractices.\textsuperscript{48} It is, however, further submitted that the criticism or the charges levelled against the Chief Election Commissioner may be unfair but justice should not only be done but should be seen to be done. Therefore, a law should be made in order to keep the office of the Chief Election Commissioner free from any kind of controversies as are existing. Anyhow, the dignity of the office of Chief Election Commissioner should not be lowered and the credibility of the Election Commission should not be damaged.