CHAPTER 1

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In the world today democracy is regarded as the best type of Government the reason being that in modern times nearly everyone believes in democracy and electoral process. Judging by the gradual disappearance of other forms of Government-monarchy, aristocracy, theocracy, oligarchy, dictatorship (both civil and military) in which there was a marked concentration of power together with a blatant denial of basic rights to the people—democracy has proved to be the most durable form notwithstanding the few cases of democracies having turned into authoritarianism. The durability of democracy stems from the fact that in this system of Government the citizen gets full opportunities for expressing his will, developing his personality and his faculties for social, economic and political justice. All these distinctive marks of democracy are, by and large, unquestionable and easily noticeable in most democracies of the world today. Democracy, in fact has rapidly become a culture in itself-deliberate cultivation of an intellectual passion in people, it may be vague at times or even headless and impracticable, but it continues to be the real thing to which humanity will, in all probability, stick, to the exclusion of other forms of Government.

Democracy is a form of Government in which the sovereign power rests in the hands of the people and is exercised by them either directly or indirectly through their representatives. However, due to impracticability of adherence to the direct democracy everywhere, irrespective of the size of the country applying it, modern democracy is indirect and representative with honourable exception of Switzerland where there is direct democracy. Representative democracy implies periodic elections to the legislature which is entrusted with the power to act on behalf of the people, pass laws, levy taxes and bring harmony of purpose between the Government and the
Governed. Thus, election is the very heart of the representative democracy and it is an essential and inseparable part of the modern democratic process. Winston Churchill, the Prime Minister of Great Britain explained the merit of electoral process in the following words:

"At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil making a little cross on a little bit of paper - no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point". ¹

With a view to appreciate the full role of the elections in a democratic system it has to be considered from different angles. ²

(1) From the point of view of the individual voter, elections are the means by which he takes his share in political power by voting for the representative of his choice.

(2) From the point of view of the voters collectively, elections are the means by which they bring the decision-makers under popular control, a control that is ever present in the minds of representatives because any part of their behaviour in office (or in the case of aspiring candidates out of office) may affect their chances at the next election.

(3) From the point of view of the representatives, the election result is an authorization to make decisions to govern within the broad drift of a policy platform, if there is one, subject to the sanction of the next election. Thus, the election result invests representatives and their decisions with legitimacy. In short, the Government which is produced – almost as a by-product and invested with legitimacy is the chief social purpose of the whole electoral process.

In addition to the above multi-dimensional ramification of elections there are following main purposes for which elections have been instituted.\(^3\)

1. An electoral office reflecting the main trends of opinion within the electorate.
2. Government according to the wishes of the majority of the electorate.
3. The election of representatives whose personal qualities best fit them for the function of Government.

There is no need to mention that India has the distinction of being the largest democracy in the world. Like other modern democratic countries of the world India has also a democratic constitution. The constitution has provided for a form of Government by the people's representatives democratically elected on the basis of universal suffrage, irrespective of caste, creed, race or sex.\(^4\) The determination of the founding fathers of the Indian Republic to lay down the foundations of a full-blooded democracy, i.e. the emphasis on democracy is evident in the very preamble to the Constitution. Though the Preamble is not an integral part of the Constitution and it does not possess the legal force of the clauses of the constitution itself, yet its significance is great as it is a grand declaration of the ideals and objectives which the Indian people have set before themselves and have the ambition to realise. Brief as the Preamble is, it brings out clearly two points of great importance. Firstly, it declares that the people themselves are the ultimate source of power in the Sovereign Democratic Republic of India. The constitution has been framed, adopted, enacted and promulgated in the name of the 'sovereign' people. To quote the late Prime Minister Mrs. Indira Gandhi on the occasion of her broadcast to the Nation on January 18, 1977: "Our system rests on the belief that Governments derive their power from the People and that the people give expression to their sovereign will every few years freely and without

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\(^4\) Part XV, Articles 324 to 329 of the Constitution of India.
hindrance, by choosing the Government they want and by indicating their preference for policies. Secondly, the Preamble indicates that democratic polity in India shall rest on the four pillars of Justice, Liberty, Equality and Fraternity. The democratic base of our constitution was very well elaborated by Mathew, in Indira Nehru Gandhi v. Raj Narain. The learned judge observed that “Democracy proceeds on two basic assumptions: (i) popular sovereignty in the sense that the country should be governed by the representatives of the people, that all power came from them, at their pleasure and under their watchful supervision it must be held; and (ii) that there should be equality among the citizens in arriving at the decisions affecting them.” He further said that, “Today, it is impossible to conceive of a democratic republican form of Government without equality of citizens. It is true that in the republics of Athens and Rome there were slaves who were regarded as chattels. And, even in the United States of America, there was a republic even before the Negroes were enfranchised. Our constitution envisages the establishment of a democratic republican form of Government based on adult suffrage.”

The constitutional scheme in India makes it clear that the legislature and the executive authority of the Centre as well as the States has been placed in the hands of the representatives of the people chosen at regular intervals by means of free and fair elections. The introduction of universal adult suffrage and the abolition of communal electorates are the most progressive and radical features of the India Constitution. By introducing the universal suffrage the constitution has made India the world’s biggest democracy. It has to be made clear that when the question for the adoption of universal suffrage was considered in the Constituent Assembly a few sceptical voices were raised. But Dr. Rajendra Prasad, President of the Constituent Assembly removed the apprehensions and made it clear to the
members of the Constituent Assembly that adoption of the universal suffrage would not be a dangerous experiment in India.

He clarified:

"Some people have doubted the wisdom of adult franchise. Personally, although I look upon it as an experiment the result of which no one will be able to forecast today, I am not dismayed by it. I know the village people who will constitute the bulk of this vast electorate. In my opinion, our people possess intelligence and commonsense. They also have a culture which the sophisticated people of today may not appreciate but which is solid. They are able to take measure of their own interest and also of the interests of the country at large if things are explained to them".  

It may be pointed out that speaking in December 1969 and taking into account the experience of four general elections and 'mini' general election (February 1969) the then Chief Election Commissioner, Mr. Sen Verma expressed sentiments similar to those of late Dr. Rajendra Prasad, he said:

"The electorate of this country possesses strong commonsense and native intelligence and the strength and stamina of their character cannot but evoke respect and administration".  

The experiences of democratic functioning in India during thirteen general elections justify the faith of Dr. Rajendra Prasad reposed in the people of the country.

Again, no less for reaching in its implications than the principle of universal adult suffrage has been the decision of India's constitution-makers to abolish the baneful system of separate communal electorates introduced by the British to prolong their rule over this country by dividing her people into separate water-tight electoral compartments based on religion, caste, sex and interest. And, consequently they forced Hindus, Muslims, Indian Christians, Landlords and so on to elect their representatives separately. Under the

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9 C.A.D. XI, p. 989.
10 The Times of India, New Delhi, December 8, 1969, p. 15.
Government of India Act of 1935, separate electorates were provided as many as fifteen categories of persons. Nationalists opinion in India was strongly opposed to this unnatural and undemocratic system. It was, therefore, natural for the framers of free India’s constitution to abolish this unnatural and undemocratic system, i.e. communal electorates by introducing the system of one general electoral roll. As Article 325 of the constitution of India reads:

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

This provision ensures that in independent India a citizen votes as an individual and not as a member of this or that religious community or of a particular class or interest. In other words, the provision underscores the fact that all Indians, despite their different religions, castes and interests constitute a single political community. The two provisions, universal adult franchise and a common electoral roll taken together have, therefore, laid the foundation of a full-scale democracy in India.

It may be pointed out that the constitution of India has provided a separate chapter on elections. In this respect, it has made a departure from the usual practice of constitutions to leave elections as a comparatively unimportant subject to be dealt with by the legislature. The fact that detailed provisions in this regard have been made in the constitution shows how anxious the constitution-makers had been to safeguard the democratic system and electoral process in India and ultimately the political right of the citizens of India as an integral part of the constitution itself. Now question arises as to reasons which have inspired us to adopt a system of election in preference of other methods of selecting our rulers. Here it would not be wrong to say that it is the general theory of Government which inspired us to
adopt a system of election in preference to other methods of selecting our rulers. This is the theory that the rulers whom the people are expected to obey should not only rule in their interests but also rule according to their wishes, and that the rulers should be accepted by the ruled this acceptance being no more acquiescence but conscious choice. A positive meaning is thus given to the 'consent' upon which Government is supposed to rest. So it has become increasingly accepted that the Governed should have the power to renew at intervals the authority they give to them. It follows that the elected should be prepared to relinquish their powers voluntarily and to submit to a new exercise of the elector's will, when they can no longer claim to possess the confidence of the majority.

Again, there is no need to mention that in modern period free and fair elections is the hallmark of a working democracy. The Supreme Court of India has often emphasized the importance of free and fair elections in democracy. In P.R. Belagali v. B.D. Jatti11, Justice Grover observed:

"Free and fair elections are the very foundation of democratic institutions and just as it is said that justice must not only be done, but must also seen to be done, similarly elections should not only be fairly and properly held, but should also seen to be so conducted as to inspire confidence in the minds of the electors that everything has been above board and has been done to ensure free elections."

The above discussion makes it clear that democracy contemplates free and fair election so as to enable the voters to vote for candidates of their choice. Democracy can indeed function only upon the faith that elections are free and fair. To ensure it three necessary components have been treated to be essential: First, a set of electoral law and rules generally accepted throughout the political community. It ensures the free and fair elections. If the electoral law and rules are not observed faithfully the democracy itself will disappear. Second, there should be an independent judiciary to interpret

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11 AIR 1971, SC 1348.
electoral law. Third, an honest, competent and independent administration to run elections. These conditions are ideal conditions to ensure free and fair elections. In India, such conditions for a free and fair election and working democracy are not only formally provided for in the constitution, they are in fact available to the people. First, India has a well-settled electoral law and rules contained in the constitution and in a variety of statutes and rules. Articles 327 and 328 of the Constitution of India deals with it. Secondly, there are express provisions under the Indian Constitution for an independent judiciary. Article 329 of the Constitution of India deals with it. Thirdly, there is provision under Article 324 of the Constitution of India for an independent Election Commission to run elections. The Election Commission is charged with “the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of all elections. Further, for the free and fair elections independence of the Election Commission is necessary and with this purpose the Constitution has tried to ensure the independence of the Election Commission by making provision in the same Article, i.e. Article 324 of the Constitution.

The free and fair elections in India is ensured further by the manner in which constituencies delimited from time to time. It is well known that the delimitation of constituencies is a crucial matter. In some countries, the boundaries of constituencies are drawn or altered so as to suit the interests of particular parties. This practice, known as gerrymandering, has played a notorious role in the United States politics. In view of the important political implications of the manner in which constituencies are delimited, it is considered necessary that the matter should be under the control of an independent agency and should not be left to the will of the party in control of the Government. Under Article 327 of the Constitution of India, the Union Parliament is empowered to enact legislation from time to time to provide for the delimitation of constituencies for elections to parliament and to the state legislatures. For the first general election the delimitation of constituencies for elections to parliament and to the state legislatures was carried out by Presidential Order as provided for under the Representation of the People
Act, 1950. The arrangements made in the Presidential Order, however, were subject to approval of Parliament which made material changes in them. There were complaints that the changes introduced by Parliament were the result of party considerations. According to the Election Commission the procedure, "did not work very smoothly or satisfactorily". The Commission accordingly recommended the establishment of an independent body to limit constituencies. As a result of this recommendation Parliament passed the Delimitation Commission Act. The Act provides for the establishment of a Delimitation Commission for the purpose of delimiting constituencies in each state after every census. The notable feature of its functioning is that the arrangements followed in India for the delimitation of constituencies have little or no scope for gerrymandering.

However, despite the general feeling of satisfaction with the working of the democracy and the conduct of elections in free and fair manner, it cannot be claimed either that the system itself is perfect or that there is no ground for complaint in regard to the manner in which it has been actually operated. There has been a great deal of discussion on the subject in the Parliament and in other forums. There are various questions which have become "a matter of national concern and debate in order to ensure the proper working of Indian democracy through the free and fair elections. The one considerable issue is with regard to voters participation in elections. In each of the thirteen general elections so far held in India, the turnout of voters has been very unsatisfactory. There is no denying the fact that the degree of voters participation in elections is one of the major indices of the measure of success achieved by democracy in a country. This disappointingly low percentage of voting in our elections undoubtedly reflects the general disillusionment with the working of democracy in the country. So, it is obvious that if democracy is to survive and flourish in our country, there must necessarily be a whole-hearted participation and involvement of the people at large in the electoral process. Mass participation of voters, elections has

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obvious advantages. It can make our democracy more deeply entrenched in the active interest of the common man as it is at present, and help in checking the growing frustration with the working of our democratic institutions. In view of the prime necessity of involving as many voters as possible in the democratic process and elections the question of compulsory voting, i.e. whether some form of coercion should be applied to bring the voter to the polling booth become important. Further, following the British and American electoral system, India has adopted the single constituency pattern in which the candidate who wins a simple majority of votes cast, wins the seat. This system naturally favours large and powerful parties against small and weak. A party may win a majority of seats in the legislature while it gets a minority of total votes or even of the votes actually cast in the election. Obviously, proportional representation has also become one of the important issues regarding elections, which need proper consideration. The other problem which requires more consideration is that of the use of corrupt practices which is one of the major ills affecting and corroding our electoral process and, thereby the very foundations of democracy. In addition to these problems, there are certain other problems regarding the elections which require proper solution and consequently proper reform of electoral law such as multiplicity of frivolous candidate, deregistration of political parties, expenditure of political parties and financial arrangements, use of money power, booth capturing, voting of non-resident Indians, observance of model code of conduct, independence of Election Commission, etc.

In short, the basic problem regarding the general election in India is how to conduct elections in an impartial manner so as to achieve the requirement of free and fair elections. However, Indians are proud of their democratic system and electoral process which offers them the Government of their choice and the centre and in the states through free and fair exercise of their franchise at periodic elections. Naturally enough, they may be interested in knowing the operation of this system. In these circumstances it is obviously of prime importance to examine the electoral law which provides for Representative democracy and free and fair elections, and its actual
implementation to achieve the object. The study of electoral law has, therefore, now become the most important branch of constitutional law and consequently the legal scholars are very much concerned with the law of elections. But the electoral law in India is to be gathered from the Constitution of India and a number of statutes and rules. It is not contained in a single code. It is scattered in the constitution and in a variety of statutes and rules.

The Representation of People Acts, 1950 and 1951 form the principal enactments in this field. The Registration of Electors Rules, 1960 and the Conduct of Election Rules, 1961 are supplementary to these two Acts. The Delimitation Commission Act, 1972, the Prevention of Disqualification Act, etc. are other enactments governing elections in India. It is obvious that a law scholar or an ordinary citizen will find it extremely difficult to find out the exact legal position which he is searching for and to satisfy himself of a particular aspect of the law by looking into one or two of the Acts. Further, for the strength and stability of Indian democracy each voter has to exercise his right to franchise wisely and with maturity of judgement. For this purpose, it becomes necessary that the electorate should have a basic understanding of the electoral process and democratic values and this is possible only through the precise books and research work in the area of laws of elections.

From the above it is evident that representative democracy and the concept of free and fair elections under the Constitution of India has become a burning issue in the modern democratic India. There is no doubt that there have been many seminars, workshops, symposia, writings, monographs, etc. Where the system of the concept of free and fair elections have been examined, but to the best of our knowledge there is hardly any precise book and research work conducted by law scholars and law teachers on the same, i.e., there has been no full and in depth study devoted to the concept of free and fair elections or electoral laws. This is special justification for a study on the concept of election law and practice in India. There is of course, the need of precise book and research works with regard to election law covering the free and fair elections in India. And this is one of the reasons which has inspired me to conduct a research on "An Evaluation of Election Laws and
Practice in India” with object to highlight the various important aspects of the electoral law regarding the free and fair elections to discuss the development of election law in the light of important decisions of the Supreme Court which have settled certain questions of law relating to electoral law and process in India, and to examine how far the object of free and fair elections has been achieved as well as to see whether our long experience of democracy and electoral process suggests that any changes are necessary in the interests of good Government through free and fair elections in our country.

It may be pointed out that the scope of the present work is limited to the study of election law and practice in India. In this study the text-books, original case law, Constituent Assembly Debates, Parliamentary Debates, Statutory materials, i.e. Acts, Rules, Orders, and various Reports like Reports on the various General Elections in India, Annual Reports of the Election Commission of India, Reports of the various Committees and Commissions on the Electoral Reforms, and various journals may be consulted.

However, the area of the topic is very vast. Therefore, an attempt has been made to select those areas which are of focal importance in ‘Election Laws in India’. Therefore, for logical end the whole study has been divided into Six Chapters. After Introducing the subject-matter of study in this Chapter, in Chapter Two an attempt has been made to give the meaning and definition of election, existing models of election law and electoral processes, merits and weaknesses of democracy, etc. which also deals with the fundamental principles of election. Chapter Three relates to an examination of electoral analysis, corrupt practices and electoral offences. Chapter Four discusses the Constitution, Powers and Functions of the Election Commission. Chapter Five concentrates on examinations of the electoral reforms. Chapter Six concludes the study.