CHAPTER 2

Election Law in India: Analysis and Application
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ELECTION LAW IN INDIA: ANALYSIS AND APPLICATION

2.1 A Historical Back-Ground Of Elections And Franchise In British India (1861-1947)

The history of elections in India, in fact dates to the Act of 1919 there original, however, is rooted in the Act of 1861 itself. Chief among the cause of the Indian Revolt of 1857 was the lack of any touch between the rules and the ruled. "It was clearly dangerous to continue", as Sir BERTLE FRERE, in his famous minute of 1860 observed, "to legislate for million of people with few means of knowing, except by a rebellion whether the laws suit them or not"1. It was, therefore, tactfully decided to provide some non-official representation on the Governor General's and the Governors councils. The Indian councils Act of 1861 were the result of this decision. The Act provided the appointment additional members, not fewer than six and not more than twelve, for two years, of whom not fewer then half were to be non-officials. Inclusion of Indians in the council was not based upon the principles of democratic representation, for invariably the person nominated were the Indian princes, their Dewans or big 1-and holders.

The Indian Councils Act of 1892, as the previous Act had failed to satisfy the Indians, especially the nascent Indian National congress, increased the number in the case of the supreme council to not fewer than ten and not more than sixteen, and "prescribed the manner in which such regulations should be carried into effect"2. This provision was considered sufficient to include the method of election. Mr. Schwann, the member of the parliament from Manchester, was not sure whether the system of election would be effectively introduced in practice, when, even the word election was not mentioned under

the Act. He, therefore, moved an amendment which declared "no reform of the Indian councils which does not embody the elective principle will prove satisfactory to the Indian people or compatible with good Government". Lord Curzon said, "In reply I should like to point out that our Bill does not exclude some such principles, be it the method of election, or selection or delegation".

Writing about this Act, R. Coupland observed, "Lord Differin, the Viceroy was prepared to concede at least a measure of election. He proposed that, while some of the non-official members should still be nominated, others should be elected. But Lord cross, the secretary of the state, refused to sanction a fundamental change of this description without much more positive evidence in its favour than was forthcoming. This controversy led to a compromise. A few of the non-official seats were still to be filled by simple nomination, but for a majority of them 'recommendations' were to be made by the local bodies or corporations, religious communities, municipalities, universities, chambers of commerce and the like. In the event this half-hearted evasion of the elective principle came to nothing. Since the recommended candidates were in practice accepted as a matter of course, the process became virtually election.

The provisions of the Indian Council Act again failed to satisfy the Indians. In 1894, Mr. Alfred Webb observed from the Indian National Congress platform that, "The administrative mutilation of the manifest intentions of parliament in framing the Indian Councils act is much to be deplored. I see that complaints have been made in every province where the enlarged councils are established, that the distribution of seats for representation of the people is most unsatisfactory, and that while some interests are over represented, other important interest are not represented at all".

The Indian Councils Act 1909 popularly known as the Morley Minto Reforms of 1909 further enlarged the legislative councils both of the Governor

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2 Clause 1, sub-sec. 1 & 4 of the Act of 1892.
3 Keith A.B., Speeches and Documents on Indian Policy, 1942, vol II, p.63.
4 Ibid, p.64.
6 Quoted in India's Struggle for Freedom, 1962, J.S.Sharma.
General and that of the provinces. They also introduced, for the first time the method of election, though indirect, as the means of constituting a portion of the non-official members. Each Legislative Council was to consist of three classes of members: the official, elected and the nominated non-officials. The elective principle, however, was cramped down by severe limitations, restrictions and distortions. The franchise was extremely narrow based, and, in effect robbed the elective principle of its real meaning and purpose. In the case of the Imperial Legislative Council the average number of voters in the general constituency was 21, and in one case the number of voters was 9. The total number of votes, by which all the elected members of this Council are returned (U.P.), can scarcely exceed 4,000. That gives less than average of 150 for each member. Similarly, members of the Legislative Council of the United provinces are elected by about 3,000 votes, or an average of about 143 for each elected member.

However, the election was indirect. To the non-official members of the local boards was given the right to elect the representatives of the general public to the provincial councils. Likewise, the non-official members of the provincial councils were empowered to elect representatives of the general public to the Imperial Legislative Council. The link between the common man and the representative was, therefore, remote and, consequently ineffective and meaningless. There was "absolutely no connection between the supposed primary voter and the man who sits as his representative on the Legislative Council, and the vote of the supposed primary voter has no effect upon the proceedings of the Legislative Council."8

In addition to territorial representation, the elections accorded recognition to class, communal, and special electorate. Accordingly, the electorate was grouped under three categories, as follows:

(i) General electorate consisting of the non-official members either of Provincial Legislative Councils or of the Municipal and District Boards;

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(ii) Class electorate comprising of: Land holders constituencies, and Mohammedan electorate; and

(iii) Special electorate, comprising of Universities, Chambers of Commerce, Port Trusts, Presidency Corporations, Planting & Trade interests, etc.

This scheme of class and special electorate was extremely puzzling and often very 'confusing'. This 'puzzling' and 'confusing' system emerged from the fact that the Government was, in the words of Lord Minto, "Very anxious to avoid any appearance of a Parliamentary franchise. I set my face against any thing that might appear resemble it. We did not want a parliament at all; we wanted Councils... but did not want Councils elected on Parliamentary lines". The reforms of 1909 afforded no answer and could afford no answer to India's political problems. Narrow franchises and indirect elections failed to encourage in members a sense of responsibility to the people in general, and made it impossible, except in special constituencies, for those who had votes to use with perception and effect. The conception of a responsible executive, wholly or partially amenable to the elected councils, was not admitted. Power remained with the Government and the Councils were left with no functions but with criticism. Responsibility which is the saviour of popular Government was wholly lacking in those councils. Mr. V.H. Story wrote about the proposals in the 'New Age', London, "they are tainted all over with a degrading appeal to class interests and always upper class interests".

The introduction of communal electorates is generally held to be an ugly piece of statecraft and an out-standing instance of mischievous British-Machiavellism in India.

Although the Morley-Minto Reforms were an improvement upon the Act of 1892, then failed to satisfy the aspirations of the people. The Councils were not true representatives of the people as a whole. Narrow franchise and indirect elections failed to instil in the members a sense of responsibility to the

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9 Quoted in the Indian Constitution by R.S. Iyenger, p.157
10 Hindustan Review, Sept. 1907, p.273
people. The disillusionment created by the Act of 1909 in the political atmosphere of India aggravated and reinforced the demand for self Government. Sensing this E.S. Montagu, the Secretary of state for India made an announcement in the House of Commons on 20th August, 1917. "The policy of His Majesty's Government with which the Government of India are in complete accord, is that of the increasing association of Indians in every branch of the administration, and the gradual development of self governing institutions. With a view to the progressive realisation of responsible Government in India as an integral part of the British Empire"

Mr. Montagu, then, visited India in 1917-18 and thereafter A Report on Indian constitutional Reforms which came to be known as the Montagu-Chelmsford Report was published. In accordance with the statement and the report : the Government of India Act of 1919 was enacted on the British Parliament. Meanwhile, a separate Franchise committee was also appointed to study the questions connected with franchise and elections. The recommendations of the Franchise committee formed the whole scheme for future elections under the Act of 1919.

The new central legislature was to consist of two chambers: The council of states and central Legislative Assembly. Under the rules framed by the Government of India, the council of states was to consist of 60 members, out of them 34 were to be elected -20 by general electorate, 3 by the European chambers of commerce and 11 by communal electorate (10 by Muslims and 1 by Sikhs). The Assembly was to consist of 143 members, of them 103 were to be elected- 51 by the general constituencies, 32 by communal constituencies (30 by Muslims and 2 by Sikhs) and 20 by special constituencies (7 by land holders, 9 by Europeans and 4 by Indian Commerce). The Franchise Committee recommended a system of indirect elections for the Indian Legislative Assembly, because in its opinion direct elect though preferable, were impracticable. Constituencies, it explained, framed on the basis of Provincial franchise would be too large and unwieldy; and a narrower franchise would be both 'illogical' and 'politically undesirable'. But the Government of

India decided in favour of direct election for both the Houses of the Central Legislature. In the same way, the majority of the members of the Legislative Councils taken together, they formed 77.8% of the total number.\textsuperscript{12}

However, neither the central Legislature nor the provincial Legislatures could be called democratic or really representative of the people as such. The franchise although, it was direct, was kept very low and narrow. The number of persons who were enfranchised in 1920 was only 5.3 millions out of the total population of 241.7 millions or just over 2 per cent of the people, or 8.8 per cent of the males over 20 years of age.\textsuperscript{13} The franchise was based largely on a high property qualifications.

The system of communal electorates, which applied only in the case of Muslims under Government of India Act, 1909, was now extended to the Sikhs, Indian Christians, Europeans and Anglo-Indians as well. Special representation continued for the landlords, commerce and industry, planting and mining interests and the universities.

Up to 1919, as discussed earlier, there was no system of direct elections except for Muslims and land holders' constituencies, either for Central or Provincial Councils. The representatives came through indirect elections. Under the Act of 1919, however, the system of indirect election was replaced by direct elections. A full chapter on franchise and elections was included in the Act of 1919. Section 64(i) of the Government of India Act of 1919 dealt with conduct of elections.\textsuperscript{14} It provided, "subject to the provisions of this Act may be made by Rules under this Act as to...."\textsuperscript{15}

(i) The qualifications of electors, the constitution of constituencies, the method of election for the Council of States and the Legislative Assembly (including the number of members to be elected by communal and other electorates) and any matters incidental or ancillary there;

\textsuperscript{12} India in 1922-23, p.53.
\textsuperscript{13} Ibid.
\textsuperscript{14} Government of India Act, 1919, Calcutta, 1920.
\textsuperscript{15} Ibid.
(ii) The qualifications for being or for being nominated or elected as member of the council of States or the Legislative Assembly;

(iii) The final decision of doubts or disputes as the validity of an election; and

(iv) The manner in which the Rules are to be carried into effect.

Thus the Act authorized the Governor General in Council to enact Rules regarding electoral matters. Various electoral Rules dealing with elections to the Council of States, Legislative Assembly, and provincial councils were accordingly passed by the Central Legislature in 1920. The Legislative Department of the Government of India under these electoral Rules was entrusted with the election work. The constituencies for Central and Provincial elections were delimited. Uniform constituencies based upon territory were considered unsuited to the Indian constitutions. Hence, the constituencies were designed to represent particular communities or special interest such as universities, landholders, chamber of commerce etc\(^\text{16}\). These Rules prescribed the necessary qualifications and dis-qualifications of the electors and the candidates. The Local Governments were also authorized to enact Rules regarding removal of the disqualification’s of either electors or the candidates.

Section 15 of the Electoral Rules, 1920, however, authorized the provincial Governments to issue Regulations for the actual conduct of elections under the Act. The local Governments were empowered to make provisions regarding the following electoral matters\(^\text{17}\):

(i) Scrutiny of nomination papers, manners and conditions for admitting or rejecting objections in connection thereof,


\(^{17}\) See Punjab Electoral Rules, 1920, p.8
(ii) Appointment of Returning officers, their powers and duties,

(iii) In case of general constituencies, setting up the polling stations, keeping in view the reasonable facilities for voting for all electors,

(iv) Appointment of the presiding officer and other polling personnel for the polling stations and their duties,

(v) Procedure for voting at such polling stations,

(vi) Procedure regarding personation and tender vote,

(vii) Safe custody of ballot boxes, ballot papers and the other elections papers,

(viii) Counting of votes and declaration of results,

and

(ix) Any other matter connected with actual conduct of elections.

The conduct of elections, therefore, was the responsibility of the provincial Government, which not only issued Regulations regarding elections, but also got the elections conducted with the help of their officials. In Uttar Pradesh, for instance, a provincial Franchise committee was constituted in 1920 with the secretary to the Government (Department of Law) as Chairman and mostly I.C.S. officers and the councilors as its members. The committee was appointed to make necessary recommendations regarding Regulations for the elections in the province. The province was divided into various constituencies by the Electoral Rules framed by the central Legislature. In most of the cases, the district formed the bedrock of every constituency. The district officers were made responsible for the conduct of elections in their respective districts. It was their responsibility to get electoral roll prepared and published with the help of district Administration. Various district officers were assigned the duties of Electoral Registration Officers, Returning Officers, Assistant Returning Officers, Presiding Officers, and so on. For electoral disputes, the Governor of the
state appointed the commissioners, who conducted the inquiries and settled the disputes.

Under the Act of 1919 elections were held in 1920, 1913, 1926 and 1929. The second Franchise committee was appointed by the British Cabinet in 1928 to examine the current system of franchise and elections and to make recommendations to be incorporated in the Government of India Act of 1935. The committee thoroughly examined the current system and pointed out defects in the elections system in the following words:

"As a result of our enquiries we are satisfied that many of the polling arrangements in use in various provinces in British India are unduly elaborate and over cautious. There is no uniformity in polling arrangements and techniques and there is a good deal of wastage of polling capacities. There is no uniform basis for the qualifications and grades of the officers, who are considered competent ... as presiding officers etc. One province means a polling station with one presiding officer and one clerk while another province finds it necessary to employ one presiding officer and four or more clerks to poll the same number or even less, one province fixes the polling capacity at one station at less than 300 electors while the other places it at the thousand or even more. In one province, there is no secrecy of the ballot under the present system even in the literate voters and in another the practice is that the presiding officer marks the ballot paper of illiterate voters in the presence of the candidates or their polling agents, who can hear the voter’s request and watch the actual marking of the ballot paper ........"18

The franchise committee thereafter made some serious recommendations for reforming the electoral system and the machinery. The recommendations were duly accepted by the Government of India and the British Government and incorporated into the Government of India Act of 1935. The elections under the Act of 1919 virtually failed to give political
training to the masses, specially the voters. Consequently, the Legislature was the representative of a small electorate untrained in the art of self Government. Elections also failed to create interest in the public mind for the simple reason that the departments of public importance were not entrusted with the Indians elected of a popular vote. Therefore, from the very beginning of the responsible Government, the voter was deprived of the most powerful incentive to a wise and responsible use of his vote, because his most immediate interests were not involved in the exercise of the franchise.

The adoption of property qualifications as a basis for the franchise also gave predominance and sometimes a monopoly in the vote to the moneyed classes of the population. Thus, the bulk of the population being poor was excluded from the franchise. Initially, women were not given a right to vote. The provincial Government were, however, given the option to extend the franchise to the women if they liked, which most of them in due course did. In exercising, the option allowed to them of enfranchising women on the same terms as men, the provincial Legislatures, therefore, made a gesture of high significance. But so long as the qualification it remained a mere gesture, for Indian women do not own property in their own right. Apart from Burma, the proportion of women voters was almost negligible.

Another milestone in the history of elections in India is the Government of India Act, 1935 which was only partially implemented – as only the provincial part of the Act came into force. The question of franchise attracted the attention of several bodies during the evolution of this Act. The Indian statutory commission, popularly known as the Simon Commission, recommending in 1928, showed itself in favour of enfranchising at least ten per cent of the total, or twenty per cent of the adult population, and greatly increasing the ratio of women voters. The Indian franchise sub-committee of the Round Table conference argued for recommendation similar to that of the Simon Commission. In 1931, the chairmanship of Lord Lothian, it considered the question of adult suffrage. The committee, however, did not

show itself in favour of its adoption. In regarded adult franchise as administratively impossible and, generally toeing the line of the Round Table conference sub-committee, was in favour of extending the franchise to ten to twenty per cent of the total population20.

The Act of 1935 did not envisage any change in the principles of the allocation of the seats in the Legislative Assemblies and the councils. Separate, communal electorates and 'weightage' were retained. The franchise was mainly based upon property, education and income qualifications. For the upper Houses the franchise was much higher. Though they formed separate electorates the qualifications of the voters for the different communal constituencies did not differ. The depressed classes, were, however, given a lower franchise. Women in all provinces were given some additional franchise, mainly by virtue of their husbands qualifications. The new franchise gave the vote to about 14 per cent of the population raising the number of voters from fewer than nine millions to about 35 millions. A person qualified to vote for the general or Mohammedan seat could be elected from any constituency of similar communal description. The candidates for other seats in the Assembly had to be persons qualified to vote for them. Similarly a candidate for any of the elected seats for territorial constituencies of the upper House had to be qualified to vote for the seat or any other seat of similar communal description21.

The machinery for conducting elections remained practically as the same as that of 1919. For the first time, the elections were held in 1937 under the Government of India Act of 1935. The elections brought to the fore the various trends of the Indian political opinion then existing in the country. In fact, they revealed the ill results of numerous communal, special and separate representations which were deliberately introduced by the Britishers through a long span of time. It was not a democratic election at all. It was an election based on a limited franchise divided unscientifically amongst the

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masses on the basis of political considerations. As B.N. Rau has beautifully put it:

"The system of communal electorate prevented the various communities from developing a sense of political unity rising above race of religion."

The election of 1937 tended to perpetuate the problems of minorities. The indirect system of election to the Lower House of the Central Legislature was "undemocratic corruption engendering, and intrigue fostering". The Indian demand for the grant of universal suffrage and a sovereign Assembly to frame the country's constitution was only fulfilled with the dawn of independence in 1947. This brings us to the conclusion of the history of elections and franchise during the British regime in India.

2.2 Meaning And Definition Of Election

Elections are an essential and inseparable part of the democracy. Without election the will of the people cannot be determined. Holding elections are therefore, necessary events in democratic system. It is through the elections the people elect their representatives from among themselves to the electoral offices. Thus it becomes necessary to know what is the meaning and definition of "Election".

According to Webster's dictionary "election" means the act or process of choosing a person for an office position or membership by voting. In the Representation of the People Act, 1951, the word "election" is defined as follows: "Election means an election to fill a seat or seats in either House of Parliament or in the House or either House of the Legislature of a State ..."22 Thus, it is evident that the word "Election" connotes an Act choosing.

Apart from the meaning of the word "Election" as stated above it may be defined as a process through which the authority of Government is clothed with legitimacy, peaceful and orderly transfer of power to new rulers is ensured and effective control by the people over the Government is exercised. In other words, Election is the contrivance through which a modern
state creates amongst its citizens a sense of involvement and participation in public affairs. It is through popular elections that the authority of a Government is clothed with legitimacy. Elections also make a peaceful and orderly transfer of authority to new leaders possible. Thus it may be concluded that in a democratic system, elections are institutionalized procedures for choosing representatives for electoral offices.

Again, it may be pointed out that the word "Election", has by long usage in connection with the process of selection of proper representatives in democratic institutions, acquired both a wide and a narrow meaning. In the narrow sense, it is used to mean the final selection of a candidate which may embrace the result of the poll when there is polling or a particular candidate being returned unopposed when there is no poll. In the wide sense, the word is used to connote the entire process culminating in a candidate being declared elected. In this meaning it includes the entire procedure of election – the announcement of elections, nominations of candidates, the candidature, the withdrawals, if any the poll and finally the counting and declaration of results. It may be pointed out that in the constitution of India the word "Election" has been used in wide sense as including the entire process of Election commencing with the issued of a notification and terminating with the declaration of election of a candidate.

The question with regard to the meaning of the word "Election" came up before the supreme Court in N.P. Ponnuiswami v. Returning officer, Namakkal Constituency\textsuperscript{23}. The Supreme Court approved the opinion expressed by the learned judges of the Madras High Court in Srinivasalu v. Kuppuswami\textsuperscript{24} that the term "Election" may be taken to embrace the whole procedure whereby an 'elected member' is returned whether or not it be found necessary to take a poll and said, the Supreme Court:

\textsuperscript{22} The R.P. Act. 1951, Sec.2(d)
\textsuperscript{23} A.I.R. 1952, S.C. 64.
\textsuperscript{24} A.I.R. 1928, Mad 253.
"The word election has been used in part XY of the Constitution in the wide sense, that is to say to connote the entire procedure to be gone through to return a candidate to the legislature"\textsuperscript{25}.

This case is regarded as a landmark case in Election Laws. Its ratio has been consistently followed by the same court in several rulings. In \textit{Mohinder Singh Gill v. Chief Election Commissioner}\textsuperscript{26}, Krishna lyer J. giving the majority decision observed:

"The rainbow of operations covered by the compendious expression election thus commences from the initial notification and culminates in the declaration of the return of a candidate".

Therefore, it is evident that the word ‘election’ is used in India in wide sense i.e. the expression “election” used in the Constitution of India is intended to cover comprehensively all the diverse steps involved in the process of selecting a representative, from the issuing of a notification calling an election up to the declaration of the results.

2.3 Framework of the Electoral System

Before we deal with electoral laws, we must understand the legal and administrative framework of elections which rests on the provisions of the Constitution, the Representation of the people Act, 1950, the Representation of the People Act, 1951, the Indian penal Code and the Delimitation Act, 1972.

There are also some other laws like the Government of Union Territories Act, the Delhi Administration Act 1966, and the Jammu and Kashmir Representation of the People (supplementary) Act, 1968 which are special laws meant for specific areas and do not concern us here.

Under Article 328 of the Constitution, State Governments can also make laws (subject to the provision to the central laws) but so far State Governments have made laws only designating posts which cannot be

\textsuperscript{25} Ibid.

\textsuperscript{26} \textit{A.I.R. 1978, S.C. 851}.
deemed to be offices of profit and which, if held by a legislator, will not disqualify him from being a legislator.

Constitution of India

The more important provision in the Constitution relating to election are:

Articles 52-71 prescribing the manner of electing the President and the Vice-President.

Articles 80 and 83 laying down the composition and term of the Council of States (Rajya Sabha) and the House of the people (Lok Sabha) and their terms.

The council of States has continuous existence with one-third of the members retiring every two years while the House of the people has ordinarily a term of five years but can be dissolved earlier (when a ministry loses the confidence of the House and cannot be replaced by another). Its term can be extended only during an ‘Emergency’.

Article 84 prescribes the minimum qualifications for an M.P. viz (a) being a citizen of India and (b) an age of at least 25 years in the case of the Lok Sabha and 35 years in the case of the Rajya Sabha. Additional qualifications can be prescribed by law under this article.

Article 101 lays down that no person can be a member of both the Houses of parliament or of the parliament and a State Legislature.

Article 102 prescribes disqualification for membership of parliament, viz (a) holding an office of profit under Government; (b) being an undischarged insolvent; (c) being declared to be of unsound mind by a competent court and (d) voluntarily acquiring the citizenship of foreign state. Other disqualification are prescribed by law.

Articles 168 – 173 and 190 – 192 contain similar provisions about composition, qualifications, disqualification etc for State Legislatures.

Article 324 is about the appointment and powers of the Election Commission and has acquired considerable importance and attracted attention at present. It provides that the Commission shall consist of a Chief
Election Commissioner and such number of other Commissioner as the president may appoint.

Article 326 lays down that elections to the Lok Sabha and the State Assemblies shall be held on the basis of adult suffrage. The minimum age for being considered and adult was reduced from 21 years to 18 years in 1988.

Article 329 (i) debars courts from questioning the validity of any law relation to delimitation of constituencies or allotment of seats; and (ii) provides that an election to parliament or a State legislature can be questioned only through and election petition presented to an authority provided by law. Till 1966 the authority was the Election Commission. In 1966 the authority was vested in the High Courts.

Articles 330 to 334 provide for reservation of seats for Scheduled Castes and Scheduled Tribes in Parliament and the State legislatures. These reservation, which were originally meant to remain in force for 20 years form the commencement of the Constitution are being extended from time to time – the last extension being up to the year 2000.

The Tenth Schedule (to the Constitution) is an important addition made in 1985 to check defections. The Constitution now provides for the disqualification of a member of a legislature if he leaves the party on whose ticket he has been elected or votes or abstains from voting contrary to any direction given by the party unless such voting or abstention from voting is condoned by the party within 15 days.

This disqualification is not attracted if the members of a party en bloc join another party; or if a party is split and a group of not less than one – third of its members leave the party though they may or may not join another party.

Any dispute, whether any member is disqualified under these provisions, is to be decided by the speaker or the Chairman of the house and no Court can take cognizance of such disputes.

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27 See sec. 80A to the R.P. Act, 1951.
The Representation of the People Act, 1950 and the Delimitation Commission Act, 1972

The main objects of these two laws are delimitation of constituencies, prescribing additional qualifications for voters, preparation of electoral rolls, etc. A separate law for the constitution of a Delimitation commission was enacted in 1972. Till then Delimitation of constituencies was done by the Election Commission. The more important provisions of the first Act are:

(i) The seats in the Lok Sabha are distributed state-wise. A constituency of the Lok Sabha cannot be spread over two or more states.

(ii) Every constituency of the Lok Sabha is a single member constituency.

(iii) The constituencies of the Legislative Councils of States are determined by the President.

(iv) Any person who is not less than 18 years of age on the qualifying date and who is ordinarily resident in a constituency and is not otherwise disqualified (e.g. by reason of being insolvent or of unsound mind) is entitled to be registered as a voter in the constituency. These electoral rolls are revised and updated from time to time by the Electoral Registration Officers either on an application by some person or suo – motto. An intensive revision of the roll is carried out before every general election to the Lok Sabha or the State Legislature or before a by – election, unless the Election Commission directs otherwise.

As for the Delimitation Act, 1972 a Delimitation Commission was appointed under the Act in 1973. After that there have been no revisions of constituencies because or for decision of Government to freeze the constituencies so as not to give increased representation in parliament to States where population has been growing very fast.
The Representation of the People Act, 1951

It is the most important legislation which lays down the nut-and-bolt aspects of an election: detailed provisions regarding qualifications and disqualification for candidates; time schedule for elections; administrative machinery for conducting elections; power to requisition premises, vehicles, etc. by a government for the elections; role and function of candidates and their agents; manner of voting, counting or votes and declaration of results; disposal of election offences; suspension of poll or countermanding of election; registration of political parties; deposits for contesting elections; prevention of impersonation and limits on election expenditure, etc.

The Indian Penal Code, 1860

Certain actions in connection with elections have been declared as offences under the Indian penal Code 1860 (IPC). These are promoting enmity, etc. between different groups on grounds of religion, race, place of birth, residence, language, etc. (section 153A); imputations and assertions prejudicial to national integration (153B); bribery (171B); use of undue influence to interfere with the free exercise of any electoral right (171C); personation at an election (171D); making false statements (171G); illegal payments (171H); failure to keep election accounts (171); and making or circulating statements conducive to public mischief, enmity or hatred, etc. between different classes.

All these, with the exception of the first two, were a part of the IPC before independence. Nos. (1) and (2) were added in 1969 and 1972 respectively.

It should be noted that some of these offences like bribery undue influence and promoting enmity, etc. on the ground of religion, race, etc., have also been declared corrupt practices under the Representation of the People Act, 1951 (sec. 123) which also prescribes several other electoral offences such as holding a public meeting during the 48 hours before polling begins (sec. 126), creating disturbances at election meetings (sec. 127) etc.
The main difference between an electoral offence and corrupt practice is that an electoral offence attracts penalty in a criminal court whereas a corrupt practice disqualifies a candidate whose election can be set aside.

2.4 Electoral Systems (in Developed Countries)28

There are three main types of election systems each with its own subtypes, viz.

I. **Majoritarian types:**
   - (i) plurality system – or the first past the post system;
   - (ii) double ballot system;
   - (iii) alternative vote system and
   - (iv) ‘winner take all’ system.

II. **Proportional Representation (PR) types:**
   - (i) largest remainders;
   - (ii) highest averages and
   - (iii) single transferable vote system (STV).

III. **Semi-proportional types:**
   - (i) cumulative vote (SNTV).

**Majoritarian Type**

Plurality system (FPTP): Most of the major English-speaking countries including the UK, the USA, New Zealand, Canada and India (which is not fully an English-speaking country but is dominated by Anglo-American values and political system) follow the plurality system in which there are single-member constituencies with no limit on the number of candidates. Whoever wins the highest number of votes, irrespective of his share of the total number of votes cast, is declared elected. If there are three or four reasonably popular candidates, a candidate getting just 25 or 30 per cent or the votes cast, gets elected. Further, a party with a good spread of popularity over all the constituencies can capture a disproportionately large number of seats. Its

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28* The information has been collected from different sources – encyclopaedias, other books and correspondence with embassies.}

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over all percentage of vote may be just 30-35 per cent; but it can secure as many as 60-70 per cent of seats.

Under the Double Ballot system used in France, voting is held in two stages. The first or preliminary ballot is like the one under the previous system (the FPTP system). Suppose in this first ballot there are four candidates (say A, b, c and D) getting 40 per cent; 30 per cent; 25 per cent and five per cent votes.

A second ballot is then held in two ways: only A and B are allowed to figure in the second ballot and one of them is bound to get more than 50 per cent votes cast; alternatively all candidates are allowed to contest in the second ballot and the result are declared by the FPTP method. (However, in practice the lowest candidates with poor votes in the first ballot usually withdraw, making it a limited contest between two or three candidates).

In France, the first alternative is followed in the case of presidential elections and the second in the election of deputies to the lower House of Parliament.

The alternative vote or preferential system is in use in elections to the lower House of the Australian Parliament. There are single-member constituencies and the voter has just one vote but instead of allotting the vote to a single candidate the voter indicates the order of his preference for the candidates by allotting them numbers as shown below:

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<th>Candidate</th>
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There is only one ballot but multiple counting. After each counting round, the candidate with the least number of 'first preference' votes is eliminated and all the second preference votes on his ballot papers are treated as first preference votes and allotted to the respective candidates and a second
count is taken. Again the candidate with the least number of ‘first preference votes is eliminated and all the second preference votes on his ballot papers, including the ballot papers of the candidate eliminated in the first round which showed second preference for the candidate, are transferred to the remaining candidates. This process is repeated till finally one candidate emerges with more than 50 per cent first preference votes, who is declared elected.

The ‘winner take all’ system is a variant of the FPTP system which is followed in the American presidential elections. Each of the fifty states is allotted seats in proportion to its population. The election follows the FPTP system but whereas in the FPTP system the winner gets only one seat from the constituency, in the ‘winner-take all’ system, the winner gets all the seats or votes allotted to that state. A candidate winning the election in just a few populous states like California, Texas, New York or Florida can win more than 40 to 50 per cent of the total seats and win the election. This results in a very large weightage for the more populous states and therefore a relative indifference to less populous states.

**Proportional Representation Systems**

Prof. Arend Lijphart of the University of California, who made a study of the electoral systems of 27 democracies (including India from 1945-90, found that nearly three fourths of them use proportional representation (PR) system. There is, however, a variety of such system in which the degree of proportionality (between the percentage of vote and the percentage of seats won by a party) depends upon several factors such as:

The number of constituencies which are usually multimember. In many cases the country may be divided into a large number of constituencies-each with four of five or even ten seats; or the whole country may be treated as a single constituency as only for parties and not individuals.

The number of seats that party wins in proportion to its votes is calculated by several sophisticated mathematical formulae. Broadly these formulae are divided into two categories, viz. The largest remainder formulae and the highest average formulae.
In some types the voter is allowed to vote for only one party (cardinal vote while in others the voter is allowed to split his votes between two or more parties (ordinal vote).

Proportional representation helps small parties to get a fair share of the seats but it also leads to proliferation of small parties. To prevent excessive proliferation there is a threshold limit of two per cent to five per cent and any party receiving less votes than this limit is not entitled to any seat.

In some countries, parties while submitting separate party lists are also allowed to join together and combine their votes for the allocation of seats.

The single-transferable vote system is a combination of the PR system and the alternative vote system in which the constituencies are multi-member but a voter has only one vote which he allocates to the candidates according to an order of preference as in the Australian alternative vote system; the minimum number of first preference votes required for winning a seat is determined by formulae similar to the ones used in the other PR systems; candidates winning this minimum number of first preference votes are declared elected and their surplus above the minimum quota of first preference votes is distributed among the other candidates according to their second preference votes; if this redistribution does not result in any other candidates getting the minimum quota, the candidate with the least number of first preference votes is eliminated and his second preference votes are distributed among the candidates with second preference on his ballot papers. As in the alternative vote system, this process of elimination is repeated, till we get the required number of candidates with the minimum quota.

The Semi-Proportional Representation Systems

The three variants, viz. (i) the cumulative vote; (ii) the limited vote (LV) system and (iii) the single non-transferable vote (SNTV)-have one common feature, viz. Multi-member constituencies.

In the Cumulative Vote system the voter has as many votes as seats and is allowed to distribute them among the candidates as he likes. He can even
give all the votes to one candidate. This ensures a reasonable share of seats for small and minority parties and was in vogue in India before independence.

Under the Limited vote system, the voter has more than one vote but less than the number of seats and he can give only one vote to one candidate. In the LV system used in Japan in 1946 for example, there were constituencies with more than 10 seats but the number of votes available to each voter were: constituencies with one to three seats—one vote; four to ten seats—two votes; and more than ten seats—three votes.

The Single Non-Transferable vote systems (SNTV) is the extreme version of the Limited Vote where a voter in a multi-member constituency has just one vote.

Of these three systems the cumulative voting system (with necessarily multi-member constituencies) gives more proportional representation than the others. Of the other two, the system become more and more proportional as the size of the constituency increases and the number of votes for a voter decreases. On the other hand as the number of votes increase the system becomes more and more a majoritarian system. When the number of votes is equal to the number of seats without cumulation, the system becomes as good as a majoritarian system.

2.5 Indian Electoral System

There is a large variety of voting systems in the world – probably as many systems as there are countries but they can broadly be divided into three categories: the Majoritarian systems; the proportional Representation systems; and the Semi-proportional Representation systems.

India has adopted the Majoritarian plurality system or what is called the “first past the post” (FPTP) system in which the whole territory of the country is divided into single-member constituencies. Each voter has just one vote and the candidate getting the highest number of votes irrespective of the proportion of the total votes secured by him is elected. This gives rise to the following undesirable consequences:
(I) A candidate securing less than 50 per cent of the votes from a constituency (sometimes as little as 25 to 30 per cent votes gets elected. His claim to represent the constituency is questionable.

(II) The system is unfair to small parties which get far less representation than the percentage of their votes (often no representation at all).

(III) On the other hand, a party enjoying even modest general support, gets representation far in excess of the proportion of its votes. As can be seen from the Table on the next page, the seats secured by the party enjoying the highest support has often been 60 per cent more than its percentage of votes.

(IV) Where there are two or three comparably powerful parties like the Conservative and Labour Parties in the UK or the Republicans and Democrats in the USA, both the parties can alternately get advantage of this system, unfair as it may be, and form stable governments; but where the political stage is dominated by a single party as in pre – 1989 India, the system leads to a virtual one-party rule.

The system has, however, two advantages:

(i) it gives stability to the government unlike the instability experienced by many countries under the proportional Representation system – like France before 1958 or Italy after the world War II where governments used to last on average for less than six months and

(ii) it prevents the proliferation of small parties as in Israel where a few small groups dictate to the two major parties.

However these two advantages have to a large extent been nullified in India by the almost continuous rule of a single party which has led to several distortions in the very structure of our democratic system.
Why did India adopt this system when an overwhelming majority of developed democracies use some type of proportional representation system? There were probably two reasons. First, because the roots of our democratic institution lie in the Anglo-Saxon culture. Second, the founding Fathers of our Constitution expected that like the UK and the USA we would also probably develop a sound two-party system. This expectation did not materialise partly because of the absence of democratic traditions (notwithstanding our nostalgic and sentimental admiration for our ancient gram panchayats which Dr Ambedkar rightly termed ‘pathetic’), the servile mentality of kowtowing to those in power which was further buttressed by dire poverty. The ruling party (the Congress) also used the system to strengthen and perpetuate its hold by all means fair and foul. The opposition parties have, therefore, been demanding a change in the election system.

There are two other Majoritarian systems in operation: the Double Ballot system of France and the Alternative Vote system in Australia. Both give much fairer results but are not suitable for Indian conditions.

The French system of double ballot would almost double the expenditure in money as well as labour which, though suitable for a small rich country like France, would be unaffordable for a continent-sized country like India. The Australian system based on preferential vote which requires the voters to mark their preference for candidates on the ballot paper by writing a number against each candidate, is unthinkable in a country like India with barely 55 per cent literacy (as low as 38 per cent for Bihar and Rajasthan and just 20-22 per cent for females in both these states). One does not know how far even the census figure of 55 per cent literacy accords with reality.

A full-fledged proportional Representation (PR) system is also not and unmixed blessing. Its main disadvantages are:

(i) a complicated system of calculating seats;
(ii) a system of faceless elections in which a voter votes for a party and not an individual from the constituency whom he knows personally;
(iii) the danger of growth of small parties which can be checked to some extent by the threshold limit of votes;

(iv) a complete stranglehold of the party on the candidates which is undesirable in a truly democratic system.

The opposition parties and intellectuals have, therefore been asking for a system similar to the one used for elections to the lower chamber of the German Parliament (called Bundestag), which is a combination of the FPTP system and the PR system on the following lines.

The number of constituencies is equal to half the total number of seats and each constituency has therefore two seats. One seat is filled by the FPTP method and the other by the PR method. The ballot paper has therefore two parts - one showing the names of individual candidates and the other of parties. The voter casts two votes, one for an individual and the other for one of the parties. He need not vote for the party of the candidate for whom he has voted in the first part of the ballot paper.

The votes for the parties are pooled together and the quota of seats won by each party by PR is filled from a list of party nominees submitted by the party before the election.

There are two minor objections to this system. First, the constituencies become rather large – twice the size under a full FPTP system. This leads to increased expenditure by candidates with very undesirable consequences as we shall see in Chapter 12. In the elections to the Lok Sabha each constituency will be of the size of two districts. Second half the representatives selected on the basis of PR are faceless persons from the party lists.

The Tarkunde Committee appointed on 1977 had therefore suggested a modification of the German system. The Committee suggested that there should be single member constituencies as at present and elections should be held in the same way as at present (by the FPTP method). In constituencies where a candidate wins more than 50 per cent of the votes cast, he should be declared elected. Where no candidate gets more than 50
per cent votes, the votes from such constituencies should be pooled together party-wise and should be filled by the PR system.

As in the German system no party should be eligible for a seat under the PR system unless the party has secured at least five per cent of the total votes.

This suggested system has three advantages over the German system:

(i) the representation will be much less distorted than under our present system;

(ii) all candidates selected by the FPTP method will have the backing of at least 50 per cent of the voters and will therefore be more representative of the constituency than under the present system;

(iii) there will be no increase in the size of constituencies which results in reduction of direct contact with the constituents and increases the election expenditure which leads to other undesirable consequences. The limit of a minimum five per cent vote for a share in the PR pool of seats as in Germany, would discourage the proliferation of small parties.

There is however a possibility of the system degenerating into a cent per cent PR system if no individual candidate gets more than 50 per cent votes in his constituency; or a cent per cent FPTP system if a candidate in every constituency gets more than 50 per cent voters in the constituency without the hassles of a second ballot as under the French system.

2.6 CONSTITUENCIES

A modern state is divided into a number of territorial constituencies, each constituency being entitled to return a specific number of members to the legislature. This division into constituencies becomes necessary for reason of equity that every elected member should represent an equal segment of population and also for electoral convenience. Besides, it establishes a closer and desirable nexus between the legislator and the elector and enables the
latter to exercise a choice between the candidates. In countries such as Israel and South African Republic the entire legislatures are elected en bloc from national lists. This is not a viable proposition in India.

The delimitation of constituencies is of political significance for two reasons:

(i) it determines the nature, size, form and contours of constituencies and to that extent the general character an assembly,

(ii) it affects the chances of electoral success of individuals and of political parties, if it is not done with utmost objectivity. Improper demarcation may result in marginalisation of constituencies which, according to earlier division, were most favourable to a political party or it could be the other way round. It “determines the relative influence and effectiveness of political parties”.

Delimitation work should, therefore, be entrusted to such a body which may act freely, fairly and objectively for one and all. For demarcating constituencies, three types of agencies are invoked.

(i) The partisan agency, which is used in most States of U.S.A. the state legislatures draw the constituencies for themselves and for the House of the Representatives. This provides great temptation for any majority party in a legislature to draw boundaries of constituencies to favour its own candidates.

(ii) The bi-partisan agency, where two or more parties, represented on a commission, decide by commonly agreeable decisions. This approach is adopted in some of states of the U.S.A. like Hawaii etc.

(iii) The third type of agency used for demarcating constituencies is the neutral agency. Such agencies for readjustment of boundaries of constituencies are employed in the United Kingdom, Canada, Australia, Newzealand, Malaysia, Germany and India. In these countries independent commissions are constituted for the demarcation of constituencies on the basis of twin principles of equity and fair-play, and their recommendations, with or without the approval of legislatures, are treated as mandatory. The inclusion of experts and judges for re-adjustment of boundaries of
constituencies, is seemingly to promote equity and provide electoral convenience.

The makers of the constitution of India had visualized the need for fairness and objectivity in the demarcation of parliamentary and assembly constituencies in the country and had provided the means for promoting the same. Under the Constitution the authority of making laws with respect to all election matters, including delimitation of constituencies, has been delegated to the Parliament. Such delegation of authority to the parliament has been considered odd. But this is not so. Delimitation of constituencies is required because:

(a) Population of the state, through natural process, changes;
(b) Population moves from one area to another and
(c) Urbanization grows.

In no way delimitation of constituencies can be done on a long-term basis through constitutional provisions.

The entire country is divided into a specified number of parliamentary, assembly constituencies, for as per provision of the Constitution member of the Lok Sabha and state legislative assemblies are to be chosen by direct election from territorial constituencies. The guidelines for the fixation of the seats of the states in the Lok Sabha, the strength of state assemblies, and their division into parliamentary/assembly constituencies have been prescribed in the constitution. Prior to the constitution (Forty-Second Amendment) Act 1976, Article 82 & 170 (3) of the constitution provided that representation accorded to the territorial constituencies of the House of the people and Legislative Assemblies shall be readjusted after every decennial census. Thus representation has been linked with population as in U.S.A. Australia and Canada etc. as ascertained after decennial census. In helps in maintaining objectivity in the delimitation of constituencies and prevent governmental authority from showing either Laxity or undue haste in resorting to this practice. The constitutional provisions also guard against any outrage of its spirit in the physical demarcation of constituencies, the field where the
party in power is alleged to indulge in for its own benefit. Article 81 (2) provides:

a) There shall be allotted to each state a number of seats in the House of the people in such a manner that the ratio between that number and the population of the state is so far as practicable, the same for all the states; and

b) 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 so far as practicable, the same throughout the state.

Similar uniformity of representation to various constituencies in legislative assemblies has been ensured through Article 170 (2)

The constitution originally provided specific population limit (Article 81 (1) for delimitating parliamentary and assembly constituencies. The upper and lower limits of population for a parliamentary constituency/assembly constituency were, however, deleted by the constitution Second Amendment Act 1952 and Seventh Amendment Act 1956 respectively as these had become unworkable. The constitution makes provision for uniform scale of representation, based on population. The acceptance of numerical equality as the basis of distribution of seats led to the abandonment of the vicious formula of representation – identification with communities-the arch principle of all sorts of representation in the pre-independence era.

Some constituencies were reserved, in the House of the people and the legislative assemblies of the states, to ensure representation to Scheduled Castes and scheduled Tribes in proportion to their strength to the total population of the state for a period of 10 years from the commencement of the Constitution. This period was extended by the constitution (Eighth Amendment) Act 1959 to 20 years, and again to 30 years by the constitution (Twenty third Amendment) Act 1969. Subsequent constitutional amendments, Forty-fifth, carried out in 198 and Sixty-Sixth of 1990, extended the period of reservation to 50 years.

Judicial interference in the process of delimitation of constituencies has been ruled out (Article 329). This constitutional provision has been further
placed beyond doubt when in Meghraj Kothari v. Delimitation Commission of India, the Supreme Court ruled that readjustment of constituencies made by the delimitation commission is beyond question in any court of law.

There is no territorial constituency for election to the Council of State. The members of the legislative assemblies elect the state representative for the Council of States. The representatives of Union Territories are elected through electoral college. The legislative assembly of the concerned Union Territory acts as electoral college for the purpose.

Delimitation of constituencies (for local authorities teachers and graduates) for the Legislative Council of a state is made by the president by an order under Section 11, Representation of the people Act 1950, after consultation with the Election Commission. Every order of delimitation is required to be laid on the table of the parliament and is subject to such modification as the parliament may make therein.

The first general election were held in 1951-52 from constituencies delimited in 1951 by the order of the president under section 6 & 9 of the Representation of the people Act, 1950. The Election Commission formulated proposals for delimitation of parliamentary and assembly constituencies in each state and submitted the same to the president for making delimitation orders. Every order made by the president is statutorily required to be laid on the table of the House. The parliament was competent to modify these orders within twenty days. These delimitation orders were effective for a period of three years.

The procedure for the delimitation of constituencies provided for in the statute was subjected to criticism. It was pointed out that the institution of the advisory committee comprising the members of parliament and legislative assemblies for the assistance of the Election Commission provided scope for political maneuvering. A quasi-judicial body assisted by representatives of political parties, would have dispelled any such misapprehension.

The empowering of parliament to modify these proposals amounts to conferring parliament with the authority to determine the contours of constituencies according to its design.
The Advisory Committee, it was pointed out could not be expected to consider these proposals without weighing their political implications and the Government (in concurrence with the parliament) having the authority to revise these proposals, could not but revise them in its own favour. In some cases, constituencies have been demarcated because certain castes preponderate within certain local areas, while in others the guiding principles seem to favour one prominent personality or the other belonging to congress group to ensure his return to the legislature. It is regretted that when proposals for delimitation were published no indication was given as to the principles on which they are based.

Similar views were expressed by a section of members on the floor of the House\(^{29}\). The Election commission itself conceded that the procedure followed for delimitation in 1951 did not work out smoothly and satisfactorily as many of the Delimitation orders issued by the president were “materially amended”\(^{30}\). This was admitted by the Union Minister of Law, C.C. Biswas, while initiating the Delimitation Bill in the Rajya Sabha\(^{31}\).

The Election Commission following the first general elections, recommended to the Government that delimitation of constituencies should be made by an independent body and the scheme of delimitation worked out by it should be made final in law. These recommendations were accepted by the Government.

The population figures of the 1951 census were finally published in 1953. The parliament had however enacted the Delimitation Commission Act, in 1952. Under the Act an independent Commission, consisting of three members—a retired judge of the Supreme Court as its Chairman and a Retired Chief Justice of High Court as member, besides the Chief Election Commissioner as an ex-officio Member, was constituted. The Delimitation Commission was to be assisted by 2-7 associate members from each state, depending upon the population of the state concerned, nominated by the Speakers of the respective Houses, (House of the people and legislative


assemblies with due regard to the composition of the House. The associate members were given neither the right to vote nor to sign any document. Thus association of political elements was continued with delimitation work under the new name of associate members.

May be to avert such criticism, in United Kingdom, Sri Lanka and Canada members of parliament are ineligible for membership of an electoral boundary commission constituted for the purpose of division of constituencies.

The Delimitation Commission was entrusted with the task of readjustment of the allocation of seats in the House of the people to the states, the determination of the number of seats in the legislative assembly of each state and division of each state, excepting Jammu and Kashmir, into constituencies on the basis of census figures published in 1953. It was also empowered to fix the number of reserved seats for scheduled Castes and Scheduled Tribes in Lok Sabha and the legislative assemblies of states. The commission was required to act within the parameters of constitutional provisions and guidelines set out in the Act. The provisions of the Delimitation Act required that (a) number of seats assigned to legislative assembly of each state was to be an integral multiple of the number of seats in the House of the people allotted to that state, (b) that constituencies were to be either single-member, double-member or triple; and (c) that all constituencies were as far as practicable to consist of geographically compact areas in the delimitation of which weight was to be given to the physical features, existing boundaries of the administrative units facilities of communication and public convenience. However, the Commission was permitted to depart from the normal procedure, if special geographical conditions including in particular the size, shape and accessibility of a constituency rendered a departure desirable.

Procedurally the Commission was required to ensure popular participation in the process. Its proposals for demarcation of constituencies were to be published in the official gazette as also in such manner as it deemed desirable along with proposals, if any of associate members inviting suggestions and objections from the public. This suggestion and objection

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were to be further considered in public meetings before issuing final Delimitation order. The Commission Delimitation Order had the force of law and could not be questioned in any Court. However, after publication every order was laid on the table of the House of the people.

The commission adopted the same formulae for the distribution of parliamentary seats to states as was followed by the Election Commission for this purpose in 1951. It also retained, with minor modifications, the existing allocation of seats to the legislative assemblies of states. The seats were also reserved in the Lok Sabha and legislative assemblies of various states for Scheduled Castes and Scheduled Tribes on the basis of the same formulae, with minor deviations for fair distribution of seats in different areas of the states.

As per the Delimitation Commission’s order, the House of the People was to consist of 495 seats. These seats were distributed over one three-member constituency, 82 two-member constituencies and 326 single-member constituencies. In the three members’ constituency, one seat was reserved for Scheduled Castes, and one for Scheduled Tribes. In every two member constituency, one seat was reserved either for Scheduled Castes or Scheduled Tribes. No seat was reserved for Scheduled Castes in single member constituencies but reservations were made for Scheduled Tribes in 11 constituencies. There were 69 seats reserved for Scheduled Castes, 27 Scheduled Tribes, and the remaining 397 seats were unreserved.

Orders issued by the Delimitation Commission in respect of different states were consolidated into a single order known as Delimitation of Parliamentary and Assembly Constituency Order, 1956 for facility of reference.

The Delimitation Commission was also entrusted with the task of modification of the Delimitation Order, 1956, to the extent necessary, as a consequence of enactment of States Re-organization Act, 1956 and Bihar and Bengal (Transfer) of Territory Act in the same year.

The Commission was required to determine on the basis of the population figures of the census of 1953, the parliamentary and assembly
constituencies into which each new state was to be divided and the number of seats, if any, to be reserved for Scheduled Casts and Scheduled Tribes.

The Commission followed the same principles as it adopted under the Delimitation Act, 1952.

The Delimitation of Parliamentary and Assembly Constituencies Order, 1956 made drastic changes, which gave rise to fierce controversy. The Commission followed procedure which were expeditious but less democratic, as neither its proposals were published in the gazette of the state concerned or gazette of India, nor were objections and suggestions invited from the public. The Commission discussed proposals with associate members and their views alone were taken into account in formulating proposals.

The drawbacks in the Commission’s proposals were because of the defective procedure statutorily prescribed. It had to rely on suggestions of associate members nominated by the Government, and not as earlier by the Speaker of the House of the People or legislative assembly. Proposals of the Government nominated associated members are likely to be coloured by political considerations.

The Delimitation Order, as finally issued, made drastic changes in the boundaries of parliamentary constituencies. Out of a total of 481 seats allotted to states, there were only 15, which allegedly retained their full identity with existing constituencies. Another 15 completely lost their relationship to previous ones. There were allegations that 34 previous constituencies underwent between 50 to 70 per cent change and another 183 lost 20 to 50 per cent of their old areas. A large number of constituencies could, however, be identified with 1951 constituencies. There were only 249 or about 52 per cent of constituencies, which could be compared with the 1951 delimitation.

Uttar Pradesh and Gujarat had the least number of drastically changed constituencies. Assam, Kerala and Madras had less than 40 per cent change in the existing composition of the constituencies. But in Rajasthan, West Bengal, Punjab, Orissa, Mysore, Haryana and Bihar over 60 percent of the constituencies got their contours altered. In the rest of the states the changes were about 50 per cent.
The changes in the boundaries of constituencies in 1956 could, however, be justified as the 951 delimitation was done on an ad hoc basis by the President and many of the delimitation proposals were modified by the Parliament. The reorganization of states in 1956 was an additional contributory factor.

The third Delimitation Commission, consisting of a retired judge of Supreme Court (Chairman), a sitting Judge of Calcutta High Court (Member), and Chief Election Commissioner (ex-officio Member) was constituted on 22nd February 1973, under the Delimitation Act, 1972 following the publication of decennial census figures of 1971. The Commission was assisted by 10 associate members and not nine as provided for under the Delimitation Act, 1962, to be nominated by the Speakers of the Lok Sabha and the legislative assembly of concerned state. The Delimitation Act, 1972 provided for similar guidelines and procedure for the demarcation of constituencies as were provided for under earlier delimitation Acts of 1952 and 1962.

As a consequence of the North-Eastern Areas (Re-Organization) Act, 1971 three new States – Manipur, Tripura and Meghalaya and two new Union Territories - Mizoram and Arunachal Pradesh were created. The states of Manipur, Tripura and Meghalaya were allocated two states in the Lok Sabha increasing its strength to 506 seats. This exceeded the number of 500 seats fixed for the states under Article 81(A) of the constitution. This access was however permissible as the new states were created under Article 3 of the Constitution.

The Union Territory of Mizoram created under the Re-Organization Act comprised the Territories which immediately before the Act constituted Mizo district in the State of Assam. One seat was allocated to the Union Territory to be filled by direct election. The Union Territory of Arunachal Pradesh, formed of the territories formerly known as NEFA, was also allotted one seat in the Lok Sabha to be filled through nomination by the president of India.

The distribution of the existing available seats to the states in the Lok Sabha, on the basis of 1971 census figures would have reduced,
representation of some of the States such as Himachal Pradesh, Manipur, Tripura and Meghalaya by one seat each. With a view to ensure minimal loss of representation to the states in the House, parliament enacted the Constitution (Thirty-first) Amendment Act 1973. This amendment increased the total number of seats in the Lok Sabha to be filled by direct election from constituencies in the states from 500 to 525 and reduced that of the Union Territories from 25 to 20.

At its first meeting the commission decided the total number of seats to be allotted to the States in the Lok Sabha on the basis of 1971 census figures and seats, if any, to be reserved for Scheduled Castes and Scheduled Tribes. The guiding principle of allocation of seats in the Lok Sabha to the states was as provided for under Article 81(2) (a).

The Delimitation Commission allotted the seats in the new Lok Sabha to the states and divided each state into territorial constituencies on the basis of amended Article 81(1) of the constitution. As constituted by the new delimitation, the Lok Sabha was to consist of 542 members. Of these the States were allotted 525 seats, the maximum number that could be allotted to them and the Union Territories 17 seats.

As for the number of seats in the legislative assemblies of various states, the Commission decided to retain the existing multiple in all the states, except Punjab. In Punjab the integral multiple was raised from eight to nine. The Delimitation Commission followed the same guidelines as were adopted by the two earlier Commissions set up under the Delimitation Acts.

Article 329 (a) of the constitution provides that validity of any law relating to the delimitation of constituencies, or the allotment of seats to such constituencies, made under Articles 327 and 328, shall not be called in question in any court. The delimitation Commission Act 1972 also contained a provision in Section 10(2) that upon publication in the Gazette of India, every order made by the Commission, shall have the force of Law and shall not be called in question in any court. These provisions notwithstanding three writ petition were filed one each in the High Court of Andhra Pradesh, Gujarat and Orissa challenging the delimitation orders made by the Commission in respect
of these states. The High Courts of Andhra Pradesh, Gujarat and Orissa dismissed the petition inter alia on the ground that there jurisdiction was barred under Article 329(a) of the Constitution. Two appeals—one before the Supreme Court of India from the judgement of Gujarat High Court and the other before the High Court of Andhra Pradesh were filed. The appeals were dismissed.

Prior to the (Forty-Second Amendment) Act, 1976 Articles 82 and 170 (3) of the Constitution provided that upon the completion of each decennial census the allocation of seats in the House of people and the legislative assemblies of various states and the parliamentary and assembly constituencies into which each state is divided shall be readjusted by such authority and in such a manner as may be determined by parliament.

The Constitution (Forty-Second Amendment) Act, 1976 amended these Articles to provide that until the relevant figures for the first census taken after the year 2000 have been published, it shall not be necessary to readjust the allocation of seats in the House of the people to the states and the total number of seats in the legislative assemblies and division of the seats into territorial constituencies (both parliamentary and assembly). Consequently, subject to any changes as a result of laws of states, etc; Delimitation of parliamentary and Assembly Constituencies order, 1976 on the basis of 1971 census figures, will continue to be effective.

In 1986, parliament enacted the State of Mizoram Act and the state of Arunachal Pradesh Act raising each one of the Union Territories to the status of state. In 1987 Goa, Daman and Diu, Re-organization Act, 1987 provided for the establishment of a new state of Goa and for a new Union Territory of Daman and Diu. Under these three special Acts of 1986 and 1987 the work of the delimitation in the three newly created states, namely, Mizoram, Arunachal Pradesh and Goa was entrusted to the Election Commission.

The Election Commission was empowered to delimit or demarcate the assembly constituencies having due regard to the provisions of the Constitution and the guidelines given in the respective State Act. The Election Commission was required to have as associate members, the sitting
members of the Lok Sabha and six members of the legislative assembly of the state concerned as nominated by the Speaker.

The Constituencies were demarcated by the Election Commission following the same procedure.

The Constitution (fifty-seventh Amendment) Act, 1987 was passed by the parliament to provide for increased representation to Schedule Tribes in the Legislative Assemblies of Arunachal Pradesh, Meghalaya, Mizoram and Nagaland. The Representation of the People (Third Amendment) Act 1987 specified the number of seats which shall be reserved for Scheduled Tribes in the Legislative Assemblies of these States. The consequent work of determination of the Assembly constituencies in the states of Arunachal Pradesh, Meghalaya, Mizoram and Nagaland in which seats were to be reserved for Scheduled Tribes was entrusted to the Election Commission.

The Representation of the People (Third Amendment) Act, 1987 was promulgated to specify that thirty-nine of the forty seats in the Legislative Assembly of Arunachal Pradesh, fifty-five of the sixty seats in the Meghalaya Legislative Assembly, thirty-nine of the forty seats in the Mizoram Legislative Assembly and fifty-nine of the sixty seats in the Nagaland legislative Assembly shall be reserved for Scheduled Tribes.

The Election Commission having due regard to the provisions of the Constitution and the guidelines of the special laws, enacted for each of the respective states and after taking into account the written representations and suggestions and objections made at the public sittings made its final order as to which of the seats will be reserved for Scheduled Tribes.

A large number of individuals and organizations brought to Election Commission notice some distortions in the parliamentary and assembly constituencies as delimited in the Delimitation order, 1976. In some states it was alleged, glaring variation was noted between the lowest and the highest number of electors among the parliamentary constituencies within the states as well as among them. The story is the same with some assembly constituencies as well. It was pointed out that in 1972, 75 delimitation of parliamentary constituencies in the larger state was worked out with an
average total population of 103,000. However, in some states the number of electors has far exceeded the average population per constituency. For instance, in Bombay North parliamentary constituency, the total electorate (which is normally 50 per cent of the total population has by far exceeded 103,000, the average population per constituency. In such constituencies, the elected representatives find it difficult to get to know the grievances of the people for remedial action. Further on account of steady flight of people from villages to towns and cities, the population of some constituencies has gone up considerably, far exceeding the average population per constituency. Adjustment of boundaries of parliamentary and assembly constituencies has been, therefore, necessary to keep the average population more or less the same. Some distortions in the Delimitation order, 1976 are enumerated below:

(i) Existence of certain villages geographically found as enclaves included in certain assembly constituencies due to inadvertence;

(ii) Continued reservation of certain parliamentary and assembly constituencies by successive delimitation Commissions for the Scheduled Castes or for the Scheduled Tribes, as the case may be is against the principle of natural justice and to the dissatisfaction of the public;

(iii) Inclusion or exclusion of certain areas in or from certain assembly constituencies, which cause considerable hardship to the local public;

(iv) Many of the seats reserved for the Scheduled Castes in particular have been continuing as such for the last 15 to 20 years (in some cases 30 years) causing a feeling of frustration among the public;

(v) At the when actual delimitation was done during 1973-75 on the basis of the population figures of 1971, the Delimitation Commission received representations that population figures in several cities namely Calcutta
Bombay Delhi etc. and industrial towns like Durgapur Jamshedpur, Rourkela, Sindria had increased considerably after the 1971 census;

(vi) Large scale shifting of population from one area to another in Delhi on various grounds and all round growth of new townships caused disparity in the number of electors among the various constituencies. The objective of equitable representation was defeated and this was true in most of the states;

(vii) Migration of population from one State/ District/Taluka/ Village to another in search of employment and for various other reasons is constantly taking place. Consequently the variation in the number of electors in a constituency has reached after sometime a stage when a stable ratio between population for each constituency and the number of seats allotted to a state as far as practicable as provided in Article 81(2) (b) and 170 (2) of the Constitution, is unattained.

Yet, the party in size of constituencies is essential to ensure that value of a vote is broadly the same all over the country. The Constitution has, therefore, provided that after every census constituencies should be delimited afresh on the basis of latest population census. This was, however, not done after the census of 1981 and 1991 due to freeze on delimitation of constituencies imposed in 1976. As a consequence disparity in the size of rural and urban constituencies has increased. There is a variation between the average size of constituencies. Delhi tops in the disparity between constituencies. Due to variation in size, the value of vote has varied. There is over-representation of small rural constituencies and the under representation of large urban constituencies.

The Election Commission, has, therefore, in its report on the General Elections to the Lok Sabha and Legislative Assemblies 1979 – 80 and Vice-Presidential Elections, 1979 has recommended to the government that Article
82 and 170 (3) of the Constitution may be so amended that the total number of seats allotted to various states in the Lok Sabha and to the various state legislative assemblies may remain the same, but the original position of fresh delimitation of constituencies in each State. Union Territory after each decennial census be restored so that the defects in the boundaries of various constituencies and vast variation in the population of attached to those, could be corrected. The Commission reiterated this proposal after the general elections of 1991 as well as in its proposals for electoral reforms in 1992. The action on these proposals is essential for fair and equitable electoral system. No action on this suggestion has been taken till the end of August 1997.

2.7 Electoral Rolls

In the nascent Anglo-Saxon democracies, when the elector was simple and franchise was limited, elections used to be conducted without prior registration of elections used to be conducted without prior registration of electors in any register. The identity of an elector was screened at the polling place before permitting him to vote. The challenge to one's voting entitlement was defended by the elector either by filling an affidavit or by adducing witnesses. Fraudulent voting was prevented by marketing the forefingers of the electors. However, increase in population, enlargement of franchise and growth of major cities, generated corrupt practices, intimidation and undue influence on voters and corruption in administration. This gave birth to electoral register.

The provision of a register for eligible electors forms the basic foundation of electoral administration. Registration of voters in the registers of constituencies, in advance of the poll, is mandatory in almost all democratic countries. Registration systems in countries differ as each country evolves its own procedure of registration in keeping with its social and political milieu. Permanent lists or continuous electoral rolls are however, used in some form or the other in most of the western democratic countries.
In United Kingdom, where registration is semi-obligatory, permanent registers of electors are maintained and updated annually. Registration is compulsory in Australia. Register of electors is prepared and revised annually by provincial governments. Provision of permanent register with yearly updating is in vogue in France.

In India, Article 325 of the constitution makes provision for electoral rolls in every constituency irrespective of religion, caste, race of an elector, in contrast to the provision of separate electoral rolls for certain communities prior to the enforcement of the Constitution in 1950. Article 326, as amended, stipulates that electoral rolls must contain all adult citizens, not less than eighteen years of age on a date fixed by law. This is in sharp contrast with British period when only persons with property, as fixed by Government, could be enrolled for participation in election.

The electoral rolls are statutorily required to be prepared/revised before a general election to the house of the people or legislative assembly of a state/ Union Territory or a by-election to either of them in case of casual vacancy, by the electoral registration officer of a constituency in accordance with the provisions of Representation of the People Act, 1950 and Registration of Electors Rules, 1960.

The electoral rolls are prepared with reference to the first day of the year of preparation or revision. The condition of registration as an elector is that he (a) must be a citizen of India, (b) must be eighteen years of age, (c) must be ordinarily resident in the constituency in which he seeks registration and (d) should not suffer from any disqualification for corrupt practices or offences connected with the elections.

The preparation of election of electoral rolls is done in parts. Electors residing within the area of a polling station are covered in each part. A part of electoral roll is co-terminus with a poling station. The last part of the electoral roll of a constituency contains the names of electors having a service qualification.
The total number of rolls of component assembly constituencies constitute the roll of the parliamentary constituency. Elections to the Lok Sabha or a state legislative assembly are held on the basis of electoral rolls.

There are three methods of revising electoral rolls: (a) intensive, (b) summary, and (c) combination of the two.

In an intensive revision, the enumerators visit every household, enlist the names of eligible person of each household and hands over a copy of the enumeration card, prepared in duplicate, to a member of the family. A draft roll is prepared on the basis of these cards for each constituency and put on the notice-board for inviting complaints and objections from the public. An eligible person who does not find his name in the draft, can make a claim application. An elector can also file objection to the inclusion of an ineligible person on the rolls. These claims and objections are disposed of by the electoral registration officer on the basis of field verification. Thereafter, supplements of additions, deletions are added to the draft. The basic roll together with the supplements form the final roll. An eligible person can seek enrolment even after the publication of the rolls upto the last date of making nomination. A period of four and a half months is taken in the intensive revision of rolls of a constituency.

The rolls are revised summarily when there is no prospect of election. In the summary revision, the existing rolls in draft appear on the notice board of the electoral registration officer for inviting claims and objections. After the adjudication of claims and objections, the rolls are finally published. The process of summary revision consumes a period of approximately two months.

The total number of electors in an Assembly constituency normally ranges between 80,000 and 200,000 whereas for a Parliamentary constituency, the average number of electors is between 6,00000 and 10,00000.

The names of service voters are registered in the last part of electoral rolls of the constituency in which, but for having a service qualification, they will be ordinarily residing. The wife of service voter ordinarily residing with
him, is also eligible for registration in the last part of the electoral roll. All voters, whose names are registered in the last part, are entitled under the law, to vote by post.

The last part of the roll is revised either intensively or summarily. The method of revision of this part of the roll, is procedurally different from the general parts of the roll.

**Preparation of Electoral Rolls:**

The preparation of electoral rolls administrative unit-wise was undertaken by the Provincial Governments as early as November 1947, pending constitutional and statutory enactments or the formation of a Central or a state supervisory agency. The Central Government had issued instructions to the provincial governments on the manner and procedure of preparation of rolls. The electoral rolls were to include citizens not less than 21 years on 1st January 1949, living in any administrative unit for not less than 180 days in the preceding year ending on 31st March, 1948.

However, provisions of the Representation of the People Act, 1950, which came into force in April, 1950, changed the date of eligibility to 1st March, 1950 and the qualifying period of residence in an administrative unit to 31st December, 1949. The definition of an ordinary residence was also enlarged to include all those who possessed dwelling houses in the administrative unit. As these statutory requirements rendered the electoral rolls so far prepared incomplete and out of date, supplementary lists were prepared by incorporating the names of all those who were enfranchised under the provisions of the Act. These lists were made available for public scrutiny at headquarters of administrative units. Eligible citizens not enrolled were allowed to file claim applications. Citizens were also permitted to file objections for enrolment of ineligible persons in the draft.

A total number of 16,85,428 claims and 7,31,750 objections were filed with the electoral registration officers. The revising authorities who adjudicated them, upheld 13,93,526 claims and 7,12,802 objections.
Supplementary lists of thus adjudicated claims and objections were added to the draft rolls in order to given them the shape of final rolls.

The rolls which were prepared administrative unit-wise were rearranged constituency-wise after demarcation of the boundaries of parliamentary and assembly constituencies by Delimitation Orders in August, 1951.

The producer of registration was criticized widely on the ground of omissions of patches of areas in some constituencies and sizeable section of electors in others. In the states of Uttar Pradesh, Madhya Pradesh, Bihar, Vindhya Pradesh and Rajasthan, around 2.8 million women electors were alleged to have been denied franchise as they were registered in the rolls not by their names but by their relationship with the men-folk. This happened because women were not inclined to disclose their names.

The names of a large number of displaced persons in the states of Punjab, West Bengal and Delhi, who Migrate to India after July 1948, were allegedly omitted on the ground of administrative negligence. The records of the Election Commission, however, indicate that these persons were not enlisted as they had neither acquired Indian citizenship nor the qualifying period of residence in any administrative unit. The Election Commission's acceptance of the appeal of 732 persons for enrolment, of whom 87 were returned to the Legislatures, 17 to Lok Sabha and 70 to the state's legislative assemblies as mentioned in the Commission's report for First General Elections, is however, testimony to the fact that the method of preparation was not free from blemishes.

Rolls were prepared by inexperienced staff, for the first time on the basis of adult franchise in vast and populous country where the number of electors was larger than even the population of the United States at that time, with poor means of communication and low level of literacy. There was neither a Central or states supervisory agency for giving guidelines in the exercise. The Chief Election Commissioner assumed office on 21st March, 1950 only. To quote H.V. Patasker, then Law Minister, "It was one of the most stupendous task where nearly eighteen crore of people had to be
enrolled for exercising their franchise, and this was the first occasion when it was tried, on such a massive scale". Apart from problem arising out of linguistic diversities, there were also difficulties in obtaining names, seeking information in backward areas and ambiguous status of thousands of refugees who had returned to India after partition of the country in 1947.

Further, political parties which mushroomed prior to elections without any clear organization experience made the already bad situation still worse to administer. In Britain, the task of preparation of rolls is undertaken by the organization of political parties at the constituency level. The ordinary voter was equally apathetic either because of his ignorance or inexperience in seeking his own enrolment or that of his family members.

Notwithstanding the errors, the rolls were, as the Commission records, "reasonably satisfactory" in as much as 96 per cent of the adults in India (excluding Jammu and Kashmir) i.e., 17,32,13,635 out of 18,03,07,684 were enrolled. This is encouraging when compared to advanced western democracies like United States, where registration is slightly under 70 per cent or Britain where it ranges 80-85 per cent of the electors.

Ambiguities and inadequacies detected during preparation of rolls were removed in 1956, 1958 and 1987 through amendment and insertion of additional provisions in the Representation of the People Act, 1950.

The provisions of preparation of electoral rolls every year, with reference to a qualifying date, were substituted by the continuing validity of the existing rolls till the next revision. Separates roll for parliamentary and assembly constituencies being redundant, were substituted with an integral roll for both. A parliamentary constituency was to comprise the rolls of all assembly constituencies, which geographically will fall within its ambit.

The requirement of elector residing for one hundred and eighty days in an administrative unit for the purpose of enrolment was substituted by mere residence in the constituency on the qualifying day. The provision was found unworkable in practice.
An additional provision was inserted making it obligatory for the local authorities to make their staff available to the electoral registration officers, on demand for the preparation of electoral rolls of the constituency.

The office of the Chief Electoral Officer, hitherto recognized under the Rules, was given statutory recognition through an additional provision in the Act. However, members of Parliament opposed the insertion of the provision of nomination of a Chief Electoral Officer by the Election commission, in consultation with the state government from the officers of the state cadre. They felt it could limit the choice of appointment and the officer so chosen might be tempted to act, more as the spokesman of the state government than an agent of the strictly non-partisan and impartial Election Commission. An amendment for appointment of a full time officer with a fixed tenure as Chief Electoral Officer of State was rejected. Provisions for selection and appointment of electoral registration officers and asstt. Electoral registration officers for the assistance of Chief Electoral Officer were, however, made in the Act.

The old set of rules, known as Representation of the People (Preparation of Electoral Rolls) Rules, 1956, were revised and replaced by new set of rules, Registration of Electors Rules, 1960.

A new Rule 11(a) for making available a copy of each part of political parties, was added in the Registration of Electors Rules, 1960. An amendment for making available two copies of the drafts and final rolls to validly nominated candidates, free of cost, was lost.

Some provisions of the representation of the People Act were also amended during 1958 – 61. The definition of ordinary residence as given in the Act, which enabled a person to seek registration in the rolls both at a place where he ordinarily resided or where he owned a house, was dropped as it provided scope for impersonation and fraudulent voting. The date with reference to which the revision of rolls is undertaken, was shifted from 1st March to 1st January of the year of revision. The electoral registration officer was empowered to amend or transpose or delete entries in the rolls relating to persons who were dead or had left the constituency on his own initiative. This
was helpful to the electoral registration officer in updating the electoral rolls during the interval of revision.

The power of adjudication of claims and objections filed in relation to the draft rolls, hitherto enjoyed by the revising authority, was transferred to the electoral registration officer. This gave him greater moral and judicial authority and brought him at par with his British Counterpart.

The exercise of revision for the next general elections, initiated immediately after the conclusion of the first, was spread over a span of five years. One-fifth area of each state was covered every year. Around 2.8 million voters who were denied franchise during the first elections on ground of not registering them by names, were registered by their names.

The electoral rolls of some of the constituencies which underwent changes in their geographical boundaries following the Reorganization of State's Act, 1956 were rearranged. The electoral rolls were also rearranged constituency-wise after the issue of Delimitation of Parliamentary and Assembly Constituencies Order, 1956 in December 1950.

In all, the number of electors in the whole country (excluding Jammu and Kashmir, Andaman and Nicobar and Minicoy Islands) was 193,646,069, out of the population of 38,43,70,000 i.e., 50.4 percent. (the percentage of the adult population was estimated about 51 percent). About 98.8 percent of the adult population was enrolled. Only those who were present at their residences at the time of enumeration were registered. A sizable number of eligible electors were left out.

The allegation of large scale omission of names does not appear to be correct as 50.4 percent out of 51 percent adults of the total population were registered. Even the stray complaints of omission of names from individuals, residents of isolated areas, could have been avoided, had the political parties, who were given three copies of the draft rolls to assist the electoral registration officers, had supplied the lists of omitted names.

One – third area of every state was intensively revised during the three successive years following the second general elections. In 1961, the year
preceding the election, the rolls were revised intensively in urban areas and summarily in rural areas. The number of electors on rolls on the eve of third general elections was 218, 216, 585, 49.91 percent of the total population of the country. There was no complaints either of omission of names or inclusion of ineligible persons on the rolls.

In its report the Election Commission, suggested no enrolment after the last date of making nominations because the electoral registration officer did neither have the time nor the necessary manpower for scrutiny of applications after this date. It also caused inconvenience to the candidates and political parties in electioneering. The suggestion was not accepted for it implied denial of franchise to electors, a facility available in other Western democracies.

In the interest of promoting accuracy of rolls, the Representation of the People Act, 1950, was amended in 1966 to provide for revision of electoral rolls before a general election to the Lok Sabha or a state legislative assembly or a by-election to fill a casual vacancy in either of the two, unless otherwise directed by the Election Commission. This brought the Indian law at par with its counterpart in Canada where the rolls are statutorily required to be prepared before a general election or a by – election to the House of Commons.

Pursuant to the amended provisions of the Act, the rolls were summarily revised during 1963-64. In the next two years, the electoral rolls were intensively revised with reference to 1st January 1966 as the qualifying date. The revision of rolls in Jammu and Kashmir had become necessary because of passage of the constitution (Application to Jammu & Kashmir) Order, 1966, extending the principle of direct election to the state for filling six seats in the Lok Sabha. A common electoral roll was prepared for simultaneous election to the state legislative assembly and Lok Sabha by making a mark against the names of those electors who were not permanent residents of the state according to the definition given in the Constitution (Application to Jammu & Kashmir) Order, 1966.
The electors on rolls following the revision for the fourth general elections was 25,03,12,239, an increase of 14 per cent over the rolls on the eve of third general elections.

Wind of change was blowing in the political climate of the country, following the congress, the ruling party at the centre for the last sixteen years, having secured only a slender majority. The Congress party failed to form government in a number of states. The party was split and it was feared that the Prime Minister may advise dissolution of the House at any time necessitating fresh election to the Lok Sabha. In the midst of fluid political situation, the rolls were summarily revised all over the country, with reference to 1st January 1970 under a short crash program. This was done in order to be in readiness for election, should that be announced. This revision raised the number of electors on rolls to 273, 134, 889 as against 250, 312, 239 on the eve of fourth general elections, an increase of 9.27 per cent.

Complaints arising out of the process of revision, as indicated in a section of the Press, related to omission of names from certain constituencies in some of the states and printing errors particularly from the state of Tamil Nadu and Delhi. In Madras City, fifty thousand of the existing voters were stated to have been omitted from the list. C. Rajagopalachari, the first Indian Governor General of India, after independence, alleged that in Tamil Nadu, rolls had been "deliberately manipulated, both by omission of legitimate voters and the addition of illegitimate voters."

The electoral rolls were intensively revised in 1971 in states and Union Territories where the term of the assemblies were nearing completion. Summary revision was done in those states which were under president's Rule. The states of Andhra Pradesh, Assam Haryana Madhya Pradesh, Maharashtra, Himachal Pradesh, Jammu and Kashmir, and then Union Territories of Goa, Daman and Diu, Mozoram and Delhi belonged to the first category and the states of Bihar, Gujarat Mysore Punjab, West Bengal, Manipur and Tripura were in the second category.

The rolls were revised under the system of electoral card. Under the electoral card system, enumerators visited each household, enlisted the
names of eligible persons and handed over a copy of the electoral card to a member of the family.

The revised rolls had 19,52,72,699 electors, 6.97 per cent more than on the eve of the preceding election in these states and Union Territories.

In the states of Uttar Pradesh, Nagaland, Orissa, Manipur, Tripura and the Union Territory of Pondicherry, the rolls were intensively revised with reference to 1st January 1973 for holding elections to the legislative assemblies of respective states and the Union Territory.

On the completion of the term of the Fifth Lok Sabha in 1976 the electoral rolls all over the country were revised under a crash programmed combining the processes of intensive and summary revision with reference to 1st January 1976 for general elections to constitute the sixth Lok Sabha.

Elections to the Lok Sabha were, however, not held as duration of the House was extended by one year upto March 18, 1977 under the House of the people (Extension for the duration) Amendment Act 1976.

The president dissolved the House on 18th January 1977. Notification calling for a general election for constituting a new House was issued in the first fortnight of February 1977. There was not enough time before the issue of notification for undertaking a further revision of rolls for the purpose of an election. The election to the Lok Sabha was, therefore, held on the basis of rolls revised with reference to 1st January 1976.

In 1978, general election to the legislative assemblies of Andhra Pradesh, Assam, Karnataka, Meghalaya and the Union Territories of Arunachal Pradesh and Mizoram were held on the basis of rolls intensively revised with reference to 1st January 1978.

The term of the House constituted in March 1977 would have continued till March 1982. The president had to dissolve the House on 22nd August 1979 following the resignation of the prime Minister on 15th July of that year as a result of dissension's in the ruling Janata party. Immediately, thereafter, the rolls in the country were summarily revised with reference to 1st January 1979, excepting the states of Sikkim, Assam and the Union Territory of Pondicherry. In Sikkim and Pondicherry, rolls had already been revised
with reference to the same date. In Assam, revision was not taken up because the inclusion of foreign nationals remained a contentious issue.

The number of voters on the revised rolls was 363945873 an increase of 13.32 per cent over the number of electors on rolls on the eve of the sixth General Elections in 1977.

The complaints arising out of the revision, which mainly emanated from the states of Punjab, Uttar Pradesh, the metropolitan cities of Delhi, Bombay, Madras and Pune related to, (a) large scale omission of names and (b) dissimilarity in the copies of rolls supplied to political parties and those used by the polling staff at some of the polling stations.

However, the Election Commission ordered special revision of the rolls under Section 21(3) of the Act of 1950 with reference to 1st January 1980 in all states and Union Territories excepting Assam, Meghalaya and Gujarat. In Assam and Meghalaya, revision could not be taken up on account of political situation that arose on the issue of deletion of names of foreign nationals form the rolls. In Gujarat, revision process was already on under a separate program.

The salient features of this special revision were: (a) integration of the existing supplements with the basic roll, (b) preparation of/ revision of rolls polling booth-wise, (c) publication of rolls at polling booth/polling area and (d) placement of the polling booths used during the Lok Sabha Elections, 1980 on regular footing in addition to the headquarter station of the electoral registration officer.

After this, the Election Commission decided to revise the rolls summarily every year for keeping them ready for holding general election at short notice, with premature dissolution of the House being a recurring feature. This was a sound decision as there had been premature dissolution of the state assemblies from 1971 onwards.

The rolls of all constituencies in the country were intensively revised during 1983-84. The rolls of rural country were revised with reference to 1st January 1983, and that of urban constituencies with reference to 1st January 1984.
The number of electors of revised rolls was 378,983,065. In all, 755 complaints, 366 in 1983 and 389 in 1984, regarding irregularities in the revision of rolls were received in the Commission. These complaints related to omission of certain names/houses/areas from the rolls, inclusion of names twice in the same constituency or in two constituencies, inclusion of urchins, non-display of rolls at polling stations, non-availability of forms for registration, inadequate training to enumerators and supervisors, breach of official duty by the staff, non-cooperation of political parties in the process etc. As most of these complaints related to allegations of administrative irregularities, these were sent by the Election Commission to the chief electoral officers of the concerned states for appropriate remedial steps at the level of electoral registration officers and chief electoral officers.

A complaint filed by Bhartiya Janata Party in regard to filling of large number of forms for enrolment in some areas of Delhi Sadar parliamentary constituency, was investigated by a team of the Commission's officers. The team found irregularities and negligence in the enumeration of names at some of the polling stations in some areas of the constituency. The irregularities so detected were rectified through a special revision of rolls in the effected areas.

Some of the complaints filed in the commission are reportedly baseless. The Election Commission's report states that "the total projected population in the country in 1984 was about 731 millions and the electorate was 379 millions, which works out to about 50% of the population. As this reflected a statistical normalcy, it was evident that number of names omitted from the rolls would only be marginal."

The process of revision of rolls was initiated in the beginning of 1985 and continued in the subsequent two years. During 1985-86, the rolls were revised summarily in states and Union Territories, excepting Assam and West Bengal. In Assam, revision was not undertaken as the rolls had been published in November, 1985 after intensive revision. In West Bengal, the administrative staff was engaged in elections to the local bodies.

During 1987, electoral rolls in the states of Nagaland, Meghalaya, Tripura, Kerala, Haryana where the term of the assemblies were due to be
completed in the last quarter of 1987 or the first quarter of 1988, were intensively revised. In other states and Union Territories excepting Punjab and Assam, the revision was summary only. Revision could not be taken in Punjab on account of poor law and order situation.

Non-resolution of the volatile issue of the nature of revision held up the exercise of revision altogether in the state of Assam.

In all, 364 complaints, 59 in 1986 and 305 in 1987, regarding irregularities in the revision process were received in the Commission. The largest number of these complaints 170 came from West Bengal, followed by 99 from Delhi.

In 1987, when the rolls were under revision, the Election Commission deputed teams of its officers to West Bengal and Haryana to make on the spot enquiry of complaints and to verify whether the revision was carried out in accordance with law and the instructions of the Election Commission. The team sent to West Bengal found the revision in accordance with the prescribed procedure and the Commissions instructions. Specific complaints were enquired into and wherever any infirmity was noticed, instructions were issued to the chief electoral officer and the electoral registration officers for rectification.

In Haryana the team detected bogus enrolment of names in one constituency. The Chief Electoral Officer of the state initiated disciplinary action against the erring officials and ordered sample checks of the draft rolls of all other constituencies.

In the state of Nagaland complaints about enrolment of some constituencies being above the normal standard were looked into. The electoral rolls of four constituencies were re-revised for rectifying irregularities. The enrolment of urchins was discouraged under the orders of the state government.

As general elections to the Legislative Assembly of Nagaland were due in November 1987, the rolls in the entire state were re-revised with reference to 1.1.1987, under Section 21(3) of the Representation of the people Act, 1950.
In 1988, the rolls of all states and Union Territories, excepting Kerala, Meghalaya, Tripura, Haryana and Delhi were intensively revised with reference to 1.1.1988. In the states of Kerala, Haryana, Tripura, Meghalaya and Delhi were the rolls had been revised intensively in the preceding year, were revised summarily. There was no revision of rolls in Assam on account of ongoing controversy about the cut off date of illegal immigrants.

A general election to Lok Sabha and the Legislative Assemblies of Andhra Pradesh, Arunachal Pradesh, Bihar, Gujarat, Goa, Himachal Pradesh, Madhya Pradesh, Karnataka, Rajasthan, Orissa, Manipur, Uttar Pradesh, Sikkim and Pondicherry were due in the first quarter of 1990. Revision of rolls had therefore, become necessary for registration of all those who would attain the age of twenty-one years on 1st January 1989 to enable them to participate in the ensuing elections. A program of summary revision of rolls in the states and Union Territories where rolls were revised intensively of summarily in the preceding year, with reference to 1.1.1989 was commenced in the beginning of the year.

A significant development was that the voting age of a person was reduced from 21 to 18 years in 1989. Pursuant to this Section 14(b) of the Representation of the people act, 1950 was changed to make room for the qualifying age for registration in the rolls from 1st January to 1st April 1989.

In pursuance of the constitutional and statutory changes, the electoral rolls all over the country, were prepared by registration of all persons who will be attaining eighteen years of age on 1st April 1989. The number of voters on rolls as finally published was 498,906,429.

As the Ninth Lok Sabha constituted in 1989 was due to complete its term in 1994, in keeping with the normal practice, the rolls in all states and Union Territories, excepting Assam, were summarily revised with reference to 1st January 1991 under a crash program of one and a half month. The rolls as published in final form sometime in February/ March, 1991 contained 514126380 electors.

After the resignation of prime Minister Chandra Shekhar on 5th March 1991 the President dissolved the ninth Lok Sabha on 13th March 1991 with
the direction that the new Lok Sabha be constituted on or before 5th June 1991. In view of the this direction on 12th April 1991, the Election Commission recommended to the President to issue Notification calling upon the Parliamentary Constituencies in all States and Union Territories to elect members to the House of the people on 19th April 1991 with the date of poll on 20th, 23rd, 26th and 31st May 1991. The election to the Lok Sabha were held on the basis of rolls summarily revised with reference to 1st January 1991 as there was not enough time for intensive revision of rolls in the country in view of the President's direction for constituting new Lok Sabha on or before 5th June 1991.

The electoral rolls of all parliamentary constituencies were summarily revised with reference to 1st January 1996 for election to the eleventh Lok Sabha. The rolls had been intensively revised in 1995. The number of electors on the revised rolls was 59257288.

The Election Commission not having staff of its own. Discharges its supervisory responsibility for the preparation, revision and maintenance of electoral rolls in the country, through the staff of the state governments. It issues them suitable comprehensive and precise instruction from time to time for accurate, complete and defect-free rolls in the country. Electoral rolls are intensively prepared/ revised before a general election to the Lok Sabha or a state Legislative assembly as statutorily prescribed and summarily every year for meeting the eventuality of an election at short notice.

Notwithstanding the Election Commission's exhaustive instructions to the staff, complaints for omission and inclusion of bogus names received and attended to. Omissions were incidentally more in major cities than in rural areas.

Taken as a whole, performance seems to be satisfactory for over 50 per cent of the population, which is the normal adult population, is enrolled in the intensive revision of rolls. The percentage of registration even in advanced democracies of the West is not more than 90 per cent of the eligible adults of the country. In United State the percentage of registration is little below 70 per cent of the adult population. Preparation and revision of rolls can be further
improved in political parties discharge their responsibilities square and ordinary citizen becomes vigilant enough to ensure his registration in the rolls.

Further, tightening of the administrative staff engaged in the task of preparation/revision of rolls needs to be considered. And for this the committee on Electoral Reforms has, suggested that Section 32 of Representation of the People Act should be amended to provide for stringent punishment of six months for breach of official duty in connection with the preparation of electoral rolls as against the existing provision of fine which may extend to Rs. 500. It has further suggested that the Election Commission should be given the power not only to recommend disciplinary action for breach of official duty but also be empowered to record adverse entries against officers found guilty of lapses in duty. There is also the suggestion that every post office an appropriate and effective Central Government agency at the lower level should be made the focal point for the preparation maintenance and updating of electoral rolls.

In order to inspire an ordinary citizen to appreciate the value of his franchise, the cumbersome procedure through which one has to pass for registration in the rolls should be simplified. The necessity of filling an application for registration in the electoral rolls with the payment of a fee of ten paisa or by affixing a stamp of that amount on the application should be dispensed with. Similarly, a person seeking registration should not be required to obtain the counter signature of another elector, already registered on the rolls on his application. In addition to this voluntary consultative committees of political parties at the constituency level would also be helpful in the accurate preparation of the rolls. Further it should be made mandatory for the Registrar of Births and Deaths to furnish information in regard to deaths registered by him at list twice in a year to the electoral registration officer to enable him to delete the entries of such persons in the rolls. Suitable amendments may also be made in Rule 14 of Registration of Electors' Rules, 1960 prohibiting receipt of applications in bulk by the Electoral Registration Officer. This is necessary as the electoral registration officer has neither the time nor resources for
verification of applications received in large scale during the last days of filing claims and objections.

2.8 Multiplicity of Political Parties

Political parties, the requisite components of free and open democratic system, form the foundation of the people's will to govern themselves. They are effective, if they want to be, instruments through which the will of the people is made vocal, and making of laws in harmony with their needs is made possible. With 50 years of democracy in India, the parties have become so potent and loud in proclaiming to uphold public interest in deciding the kind and degree of welfare measures and administering the affairs of the government to bring about public good that they are now regarded as inseparable and integral form of a democratic government. Political parties provide a vital link between the people and the public bodies/institutions, and their contribution in the formulation and articulation of political will and ability of a nation entitles them to constitutional or legal status. It is sadly true that statutory recognition of political parties was considerably delayed in many democratically governed nation of the world and still continues so even now in some of them. In most countries, including the older democracies, such as the United Kingdom and United States of America political parties emerged unrecognized either by the laws or the customs and assumed useful role in the political life of the nation. They were allowed to develop in countries where constitutions provided for elections. Such elections could not be held without the presence of political parties as a means for presenting alternative policies and programmes to public for approval. Some of countries, such as China, Rumania, Bulgaria, erstwhile Czechoslovakia, Poland and Hungary, France, Germany etc. confer a befitting constitutional status on political parties.

For instance Article 21 of the Basic Law of the Federal Republic of Germany provides that "the political parties shall participate in the forming of the political will of the people. Similarly, Article 4 of the Constitution of France entitles the parties and political groups to participate in elections.
Parties are statutorily recognized in Norway, Ireland, Australia, Sri Lanka and the United States.

In the United states parties are subjected to such a high degree of legislative control, that they are integrated in the political process.

Furthermore, political parties enjoy legal status in countries like Sweden, Puerto Rico etc. where they get state subvention for political education of the masses and contentions elections in cash. There is given in the form of free postal communication, free hoarding sites and free time on radio and television. Japan, United Kingdom and Israel provide such assistance to political parties. In the United Kingdom even the leader of the opposition party is accorded a status in the House of Commons.

Further political parties enjoy legal status in Netherlands, Italy, Greece and France etc. where the system of proportional representation for election to the legislature is used. In these countries the lists of candidates are prepared by political parties and the ballot papers are printed according to party lists. The electors vote for the party lists and not for candidates.

Article 19 of the Constitution of India accords right to citizens to form associations. Except this there is no mention in the statute of formation and functioning of political parties in the country. The term political party, initially found no expression either in the Constitution or in the Representation of the people Act, 1950 or 1951, until 1974 when it was mentioned by way of an amendment to section 77. The framers of the Constitution had no idea that parties will eventually decide the destiny of the nation. Contesting an election is treated as an individual action of a lawful nature with no reference to political parties.

Because of India's low level of literacy continuing even after the attainment of independence, it was too much to expect the voter to mark his preference for a candidate against his name on the ballot paper. A new method which did not required reading of the candidate's name on the ballot paper and yet ensured its secrecy had to be evolved. This was achieved by printing pictorial representation of some commonly known objects, each linked to a specific candidate, on the ballot paper for elections to the Lower House of
the Union and State legislatures. The symbol system was a device to meet the exigencies arising from illiterate voters.

The candidates choose symbols from the list of symbols notified by the Election Commission and indicate the same in nomination papers. The selection of symbols by candidate fielded by political parties might have represented candidates of one political party in one constituency and that of other party in another constituency in the same region. Use of the symbol system requires the allotment of the same symbol to the candidate sponsored by a particular political party.

The Election Commission, under Article 324 of the Constitution, together with the provisions of Representation of the people Act 1951 and conduct of Election Rules, 1961 decided to reserve symbols neutral to religious sentimental or racial connotation, for exclusive use of major political parties so that candidates fielded by them for election to Lok Sabha and Legislative Assemblies could obtain the same symbol throughout a state or the whole country. Reservation of symbols exclusively for candidates sponsored by a political party amounted to indirect recognition, albeit indirectly, of the party system.

Notwithstanding the limited purpose for which the recourse was taken to the use of symbol system in the country, the party symbol with passage of time acquired a great value among the electorates as something easy to store in memory and talk about in daily life. When programmes are couched in cliches and are indistinguishable, symbols do make a sense. The Supreme Court; accepted it when in the case of Kannigaya Lal vs. R.K. Trivedi and others it held, "the use of a symbol be it donkey or elephant, does give rise to unifying fact among the people with common political and economic program and ultimately helps in the establishment of Westminster type of democracy". (AIR, 1986 SC, III).

The use of symbol is not the peculiar feature of the Indian elections. In Sri Lanka, Pakistan, United Arab Republic, Ghana, Malaysia and Nigeria also candidates in the poll are identified by symbols on the ballot papers.
A reference was made to political parties for the first time in Rule 11(c) and 22(1) (c) of the Registration of Electors Rules 1960 in the context of free supply of two copies of the electoral rolls to such of the political parties, for whom a symbol is exclusively reserved, at the time draft and final publication of the rolls respectively. In 1968, the Election Commission promulgated the Election Symbols (Reservation and allotment ) order, 1968, which inter alia made provisions for registration and recognition of political parties and resolution of disputes among them as a result of splits and mergers. This order has been recognized by the Supreme Court as a self-contained code and can be treated as one of the important landmarks in the evolution and regulation of political parties in the country. It was accepted by the apex Court in Sadique Ali vs. Election Commission of India.

In 1974 the term political party found place in the Representation of the people Act, 1951. By way of an amendment to Section 77 for exclusion of expenditure incurred by political parties from the statement of accounts to be lodged by contesting candidates.

"Political party" got acceptance in the Constitution by the passage of the Constitution (Fifty-second Amendment) Act, 1985 popularly known as Anti-Defection Act. Through this Act, a new Tenth Schedule was added to the Constitution which ended defection in political parties and prescribed procedure of dealing therewith.

In 1988, an additional Section 29A was inserted in the Representation of the people Act, 1951 making provision for registration of political parties with the Election Commission, hitherto registered under the symbol order. Under this Section, any association calling itself a political party and intending to avail itself of the benefit under the provision of this Act, shall register with the Election Commission.

In 1988, Representation of the people Act 1951 was amended to include an additional Section 29A under which political parties intending to enjoy the benefit under the Act, are to register themselves with the Election Commission within the period prescribed in the statute.
A political party seeking registration with the Election Commission is required to furnish substantially the same particulars about itself to the Commission as it does under the symbols order, excepting that it is not mandatory for it to add particulars regarding its policies and programmes. Symbols order 1968 was however, amended in the same year to enjoin upon the party seeking registration, to furnish additional particulars like policies electoral support that it commands etc.

In all 299 application were filed by political parties for registration with the Election Commission, including the application of seven national parties, 31 state parties and 12 registered parties.

Because there was not enough time between filling of applications and announcement of elections, only 11 applications could be disposed of by the Election Commission for the purpose of parliamentary elections, 1989.

In the USA there is a democratic system of nominating candidates for political parties in their primaries. In India such official recognition may in effect amount to handing over the control of candidature to a small coterie of politicians who happen to be in a position to give or refuse party endorsement. The contrary view is that an attitude of legal detachment to political parties is not possible in territories with a semi-illiterate electorate depending on the use of symbols for the identification of candidates. The symbol system was evolved in India to facilitate the identification of candidates by an illiterate electorate and to help the election campaigns of the newly emergent parties. The allotment of symbols individual candidates without reference to their parties would have been a futile exercise on account of multiplicity of candidates in large number of constituencies. This would have created confusion for the voters in the identification of candidates. The recognition of the role of political parties is a necessity in the promotion of democratic elections in the educationally backward and politically immature countries.

The device of election symbols is alleged to be operating unfairly against unrecognized political parties, the independents and newly-formed parties. The candidates of recognized parties, having been allotted symbols, are positively in an advantageous position for identification by an illiterate
electorate. The mere fact that a party is not entitled to a symbol is an advertisement of its weakness; candidates contesting election are also allotted symbols; but for an unqualified party to have to put up its nominees as independent candidates seems to be an end of its ambition. In many cases, the symbols have become more prominent than persons and party labels. For instance in the case of an unpopular candidate sponsored by a recognized political party with reserved symbol, the appeal to vote is often made for the symbol. Symbols thus tend to obscure personalities, and discourage voters to weigh relative merit of the candidates. To some extent the system thus detracts from the value of democratic election. But no party with a standing symbol at its disposal could be complacent in this respect. If the political climate changes in a constituency, symbols cannot possibly resist the change the verdict at polls.

The Election Commission, doubtlessly, issues a list of symbols devoid of any religious or sentimental connotation, but in electioneering, political parties and candidates reverse the process and sentimentalize them and load them with positive or negative value associations. The purpose of value loading goes on in cultural religious as well as in current and secular terms. Candidates emphasize the positive connotation of their own symbols and arouse negative feelings in respect of symbols of their rivals.

The existing criterion for recognition of a political party as a state party, or a national party as determined by the Election Commission, is considered arbitrary as a consequence of which the number of political parties in the country has grown and continue to grow either on ground of ideologies or special issues, or region. The multiplicity of political parties, it is stated bad for a healthy and stable parliamentary democracy. Proliferation of political parties hinders the functioning of a stable government at the Center or in the state and hampers the voters in choosing the party candidates during elections. No sanctity can be attached to the stipulated minimum of three or four per cent of the valid votes. This percentage may be raised to a higher figure. The raising of the percentage required for recognition of a party may help in reducing the number of recognized parties on India and also help in establishing healthy
parliamentary traditions and stable governments. A more stringent criterion for recognition by depriving the smaller parties of the privilege of reserved symbols may compel them to merged with bigger parties of near similar opinion.

This question of revision of the criterion of recognition of political parties was considered by the Conference of chief Electoral Officers of all states and Union Territories held in Shillong in May, 1982. The Chief Electoral Officers were of the view that the norm of recognition of a political party as a state party should be raised from 4 per cent of the valid votes polled in Lok Sabha/Assembly elections to 10 per cent of the valid votes polled by the candidates set up by a party; and that the status of a state party may be raised to the status of a national party after it receives recognition in 10 states, or more.

Consequently, in 1983 the Election Commission formulated a proposal that the percentage of valid votes polled by a political party seeking recognition as a state party may be raised from 4 per cent of the valid votes polled to 5 per cent or any other percentage up to 8 per cent at a general election to Lok Sabha or a legislative assembly and that the norm of recognition of a party as a national party in four or more states or Union Territories should be raised to a larger number of states and Union Territories.

The election Commission sent the proposed revised formula for recognition of a political party as national or state to recognized national parties/ state parties / registered parties for their comments.

Two national parties, the Communist party of India and the Communist party of India (Marxist) responded only negatively to the suggestion. Of the nine state parties who responded to the suggestion, three parties, All Party Hill Leaders Conference, Manipur People's Party and Naga National Democratic Party endorsed the upward revision of the present criterion and others opposed it.

The Commission summoned on 3rd December 1983, a meeting of all political parties. The political parties, by and large felt that as political system in the country was at a development stage the norm already set for
recognition of a political party as a national or state party should not be revised upwardly. The matter was not pursued further.

Indian National Congress was the only major party in the country before Independence. Associations or groups at the provincial or local levels had policies and programmes similar to those of the Congress in tone and tenor, excepting that some of them stood for radical measures. At the first general elections a number of parties were on the spectrum at the national and state level. These parties were formed either by the disgruntled elements of the Congress party or were the outgrowth of social caste or communal pulls. The Election Commission Granted 14 of them recognition as national parties. Fifty-nine parties were treated as state parties. The number of parties has grown every year on account of splintering or regrouping or the existing formations or emergence of new ones without any rhyme and reason, so much so that eight national, 30 state parties and 171 registered parties participated in the Lok Sabha election of April /May 1996. This multiplicity of political formations without separate policies hinders the task of administration of elections and causes inconvenience to the elector in the identification of his choice in the poll. Profusion of parties leads to unstable coalitions as is already being noticed now. If there had been only two national parties such as the Congress and the Communist, or at the most three, the election scene in India would have been altogether different. For the growth of healthy democratic tradition, the emphasis has been on a few well known parties.

Parties divided within themselves have shown tendencies unhealthy for their growth and development. They are in no way able to contribute to the development of polity, nor to the democracy traditions. Their growth is cantankerous and spells disaster for democracy. Split and further split in almost all the national and state parties offer no gain either to the party or to the country. The electors understand this but not the party or the functionaries. Merger of parties have been rare and if it has occurred any time its life span has been short.

In the functioning of parties it is often found that functionaries do not abide by their own constitutions or rules or abide only what is convenient.
Periodical elections to various party organization are either not held or held fraudulently, throwing the rules to the winds. Enrolment of big membership is most common. Internal democracy in their day-to-day working is absent. Decisions are taken by senior party leaders without listening to the views of party's lower formations. Even senior officers of a party a unit such as president of a state unit are appointed on ad hoc basis by senior party leaders. Further, when a party holds the reign of office at the Centre or in a state, in most cases, a senior party functionary combines the party and the Government office. After the passage of the Anti-Defection Act 1985, some of the party leaders who were not fully in agreement with the views of their seniors were expelled from the party, without giving reasonable opportunity to them to explain their conduct. Some public men are of the view that parties which fail to comply with their party constitutions should be deprived of their reserved symbols by the Elections Commission in the elections.

The Election Commission had issued directives to national and state parties to hold organizational elections by a specified date to ensure internal democracy in respective parties. Failing to comply with it, a national party decided to defer organizational elections to a subsequent data. On this the Election Commission, issued a show-cause notice to the concerned party virtually threatening to derecognise it if it failed to hold election in the organization by the already desired date. Incidentally, the Symbols Order 1986 as amended in February 1994, empowers the Commission to suspend or withdraw recognition of a party for failure to comply with its lawful directions. In such circumstances development of a word culture seems to be the inevitable remedy.

Some of these unhealthy trends and distortions in the party system are attributed to the absence of law regulating their working procedure. Parties fall under the ambit of regulatory procedure, for the limited purpose of their registration, recognition and allotment of symbols under the Representation of the people Act 1951 and the Election symbols (Reservation and Allotment) order 1968. In their normal functions they decide and determine their own procedure of functioning. It is possible a statutory prescription of broad
parameters governing their functioning will have better and wider acceptance and will thus set a healthy trend. The law may lay down the guidelines on their internal organization, the method of their registration maintenance of their accounts and auditing and that of filing of returns before an appropriate registering authority. For proper functioning of parliamentary democracy it is necessary to lay down the procedure for a regulated party system.

Would the parties already known for aversion to statute be winning to accept statutory regulation? It is contended that statutory regulation of the functioning of parties would amount to an infringement of their constitutional right to form association and run them according to their desire and convenience. The party is a voluntary organization and as such is entitled to be free from interference in its internal working. In a parliamentary democracy, interference in the internal affairs of parties would amount to ushering in one party rule. The functioning of a party, has to be regulated to see that it observe ordinary laws of procedure. The arbitrary onslaught of political bosses should be left to the vigilant public opinion. The electorate is and should be the final arbitor of parties conduct.

Some public men are of the opinion that parties may accept legal guidelines in their functioning, if given subsidy from the exchequer for carrying on their normal political activities and contesting elections. State aid to political parties at this juncture of financial crunch may not be possible. The committee on Electoral Reforms (May 1990) consisting of members of major political parties, who considered this question recommended aid to political parties in kind and not cash only in the form of additional copies of electoral rolls, prescribed quantity of petroils to the candidates for vehicles and printed identity slips etc. during election. And this aid as and when given should be limited to the candidates of recognized parties only. With this limited help parties may not agree for regulation of their functioning by law.

Parties may also not agree to file their returns of income and expenditure before a prescribed authority on the ground of voluntary nature of their organizations. Parties should file their returns before the electorate about how they have raised funds and spent. Maintenance of accounts by parties
may not be useful as the donors do not maintain any account of donations. Even the publicized accounts of the parties would not thus contain details of such donation. In a parliamentary system of government, submission of accounts by the parties in opposition to the ruling party, may lead to the exposure of donors to disadvantage. The party should thus submit the account to none except the electors, it is argued.

The Committee on Election Reforms could not come to any decision of the question of submission of accounts by parties. Some of the members favoured regulation of the functioning of parties and submission of accounts by them to a prescribed authority, others opposed such proposal because of practical difficulties in its implementation.

If ills of the party system cannot altogether disappear, these will be reduced with the emergence go a two-party system on British and American model. Harold Laski, once observed, "a political system is the more satisfactory, the more it is able to express through the anti-thesis of two great parties". A two-party system simplifies the choice of elector and enable him to choose between two alternatives directly.

This country has witnessed multi-party democracy, with one party dominance, from the beginning of the independence. The one party rule is now over. In the fourth general elections, the Indian National Congress lost elections in a number of states and some opposition parties combined to form governments.

What are the adverse factors to the growth of two-party system in the country? India is a vast country with diversities in religion, language and even culture. The population of the country is divided into over two thousand castes which are further subdivided into sub-castes. The feelings of cast and community are so entrenched in the minds of the people that they make a narrow grooves indifferent to national interests. Indians have wide variety of opinions with firm conviction. There is therefore, hardly any scope for two-party system as in Britain or United States.

For the reflection of wide variety of opinion multi-party system seems to be only answer. In Britain two-party system is working for it is a small and
compact island free from narrow communal and religious diversities. Further the main stream in the country is enlightened, broad and vigilant which can look for the national interests. Parties like Liberal party and Communist Party exist in the country by the political power is wielded by either the Conservative or the Labor Party. It is further contended that unitary form of government such as in Britain is more suitable for the development of two-party system. In countries such as Canada Australia and India where nature of governments is federal conditions are not congenial for the origin and growth of this type of party system.

The emergence of regional prates such as Dravida Munnetra Kazhagam in Tamil Nadu. Telegu Desam in Andhra Pradesh, Assam Gana Parishad in Assam, etc is another impediment to the growth of two-party system. Regional parties are also treated in some quarters as anti-national. One may not agree with this view for these parties are the outcome of regional imbalances in socio-economic and cultural fields or splinter groups of national parties as a consequence of failure of Central government policies. These formations help in the expression of the will and aspirations of the region who feel neglected in their socio-economic development. If past experience is any guide, one may hold an opinion that these parties help in the consolidation of political parties.

In 1983 the initiative for a national opposition, a combination of national and regional parties, was taken by N.T. Rama Rao, head of a regional party. It was he who was the Chairman of the National Front against the Indian National Congress at the Centre before the Lok Sabha election 1989. The United Front that came to power at the Centre in 1996 is a combination of 13 national and state parties possible in near future. However, the desire of bipolar system has not been feasible in the country in the last 50 years of democratic governance. The result of the Lok Sabha election held in 1996 has given neither a two-party system nor a system with more than two closely-related parties. It has ushered in an era of coalition parties in the country.
2.9 The Candidate

The responsibilities of the representatives are many and difficult. The problems which they are required to tackle are various and complex. They should be chosen with due regard to their experience of the public affairs. They should be renowned for their honesty, integrity, broad outlook, and selfless patriotism. Every state prescribes some qualifications for representatives. The aim is that those seeking election may offer proof of a genuine interest in public affairs. These qualifications are not fixed. They differ from country to country. Practically all states require that a representative must have attained the age of the majority. A higher age is insisted upon generally. The reason is that for law-making experience and mature judgement are of the vital importance. Twenty-one or twenty-five years is generally the age-limit fixed for representatives of the Legislative Assemblies. For second Chambers a higher age is desirable. This is to check the radicalism of the popular chamber by mature judgement. In France, a senator was required to be of the forty years of age. By the Government of the India Act 1935, thirty years was the minimum age for the Upper House. It was fixed at twenty-five for the Lower House. The Constitution of the India prescribes the same age limits for the Council of the States and the House of the people respectively.

A. QUALIFICATIONS

Parliament

The general rule is that a person who is qualified to be an elector is qualified to be a candidate for election to parliament. Art.84 of the Constitution engrafts an innovation. It empowers the Parliament to lay down additional qualifications for being a member of the either House of the Parliament. In the words of Dr. Ambedkar, the object behind this innovation is "to secure for Parliament men of better caliber than an ordinary voter". Art.84 lays down the qualification required for a person to be chosen (elected or nominated) fill a seat in parliament:-
(i) Citizenship: He must be a citizen of the India.

(ii) Oath or affirmation: He must make or subscribe an oath or affirmation. It must be made before some person authorized in that behalf by the Election Commission. The form of the oath or affirmation is set out in the Third Schedule to the Constitution.

(iii) Age: For membership of the Council of the States, the minimum of the prescribed age is thirty. For House of the people it is twenty five.

(iv) Other qualifications: Art. 84 empowers the parliament to prescribe additional qualification for membership of the parliament. Accordingly, the parliament has provided additional qualification in s. 364 of the R.P. Act, 1951 for membership of the Council of the State and the House of the people. Generally it must be an elector and in any parliamentary constituency.

If the seat is reserved for Scheduled Castes or Scheduled Tribes, he must be a member of the such castes or tribe as the case may be. It is not necessary that he must belong to the constituency, the state or the Union territory concerned. But he must possess the qualifications required of an elector in any parliamentary constituency.

In the case of a seat reserved for the scheduled tribes in the Union Territory of the Lakshadweep, he must be a member of any of the those scheduled tribes and is an elector for the parliamentary constituency of the Union Territory.

Even though a person possesses the requisite qualifications as aforesaid, he would not be entitled to be chosen as or to continue to be a member, if he incurs any of the disqualification specified in Art. 102(1).

State Legislatures

Art, 173 of the Constitution prescribes the qualifications for membership of a state Legislature:-
Citizenship: He must be a citizen of the India.

Oath or affirmation the person seeking such membership must make and subscribe an oath or affirmation. It must be made before some person authorized in that behalf by the Election Commission. The form is given in the third Schedule to the Constitution.

Age: For membership of the legislative Assembly of a state, the prescribed minimum is 25 years. It is 30 years in the case of a Legislative council. If the candidate did not attain the prescribed age on the date or scrutiny of the nomination paper his election has to be set aside even though he attain the age before the date of election: Amritlal v. Himathobhai, A.I.R 1968 S.C.1455.

Other qualifications: as in the case of membership to the parliament, additional qualification can be prescribed by parliament if the seat is reserved for Scheduled Castes or Tribes the candidate must be a member of that caste or tribe as the case may be. He must also be qualified to be an elector for may assembly constituency in the state.

A person shall not be qualified to be chosen to fill a seat in the Legislative Council of a state to be filled by election unless he is an elector for any Assembly constituency in that state. In the case of nominated seats, the Governor can nominate any person who is ordinarily resident in the State provided that he is not otherwise disqualified.

A person seeking membership of the Legislative Assembly of a Union territory must be a citizen of India. He must make or subscribe an oath or affirmation according to the form set out for the purpose in the First Schedule to the Government of Union Territories Act, 1963. The prescribed age is 25 years. He must also possess any other qualification as may be prescribed. The term State includes a Union territory as well. Accordingly, the qualifications required for membership of a Legislative Assembly will apply in the case of the Legislative Assembly, of the Union territory as well. Thus if the
seat is reserved for scheduled Castes or Tribes, the candidate must also belong to that caste or tribe. He must be qualified to be an elector for any Assembly constituency of that territory.

**B. DISQUALIFICATION**

Certain persons are disqualified from membership of parliament or of any State Legislature by reason of incapacity whether inherent: as in the case of an infant or lunatic, or acquired; by profession or office or incurred: by conviction for offence bankruptcy or corruption. Art. 102 of the Constitution lays down the grounds of disqualification for membership of either House of parliament. Art 191 enumerates the grounds of disqualification for membership of the state Legislatures. The grounds are identical. The additional grounds of disqualification laid down in ss. 7 to 10 A of the R.P. Act, 1951 are in consonance with Arts, 102 and 191.

(i) *Aliens*

An alien is disqualified by law to be chosen as member of the legislature. Arts 191(1) (d) and 102 (1)(d) provide for this. He is disqualified if he is not a citizen of India or has voluntarily acquired the citizenship of a foreign state or acknowledges allegiance to a foreign state.

(ii) *Infancy*

Under Arts 84 and 173 of the Constitution, one must be not less than 25 years of age for membership in the House of the people or the Legislative Assembly of a state. He must be not less 30 years of age for membership in the council of states or the Legislative Council of states.

(iii) *Insolvency*

Arts, 191 (1) and 102 (1) disqualify an 'undischarged insolvent' from being a member of the legislature. An 'undischarged insolvent' will be a person who has been adjudged insolvent under the presidency Towns insolvency Act, 1909 or the provincial insolvency Act, 1920 and there has
been no subsequent order of discharge. If the adjudication is annulled, the disqualification shall cease. A conditional order of discharge of insolvent will also remove the disqualification.

(iv) Lunacy

Lunacy or idiocy is a disqualification for membership as contained in Arts. 102 and 191 of the Constitution. A person is disqualified if he is of unsound mind and stands so declared by a competent court. A person may be declared a lunatic (defined to mean an idiot or person of unsound mind) under the Indian Lunacy Act, 1912.

(v) Conviction

By virtue of the power conferred on it by Arts. 102 and 191 of the Constitution, the parliament has enacted the following provision, the parliament has enacted the following provisions in s. 8 of the R.P. Act 1951:-

Section 8 (2): a person convicted by a court in India for any offence and sentenced to imprisonment for not less than two years shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of five years since his release”.

By the explanation and proviso this disqualification is equally applicable to a person convicted by a court in India for the contravention of any law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs and sentenced to imprisonment for not less than six months. It covers any enactment or any order, rule or notification having the force of law providing for the regulation of production or manufacture control of price regulation or acquisition. Possession storage, transport, distribution disposal and use or consumption of any essential commodity as defined in the Essential Commodities Act 1995 ‘food’ as defined in the food Adulteration Act 1954 and drug under the drugs and Cosmetics Act, 1940. In all the three cases, even though the provision would appear to be general principally, it would cover cases of conviction under these three Acts. The Election Commission can removes the disqualification or reduce its period.
For one who is already a member, the above disqualification will operate only on expiry of 3 months from the date of conviction. If an appeal of revision is filed within such period the disqualification will take effect only on its disposal.

(vi) Corrupt Practices

The statutory penalties inflicted for corrupt practices at elections may have the effect of disqualification. A person may be disqualified for election by reason of corrupt practices committed at the previous election. So also he may be disqualified by reason of corrupt practices being committed at the instant election. The latter can arise only ex post facto. By s.8-A of the R.P. Act, 1951 a person found to be guilty of corrupt practice by an order from the High Court under s 99 may be disqualified for a period subject to a maximum of six years from the date on which that order takes effect.

(vii) Holders of office of profit

Prior to 1957 the English law (dating back from 1700) on disqualification for membership of the House of Commons through holding 'office of profit' was exceedingly complicated. It has been simplified by the passing of the House of Commons (Disqualification) Act, 1957. The Act operates to disqualify the following persons to be members of the House of Commons:
1) persons holding certain judicial offices;
2) civil servants;
3) members of the Armed forces of the Crown and Public police Forces:
4) Members of Legislative of a country outside the Commonwealth;
5) Members of any Commission or tribunal; and
6) Holders of other offices listed in the Act.

The principle behind this disqualification is that there should be no conflict between the duties of a member of the legislature as such and his private interests. "the indebtedness of a member to the Government in incompatible with his independence as a representative of the people". The main considerations underlying the principle of disqualifying holders of
duration underlying the principle of disqualifying holders of 'offices or places of profit' for parliament were explained thus:

1) incompatibility of certain non ministerial offices (which must be taken to cover questions of member's relations with and duties to his constituents);
2) the need to limit the control or influence of the executive government over the House by means of an undue proportion of office-holders being members of the House; and
3) The essential condition of a certain number of ministers being members of the House for the purpose of ensuring control of the executive by parliament.32

In India Arts 102 and 191 of the Constitution disqualify a person generally for election to parliament or to the Legislature of a state if he holds any office of profit under the Government of India or under the Government of any state. This disqualification operates in the case of election as well as 'nomination' to the House.

(viii) Conviction for election offences

Sections 171 A to 171 F of the Indian penal Code deal with election offences. These offences are corrupt practices mentioned in s. 8A of the R.P.Act, 1951 and are grounds of disqualification. Section 123 of the Act enumerates these offences of the penal Code. A person convicted an offence punishable of bribery or undue influence, for promoting enemity between classes in connection with elections, for removal of ballot papers form polling stations or for malpractice committed while on election duty shall be disqualified for a period of six years form the date of such conviction.

In the case of a person who, on the date of the conviction, is member of parliament or of the Legislature of a State this disqualification shall take effect only on the expiry of the limitation period for appeal or revision or if it is filed during that period on the revision being disposed of by the Court. Thus, the

32 May's Parliamentary Practice, pp.200-201.
disqualification will take effect after three months if the appeal or application in revision is not filed within three months of the date of conviction. The mere filling of an appeal or application in revision by the convicted person (other than a sitting member) will have no effect on the disqualification or on the running of the period of six years from the date of conviction.

(ix) Dismissal for corruption or disloyalty

A person who, having held an office under the Government of India or under the Government of any state, has been dismissed for corruption or disloyalty to the state shall be disqualified for a period of five years from the date of such dismissal. A certificate issued by the Election Commission to the effect that he has been dismissed for corruption or for disloyalty to the state shall be conclusive proof of that fact. Before issuing such certificate, the Election Commission shall give such person a reasonable opportunity of being heard. Where there is no such certificate, there will be no bar to show by other evidence that he was or was not so disqualified.

(x) Contract with Government (s. 9A R.P. Act, 1951)

The primary purpose of government contracts is the procurement of supplies and services. Such contracts may not confine themselves to the commercial world alone but may make serious inroads into the political arena as well at the time of elections. If one has a contract with the government at the time of elections he is not entitled to present himself as a candidate. If elected, he is disqualified from sitting as a member in the legislature. An existing contract with the respective government is deemed to be a disqualification for seeding election for the membership of that body.

(xi) Holding of office under Government company

Section 10 of the R.P.Act 1951 disqualifies a person from election or continuance as a member if and so long as, he is a managing agent, manager or secretary of any company or corporation (other than a Co-operative Society), in the capital of which the government has not less than twenty-five
per cent share. Prior to the amendment of 1966, a condition was laid down in the Act that a person shall not be disqualified by reason of being a director (not managing agent, etc) unless the office of such director was declared by parliament by law to disqualify its holder. There is no such condition in the provision after the amendment effected in 1966. A director is in the same position now as a managing agent, manager or secretary.

(xii) Failure to lodge account of election expenses

The requirement of maintaining and filing an account of election expenses are contained in ss.77 and 78 of the R.P. Act 1951 read with rules 86 to 88 of the Conduct of Elections Rules, 1961. The procedure relating to disqualification of a candidate is given in rule 89. Failure to lodge account of election expenses is a ground of disqualification as contained in s.10-A of the R.P. Act 1951. Before the amendment failure to lodge return of election expenses in the manner required by or under the Act necessarily entailed disqualification. The Election Commission could remove the disqualification upon satisfactory explanation for the default. Now, s.10-A empowers the Election Commission to declare any person disqualified for election or continuance as member, if it is satisfied that:
a) he has failed to lodge accounts of election expenses within the time and in the manner required by or under the Act, and
b) he has no good reason or justification for the failure.

He shall then be disqualified for a period of three years from the date of order of the Election Commission.

Arts 190(3) and 192(1) apply to any disqualification to which a member becomes subject after his election to the state Legislature. The corresponding provisions relating to members of parliament are contained in Arts. 101(3) and 103 (1). Art. 192 (1) merely refers to a question arising whether a member has become subject to disqualification. How the question arises, by whom it can be raised in what circumstance it is raised are all irrelevant. Any citizen is entitled to make a complaint to the governor alleging that any member has
incurred a disqualification under Art. 191 and that he should therefore vacate the seat. The Governor shall obtain the Election Commission opinion.

If any such question arises before the president, he must decide it in accordance with Art. 103. Although the decision has to be pronounced by the president it must be in accordance with the opinion of the election Commission. As soon as its opinion is received, the president must act according to it. Thus the jurisdiction to decided any such complaint is given to the president in consultation with the Election Commission. It is the Election commission who has to hold an inquiry into the matter. The parliament may consider the desirability of enacting appropriate legislation clothing the election commission with necessary powers in the matter of holding such an inquiry.

S. 11 of the R.P. Act 1951 provides that the Election Commission may for reasons to be recorded remove any disqualification for membership or reduce its period. It will not be open to any court to sit in judgement over the discretion of the Election Commission unless the act is shown to be mala fide or without jurisdiction or no reason is recorded in writing as required by S.11. The power under S. 11 does not include the disqualification under 8, 8A i.e., for corrupt practices.

**Defections**

The word ‘defector’ has been defined as "a member of a recognized party who deserts his party by resignation or by declaration and joins another identifiable party with a mala fide intention or purpose for causing damage to the solidarity or the party or for his personal gain". The political sky of India is becoming over headword by the cloud of irresponsible defection. They frequently bring about unexpected situations to the detriment of the interests and welfare of the country. They can even set at naught the working of the Constitution.

The Committee on Defection had put forward many suggestions before the Union Ministry of Law to check effectively this growing tendency of floor crossing. A major remedy recommended by them was to limit the Cabinet.
Another suggestion was that on defection from the party in the ticket of which he had been elected, a member would lose his seat automatically. The latter suggestion was objected as being unconstitutional. The reasoning was that the disqualification to be prescribed by an Act of parliament must be of a personal character such as unsoundness of mind acceptance of any office of profit or foreign citizenship.

K. C. Ray in his research paper, Law of Election in India with Special Reference to Defection' suggests that parliament may make law under clause (e) of Art 102 (1) and 191 (1) of the Constitution declaring that defection in the specific sense will be a disqualification. An objection may be raised on the ground that such a provision will be ultra vires as offending the fundamental right of freedom of expression and association. To this he plainly retorts that it will be an imposition of a reasonable restriction if a law is made disqualifying a mala fide defector in the parliament or in the Legislative Assembly or Council. By the new Constitution of Bangladesh the membership of a defector terminates automatically. If he wants to continue his membership, will have to get elected afresh. It is high time that we in India think of the feasibility of adding such a provision in our constitution as well.

2.10 The Presidency

The preparation of a list of members of electoral college and the conduct of elections to the office of the President and Vice President is vested in the Election Commission of India under the provisions of Article 324 of the Constitution. These elections are governed by the Presidential and Vice-Presidential Election Act, 1952 and the rules made thereunder.

The Constitution of India provides for a President of India to be elected by the members of an electoral college consisting of (a) the elected members of both the Houses of Parliament; and (b) the elected members of State Legislative Assemblies (including National Capital Territory of Delhi and Union Territory of Pondicherry). The nominated members of the Parliament, state assemblies and the members of the legislative council in the states are not allowed to vote in the election. The members of legislative assemblies in the
Union Territories were also not to be in the electoral college until June 1995. (Vide A.I.R. 1970, S.C. 2097 and 1971, 2 SCR 1971)

However, by the Constitution (Seventieth Amendment) Act 1992, that came into force on June 18, 1995, members of the legislative assemblies of the National Capital Territory of Delhi and the Union Territory of Pondicherry, were made members of the electoral college for election to the office of the President of India. Explanation below Article 54 of the Constitution was Amended that in this Article and in Art.55, “state” includes National Capital Territory of Delhi and Union Territory of Pondicherry.

Proposals, both for direct election by the people or indirect election by members of Parliament, was not acceptable to the members of the Constituent Assembly. Election by an expanded electoral college was treated equivalent to direct election based on adult franchise.

In the presidential election, the votes cast by the members of the electoral college do not have the same value. This is because Article 55 of the Constitution provides that, as far as practicable, there shall be uniformity in the scale of representation of the different states at the election of the president, as well as parity between the states involved and the Union. In order to obtain such uniformity in the number of votes which each elected member of Parliament and of the legislative assembly of each state, is entitled to cast at such election, shall be determined as under:

(a) Every elected member of the legislative assembly of a state shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the state by the total number of elected members of the legislative assembly;

(b) After taking the multiples of one thousand, if the remainder is more than five hundred, then the vote of each member referred to above shall be further increased by one. The figure, so obtained is the value of votes given by any member of the legislative assembly of that state. Thus the population of Uttar Pradesh at the last census, for instance, was 8,83,41,144 and its legislative assembly has a total 425 elected members. The
value of the ballot given by each member of legislative assembly of the state would be fixed at 208.

The next step is to ascertain the total value of all the votes assigned to the elected members of legislative assemblies of all states. In order to secure parity between the states as a whole and the Union of India, this number is divided equally among the total members of Parliament to reach for the value of every member’s vote.

The value of votes of members of Parliament and members of each legislative assembly in the electoral college is ascertained by the Election Commission in accordance with the formula referred to above under Rule 40 of the Presidential and Vice-Presidential Elections Rules 1974. A statement giving the value of votes is supplied by it to the Returning Officer and to every member of the electoral college.

Each member of the electoral college has one vote, though its value varies. The value of votes is determined on the basis of the total strength of each legislative assembly and Parliament irrespective of any vacancy.

The election of the President is held in accordance with the system of proportional representation by means of single transferable vote and the voting is by secret ballot.

Who can be a candidate? Provision of Article 58 of the Constitution provides that no person shall be eligible for election as President unless he is:

(a) citizen of India;
(b) has completed the age of thirty-five years; and
(c) is qualified for election as member of the House of People.

A person is not eligible for election as President if he holds an office of profit under the Union government or a state government or a local authority. The holding of the office of President, Vice-President of the Union or the Governor of State or a minister either for the Union or for any state, will not disqualify the holder for election to the office of President and Vice-President.

Article 56 (I) of the Constitution stipulates, the President shall hold office for a term of five years from the date on which he enters upon his office. There is no constitutional or legal limit to the number of terms, consecutive or
otherwise, for which a person can be elected as President. The Constitution provides that "a person who holds or who has held office as President, shall subject to other provisions of this Constitution, be eligible for re-election to that office."

Sub-clause (3) of Clause 4 of the Presidential and Vice- Presidential Elections Act 1952, requires that in case of election to fill a vacancy cause by the expiration of term of office of the President or Vice-President, the notification fixing the programme for election be issued, as soon as conveniently may be, after the sixtieth day before the expiration of the term of office of the President, Vice- President. An election to fill such vacancy should be completed before the expiration of the term under Article 62 (1) of the Constitution.

The process of election commences with the appointment of a returning officer by the Election Commission (in consultation with the Government of India) with his office in New Delhi. By convention, Secretary/ Secretary General, Lok Sabha or Rajya Sabha, with the approval of the Speaker of Lok Sabha/Chairman of Rajya Sabha, as the case may be, is appointed, in rotation, as the returning officer to conduct such an election. A senior officer of the Lok Sabha Secretariat or Rajya Sabha Secretariat is appointed as assistant returning officer. Secretaries of legislative assemblies of all the states are appointed as assistant returning officers for the conduct of elections in their respective state capitals. This is necessary as members of the legislative assemblies caste their votes at the premise of legislative assemblies. The members of Parliament exercise their franchise at the Parliament House, New Delhi. A member of the electoral college, however, has the option to vote in New Delhi or in the state capital with the prior permission of the Election Commission. This has been the practice followed in the past eleven elections to the office of the President.

Notification calling for the election to the office of the President is issued by the Election Commission on any day earlier to the expiration of the term of office of the outgoing President. This is followed by a public notice of election by the returning officer detailing its various stages.
The Presidential and Vice-Presidential Election Act, 1952 as originally enacted, was simple. Under the provisions of the Act, any eligible citizen could file his nomination paper, for election to the office of the President if he was able to muster the support of two members of the electoral college as proposer and seconder. The candidate was not under obligation to deposit any amount of security with the returning officer. Consequently, even persons with remote chances of success in the election could file nomination paper for the office of the President. Seventeen candidates, for instance, had filed their nomination papers for the fourth Presidential Election in 1967. Nine of these candidates failed to secure any vote. Election to the office of the President could also be challenged on frivolous grounds. The first five elections to the office of the President were, however, held under these provisions of the Act.

These loopholes of the Presidential and Vice-Presidential Elections Act, 1952 in regard to the mode and manner of election were, however, plugged by its amendment in March 1974. The rules under the Act were also repealed in the same year.

For a valid nomination, a prospective candidate was required to: (a) file a nomination paper, on a prescribed form, subscribed to by at least ten electors as proposers and another ten electors as seconders; (2) a sum of Rs. 2,500 was to be deposited with the returning officer as security along with the nomination paper; and (3) each nomination paper was to be accompanied by a certified copy of the entry relating to the candidate in the electoral roll for the parliamentary constituency in which the candidate was registered as an elector. A nomination paper which failed to comply with any of these requirements was liable to be rejected by the returning officer.

The provisions of the Presidential and Vice-Presidential Elections Act 1952 were not stringent to deter the entry of frivolous candidates in the fray of election. As many as 16 candidates had filed their nomination papers in the Tenth Presidential Election, 1992. However, on scrutiny only nomination papers of four candidates were found valid. In February, 1992, the Election Commission of India had recommended to the government increase in the number of proposers and seconders and the security deposit for a candidate
to the office of the President, the highest in the land, so as to discourage non-serious candidates from participation in the election.

In pursuance of the Commission's recommendations, the Presidential and Vice-Presidential Election Act 1952 was amended through a Presidential Ordinance (under challenge before the Supreme Court at the time of writing this chapter) in June 1997, three days prior to the publication of notification for election to the office of the eleventh President. Under the amended Act, a Presidential candidate needs the endorsement of 50 proposers and as many seconders instead of ten each as hitherto. The candidate has to deposit Rs. 15,000 as security against Rs. 2,500 in the past. The deposit is forfeited if the candidate is not elected and the number of valid votes polled by him does not exceed one sixth of the number of votes necessary to secure return of a candidate at such election. In other cases deposit is returned to the candidate. Under the amended Act, only party-sponsored candidate can aspire for the office of the President. The goings would be tough for apolitical candidate.

The polling is held on the date and time as fixed by the Election Commission in the Parliament House and at the premises of various state capitals. The ballot papers are counted by the returning officer in the Parliament House, New Delhi.

An election petition, calling in question an election to the office of the President, may be presented to the Supreme Court by any candidate at such election or by minimum of ten of more electors joined together as petitioners. In this context, it is relevant to mention that in 1975 through thirty-ninth Constitutional Amendment Act, the apex Court authority to try an election petition was taken away for conferment on an authority to be named by an Act of Parliament. In 1976 a nine-member Council was sought to be created for the trial of an election petition through Presidential and Vice-Presidential Elections Amendment Ordinance issued by the President. The Ordinance was, however, not replaced by Parliament legislation and allowed to lapse. In May 1977, The Supreme Court authority for the trial of election petitions relating to Presidential and Vice-Presidential elections was restored through the Presidential and Vice-Presidential (Amendment) Act 1977.
The election to the office of President is held in accordance with the system of proportional representation by means of single transferable vote. This system of voting is to work through an 'alternative vote' in single member constituency. First of all, the quota sufficient to secure the return of a candidate at the election has to be determined. For this, the number of first preference votes secured by each candidate is ascertained and the candidate credited with that number. The number so credited to all the contesting candidates are added up. The total first preference votes obtained by all the candidates is divided by two and one is added to the quotient irrespective of remaining number. The resulting number is the quota sufficient to secure the return of a candidate at the election.

After fixing the above quota, the first preference of all the candidates are counted. If at the end of this counting, the total number of votes credited to any candidate is equal to or greater than the quota, that candidate is declared elected.

However, if no candidate obtains the quota of votes fixed for election in the first count, the prescribed method of transfer of votes follows a process of elimination of the candidate who secures the lowest number of first preference votes one by one and the ballot papers are transferred to the contesting candidates with reference to the next available preference marked on ballot papers. In the process, the candidate who has obtained the quota, is declared elected as the President. The process of election consumes a period of 33 days, if there is no holiday on the last date of filing nominations or scrutiny of nominations.

The poll for the first election to the office of the President was held on 2nd May 1952 in the Parliament House, New Delhi and the premises of the state legislative assemblies in the capital of the states. The secretary to the Lok Sabha, M.N. Kaul, and the secretaries of the various legislative assemblies, functioned as returning officers and assistant returning officers respectively.

The elected members of both the Houses of Parliament and legislative assemblies of the states together constituted the electoral college with a
strength of 4056 members. The value of the vote of the members of electoral college was calculated by the Election Commission according to the formula given under the provisions of Article 55 of the Constitution. The vote of a member of Parliament was valued at 494. However, the value of the vote of the members of legislative assemblies varied from state to state, depending upon the population of the state and the strength of the legislative assembly.

The value of the vote of a member of each legislative assembly was determined by dividing the population of the state by total number of elected members and by further dividing the quotient by one thousand. The use of this formula resulted in variation in the value of the votes of the members of the legislative assemblies of various states. In Coorg, for instance, the value of the vote of an MLA was determined seven whereas in Uttar Pradesh, it was 143. The value of votes was calculated on the basis of 1951 census.

The value of the vote of a member of Parliament was obtained by dividing the total values of votes by all MLA’s with the total strength of the two Houses of Parliament. The value of vote of a member of Parliament was thus placed at 494 votes.

In all, 16 nomination papers on behalf of fourteen candidates were filed. Of these, ten nominations of nine candidates were rejected for non-compliance with the provisions of the Presidential and Vice-Presidential Elections Act, 1952 and the rules thereunder. None of the candidates withdrew his candidature and all the five candidates contested.

As scheduled, polling was held on 2nd May 1952 at the Parliament House, New Delhi and in state capitals. Excepting 23 members of Parliament who were permitted to vote in states other than their own, all other members voted either in the Parliament House or at the state capital from which they were returned to Parliament.

After the completion of polling, all the sealed ballot boxes were brought by the assistant returning officers to the office of the returning officer at New Delhi for counting.

The returning officer supervised the counting of ballot papers in the Parliament House on 6th May 1952. Rajinder Prasad, who secured 507400
votes or 83.82 per cent votes of the quota votes in the first round of counting, was declared elected as the President on the same day. The second succeeding candidate K.T. Shah obtained 92827 votes. The other three candidates, Thatte Lakshman Ganesh, Hari Ram and Krishan Kumar Chatterjee bagged 2672, 1954 and 533 votes respectively.

The term of the office of the President elected in 1952 was to expire on 12th May 1957. Before the expiry of the tenure fresh election was scheduled for 6th May 1957. S.N. Mukherjee, Secretary of Rajya Sabha, was appointed by the Election Commission as returning officer. The two under-secretaries of the Rajya Sabha Secretarial assisted him as assistant returning officers in the legislative assemblies functioned as asst. returning officers in their respective states for the conduct of elections.

The strength of the electoral college was 3897 (720 members of Parliament and 3177 members of various legislative assemblies. The value of vote of each member of the legislative assembly and member of Parliament was determined in accordance with arithmetic formula provided by provisions of Article 55 of the Constitution. Each elected member of Parliament had 496 votes and the value of vote of each member of the legislative assembly ranged from 59 in Jammu and Kashmir to 147 in Uttar Pradesh. The value of votes was calculated on the basis of 1971 census. The quota for winning elections was determined as 231599.

In all, five persons filed nomination papers. Of these, nomination papers of two candidates were rejected by the returning officer for non-compliance with statutory requirements, leaving three candidates in the field, namely, Rajindra Prasad, Nagendra Narayan Das and Hari Ram.

The Election Commission issued special permits to twenty-five members of Parliament to vote at the premises of legislative assembly buildings other than their state capitals and Parliament House, New Delhi.

The polling was held as scheduled on 6th May in Parliament House, New Delhi and in the buildings of each legislative assembly in various state capitals. The polling was only 66 per cent. The Communist Party of India and the Praja Socialist Party members abstained from voting on the ground that
the ruling party had failed to ascertain the wishes of opposition members in the selection of its nominee. The electorate of six snow-bound parliamentary constituencies, where election could not be organized due to adverse climatic conditions, were also denied organized due to adverse climatic conditions, were also denied representation in the presidential poll. The counting was held on 10th May, 1957 and Rajindra Prasad, who secured 459698 (99%) more than the requisite quota, was declared elected by the returning officer. Nagindra Narayan Das and Hari Ram secured 2000 and 2672 votes respectively.

A constitutional doubt was raised whether the Presidential election could be held notwithstanding vacancies in the electoral college.

In order to meet the eventuality mentioned above, in 1961, the Constitutional (Eleventh Amendment) Act of 1961, inserted a new Clause (4) in Article 71 of the Constitution stating “the election of a person as President or Vice-President shall not be called into question on the ground of the existence of any vacancy, for whatever reason, among the members of the electoral college electing him.”

This amendment had made some people think that the Presidential Election could take place even if one or more legislative assemblies stood dissolved. It was feared that this provision could be misused by party in power at the Centre, not sure of the victory of its candidate in the presidential election, by dissolving one or more legislative assemblies, which are opposed to it, to create a majority in favour of its own candidate in the electoral college. The danger was highlighted by H.V. Kamath (Madhya Pradesh) who, while speaking in the House of the People suggested that election of the President should not take place, unless election for all seats in the House of the People, and the legislative assemblies are completed. The suggestion was, however, ignored by the House (Lok Sabha Debates 1957, Vol. I Pt.II, March 28, 1957, col. 1276)

The third election to the office of the President of the country was fixed on 7th May 1962.
The returning officer, secretary of the Lok Sabha, apart from the secretaries of various legislative assemblies was also assisted by the Deputy Secretary of the Lok Sabha as the assistant returning officer at New Delhi in the conduct of the poll.

There were 3803 members in the electoral college. The value of vote of each member of Parliament was 493. The value of vote of a member of legislative assembly differed from state to state. In Jammu and Kashmir an MLA vote was valued 59, the lowest, whereas in Uttar Pradesh, its values was 147, the highest.

There were three validly nominated aspirants in the race, viz. S. Radhakrishnan, Hari Ram and Yamuna Prasad Trishulia. Hari Ram was a candidate in the preceding presidential elections also.

Polling was held at New Delhi and at the various state capitals as scheduled. Thirty members of the Parliament were permitted to vote at a place other than their own state capital or at New Delhi. Of the 3803 members of the electoral college, 3094 members voted at the election.

The counting was held at the Parliament House in New Delhi. Ninety-eight ballot papers representing 18295 votes were declared invalid by the returning officer. Radhakrishnan securing 553067 votes (98.2%) was declared elected as the President, defeating his two rivals, Hari Ram who secured 6341 (1.13%) and Yamuna Prasad with 3537 votes (0.63%)

A survey of the nomination papers filed in the three Presidential elections shows that persons plunged into the race without sufficient electoral backing primarily to get undue publicity. This undermines the status of this high office. In order to prevent this light hearted participation in the Presidential contest, the Commission, in report on the third general elections, suggested that a candidate for this office, should be required to deposit with the returning officer a sum of rupee one thousand to be forfeited in the event of his securing less than one tenth of the votes polled at the election. Further, a nomination paper of a candidate, in addition to being subscribed by two electors as proposer and seconder, should also be endorsed by eight other electors. This was a reasonable suggestion for it required a prospective
candidate to secure the initial support of at least ten members of the electoral college. These suggestions, found favorable response from the government and in March 1974 Presidential and Vice-Presidential Elections Act 1952 and rules thereunder were amended to check frivolous candidature.

The fourth Presidential Elections was held on 6th May 1967. The electoral college comprised 4131 members. Of these, 748 were elected members of both the Houses of Parliament and 3383 were elected members of 17 states legislative assemblies. The vote of every member of Parliament was valued at 576. The value of the vote of an MLA varied from state to state. It was valued eight in Nagaland and 174 in Uttar Pradesh. The value of vote was calculated on the basis of 1961 census.

In this election, seventeen candidates, the largest ever, filed their nomination papers for election compared to three in the second and third Presidential Elections. The real contest was, however, between Zakir Hussain and Koka Subbarao, former Chief Justice of India, who had resigned to contest elections. He was a consensus candidate of the parties in opposition. In the first three Presidential Elections, there was hardly any opposition to the candidate set up by the ruling party at the Centre.

Polling was held on the scheduled date. All the 4131 members of the electoral college voted in the election.

The votes were counted in the Parliament House, New Delhi. Forty-one ballot papers representing value of 7089 votes, were declared invalid. Zakir Hussain secured 471244 votes in the counting for first preference votes and Koka Subbarao, the following candidate bagged 363971 votes. The votes secured by other candidates ranged from 125 to 1369. These candidates did not secure any first preference vote.

Zakir Hussain, who secured the largest number of votes 471244 (56.2%) was declared elected as the President of India on 9th May 1967.

The Election Commission in its report to the Government, reiterated its earlier recommendations made in the report for the third general elections for preventing frivolous candidature to the high office of the President.
Baburao Patel, Bhambukar Srinivas Gopal, U.P. Chugani and Krishan Kumar Chatterjee filed election petitions before the Supreme Court challenging the election of Zakir Hussain as the President of India. The election in the first two petitions, was challenged inter alia on the grounds: (i) that he did not subscribe to an oath under Article 84 (a) read with Article 58 (l)(e) of the Constitution; and (ii) that the result of election was materially affected by undue influence of the Prime Minister and other ministers who canvassed for Zakir Hussain.

The Supreme Court, dismissing the petition on November 11, 1967, held: (i) that the candidate was not required to take an oath before being eligible for such election; (ii) mere canvassing in favour of a candidate in an election did not amount to interference with free exercise of electoral right; and (iii) nomination paper was not improperly accepted.

Election petition number 3 and 4 were dismissed for non-compliance with the provisions of Rule 15 of the Supreme Court Rules.

A vacancy in the office of the President was caused by the sudden demise of Zakir Hussain, the incumbent on 3rd May 1969. Election to the office of the fifth President was scheduled for 16th August 1969. A vacancy arising out of such a situation is required to be filled within six months from the date of occurrence of such vacancy.

The electoral college consisted of 748 members of Parliament 228 of the Rajya Sabha and 520 of Lok Sabha and 3383 members representing 17 State Legislative Assemblies. Thus the total electors were 4131.

In all, 24 nomination papers were filed. On scrutiny, nomination papers of nine candidates were rejected, leaving 15 candidates in the field. This election was keenly contested. Though the real contest was between the two candidates namely, V.V. Giri and Neelam Sanjiva Reddy. C.D. Deshmukh was also a potential candidate.

In the election held on 16th August 1969 as scheduled, 4047 members of the electoral college voted. Eighty ballot papers - nine of members of Parliament and 71 of members of the legislative assemblies were declared invalid.
It was a suspense-ridden election. Its peculiarity was that none of the candidates could secure requisite quota of 418169 votes necessary for winning the election in first preference votes. Second preference votes were counted, for the first time. This eventuality arose due to split in the Indian National Congress. Sanjeeva Reddy, the official nominee of the party, was not supported by all members of the electoral college belonging to the Indian National Congress. A group of members led by Mrs. Indira Gandhi disowned him and supported V.V. Giri, an independent candidate. The candidates who secured the lowest number of first preference votes, were excluded and one by one their ballot papers were transferred to the continuing candidates with reference to the next available preference marked on them. This process was continued till only two candidates namely, V.V. Giri and N.Sanjeeva Reddy remained in the field. Of these two, V.V.Giri secured 420077 votes and N.Sanjeeva Reddy bagged 405427 votes. V.V.Giri was declared elected as the President of India by a margin of 14650 votes. V.V.Giri was the first non-Congress candidate to be elected.

The election of V.V.Giri as the President of India was challenged by Shiv Kirpal Singh, Charan Lal Sahu, Phool Singh, Siri Ram Reddy and Abdul Dar through election petitions in the Supreme Court.

Election petition of Charan Lal Sahu was allowed to be withdrawn on December 1, 1969.

In the remaining four election petitions the election was, inter-alia, sought to be challenged on the ground that (1) nomination papers of some candidates were wrongly accepted and that of some others wrongly rejected by the returning officer; (2) that Section 21 of the Presidential and Vice-Presidential Elections Act, 1952 was ultra vires to the Constitution; and (3) that undue influence was exercised on the voters through the distribution of anonymous pamphlets containing defamatory statements in respect of one of the candidates.

The Court, while dismissing the petitions held that Section 21 of the Act referred to above was valid; and that nomination paper of Kirpal Singh was
rightly rejected and that of V.V. Giri, rightly accepted. The other grounds mentioned in the petitions were also rejected.

The sixth election to the office of the President was taken on 17th August 1974.

The strength of the electoral college for the Presidential election was 4405 as against 4137 in the preceding elections held in 1969. Of this, 751 were members of both the Houses of Parliament whereas 3654 were members of state assemblies. There was an increase of 268 seats in Parliament and state assemblies. Four new states namely, Himachal Pradesh, Manipur, Tripura and Meghalaya were created after the last elections. The members of legislative assemblies of these four states participated for the first time in the presidential elections. The strength of the electoral college also rose due to increase in the membership of Lok Sabha and state assemblies following the delimitation of constituencies on the basis of census figures of 1971.

The vote of a member of Parliament was valued at 723. The value of vote of a member of legislative assemblies varied from state to state. In Uttar Pradesh, the value of vote of a member of the assembly was 208 whereas in Nagaland it was nine only. The value of votes was calculated on the basis of 1971 census.

Though the strength of the electoral college was 4405, four seats of Lok Sabha, three in Rajya Sabha and 223 seats in the state legislative assemblies were vacant at the time of elections. The vacant assembly seats included in seats of Gujarat legislative assembly, which stood dissolved. In addition, seventeen members of state legislative assemblies against whom election petitions were pending, had been restrained by the Supreme Court or the concerned High Court from voting in the elections.

In all, 23 nomination papers in respect of 13 candidates were filed. Only seven nomination papers of two candidates were accepted and of all others rejected for non-compliance with the statutory provisions. The number of nominations filed in this election was large despite the statutory
modifications made in March, 1974 referred to earlier. The two candidates in
the fray were Fakhruddin Ali Ahmed and Trideep Chaudhary.

The polling was held on the scheduled date. Three thousand eight
hundred forty-seven members of the electoral college voted for the election.

In the election of ballot papers on 20th August, 50 ballot papers – four
of members of Parliament and 46 members of state assemblies were found
invalid. The total number of valid ballot papers were 3797 representing
954783 votes.

The quota of votes necessary to secure the return of the candidate was
found to be 477392. Fakhruddin Ali Ahmed who secured 765587 (80.2%)
votes, more than the quota, was declared elected as the President of India on
20th August 1974. Trideep Chaudhary had obtained 189196 votes only.
Fakhruddin Ali Ahmed assumed office of 24th of that month.

Chanan Lal Sahu and Madan Lal Dharti Pakad, whose nomination
papers were rejected by the returning officer for non-compliance with the
provisions of Section 5B of the Act, filed petitions in the Supreme Court on
24th September 1974. The petitions were, however, dismissed by the
Supreme Court on October 14 of that year on the ground that petitioners had
no locus standi to maintain the petitions as they were not candidates at the
election within the meaning of Section 13(a) of the Presidential and Vice-

Fakhruddin Ali Ahmed, the sixth President of India expired on 11th
February 1977. The Vice-President B.D.Jatti assumed office as President
under Article 65(1) of the Constitution. The process of election for electing the
seventh President was initiated only on completion of the sixth parliamentary
general elections that had begun a day before the sad demise of the
President.

There was no change in the Presidential and Vice-Presidential
Elections Act, 1952 and the rules thereunder excepting the Presidential and
Vice-Presidential Elections (Amendment) Ordinance, issued in February 1977
referred to earlier. The Ordinance was promulgated for substituting the
existing authority of the Supreme Court for the trial of disputes arising out of
Presidential and Vice-Presidential elections by new nine-member Council. However, the Ordinance was not replaced by a parliamentary enactment by the new government that assumed power at the Centre following the elections. Consequently, the Ordinance lapsed in July 1977, the authority for the trial of election petitions was restored to the Supreme Court by a parliamentary enactment.

The total number of members in the electoral college was 4550-232 members of the Rajya Sabha Legislative Assemblies. In 1974, the strength of the electoral college was 4405 only. The value of vote of each member of parliament was 702. However, the value of vote assigned to each member of various legislative assemblies varied form state to state. The value of vote of an MLA was seven in Sikkim and 208 in Uttar Pradesh.

In all, 41 nomination papers in respect of 37 candidates were filed. Of these, 37 nominations were rejected by the returning officer for non-compliance with the relevant statutory provisions of the Act in regard to filing of nominations. The returning officer accepted only four nominations papers filed by Neelam Sanjiva Reddy. Being the only candidate in the field, he was declared elected on 21st July 1977 – the last date of withdrawal of candidature, as the President of India.

Sanjiva Reddy, 64, became President of the country at the youngest age. Further, he was the first to be elected unopposed. No other person became the President of the Country in a second attempt after being routed in the first. He also had the distinction of having been elected with the support of first non-Congress government.

The election of Neelam Sanjiva Reddy was challenged by Charan Lal Sahu and Madan Lal Dharti Pakad in two separate election petitions filed in the Supreme Court. Each of the petition was dismissed by the Court on the ground that petitioner had no locus standi.

The eighth President of the country was elected on 12th July 1982. The electoral college for the poll comprised 4601 members—232 member of Rajya Sabha, 542 members of Lok Sabha and 3827 of members legislative assemblies.
On the eve of elections, there were 17 vacancies in the Lok Sabha, including 12 seats from Assam and one each from the states of Gujarat, Haryana, Meghalaya, Tamil Nadu and Jammu & Kashmir. Four seats were vacant in Rajya Sabha. Likewise, there were 142 vacancies in the assemblies, including 126 in Assam Legislative Assembly which stood dissolved. Thus, in fact, the electoral college comprised 4432 members (753 elected members of both the Houses of Parliament and 3679 members of the state assemblies.

The value of vote of each Member of Parliament was 702 as at the time of preceding elections, 1977. The value of vote of each elector of the assemblies was also the same except in the states of Andhra Pradesh, Karnataka and Maharashtra. This occurred as the number of seats allotted to these states under the Parliamentary and assembly Constituencies Delimitation Order 1976 varied from the number that they had at the time of election in 1977. The value of votes of the members of the state assemblies varied although the total votes assigned to these states remained the same. The value of the vote of each member of the legislative assembly differed from state to state. The lowest value was in respect of Sikkim (7) and the highest in Uttar Pradesh (208). The total value of all the elected members of 22 assemblies was 5,43,415.

Fifty-eight nomination papers on behalf of 47 candidates were filed for the office of the President. The returning officer, on scrutiny, rejected all the nomination papers filed on behalf of 55 candidates and accepted the nomination papers of Zail Singh and H.R. Khanna as valid.

As neither of the two validly nominated candidates withdrew from the contest, the poll was taken on 12th July 1982 as scheduled. The quota worked out for winning election by a candidate was determined at 518400.

The counting of votes was taken up in New Delhi. Fifty-eight ballot papers were rejected as invalid. In all, 4348 valid votes were polled, representing a total value of 10,36,798.

Zail Singh secured a total of 7,54,113 (72.3%) as against 2,82,685 received by H.R. Khanna. As Zail Singh secured the quota votes on the basis
of first preference votes, the returning officer declared him elected as the President of India.

Four election petitions were filed in the Supreme Court calling in question the election of Zail Singh as the President of India on various grounds. The petitioners were: (1) Charan Singh and 26 other members of Parliament; (2) Charan Lal Sahu; (3) Nem Chand Jain; and (4) Dharti Pakad, Madan Lal Aggarwal. In the first petition the election of Zail Singh was challenged on the ground of his unsuitability for holding the office; and commission of undue influence with the consent of the candidate.

The apex Court held that suitability of the candidate was to be judged by the voters and not the Court. In regard to the misuse of official machinery for influencing the voters, the Court said that events referred to in the petitions did not amount to undue influence as to invalidate an election.

Election petition nos. 2 and 3 were dismissed as petitioners had no locus standi to file the petitions. The petition of Dharti Pakad, Madan Lal Aggarwal was dismissed for the default on 8th December 1983.

The ninth election to the office of the President was held on 13th July 1987. The electoral college for the poll comprised 4695 members – Rajya Sabha 233, Lok Sabha 543 and 3919 members of 25 Legislative Assemblies.

The membership strength of each House of Parliament increased by one. One seat was allotted to Goa in the Rajya Sabha on its obtaining the status of statehood. The newly created, Union Territory of Diu was given one seat in the House of the People. The strength of the electoral college also rose due to upgradation of the Union Territories of Goa, Arunachal Pradesh and Mizoram as states. The members of legislative assemblies of these three states participated in the presidential election for the first time.

The value of vote of a member of Parliament was 702, the same as at the time of preceding elections. The value of vote of a member of state legislative assembly varied from state to state as in previous elections. The lowest-value was in respect of Sikkim (7) and the highest 208 was in respect of Uttar Pradesh, as in 1982. The value of vote was calculated on the basis of 1971 census.
There were 21 vacancies in the electoral college on the eve of elections. Of these, one was in the Rajya Sabha, six in the Lok Sabha and 14 in legislative assemblies. Two members of the Punjab Legislative Assembly, who were disqualified by the Speaker for defection, were permitted to vote by the Supreme Court.

Two members of Andhra Pradesh Legislative Assembly and one each from Rajasthan, Uttar Pradesh and Punjab, were however denied voting right on the ground of stay order from the Supreme Court in election Appeals.

In all, seventy nomination papers were filed. Only seven nomination papers filed by three candidates namely, R.Venkatraman, V.R. Krishna Iyer and Mithelesh Kumar were found valid by the returning officer. The remaining nominations were rejected.

The five members – one belonging to Rajya Sabha and the remaining four of Punjab Legislative Assembly – who were under preventive detention, were allowed to vote by post.

Five members of legislative assemblies – four of Punjab Legislative Assembly and one of Uttar Pradesh Legislative Assembly who were in Jail, were allowed to cast their votes at the polling place under police escort. This was done under the instruction of the Election Commission.

Mithilesh Kumar, one of the contesting candidate, requested the Commission to extend him the facility of putting across his message to the masses over the All India Radio and Doordarshan. This request was rejected by the Commission on the ground that such right is extended only to recognised national and state parties during the general elections.

V.K. Krishna Iyer, another contesting candidate, requested the Minister of State in the Ministry of Information and Broadcasting, that the three contestants should be given the opportunity for expressing their views on the Doordarshan. The Minister also reportedly thought it inappropriate to accept such proposal unilaterally without consulting other political parties.

The significant feature of the election was the appointment of chief electoral officer of every state as Election Commission’s observer for the first time. The observer’s main function was to assist the assistant returning officer
Senior officers in the Commission's secretariat were also deputed as Commission's observers in Bihar, Uttar Pradesh and Andhra Pradesh.

The poll was held on 13th July 1987 as scheduled. A total of 4332 votes were polled representing a total value of 1023921. Of these, 71 votes representing a value of 13907 were rejected. R.Venkataraman who polled 740148 votes (72.3%) against 281550, secured by V.R.Krishna Iyer, was declared elected as the President of India. Mithelesh Kumar secured 2223 votes only.

Mithelesh Kumar filed an election petition in the Supreme Court challenging the election of R. Venkataraman as the President of India on the ground that election process was vitiated by undue influence exercised through issue of whips by political parties to members to vote for a specific candidate. The petition was dismissed.

The tenth Presidential election was held on 13th July 1992. The electoral college for the election consisted of 4748 members-223 members of Rajya Sabha, 543 Lok Sabha and 3972 of 25 state legislative assemblies. There was no change in the membership strength of either of the two Houses of Parliament. The electors in the electoral college from Legislative Assemblies declined from 16 to eight, from 28 to 20 in Goa and from 83 to 72 in Jammu and Kashmir.

The value of vote of a member, the number of seats in the assemblies and the total value of votes in other states was the same as at the time of election in 1987.

The value of vote of each member of Parliament was the same 702 as in the last election. In the case of member of Legislative Assembly it varied. The lowest and the highest value of the vote was, however, the same.

Caste, being the basis of social structure in the country, has played decisive role in election to the legislatures. This factor raised its head in this election also. A month earlier to the date of election, a section of the socially and educationally backward classes began to mobilize support to ensure that a dalit should take over as the next President of the country. A resolution to
this effect was adopted by the Forum of "Scheduled Castes and Scheduled Tribes Parliamentarians as well. This move was backed by the Janata Dal and the Bharatiya Janata Party had no objection to it. Awakened by this development, a section of the Indian National Congress, the ruling party at the Centre, being not in majority in Parliament, floated a counter idea that the next President should be from any of the northern states to balance the fact that then Prime Minister P.V. Narashimharao was from the south. This approach was, however opposed by the Left Front - the Communist Party of India, the Communist Party of India (Marxist) etc. These parties were of the view that candidate for this office should be selected on the basis of standing and public credentials and not on caste basis. This view deserves appreciation for a person for such post should be chosen on merit rather than on caste or religious basis. To inject casteism in such an elections tantamounts to acting against the spirit of the Constitution. Persons of intellectual ability, administrative experience and political flare alone should be considered. The Janata Dal, however, had its way and with the support of some of the parties in opposition, fielded G.G.Swell, a member of a scheduled tribe from Meghalaya, as their candidate for the post. Shankar Dayal Sharma was floated by the Indian National Congress. Besides, Ram Jethmalini and Kaka Joginder Singh Dharti Pakad contested as independent candidates.

Election was held on the scheduled date, Shankar Dayal, who secured 675864 votes (around 64.78%) against G.G.Swell who could capture 346485 votes (33.31%) out of 104387 values votes was declared elected as the President on India. Shankar Dayal Sharma polled more votes than required for winning the election. This was more than the estimated figure of the Indian National Congress which had floated him. Shankar Dayal Sharma seems to have been supported by some members of the electoral college representing the National Front and the Bharatiya Janata Party. The other two candidates namely, Joginder Singh Dharti Pakad and Ram Jethmalani bagged 1135 and 2704 votes respectively.
The eleventh election to the office of the President was held on 14th July 1997, ten days in advance of the demission of office by the existing President Shankar Dayal Sharma.

The electoral college for the presidential election comprised 4848 members, one hundred more than at the time of election in 1992, as detailed below.

Rajya Sabha – 233, Lok Sabha 543, State Assemblies – 4072. The strength of both the Houses of Parliament remained unchanged. The representation of the legislative assemblies in the electoral college, however, shot up by one hundred due to inclusion of 70 members of the legislative assembly of National Capital Territory of Delhi and 30 members of the Union Territory of Pondicherry, vide Section 2 of the Constitution (Seventieth Amendment) Act, 1992. The members of these assemblies participated in the presidential elections for the first time.

The value of vote of each member of parliament was calculated as 708 compared to 702 in the preceding four presidential elections from 1977 to 1992. The value of vote of each member of Uttar Pradesh Assembly was 208, the highest, and that of Sikkim 7, the lowest. The members of these legislative assemblies had this distinction in the preceding four elections also.

Election to the office of the President, who has to uphold dignity and glory of the Nation, should be beyond divisive party politics. To obtain this objective, Election Commissioner G.V.G.Krishnamurty, suggested that political parties should allow their legislators to vote in the presidential elections according to their conscience and not on the basis of party whips issued to them indicating their choice. When a whip is issued at an election to Public office, according to him, it is an open threat to the voter to vote in the manner stated and as such amounts to ‘undue influence’ that militates against the principle of free and fair elections. This move was treated as interference in the internal affairs of the parties and as such disfavoured by almost all parties. Incidentally, in the presidential election 1969 Ms. Indira Gandhi called for conscience vote, a ploy she used to support V.V.Giri, caused disturbance, for it was indeed her challenge to then powerful Congress syndicate. However, the Election
Commission issued no directive to political parties against issuing whip to their members, no party issued whip to its members.

The search for a suitable candidate had begun even before the commencement of the election process. The forum of scheduled caste/scheduled tribe members of Parliament, had, through resolution, as early as mid-April, appealed to all parties to elect as President some one from either of the two communities, who was either “a freedom fighter” or a “political sufferer.” The United Front coalition and the Indian National Congress, in pursuance of the time tested convention to move the Vice-President at the end of term, selected K.R. Narayanan, a scholar and outstanding diplomat, as their presidential nominee, on the basis of his record of probity, commitment to values and public service. K.R. Narayanan’s candidature was endorsed by the Bharatiya Janata Party and almost all major national and regional parties. The Bharatiya Janata Party had no other viable option.

The selection of a consensus candidate by political parties was a desirable choice for none of the three major political formations, the National Front, the Indian National Congress and the Bharatiya Janata Party commanded majority in the electoral college to get its own nominee elected as the President of the Republic. This also kept the presidency above party politics and renewed people’s faith in political parties for their ability to subordinate their party interest to the national interest. The Shiv Sena, however, fielded T.N. Seshan, a former Chief Election Commissioner of India, as their candidate for the Presidency. Besides the two, there were 45 independent candidates who had filed their nominations, irrespective of the stipulation of 50 proposers and seconders each instead of ten each and enhanced security deposit of Rs. 25000 from Rs. 2500 in the past elections.

The nominations of K.R. Narayanan and T.N. Seshan were found in order and nominations of all other 45 candidates were found in order and nominations of all other 45 candidates were rejected for one reason or the other. Of these, only 13 candidates had deposited the security and five had filed the minimum number of proposers and seconders required under the
law. Of these five, three candidates, namely, Narendra Dubey, Mohinder Kumar and Mithelesh Kumar, had reportedly, forged the names they did not have to meet this number. Narayanan’s nomination having been endorsed by the United Front, the Congress and Bharatiya Janata Party, Seshan only made a presence rather offering a contest.

Twenty-nine senior Central government officers, for the first time, were appointed as commission’s observers at polling stations in Parliament House and at state capitals, Pondicherry and Delhi to ensure the conduct of election in accordance with the prescribed procedure.

It was a “whipless election,” the first in the history of the country. In breach of the established convention, no political party had issued a whip to its members to vote in favour of a particular candidate. The absence of whip by political parties to their members was attributed to: (a) near unanimity among political parties on candidature of K.R.Narayanan; and (b) apprehension that party whips to members might be challenged in the Supreme Court under Section 19 of the Presidential and Vice-Presidential Elections Act, 1952.

In the election held on the scheduled day, K.R. Narayanan who polled a record 9,56,290 votes in terms of value, against T.N. Seshan obtaining 50,631 only, was declared elected as President of India. In the electoral college, Narayanan defeated T.N.Seshan by winning 4231 votes against 240 polled by Seshan under a system of proportional representation. While 171 votes of the value of 40344 were invalid, 191 electors did not cast their votes in the electoral college of 4833. Narayanan, the first Dalit Head of the State in the 50 years of India’s independence, received 91.4 percent, of the votes against Seshan’s 4.8 per cent. Thus Narayanan received the highest number of votes polled in any presidential elections in terms of value.

**Vice-Presidential Elections (1952-1992)**

The provisions of Article 63 of the Constitution stipulated that there shall be a Vice-President of India. The Vice-President of India shall be elected by the members of an electoral college consisting of the members of
both the Houses of Parliament in accordance with the system of proportional representation by means of single transferable vote and secret ballot, envisages Article 66. The provisions of the Constitution, as initially enacted, had prescribed that the Vice-President shall be elected by a joint session of both the Houses of Parliament. These provisions were, however, not invoked in the first two elections as S. Radhakrishnan was returned unopposed as Vice-President of India in 1952 and 1957. The provision of an electoral college for the Vice-Presidential election was introduced through the Constitution (Eleventh Amendment) Act, 1961, to avoid inconvenience caused to the members of both the Houses in a joint session.

The process of vice-president election in at variance from that of the Presidential elections in two respects: (1) in the former case the members of the legislative assemblies have no share; and (2) the nominated members of both the Houses of Parliament are entitled to vote in the Vice-Presidential election.

The Vice-President holds office for a term of five years from the date he enters upon his office.

The aspirant for Vice-Presidency should be an Indian citizen of not less than 35 years of age and should be qualified for election as a member of the Rajya Sabha. He must not hold any office of profit under the Government of India or the government of any state or under any local authority subject to the control of the government. Parliament is further empowered to prescribe any additional qualification or disqualification for any aspirant to this office.

A valid nomination for the office of Vice-Presidency in the first five elections held in 1952, 1957, 1962, 1967 and 1969, only required proposer, seconder and assent of the proposed candidate.

In March 1974, Presidential and Vice-Presidential Elections Act as also the rules under it, were amended to prevent frivolous candidate for the office. The nomination paper of a candidate for the election was required to be subscribed to by at least five electors as proposer and another five electors as seconder; (2) the security deposit for the election was Rs 2500, was to be made along with the nomination paper. The deposit is forfeited if the
candidate is not elected and the number of votes polled by him is less than one-sixth of the number of votes necessary to secure the return of a candidate at such an election. In other cases, the deposit is refunded to the candidate; (3) Each nomination paper was to be accompanied by a certified copy of the entry relating to the candidate in the electoral rolls for the parliamentary constituency in which the candidate is registered as an elector; (4) No elector could subscribe as proposer or seconder more than one nomination at the same election.

In June, 1997 Presidential and Vice-Presidential Elections Act., 1952 was amended through a Presidential Ordinance to prevent the entry of non-serious candidates in the election to the office of Vice-President. For a Vice-Presidential candidate, there have to be now 20 proposers and twenty seconders each against five each in the past. The security deposit has also been raised to Rs. 15000 from Rs. 2500 in the past.

By convention, the Secretary General of the Rajya Sabha and Lok Sabha are appointed, as the returning officer, by rotation, by the Election Commission. The election is held in the central hall of Parliament, New Delhi.

The authority for settling disputes relating to election vested in the Supreme Court. An election petition calling in question the election of the Vice-President may be presented by ten or more electors joined together as petitioners or by any candidate at such election within 30 days from the date of publication of the declaration of result of the election.

The first two Vice-Presidential elections in 1952 and 1957 were not held as S.Radhakrishnan, the only validly nominated candidate was returned unopposed as Vice-President of India on the last date of withdrawal of candidature.

The third election to the office, held on 7th May 1962 was, however, contested. There were two candidates in the field namely N.C.Samant Sinhar and Zakir Hussain. The strength of the electoral college was 754. Of these, 596 members voted on the scheduled date of election.

The counting of ballot papers was taken up on the same date. Fourteen ballot papers were found invalid. Zakir Hussain; who secured 568
votes, defeated his rival candidate N.C. Samant Sinhar by a margin of 554 votes.

In the fourth Vice-Presidential election on 7th May 1967, there were two candidates in the fray namely V.V. Giri and Prof. Habib.

Election was held on scheduled date. Six hundred seventy-nine of the 759 members of the electoral College voted. Three ballot papers were rejected. V.V. Giri, who secured 483 votes, defeated his rival by a margin of 290 votes. The newly elected Vice-President assumed office on 13th May 1967.

A vacancy in the office of the Vice-President was caused by the resignation of V.V. Giri as the Vice-President on assuming the charge as acting President of India on 20th July 1969. There were as many as six candidates in the field for the post of Vice-President. The candidates were: G.S. Pathak, H.V. Kamath, D.D. Mahaseth, Mauhora Nirmala Holkar, S. Nagappa and Sivashanmughan.

The poll was held on 30th August 1969. Of the 759 members of the electoral college, 762 exercised their franchise. The turn out this time was better than in the last election when 80 members of the electoral college did not vote. G.S. Pathak who secured 400 first preference votes, was declared elected as the Vice-President of India.

The sixth election to the office of Vice-President was held on 27th August 1974. B.D. Jatti and N.E. Horo were the two contestants. B.D. Jatti, who secured the larger number of votes was declared elected.

The seventh Vice-Presidential election scheduled for 27th August 1979, was not held as M. Hidayatullah was returned unopposed for the post.

In the eight election to this office held on 22nd August 1984, there were only two contestants in the fray, namely, R. Venkataraman and Kamble Bapu Chandrasan. Kamble Bapu Chandrasan secured 207 votes and R. Venkataraman secured 508 votes. 30 votes were declared invalid. R. Venkataraman was declared elected as the Vice-President of India.

The ninth election for filling this office was held on 7th September 1987.
Thirty-nine nomination papers in respect of 27 candidates were filed with the returning officer. Of these only nomination paper of Shankar Dayal Sharma, the then Governor of Maharashtra was found valid. Shankar Dayal Sharma was elected as the Vice-President of India on the last date of withdrawal of candidature. He assumed office on 13th September 1987.

The tenth Vice-Presidential election was held on 19th August 1992. The strength of the electoral college was of 790 members as in the preceding election of 1987.

There were hectic parleys in political circles in search of a suitable consensus candidate a month earlier to the scheduled date of elections. There was no unanimity among the major political parties for a particular person. A section of the public was of the opinion that a person of appropriate status, with democratic credentials, should be chosen as candidate for the post. Another section underlined the need of a non-party man like S. Radhakrishnan who held the office in the first two consecutive terms. The third view was that the post should go to a Dalit. In the end the leaders of major political parties were able to obtain a consensus for K.R. Narayanan, a member of the Lok Sabha, from a constituency reserved for Scheduled Castes from Kerala.

Forty-one nomination papers were filed by twenty aspirants. Of these, only nomination papers of K.R. Narayanan and Joginder Singh Dharti Pakad were found valid and the other nominations were rejected by the returning officer.

The election for the office was held on scheduled date. K.R. Narayanan, who secured far more votes than Joginder Singh Dharti Pakad, was declared elected as Vice-President of India by the returning officer on the same day.