CHAPTER-6

CRIMINALISATION OF POLITICS
CHAPTER 6
CRIMINALISATION OF POLITICS

6.1 INTRODUCTION

On the attainment of independence in 1947 and on becoming a Sovereign Democratic Republic in 1950, India went to the polls for its first general elections to Parliament and state legislatures in 1951-52 the founding fathers of the Constitution of India. Had straightaway adopted universal adult suffrage as the fundamental principal of elections to the lower House of Parliament and state legislatures, though in many other democracies including Britain, women had to struggle hard for centuries for their voting right. It was only in 1918 that the British women of the of 30 years or more got their right to franchise, though the male population enjoyed the voting right from the age 21 years and ache British parliamentary system had been in vogue form the 13th century. The universal adult suffrage in Britain came later in 1928. Another notable feature of the Indian Constitution was the abolition of communal representation and of separate electoral rolls based on religion. Unlike during the British rule. Nearly 173 million adult Indian citizens were bought on common electoral rolls to be eligible to exercise their franchise in over 196 thousand polling stations spread over the length and breadth of the country in the first general elections. Many pessimistic views were expressed before the conduct of such a gig antic exercise unparalleled in the history of mankind till then, But the success of those elections. Silenced the critics and the subsequent successful conduct of such a gigantic exercise Unparalleled in the history of mankind till then But the success ofr those elections silenced the critics and the subsequent successful conduct of 13 more general elections silenced the critics and the People and more general election to the House of the state legislative assemblies since than 300 general elections to the state legislative assemblies since then have proved the prophets of doom wrong. Democracy is now firmly rooted in India and the country is now recognized internationally as one of the most stable democracies in the world apart form being the largest democracy in terms of sheet numbers on the earth. Its electorate has now swelled and nearly 750 millions are presently eligible to exercise their franchise at sixteenth general election to the House of the People due to be held in 2014 at nearly one million polling stations. The electoral system in India has also stood the test of
time and its true merit and efficacy can be well judged form the fact that the electors have been able toa successfully reject even the string Prime Minister and chief ministers on several occasions, when the former felt disenchanted or disappointed with the performances or politicise of the latter. The electorate despite a substantial number thereof still being without a formal education Has shown a remarkable degree of political maturity The voter knows the worth of his vote and also knows how to use it to his benefit, by being able to make out who is performing and who is not and without being carried away by slogans, etc, However, no constitutional order or system of government can ever be said to be perfect A section of the people feels that the presidential form of government as in the Unit States of America is preferable to the Westminster type of parliamentary system of government presently followed India. But there are not many takers for it. The former President of india. Shri R venkataraman has expressed his unhappiness over the existing system. However his real concern, as of other like minded persons is the malady of political defections and splits in well-established parties leading to proliferation of small pressure groups and frequent falls of governments. Even there President Shri K R Narayanana in one of his interview on television; expressed his disenchantment with the present anti-defection law as contained in the Tenth Schedulled to the constitution. He was of the view that a member who desired to change his party must resign from Parliament or as the case may be the state legislature the anti defection law was made to meet certain aberrations or to stop from playing with the political system. And stability But the general feeling was that the said law lay in the provisions dealing with splits in political parties. There appeared to be confusion as to whether a split in a political parties. There appealed to be confusion as to whether a split in a political party so as to come within the meaning of the Tenth Scheduled to the Constitution should happen in the House that is to say, in the legislature party, or also in the party outside Another matter is as to say in the legislature party or also in the party so as to come within the meaning of the Tenth Scheduled to the Construction should happen in the House, that is to say in legislature party, or also in the party outside. Another matter is as to at what point of time a candidate who is elected becomes a member of the house so as to fall in the ambit of the anti-defection law; that is to say, whether from the date on which he is declared elected by the returning officer or form the date he makes the oath or affirmation for taking his seat in the House. The third view does not seem to be correct as under arts 104 and 193 a Member of Parliament or a state legislature is
liable only for a penalty of Rs 500 per day, if he sits or votes in the House without taking the oath or affirmation. The correct view appeasers as a member even as otherwise there is always a gap of few days between the declaration of result of election by the returning officer and the constitution of the House without taking the oath or affirmation. The correct view appears to be the first one, as otherwise there is always a gap of a few days between the declaration of result of election by the returning officer and the constitution of the House by the Election commission and during this period the members may be at liberty to change the party or defect without incurring any disqualification under the anti-defection law. The presiding officers of the House of parliament and state legislatures are aware of these controversies and the sixty third Conference of the Presiding Officers, concluded on 1 June 2000 decided to formulate norms so that there may not be confusion on recognising splits in polities or on disqualifying members who defect form one party to another. To some extent this controversy has been resolved by omitting para 3 from the Tenth Scheduled by the constitution. Act 2003 which earlier afforded splits in political parties as an escape route to avoid disqualification on ground of defection the members of a political party forming a splinter group now stand disqualified under the Tenth Scheduled. However, the members of such splinter group if they are more than two-thirds of the legislature group of the party may still be able to defeat the object underlying the Tenth Scheduled by professing a merger with some other political party under Para 4 of that Scheduled and the remnant group not so merging may also continue to be members of the legislature without attracting group not so merging may also continue to be. Like any system of government no electoral system can also be regarded as perfect forever. The electoral system in India is no exception either. It has its own shortcoming too, and electoral reforms to remove or rectify those drawbacks are always an ongoing process. Some of the Burning issues about which the people of the country at large well meaning intelligentsia; political thinkers political parties and candidate are feeling concerned or thinking aloud, are proposed to be discussed briefly as hereunder, before concluding this book.

6.2 CRIMINALISATION OF POLITICS:-

The whole nation is seriously concerned about the criminalisation of politics. An unholy nexus between politicians and criminals is not new, as several politicians have taken the help of criminals for rigging elections in their favour. Their muscle power
has been misused for capturing booths on the day of poll and even for intimidating voters form coming to polling station. The post election victimisation or violence perpetrated on voters, particularly, those belonging to weaker section of the society who dared to defy the local mafia in the matter of exercise of their franchise, is society, who nothing to something unheard of Even the Vohra committee set up by the government under the then Home Secretary to the Government of India Shri NN Vohra Submitted on 5 October 1993 But what has caused the real concern and anxiety to all is what may be called the politicians of criminals. In the early stages criminals lent their muscle power to politicians of criminals. In favour in return from those politicians or for money; Eventually these criminal elements realized that if they could make others win because of their muscle or gun power and criminal acts, they themselves could also win election and enter legislature to put an end to their dependence on others. Unfortunately the current therefore is the desire of criminals and anti-social elements to join the electoral battle not only to enjoy the privileges, but also to perpetrate their nefarious activities. In many cases, they have won the electoral battles too. Some social or apolitical organisations have conducted research in some of the states notorious for criminalisation of politics or politicisation of criminals. They have come out with graphic details of criminal cases in many cases, of heinous crimes like, out with graphic details of criminal cases in many cases of heinous crimes. Like, murder dacoit rape, extortion and so on pending against several legislation in different courts of law According to one survey At the time of the general elections to Bihar legislative assembly in November 2005 453, of 1613 candidates who contested the against them in various courts; of them 119 managed to win the elections It is a matter of concern that these candidates belong to all the recognised national and state parties. As has been discussed in ch 8 dealing with the disqualification on the ground of conviction under s of the 1951 Act the law disqualifies only such persons who have been convicted by the trial court or the court of final apple, the garbling discrepancies in the existing provisions of that section have also been brought out in those discussions. As has been pointed out a person considered for rape and sentenced to imprisonment. For 10 years was earlier free under s to contest election after the period of six years from the date of his conviction. Though still sving the sentence of imprisonment. Although the law considers a person as criminal on conviction The common man perceives otherwise. In his perception persons charged with heinous crimes and known history shelters are also
criminals. Although a formal conviction may not have been recorded against them by the courts of law, The Election Commission sharing its concern in the matter had suggested in 1998 that persons involved in serious offences punishable with imprisonment for five year or more should also be disqualified during the pendency of their trial provided the competent court of law had taken cognisance of the offence and farmed the charged against the accused. In almost similar terms the Law Commission also made a recommendation in its 170 the Report submitted to the government in May 1999. But reaction in political circles to the above suggestion of the Election Commission and the Law Commission is one of scepticism. A Parliamentary Committee considered this proposal in 2007. However the Committee, in its 18 the Report submit on 15 march 2007 did not favour the person is presumed to be innocent unless convicted and false charges are often farmed. As regards the first ground it needs to be pointed out that when a person is facing trial he is often put in prison and deprived of his most fundamental and basic human rights, he is often put in prison and deprived of the most fundamental and basic human rights enshrined in art 19 of the Constitution i.e. right to freedom of speech and expression right to move freely through India, right to reside and settle in any part of India. And right to practice any profession or to carry on any occupation. Trade or business. In all such case, he is ye to be convicted and ought to be presumed innocent until convicted under our jurisprudence; still he is not able to enjoy the said fundamental and basic rights before conviction. The right to contest election is only a statutory right and cannot be said to be more sacrosanct than the fundamental right, and can be abridged in larger public interest. Further how far they are correct and justified in decrying the system of criminal administration and justice in the country’s ultimately for the people to judge, whose only desire and expectation is that law-breakers should not be law makers. It is a blot on our electoral system and democracy itself that persons jailed for serious offence contest elections and even win in many cases. Though the Parliament is still to internee and take some remedial measures to eradicate this malaise form our electoral system the Supreme Court has meanwhile rendered some judgments of far reaching significance having telling impact on decriminalization of politics to some extent. Firstly the Supreme Court has ordained that all candidate contesting elections only a statutory right and cannot be said to be more sacrosanct than the fundamental right, and can be abridged in larger public interest. Further how far they are correct and justified in decrying the system of criminal administration and justice in the
country is ultimately for the people to judge whose only desire and expectation is that law breakers should not be law maker. It is a blot on our election system and democracy itself that persons jailed for serious offences contest election and even win in many cases. Though the Parliament is still to intervene and take some remedial measures to eradicate this malaise form our electoral system the supreme court has meanwhile rendered some judgements of far reaching significance having telling impact on decriminalization of politics to some extent. Firstly the Supreme Court has ordained in the case of People’s union for Civil Liberties that all candidates contesting elections to Parliament and state legislatures must disclose their criminal antecedents if any, by filling an affidavit along with their nomination Paper furnishing details of their convictions in the past and also of the criminal cases pending against them in which the course have taken cognizance They have also to choice They cannot also suppress any information by leaving any column blank in the affidavit. By another judgment in July 2013 in the case of Lily Thomas the Supreme Court has struck down s 8(4) of 1951 Act which earlier provided that if a sitting member of the Parliament or state legislature was convicted by a court there was no disqualification for three months and if an appeal was filed against the conviction disqualification was not attacked till the disposal of the appeal was filed against the another landmark judgment announced by the September 2013in the people’s Union for Civil Liberties, the court in September 2013 electors to express in secrecy their disapproval of all the candidates in the fray by pressing an appropriate button on the electronic voting machine that he does not wish to vote for any of the candidates. But so long as the Parliament does not act and take some proactive steps to amend the law on the lines suggested by the Election Commission, the real malaise may not be eradicated form our electoral system. An alternative remedy suggested by some well-meaning people is that there political parties should themselves make introspection and refuse to give tickets to those who are known for their involvement I crimes, as political parties cannot profess ignorance or lack of awareness of the antecedents of the candidates set up by them. But regrettably, the statistics in relation to the last general election to the House of the People in 2009 and certain state legislative assemblies in 2010 to 2013 speak otherwise. As per the out to the 543 members of the fifteenth House of the People have declared criminal cases against them The position in some of the existing state legislatures is more alarming. The impact of muscle power in Indian governmental issues has been an unavoidable truth for quite a while. As ahead of
schedule as in 1977, the National Police Commission headed by Dharam Vira watched: "The way in which diverse political gatherings have worked, especially on the eve of intermittent decision, includes the free utilization of musclemen and "Dadas" to impact the mentality and lead of sizable areas of the electorate. The Panchayat races, as different races in the current past, have exhibited by and by that there can be no rational soundness in India the length of governmental issues keeps on being founded on rank and The government officials are flourishing today on the premise of muscle power given by lawbreakers. The everyday citizens who constitute the voters are by and large excessively hesitant, making it impossible to take measures that would abridge the criminal exercises. Once the political angle joins the criminal components the nexus turns out to be to a great degree unsafe. A considerable lot of lawmakers picked muscle energy to pick up vote bank in the nation, and they apply the supposition that, in the event that we can't acquire confidence the group then we can create dread or danger to get the power as decision.¹

6.3 ROLE OF MONEY POWER IN ELECTIONS

It is only muscle power, but also money power that is eroding the electoral system money mostly black is paying a pernicious role in electoral battles. Not only the common people at large, but even the apex court of the land has expressed concern in the matter and observed that the existing law does not measure up to the existing realities. The Supreme Court went to the extent of observing in that if the present law in not tightened it is may be advised to omit the provision to prevent to prevent the resort to indirect methods for its circumvention and subversion of the law accepting without any qualm the role of money power in the above observation was made in the context of the then the existing explanation to s 77(1) of the 1951 Act where under the ceiling on election expenditure was fixed only in respect of the expenditure incurred by the party or anyone else in his election campaign was outside the net of legal sanction. In the supreme court observed that even smugglers and other criminals were freed to spend as much as they like on the election of others with impunity Similar

¹ See proceedings the Third National Workshop on Electoral and Political Party Reforms held by Association of Democratic Reforms at Patna on February 11-12-2006,p,71 People’s Union of Civil Liberties and another v Union on India and Anor AIR 2003 SC 2363. Resurgence India v Election Commission of India and Anr Decided on 13 September 2013 Lily Thomas v Union of India and Ors decided on 10 July 2013. 2013(5) SCJ 613 JT 2013 (9) SC 419 People’s Union of Civil Liberties and another v Union of India and another decided on 27 September2013 by the Supreme Court in Writ Petition No. 161 of 2004.
concern was raised by the level playing field between political parties and candidates but may also be corrupting the whole economic system of the country because those money bags and big donors who spend money on elections to prop up any party or candidate do so on quid pro quo basis in expectation of financial favours and concession in return from that party of candidate if voted to power The Committee on State Funding of Elections, which was set up by the Government in June 1998, has gone into these aspects and has made some valuable recommendations to the government in its report submitted on 30 December 1998. The committee backed the idea of state funding of elections in principle stating that Committee see full justification constitutional, legal as well as on ground of public interest for grant of State subvention to political parties so as to establish such conditions where even the parties with modest financial resources it independent candidates, and should be given only in kind, in the form of certain facilities to the recognised political parties so as to establish such conditions where even the parties with modest financial resources may be able to compare with those who have superior financial resources. It added two limitations, namely such funds could not be doled out to independent candidate and should be given only in kind, in the form of certain facilities to the recognised political parties and their candidates. However, despite strongly backing full State funding, it stated that only partial State funding would be possible in the Short term given the prevailing economic condition of the country. The 1999 report of the Law Commission of India concurred with the Indrajit Gupta committee, stating that it is desirable that total state funding be introduced other source. It also agreed with the Indrajit Gupta Committee that only partial state funding was possible at the present time given the economic condition of the country. Additionally it strongly recommended that the appropriate regulatory framework be put in place with regard to political parties’ internal democracy internal structures and maintenance of accounts their auditing and submission to Election Commission before state funding of elections is attempted. The decisions to Parliament and State Legislatures are extremely costly and tremendous race use is the main driver for debasement in India. An applicant needs to spend lakes of rupees to get chose and regardless of the possibility that he gets chose, the aggregate compensation he gets amid his residency as a MP/MLA will be small contrasted with his decision costs.
How might he conquer any hindrance between the wage and costs? Freely through gifts and subtly through unlawful means the consumption estimation for a race assessed as Rs 5 for each voter as race use, for 600 million voters, and count of the considerable number of costs in a general election evaluated around Rs 2,000 core. At that point there is the period between decisions. This requires around Rs 250 core. At that point there are state races and nearby races. Everything considered, the framework needs to create around Rs 5,000 core in a five year cycle or Rs 1,000 core overall every year. Where is this cash to originate from? Just criminal movement can produce such vast wholes of untaxed assets. That is the reason you have lawbreakers in legislative issues. They have cash and muscle, so they win and help other people in their gathering win too. The reported on Ethics in Governance of the Second Administrative Reforms Commission also recommended that a system for partial state funding should be introduced to reduce the scope of illegitimate and unnecessary funding of expenditure for elections. The National Commission that the appropriate framework for regulation of political parties would need to be implemented before proposals for State funding are considered. On the suggestion of the government to the Election Commission to consult the political parties the Commission held a meeting with the recognized national and state parties on 15 February 2006. The consensus of the opinion at the meeting was in favour of state funding and implementation of the recommendation to grant free air time to political parties for airing their views on the state controlled electronic air times was already being enforced under the scheme devised by the Election commission in 1977 i.e. long before the Indrajit Gupta by the Committee’s recommendation to that effect came in 1998. The only other facility that has been extended to the candidates of the recognized political parties pursuant to the Indrajit Gupt Committee’s recommendations is that the said candidates are now being provided with a copy of the electoral roll of their constituents free of cost at the time of general election roll of their constituencies free of cost, at the time of general election to the House of the People and state legislative assemblies. 1951Act.2

2 See also the discussions in ch 16 under the heading Corrupt Practice- Corrupt Practice of Election Expenditure in Excess of Prescribed Limit.
(1994) 1 SCC 682
(1994) 3 Supp SCC 170
Common Cause v Union of India and Ors AIR 1996 SC 3081
CHAPTER-6 CRIMINALISATION OF POLITICS

6.4 EDUCATIONAL QUALIFICATION FOR MEMBERSHIP OF PARLIAMENT AND STATE LEGISLATURES-

This aspect has also been discussed in ch8. As observed in those who aspire to be chosen as representatives of the people in the august House of Parliament and state legislatures. With the world having entered the new millennium it may not be fair to the country and to the progress it has made in all fields including literate and no educational qualification can still be fixed for its parliamentarians and legislators. It is a little strange that there was even resistance by the government to the disclosure of the educational qualification of candidates by the government to the disclosure of the educational qualification of candidates when the Supreme Court considered the issue of electors, right to information about the antecedents and educational background of candidates so as to make an informed choice in its collective wisdom but a beginning should be made. Prescribing such qualification does not require any amendment to the Constitution because the Constitution already empowers Parliament will be fulfilling the expectation of two of the main architects of the Indian Constitution, Dr Rajendra Prasad and Dr Br Ambedkar. At least all candidate are now required under the direction of the Supreme Court in the case of People’s Union of Civil Liberties to disclose their educational qualifications in their affidavits which they file along with their nomination paper.

6.5 REPRESENTATION OF WOMEN IN PARLIAMENT AND STATE LEGISLATURES-

Adequate representation of women who constitute nearly half the population of the country in Parliament and state legislatures is another burning issue which has been agitating the minds of the nation. Their participation at the grassroots level democratic institutions like gram panchayats zila parishads, municipalities, etc, has already be ensured by the Seventy third and Seventy fourth Amendments to the Constitution in 1992 whereby not less than one third of the seats in all panchyatiraj institutions and state legislatures is defying solution for the last several years as

People’s union of Civil Liberties and another v Union of India and Anor AIR 2003 SC 2363
People’s Union of Civil Liberties and another v Union of India and Anor AIR 2003 SC 2363.
Common Cause v Union of India Ors AIR 1996 SC 3081.
See also the discussions in ch 16 under the heading Corrupt Practices Corrupt Practise of Election Expenditure in Excess of Prescribed Limit,
political parties seem to have differing views on the percentage of seats to be reserved reservation to be made for women belonging to backward classes in the seats to be reserved for women and so on. The last such attempt to provide for reservation of seats to be reserved for women, and so on. The last such attempt to provide for by introducing the Constitution (One hundred and Eight Amendment Bill 2008 in the Council of Seats on 6 May 2008. The Bill was passed by the Council of State elected seats for women. It was further provided that out of the total number of seats which are reserved for scheduled castes and scheduled tribes. Under art 330 one third of such total number of seats so reserved shall be further reserved for the women belonging to scheduled castes and scheduled tribes under art 330 one third of such total number of seats so reserved shall be further reserved for the women belonging to the scheduled castes and the scheduled tribes. These seats so reserved for the first general election shall not be reserved in the next two general elections. Similar provision was made for reservation of one third of the seats for women in the seats so reserved for the first general election. Similar provision was made for reservation of one third of the seats for women in the state legislative assemblies and for their rotation after every general election. The bill as passed by the Council of states again got embroiled in controversy in the House of the People and was referred to the Parliamentary Standing Committee on Personal Public Grievances, Law and Justice and is still under consideration of that Committee. In 1998 the election Commission came out with an alternative proposals that instead of making a reservation of certain percentage of seats for women and further reserving constituencies form which only women candidates may contest elections. It was also suggested that the continued recognition of those parties would depend upon the fulfilment of this proposal was criticised on the ground that it may not result in the return of the desired number of elected women representative as their success cannot be ensured in all the constituencies in which they contest. One of the objections to the reservation of seats and constituencies for women is that it will necessarily imply the principle of rotation and the sitting male members may lose interest in nourishing their constituencies, if they know that their success cannot be ensured in all the constituencies in which they contest. One of the objections to the reservation of seats and constituencies for woman is that it will necessarily difficult to move over to the new constituencies in the event of their constituencies being reserved for women. One of the proposal made in some quarters to overcome such situation is that certain constituencies to the may be made double
member constituencies as was the position obtaining up to 1961 and which is still permissible under the Constitution. In such double member constituencies one of the seats maybe made general as was the case prior to 1961 when one of the seats in a double-member constituency used to be reserved for the Scheduled Castes or Scheduled Tribes. But the criticism to this proposal is that the double member expenditure for a candidate. Particularly a women candidate contesting election from such a double member constituency as he or she will have to conduct his or her campaign in he entire constituency as he or she will have to conduct his or her campaign in the entire constituency another proposal being mooted in this context is to increase the strength of the House of the People and state legislative assemblies by 30 percent and to reserve those additional seats for women. Whatever may be the ultimate solution, the need for an immediate and amicable settlement of women and giving them their due to and well deserved place in the Indian polity is concerned by all.

6.6 ELECTORAL SYSTEM

Under the constitution two electoral systems are presently followed in elections to Parliament and state legislatures. The elections to the upper house namely, the Council of States and state legislative councils, are held in accordance with the system of proportional representation by means of the single transferable vote. The same proportional representation system is followed in the case of elections to the lower houses, he the House of the People and state legislative assemblies are held under the first past the post system. Criticisms are often made that the FPTP system is not working well and demands are sometime made in certain quarters for a change in the system the main criticism levelled in regard to this system I s that there is no correlation between the votes polled by a political party and the number of seats won by it on the basis of those votes. Classic example of such disparity is the results of the general elections to the House of the People in 1984 and to the Tamil Nadu legislative assembly in 1996. In the former general election the Indian National congress won 405 seats out of 515 seats for which election were held in 1984 to the House of the people which worked out to 78.64 percent seats where the percentage of votes polled by the party at that general election was 49.10 percent. On the other hand the All India Anna Dravida Munnetra Kazhagam could secure only four seats in the 234 member Tamil Nadu legislative assembly though it polled 21.47 percent votes at the aforesaid
general election in 1996. Similar distortions in the electoral verdict have been observed in several other elections as well. Those advocating a change in the present system of elections to the lower houses must bear in mind that no system is ever perfect, and plus and minus points will be found in all electoral systems which are presently in vogue in different democratic countries in the world. Further, one system may be working to the satisfaction of the people in one country but the same may have failed to deliver the goods in another. The basic objective of any electoral system is twofold; one that the electoral result is fairly reflective of the views and choice of the electors and the minority view also gets a fair representation and two, it should provide a fairly stable government so that it can devote its energies to promote the welfare of the people. Thus, a balance has to be struck keeping the above twin objectives in view. The Election Commission in its report on General Election in 1971-72 dealt representation system based on the list system which some of the proponents of change in the electoral system had been advocating. Under the list system, seats are divided among the political parties in proportion to the voters polled by them and persons whose names are given in the lists furnished by the political parties in advantage are declared elected in the order of their names in the list and equal to the seats which fall to the share of the party concerned. The Election Commission pointed out, inter alia, the following defeats in the above system.

- Multiplicity of political parties, without any party having an absolute majority in the legislature and the consequent formation of coalition governments;

- Frequent fall of coalition governments and repeated elections exasperating the voters.

- Enormous increase in the powers of the central party organisers leading to the emergence of bossism in politics

- Promotion of separatist mentality among different groups of the people and national disintegration; and

- Large multi-member constituencies destroying the direct relationship between individual candidates and voters.
The Election Commission upon these considerations then expressed the view that the proportional representation system would not be the proper system for elections to the house of the People and state legislative assemblies. But in 1977 the then chief Election commissioner Shri SL Shakdher saw some merit in the demand for a change in the electoral system and suggested a combination of the FPTP and the proportional representation systems. He proposed an idea that half of the seats in the house of the people and state legislative assemblies may be filled under the FPTP system, by direct elections form the territorial constituencies, and the remaining half of the seats in those Houses may be divided among the political parties in proportion to the voters polled by them at the direct election form the territorial constituencies in each state. A somewhat similar system is in vogue in Germany in the elections to Bundestag the lower house of German Parliament. The above suggestion was considered by the Goswami Committee on Electoral Reforms set up by the government in February 1990. The Committee suggested in its Report of May 1990 the setting up of a special committee to examine the need for a change in the electoral system in view of the demands being raised from time to time to that effect in certain quarters. Pursuant thereto; a three member committee under the chairmanship of Shri Dinesh Goswami the then Law Minister was set up by the government in June 1990. But before the committee could make any worthwhile headway before there year end and it was followed by premature dissolution of then existing House of the people in early 1991. More recently, the Law Commission dealt with this in its 170th Report submitted to the government in May 1999. It also suggested a combination of the FPTP and the proportional representation systems, but with a variation from the suggestion made by Shri SL Shakdher in 1977. The Law Commission recommended that all the 543 existing seats in the House of the People may continue to be filled by direct election form territorially parliamentary constituencies under the FPTP system. But the total membership of the House of the People may continue to be filled by direct election the total up to 679 seats and the additional 136 seats may be filled under the system of proportional representation based on the list system. Likewise the strength of the legislative assemblies may also be correspondingly increased by 25 per cent i.e., proportional representation based on list system the entire country will be treated as purpose of filling the seats under the list system the entire country will be treated as one single unit for assembly elections. The law Commission further more recommended that even the seat under the list system Likewise the strength of the
legislative assemblies may also be correspondingly increased by 25 per cent. For the purpose of filling the seats under the list system the entire country will be treated as one single unit for assembly elections. To the House of the people under the above proportional representation system Not only this but the Commission furthermore recommended that even the seat won by such political party in the direct election form a territorial parliamentary constituency should also not go to the direct election form a territorial parliamentary y constituency should also not go to the candidate of that party. But should pass on to the next highest candidate of that other party which has polled more than 5 percent votes in the whole election Similar rule should not be given to the rightful winner, if his party has filed to meet the 5 basic percent benchmark, will be totally opposed to the system of direct election and its basic concept as it will be tantamount to negation of the popular choice expressed by the electorate and thrusting on their them a representative whom they have rejected at the hosting. The law Commission also suggested an alternative method of election to the House of the People and state legislative assemblies for consideration of the government and Parliament According to this alternative method a candidate should be declared elected from a territorial constituency only if he secures at least votes caste in the constituency if no person gets 50 percent or more votes, then there should be a a runoff election between the two candidates receiving the highest number of votes at the original poll. The Law Commission further suggested that there should be an additional column on the ballot Thesis for a negative vote which means that voter does not want any of the candidates in the field to be his chosen representative. In the above calculation of 50 percent+1 votes the negative votes cast in the constituency will also be taken into account in the total number of votes polled in the election. The Law Commission felt that the proposed alternative system would cut down or at any rate, curtail the significant and role played by caste factor in the electoral process and negative vote will put moral pressure on political not put forward candidates with undesirable record ie, criminals corrupt elements. And person with unsavoury back ground the Law Commission had, of course, taken note of the practical difficulties inherent in the proposed system as a runoff election would not be an easy affair in the context of Indianan elections. The National Commission for Review of Working of the Constitution set up by the government in 2001 under their chairmanship of Justice also devoted its thought on this proposal of the Law Commission candidate may require to win seat may be fixed as 40 present instead of 50 percent +e percent as
CHAPTER-6 CRIMINALISATION OF POLITICS

suggested by the Law Commission as a that would bring down the number of cases where a runoff election may require to be conducted. It may be of interest to take note of a parallel development in Great Britain. In Commission on the Voting System Under the best alternative system or combination of system to exiting FPTP system of election of election to the Web minister Parliament In doing that, the Commission was asked to take into account four requirement broad proportionality the need for stable government; an extension of voter choice and the maintenance of a link between MPS and geographical constituencies. The British Commission studied several system of election in vogue in various countries in different parts of the World. Examining the defects and virtues of the FPTP system the commission observed that the deficiencies of the FPTP system were principally the following FPTP system exaggerates movements of opinion and when they are strong, produces mammoth and landslide majorities in the House of Commons; FPTP system is peculiarly bad in allowing minor third parties to express themselves; under this system is peculiarly bad in allowing minor third parties to express themselves; under this system third parties cannot have a broad base and have a chance of success when they a narrow and more intense beam but which is perverse, because a party’s breadth of appeal is surely a favourable factor form the point of view of national cohesion; the same properties of the FPTP system the party majority government; the single party government of the country though he deems it more important who is prime Minister than who is a member for their local constituency Recounting the virtues of the FPTP system, the Commission observed that; it usually leads to one party majority government the single party government outcome may be seen as assisting quick decisions and implementation of a sustained line of policy where a government fails or disappoints, it can easily be punished by the electorate; by its winner takes all effect it encourages parties to broaden their appeal; it handed approach in their base; and it offers to unorthodox MPs a degree of independence from excessive party control provided that they can retain the support of their local organisation. The British Commission also considered the merits and demits of the proportional representation system by means of the single transferable vote. In the disadvantage of having geographically far flung constituencies The Commission considered these as fatal objections to their currently recommending that system for Britain. The commission ultimately recommended that the best alternative system fro Britain of the existing FPTP system was two vote mixed system which could be described as either the limited As Alternatives system
for Britain to the existing FPTP system was two vote mixed system which could be describe as either the limited vote system has been described as a majorities system, and under this system the winning candidate has to secure the support of over half the voters in the constituency. Vote is exercised by recording preferences against the candidates on the ballot paper. If no candidate receives more than half of the votes cast on the first count of first preference votes, the candidate who received more than half of the votes cast on the first count of preference votes is eliminated and his second preference are distributed between the other candidates. This process continues until one candidate has achieved an overall majority. In fact this is the same system which is followed in India in elections to the upper House of Parliament and those of state legislatures, when only one seat is to be though we call it the system of proportional representation by means of single transferable vote. The remaining 15 to 20 percent seats in the House of Commons would be filled by the Top-up system. Under this system the parties would submit the lists of their candidates to be elected under the above quota of seats and each voter would be allowed a second vote giving them a chicer, to either vote for a party or for an individual candidate from the lists put forward by parties. For allocating by the parties by direct elections form territorial constituencies and the number of second votes cast by voters for them to our be taken into considerate, according to the flowering method.

1. The number of second votes cast for each party will be counted and divides of constituency MPs one gained by each party in each area;

2. The party with the highest number of second votes after these calculations will be allocated the first Top-up member.

3. Any second additional member for an area will be allocated using the same method but adjusting to the fact that one party will already have gained a Top-up member.

Where respect it is felt that such a complicated system will hardly be workable in the Indian context. The Indian electoral system must suit the Indian conditions and any change in existing electoral system must be considered keeping in view the paramount of above referred twofold object of any electoral system that it gives an electoral result which is fairly reflective of the views and choice of the electorate, and that it provides a fairly stable government.
6.7 COMPULSORY VOTING;-

in the recent time there have been demands in certain quarters that the voting should be made compulsory so that there is full participation of the electorate in choosing their representative However, Election Commissions is not in favour of the idea of compulsory voting, as it feels that in a democracy free will and compulsion cannot go together Under the Act the right to vote also includes the right not to vote; or refrain from voting The Commissions has observed that voting percentage in India compares well to the good voting percentage in the world and can be further enhanced by undertaking systematic and sustained voter education. Accordingly the Commission has since 2010 embarked upon an ambitious programme of systematic voter shown positive results in the recent election to several state legislatures where the voting percentage has even crossed 80 percentages in some of those states. Further there are several administrative obstacles in making the voting compulsory. Compulsory voting would postulate some penalty for those who do not vote and the conditions in India do not warrant any penal action against those who stay away from voting for a variety of reason. Including working on the polling day to earn their livelihood Finding out the reason for not turning up for voting on the day of poll would necessarily require a noticeto the person concerned and then a fair consideration of the grounds for abstention, When millions of persons are involved, who does not vote, the administrative effort and time needed for such an exercise can be better imagined than decried Not can the courts. Which are already reeling under the burden of huge pungencies be saddled with the millions of additional cases if judicial determination is to be involved in this process.

6.8 REASONS OF THIS CRIMINALIZATION:

6.8.1 Make Vote Bank for Own :

Political gatherings and autonomous applicants have galactic consumption for vote purchasing and other ill-conceived purposes through these hoodlums or alleged gondolas. A government official's connection with them body electorate gives a suitable atmosphere to political wrongdoing. The individuals who don't know why they should vote involve the larger part of voters of this nation. Thusly dominant part of the voters is flexibility available. The greater part of them is separately tentative and all things considered quitter. To pick up their support is less demanding for the
corrupt than the principled. We have since quite a while ago saw culprits being charmed by political gatherings and given bureau posts on the grounds that their muscle and cash control gets urgent votes. Decisions are won and lost on swings of only 1.00% of the vote, so parties sceptically charm each conceivable vote bank, including those headed by denounced criminals and killer’s legitimate postponements guarantee that the blamed will kick the bucket for seniority before being indicted, so parties prudently demand that these chaps must be viewed as honest till demonstrated liable.

6.8.2 Corruption in Ticket:-

In each race all gatherings no matter what set up applicants with a criminal foundation. Despite the fact that a few of us whimper about the choice taken by the gatherings, the general pattern is that these hopefuls are chosen to office. By acting in such a way we neglect to understand that the best power that votes based system arms the general population is to vote uncouth individuals out of energy. Autonomy has occurred through a two-arrange handle. The primary stage was the defiling of the organizations and the second stage was the systematization of debasement. As we take a gander at the debasement scene today, we find that we have achieved this stage in light of the fact that the adulterating of the establishments thusly has at last prompted the systematization of defilement. The inability to manage defilement has reared hatred for the law. At the point when there is disdain for the law and this is joined with the criminalization of governmental issues, defilement prospers. India is positioned 66 out of 85 in the Corruption Perception Index 1998 by the German non-government association Transparency International situated in Berlin. This implies 65 nations were seen to be less degenerate than India and 19 were seen to be more degenerate.

6.8.3 Hole Functioning of Election commission In Politian:-

The Election Commission must enjoy sufficient measures to reprieve the nexus between the crooks and the lawmakers. The structures endorsed by the Election Commission for applicants uncovering their feelings, cases pending in courts terrace in their selection Paper is a stage in the correct course on the off chance that it connected legitimately. A lot of ought not to be normal, be that as it may, from these exposures. They would just advise individuals of the hopeful's history and
capabilities, however not restrict them from throwing their votes, notwithstanding, for a criminal. For as far back as a few general decisions there has existed an inlet between the Election Commission and the voter. Average folks barely come to know the guidelines made by the commission Crossing over this hole is basic not just to root out undesirable components from legislative issues additionally for the survival of our popularity based commonwealth. This is an incremental procedure, the rate of accomplishment of which is straightforwardly relative to the expansion in proficiency rate in India. The electorate have settled on certain wrong options previously, yet later on national intrigue ought to guide them in settling on canny decisions.

6.8.4 Disavowal of Justice and Rule of Law:

Decriminalization is a reality of Indian discretionary legislative issues today. The voters, political gatherings and the lawfulness hardware of the state are all similarly in charge of this. There is almost no confidence in India in the adequacy of the popularity based process in really conveying great administration. This stretches out to tolerating criminalization of legislative issues as an unavoidable truth. Toothless laws against sentenced offenders remaining for decisions additionally support this procedure. Under current law, just individuals who have been indicted in any event on two numbers be suspended from getting to be applicants. This leaves the field open for charge sheeted hoodlums, a large portion of who are chronic guilty parties or history-shelters. It is perplexing to be sure why a man ought to be indicted on two tallies to be precluded from battling decisions. The genuine issue lies in the definitions. Therefore, unless a man has been sentenced, he is not a criminal. Unimportant charge-sheets and pending cases don't suffice as bars to being selected to battle a decision. So the law must be changed likewise.

6.9 RIGHT TO RECALL:-

Another demand that is often voiced by certain civil society organization and well meaning citizens as a measure of reform of the election system being followed in India is that the electors should have a right to recall their chosen representative if they fail to meet their expectations and asp orations or are found to be indulging in demand, they are citing some examples of such a system being in vogue in some of her countries in the Warped like Switzerland as also in some of the stews or counties or cantons in the American container like, USA Canada Venezuela They have also
pointed out a similar system of recall being followed in some of the local authorities India too, like, mayors in the states of Madhya Pradesh Rajasthan etc. But those who are making such demand have not precisely set out the procedure how they propose this system of recall to be implemented in the case of members of Parliament and state legislatures, nor have they spelt out the grounds on which a chosen representative may be watched by the electorate before making such a demand. The election commission which would be called upon to implement the proposal if converted into law has expressed certain reservations and pointed out the scheme of recall. Some of the issues which the Commission’s opinion is reverent for section consideration are;

(1) Whether there will have to some concerned grounds for recall or simply a petition by a certain number of elector of the constituency will be a sufficient ground for recall How to verify the anthem city of thousands of signatures on such petition Also to determine whether such signatures have been obtained by a genuine exercise or through coercive measure.

(2) Whether the petitioners will needed to satisfy any authority on the ground for recall If so which authority.

(3) Whether the electors who did not vote at the original election should be allowed to move a recall petitions How to verify who are the signatories

(4) Whether there will be a minimum period before which the option cannot be exercised; otherwise there is every strong possibility that defeated candidates will resort to the tool immediately after they lose the election. In such a scenario the elected representative would not even get the time to settle down.

(5) Whether the recall petition would be first put to test by holding a referendum and then if the petitioner succeeds in the referendum a bye election is to be held

(6) whether such repeated petitions for recall leading to election after election

(7) Whether such repeated referenda impositions of Model Code of Conduct. Also would it not be a big finical bureau on public exchanger and political parties.
(8) Whether the elected representative who is recalled can re-counter the bye election form that constituency or any other constituency and if not for what period shall he be disqualified.

Indeed the above issues have no easy answer given the fact that the electorates in our parliamentary constituencies generally run into more than one million election and almost all assembly constituencies have lakes of voters.

6.10 PANCHAYATI RAJ INSTITUTION FOR LOCAL SELF GOVERNMENT

In the introductory it has been mentioned that the salient feature of the panchayati raj institutions in the country have been given in the concluding chapter Accordingly the same are briefly discussed here so as give a broad idea to the reader as to the functioning of the local self government institutions at the grassroots levels in the country form where the true democracy sprouts and flourishes. Mahatma Gandhi wrote in his book my Picture of Free India’ that panchyat has an ancient flavour it is a good word it represents the system by which their innumerable village republics of India move forward In our Constitution there is a specific provision in the directive principles regarding panchayats According to that the State has to take all steps to organise village panchayats. It is also provided that necessary power should be given to them to make them really functional, effective and be successful local self, government units In pursuance of that constitutional Provision state governments had passed laws for setting up village panchants and had also set them up But. During more than 40 years after independence the functioning of most of the village shortcomings and defeats had been noticed In spite for their being in existing for a bodies of the people. There were no regular elections; they were being superseded for very long periods; there was no sufficient representation of women and persons belonging scheduled castes scheduled tribes and other weaker sections. There were no financial resources at the disposal of panchayats. There was no real devolution of powers.

6.11 AMENDMENT OF THE CONSTITUTION:

In view of the above defeats panchayat had not been able to live up to the it was felt that the Constitution itself should provided for the basic and essential features of
panchayati raj institutions to give certainty, continuity and financial and administrative strength to them. Accordingly the Constitution was amended for their purpose by the Constitution Act 1992. After ratification by the requisite number of state legislatures, it came into force with effect from 20 April 1993.

6.11.1 Amendments to Existing Laws and Continuance of Existing Panchayats:

At the time of passing their above amendment Panchayats in some shape or the other, Panchayats continued it was provided that the existing state laws could continue for a maximum period of one year even if they were not in accordance with the new constitutional provisions. In the meantime state legislatures or any other competent authorities were required to amend their laws or repeal them and make new laws according to the principles laid down by the Seventy their Amendment. If the laws were changed earlier than one year the existing state laws relating to Panchayats were to remain in force only during that shorter period but it was expected that, in no case the period shall be more than one year. This was provided for smooth transformation. But not with starting such amendments to the law, the Panchayats which were in existence, were to remain in office and continue as they were till the end of their normal duration under the pre-revised laws. However they could be dissolved their duration by a resolution passed by the state legislature concerned.

6.11.2 Chairperson of Panchayats.

The chairperson of a village level Panchayat shall be elected in the manner specified by law. The Chair person of an intermediate level Panchyat or a district will be elected by the elected members of that Panchyat form amongst the elected members thereof 243c (5).

6.12 MUNNCPICALITIES

Like panchayats in villages, municipal committees, councils and corporations had also become weak and ineffective as institutions of local self government in towns, cities and metropolitan areas in many states, there were no regular electorates and many municipalities remained superseded for years together. Not was proper devolution of funds to them. Therefore simultaneously with the enactment of the Constitution Act relating to pancyayat the constitution Act was also passed in 1992 to provide for the
constitutional guarantee in relation to the functioning of municipalities on the same lines as for the Panchyats in the former Act.

6.12.1 Constitution of Municipalities

It is now provided in the Constitution that there shall be;

(a) Nagar Panchyat whatever named called for a transitional area, that is to say, an area in transition from a rural area to an urban area;

(b) A municipal council for a smaller urban area; and

(c) A municipal corporation for a larger urban area. All these local bodies have been referred to as municipalities in the Constitution.  

However a municipality may not be constituted in an urban area which is notified by the governor of the state as an industrial township and the municipal services may be provided by and industrial establishment in that area.

(d) It is for the governor to specify, by public notification the areas as transitional areas, smaller urban areas and larger urban areas for the constitution of nagar panchayats, municipal council and municipal corporations; having regard to the population of the area, the density of population therein the revenue generate for local administration, the Percentage of employment in non-agricultural activities, the economic importance etc.

6.12.2 Composition of Municipalities

The total number of seats in a municipality will be fixed by the state legislature concerned, by law. These seats shall be filled by persons chosen by direct election from the territorial constituencies in the municipal area and for this purpose each municipal area shall be divided into territorial constituencies to be known as wards. In addition to the seats to be filled by direct election, the state may provided by law for the representation in the municipality;

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4 See Address by Dr Shankar Dayal Sharma, the then president of India at the Sam mean of Panchyat Adhyakshas on the occasion of the celebrations of the 125th Birth Anniversary of Mahatma Gandhi at New Delhi on 10 October 1995.  
Article 243c(2)  
Article 243D(1).  

229
(1) Of the members of the House of the People and of the state legislative assembly representing constituencies which comprise wholly or partly the municipal area;

(2) Of the members of the state legislative council, if any registered as electors within the municipal area; and

(3) Of person having special knowledge or experience in municipal area; and

(4) Of person having special knowledge or experience in municipal administration

All the above person shall have a right to vote in the municipality except the persons mentioned at above to art 243R(2).

Reservation of Seats conduct of Elections and Other Allied matters Provisions relating to reservations of seats for the scheduled castes and scheduled tribes and women in municipalities, and in the office of chairpersons of those bodies disqualification for their membership of municipalities, powers authorities and responsibilities of municipalities conduct of elections to the municipalities under an independent election commission the same commission which is to conduct elections to Panchayats for each state and all other allied matters have been made in arts 243T to 243ZG. These provisions are almost pm the same lines as those for Panchayats, as discussed above. And some are not being repeated. Now that there is a constitutional guarantee in respect of Panchayats and self government in rural and urban and urban areas to make them a success.

6.13 COURT JURISDICTION BARRED IN ELECTRO MATTERS:-

Lastly but not in the least for the smooth conduct of elections to Penchants, courts are barred from interfering in electoral matters. Only buy election petition selections to Panchayats can be questioned before an authority specified by law No law relating to the delimitation of constituencies and the allotment of seats to the constituencies shall be questioned in any court if any intervention by always move the course and get the injections passed. The above provisions of art 243-o are in material with the provisions of art 329 relating to elections to Parliament and state legislatures. The Supreme Court judgment of May 2, 2002 ordered that applicants uncover their criminal forerunners, assuming any, as likewise their monetary and instructive foundation. The Election Commission had proposed correction of statutory guidelines and the organization of selection Paper, to offer impact to this judgment of the
Supreme Court. The Apex Court judgment to check debasement among open worker is an appreciated stride. No law ought to give defensive shield to the degenerate open authority and the court has properly held that no earlier endorse of equipped specialist would be required to arraign them. With this request, 93 MPs and 10 serves in service are under the scanner on different criminal accusations. This is horrifying. It is unexpected that the official and lawmaking bodies who make and actualize approaches and rules for the improvement are themselves going about as hindrance in the advancement of the country. The part of Incomparable Court turns out to be critical here. The Apex Court as overseer of constitution ought to find a way to fortify majority rules system in the nation. The assembly and official have been grumbling about the Supreme Court's mediation on their area, however it ends up plainly basic in such sort of undesirable circumstance. The Supreme Court of India maintained which made it obligatory for everybody looking for open office to uncover their criminal, monetary and instructive history. It was an approach to guarantee that the voters knew the critical insights about their "decent" pioneers, and steamed them were for sure. A portion of the gatherings would have the capacity to draw advantage from the Supreme Court arrange on the grounds that they have had less chance to enjoy wrongdoing and debasement. They would have a more prominent possibility of watching applicants of different gatherings squirm and endure in anguish. Some others may be upbeat since they as of now have effective guard dog frameworks and batteries of legal advisers set up that would allow them to document counter-sworn statements and test assignments of contradicting hopefuls inside hours of their being recorded.

6.14 ELECTION DISPUTES;-

Democracy is one of the basic inalienable features of the Constitutions of India and forms part of its basic structure; free fair, fearless and impartial election are the guarantee of a democratic polity Effective mechanism i9s the basic requirement for having such election. For conducting holding and completing the democratic process, a potential law based upon requirements of the society tested on the touchstone of the experience of times is concededly of paramount importance. A Balanced judicial approach in implementing the laws relating to franchise is the mandate of this Court Democracy is a part of the basic structure of the Constitution and rule of law and free and fair elections are basic features of democracy. Elections can be free and fair if
they are transparent and subject to judicial scrutiny. Election law in India lays stress on both the above aspects. The entire electoral exercise is conducted in a totally transparent manner, in full public gaze with the active participation of political parties and candidates who are the main stakeholders and of electors who are the ultimate beneficiaries under democracy. The exercise is also subject to judicial scrutiny in all its aspects as India is wedded to the rule of law. In 1975 the election of then Prime Minister was declared void by the Allahabad High Court Parliament amended the Constitution by the Constitution of that article had the effect of validating the election of the Prime Minister by Parliament. Notwithstanding the declaration of the high Court to the contrary The Supreme Court struck down that clause of art 329A as unconstitutional. The apex court observed that the Constitution visualises the applicant was blamed in any pending case for any offense culpable with detainment for a long time or more, and in which charge was confined or cognisance taken by the official courtroom. Provided that this is true, requires the points of interest thereof; the advantages (steady, portable, bank adjust, and so forth.) of a hopeful and of his/her mate and that of the wards; liabilities, assuming any, especially of any past due of any open monetary establishment or Government levy; instructive capabilities of the competitor. The Right to Information Act 2005 is a chronicled Act that makes Government authorities at risk for discipline in the event that they neglect to react to individuals inside a stipulated time span. Numerous open hirelings are driving lavish ways of life, past the lawful wellsprings of their pay. Numerous open workers are recording false testimonies about their yearly pay, riches subtle elements to Election Commission of India/Vigilance Commission/different specialists, by and large. These specialists are not legitimately checking these sworn statements. Many tricks, outrages are becoming visible without stopping for even a minute; legislators are blaming each other for association in tricks. While, the said specialists are keeping mum, as though those sworn statements documented by polluted open workers are valid. The corrupted open hirelings are not notwithstanding giving full, right data to open according to RTI Act, keeping in mind that reality turned out. This seen is extremely typical now a day that some open workers, discovered in the act amid rich

5 Civil Appeal No. 5756 of 2005 decided on 19 October 2006 LAW (SC) 2006(10) 68, TLPRE 2006 391.
spending, they effortlessly say that it is at their political gathering's cost or their well wisher's cost. However no sections are found in the record books of said gatherings to that regard. The law prohibits open hirelings from tolerating endowments, neighbour lines, supports past the estimation of rupees one hundred (Rs. 100), as it might be a type of pay off. Yet, one may ask all these under RTI. Appropriate to Know is an inborn quality of each individual. Appropriate to know contrasts just in one sense with ideal to data. Appropriate to know is a characteristic right and ideal to data is an arrangement given by government to its kin. Normal rights don't have any esteem lawfully until they are legitimately considered. Consequently ideal to know all things considered inferred in the right to speak freely and expression which is a legitimately thought to be correct must be given a unique esteem. Appropriate to data in that capacity will bring straightforwardness of the administration exercises and enable the general population to discover solutions for those things by which they endured.

6.15 CHALLENGE TO ELECTION WHEN AND HOW TO BE MADE:

Thus every election to any elected body or elective office be it the office of the President of India or a member of Parliament or of a state legislature is open and subject to judicial scrutiny. But the Constitution prescribes the manner in which and the stage at which a dispute relating to an election to any House of Parliament or of a state legislature shall be submitted for resolution by judicial process. It is The question now arise whether the law of elections in this country contemplates there should be two attacks on matters connected with election proceeding; one while they are going on by invoking the extraordinary jurisdiction of the high Court under Article 226 of the excluded and another after they have been completed by means of an election petition. In my opinion to affirm such a position would be contrary to the scheme of Part 15 of the Constitution and the Representation of the People Act, which as I Shall point out latter seems to be that any matter which has the effect of vitiating an election should be brought up only up only at the appropriate stage in an manner before a special tribunal and should not be brought up at an intermediate stage before any court It seems to me that under the election law, the only significance which the rejection of nomination Thesis has consists in the fact that it can be used as a ground to call the election in question Article 329(b) was apparently enacted to prescribe the may be raised under the law to call the election in question could be urged I think it follows by necessary implication from the language of this provision that those
grounds cannot be urged in any other manner at any other stage and before any other court. If the grounds on which an election can be called in question could be raised at an earlier stage and errors. If any are rectified there will be no meaning in enacting a provision like art 329(b) and in setting up a special tribunal. Any other meaning ascribed to the words used in the Article would lead to anomalies which the Constitution could not have contemplated one of them being stage and by the election tribunal which is to be an independent body, at the stage when the matter is brought up before it. The conclusion which I have arrived at may be summed up briefly as follows;

(1) Having regard to the important functions which the Legislatures have to perform in democratic countries it has always been recognised to be a matter of first importance that election should and all controversial matters and all disputes arising out of elections should not be unduly retarded or protracted.

(2) In conformity with this principle the scheme of the election law in this country as well as in England is that no significance should be attached to anything which does not affect the election and if any irregularities are committed while under the law by which elections are governed would have the effect of vitiating the election and enable the person affected to call it in question petition and not be made the subject of a dispute before any Court while the election is in progress.

(3) If an election the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result is to be called in question and which questioning may have the effect of interrupting obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

(4) Any decision sought and rendered will not amount to calling in question an election if it subserves the progress of the election and facilitates the completing of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning an election if it subserves the progress of the election and facilitates the completion of the election. Proceeding cannot be described as questioning the election.
(5) Subject to the above the action taken or orders issued by the Election Commission are open to judicial review on the well settled parameters which enable judicial review of decision of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made our or the statutory body being shown to have acted in breach of law.

(6) Without interrupting judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings to remove the obstacles therein or to preserve a vital piece of evidence if the same would be lost or destroyed or preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the result are declare and the stage is set for invoking the jurisdiction of the court.

(7) The court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of are 329(b) It is but brought to it during the pendency of election proceeding. The court must guard against any attempt at retarding; interrupting, protracting or stalling of the election proceeding Care has to be taken to see that there is no attempt to utilise the court’s indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that except on a clear and strong case for its insertion having been made out by raising the pleas with particulars and precision and supporting the same by necessary material; the Supreme Court further observed that erroneous actions which are amenable to correction in the writ jurisdiction of the courts should be such as had the effect of interfering in the free flow of the scheduled election or hinder the progress of the election which is the paramount consideration. If by and erroneous order conduct of the election is not hindered, then he courts under are 226 of the Constitution should not interfere with the orders of the returning officers the remedy for which lies in an election petition only.

6.15.1 Elections and Electoral Rolls.

It is now well settled that election connotes the entire electoral process commencing with the issue of the notification calling the election and culminating in eh declaration of result of election. Though an election cannot be held unless there is an electoral roll
the process of preparation, revision and correction of electoral roll is not part of election within the meaning of art 329(b) It si a stage anterior to election. Electoral rolls are prepared, revised and corrected so as to be kept up to date under the provisions of the 1950 Act. This and the rules made there under have been held by the Supreme Court to be a self contained code and any person aggrieved in the matter of any inclusion or exclusion in or form an electoral roll has to avail of the remedies under the said Act. But where a general grievance is made in regard to faulty preparation or revision of an electoral roll or wrongful inclusion or deletion of names of large number of persons, the high roll or wrongful inclusion or deletion of names of large number of persons the high courts have entertained writ petitions for corrective action under age 226. In writ petitions questioning the validity of electoral rolls were first entertained by the High Courts at Calcutta and Guywahti and later transferred to the Supreme Court. The Supreme Court has But the apex court advised in case that the high courts should not pass any orders under art the government of a state cannot be carried on in accordance with the provisions of the cannot be called in question on the ground that the electoral election has been held by the basis of an electoral roll, the validity of the election cannot be called in question on the ground that the electoral roll was defective. It electron roll cannot be called in question nor can the right of a person to be included in an electoral roll be questioned in an election petition. But where electoral cannot be called in question nor can the right of a person to be included in an electoral petition that any name has been included in or deleted from an electoral roll after included in an electoral roll be questioned in an election petition.

6.16 LIMITS OF TRANSPERINCY IN ELECTION:-

None of them, in any case, will stand up, dreading the aftermath, related with the mentality connected to a few fragments of common society and the state, one that characteristically questions private amassing of riches. Appointive debasement in India is a result of the organizations and frameworks that we have set up. The points of confinement on race spending, alongside the other prohibitive battle fund

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Lal Babu Hussain and Ors v Electrol Registration Officer and Ors AIR 1955 SC 1189.
Indrajit Barua and Ors v Election Commission of India and Ors AIR 1986 SC103.
principles of the EC, sustains a firmly watched communist outlook among numerous Indian policymakers, which regularly makes them careful about individual riches. By unwinding these guidelines, the Election Commission will have the capacity to not just build consistence, straightforwardness and portrayal in Indian races, additionally help adjust India's legislative issues to its new financial matters. Over the previous decade, an accord has framed among political economy researchers and improvement professionals, which hypothesizes that subjects' entrance to a free stream of data on political administration and government execution is essential for enhancing administration results. In the event that one takes a standardizing view that the nearness of criminal applicants—while possibly good with responsible government—by and by impact sly affects a country everywhere, this review shows that data may not be a panacea. In this vein, this Study speaks to a commitment to a developing writing that proposes there are motivations to be doubtful about the "data agreement." To date, the observational proof in support of this association has been blended, best case scenario, and late reviews have indicated various conceivable variables that may alleviate the transformative effects of data on administration. These include: the believability of the data supplier; time/length impacts; low request; nationals' negative self-adequacy; and control by vital lawmakers. On the date settled for the investigation of selections under segment 30, the competitors, their race specialists, one proposer of every hopeful, and one other individual appropriately approved in composing by every applicant, except no other Individual may go to at such time and place as the returning officer may name; and the returning officer should give them all sensible offices for looking at the assignment Paper of all hopefuls. The returning officer might then analyze the selection Paper and should choose all protests which might be made to any selection and may, either on such complaint or all alone movement, after such synopsis request, assuming any, as he supposes vital, dismiss any designation with reason specified. The Candidate might be permitted to disprove any complaint till the following day as it were. The returning officer should get ready and distribute in such shape and way as might be recommended a rundown of challenging applicants, sorted under hopefuls having a place with perceived political gatherings, competitors having a place to enlisted parties and different hopefuls. The EC will accommodate fair conveyance of time on digital TV system and radio to the perceived political parties in light of their past execution. The seat or seats in the Council of States allocated to any in the Fourth Schedule of the Constitution might be
filled by a man or people chosen by the individuals from the appointive school for that domain in understanding with the arrangement of relative portrayal by methods for the single transferable vote. To the degree cash assumes a part in upgrading our comprehension of the part hoodlums can play in constituent legislative issues, it highlights our absence of comprehension of how precisely parties back decisions in the creating scene. Decision back—both its strategies and sources—is an issue that has incredible pertinence for how governmental issues works in majority rules systems both old and new. This is a particularly apropos issue for creating popular governments given the affirmed part that unlawful race reserves play there. Political gatherings are a set up some portion of present day mass vote based system, and the direct of races in India is to a great extent subject to the conduct of political gatherings. Albeit many contenders for Indian decisions are free, the triumphant possibility for Lok Sabha and Vidhan Sabha races generally remain as individuals from political gatherings, and conclusion surveys propose that individuals tend to vote in favour of a gathering as opposed to a specific hopeful. Parties offer applicants authoritative support, and by offering a more extensive race battle, taking a gander at the record of government and advancing option proposition for government, help voters settle on a decision about how the legislature is run. There are tight legitimate points of confinement on the measure of cash a competitor can spend amid the race battle. Since December in most Lok Sabha voting demographics the point of confinement was Rs in spite of the fact that in a few States the utmost is for Vidhan Sabha races the most elevated breaking point is Rs the least late alteration in October 2003 has expanded these cut-off points. For Lok Sabha situates in greater states, it is presently Rs In different states and Union Territories, it fluctuates between Rs Likewise, for Assembly seats, in greater states, it is currently while in different states and Union Territories, it shifts between Despite the fact that supporters of an applicant can spend as much as they prefer to assist with a battle, they need to get composed consent of the hopeful, and while gatherings are permitted to spend as much cash on crusades as they need, late Supreme Court judgments have said that, unless a political gathering can particularly represent cash spent amid the battle, it will consider any exercises as being subsidized by the competitors and tallying towards their race costs. The responsibility forced on the applicants and gatherings has reduced a portion of the more excessive crusading that was beforehand a piece of Indian races. Cash ought not exclusively be the motivations to be chosen, it is time no cash arrangement, each
hopeful ought to present his profile in broad daylight and media gives the adjust data and instructs voters with about being one-sided or biased, cash and muscle power ought to be completely prohibited and finished with and no more cash for votes or different advancements where colossal cash being spent, India is poor furthermore, every needy individual ought to have the chance to battle decisions, than we will have truly just esteem otherwise just rich is skilled and corporate will back whom they wish to be chosen, wrong beginning so cash ought to be restricted.

### 6.16.1 Election Petitions:-

Number of some election petition given below-

1. Date of introduction;
2. Date of issue of summons to the respondents;
3. Date of administration of summons on respondents;
4. Date of recording the composed proclamation or recriminatory articulation;
5. Date of Production of reports;
6. Date of settlement of issues;
7. Date of recording the rundown of witnesses;
8. Date of initiation of becoming aware of the request;
9. Dates on which the appeal to was listened; and
10. Date of finish of trial of the appeal.

It will be apparent from the above discussions that any election to any House of Parliament or of state legislature can be called in questing only by means of an election petition presented to such authority and in such manner as may be prescribed under art 329(b) and in no other manner as may be from the time of the very first general elections in 1951-52 that an election petition is a special statutory proceeding governed by the provisions of act 1951 and Part 6 thereof contain has been held to be self contained code having elaborate provisions as to disputes regarding elections and these provisions of the Act have to be interpreted as mentioned by the legislature. The
above constitutional position enunciated by the Supreme Court in and in a catena of other case was summed up that court in following terms. A right to elect fundamental though it is to democracy is anomalously enough. Neither a fundamental right nor a Command Law right It is pure and simple a statutory right to dispute the election. The imperative standards with respect to the locale of High Courts in regard of race matters and their forces to engage race petitions can along these lines be concluded and be expressed as takes after The protected arrangements and the Representation of People Act obviously express the decide that there is a solution for each wrong done amid the race procedure. The cure in regard of constituent process is not quenched by righteousness of Art 329(b). The main thing it does is that the cure is delayed to the post-decision arrange. The purpose behind the delay of the cure in regard of wrong done regarding the races is put off to the post decision arrange on account of a crucial reason. Having respect to the vital capacities which the Legislatures need to perform in majority rule nations, it has dependably been perceived to involve first significance that decisions ought to be led as right on time as conceivable as per time plan. All the questionable matters and all debate emerging out of decisions ought to be put off till after the races are over, so that the race procedures may not be unduly impeded or extended. Unwinding standards for spending in decision is an appreciated move by EC. The contention made in this article about spending by competitors and making it sensible with the genuine spending is yet extended as in what manner can sensible spending be evaluated, and the point that it will prompt more prominent straightforwardness in spending is additionally bit unclear as the vast majority of the non pronounced spending is because of illicit spending on alcohol, purchasing votes, employing furnished man, remunerating voters, and numerous such unlawful acts. EC ought to concocted inventive thoughts so that correct adjust record of how cash procured by gatherings and how its spend in race and the information ought to be made open. On the off chance that EC chooses to further climb the spending standards it ought to likewise make parties responsible in regard to their monetary records The established position and order in this manner has been clear – that the appointive procedure once began can't be prohibited or meddled with by courts, at any mediator arrange till its finishing and summit in the revelation of the outcome. Along these lines if the writ purview of the courts have been summoned amid the pendency of decisions this test might fill in as the rule for to court to decide if it ought to regard the matter as falling inside the compass of its wide powers under Art 226. However the
indisputableness and the controlling power of this test has still not been built up. The
different choices of the pinnacle court and the High Courts of the different states
uncover that the courts are simply trying waters. The arrangement of deciding its
locale on a case-to-case premise under Art 226 appears to include a component of
delicacy, defencelessness and vulnerability. Thus the need is to advance reasonable
rules by the Election Commission and afterward subsequently establish them in the
RPA, 1951 in order to decide with conviction the degree to which the writ locale of
the high Courts can be summoned and whether it can be conjured by any stretch of the
imagination. Stationary creations they are and therefore subject to statutory limitation
An election petition is not an action at subject to statutory limitation an election
petition is not an action at Common Law, nor in equity. It is statutory proceeding to
which neither the statute makes and applies It is a special jurisdictions and special
jurisdiction has always to be exercised in accordance with the stature creating it.
Concepts familiar to common Law and Equity must remain strangers to Election Law
unless statutorily embodied A Court has no right to resort to them on considerations
of alleged policy because policy in such matters as those relating to the trial of
election disputes is what the stature lays down. In the relating to the trial of election
disputes is what the stature lays down. In the trial of election disputes Court is put in a
straight jacked. Thus the entire election process commencing the election from the
issuance of the notification calling upon a constituency to elect a member or members
to right upto the final resolution of the dispute. If any concerning the election is
regulated by the Representation of the People Act 1951. Different stages of the
process being dealt with by different provisions of the Act. There can be no election
to Parliament or the State Legislature except as provided by the Representation of the
People Act provided by the Representation of the People Act. So The Representation
of the People Act has been held to be a complete and self contained code within
which must be found any right claimed in relation to an election or an election
dispute. The object subsided by the judicial scrutiny of elections when questioned by
means of election petitions has been explained by the Supreme Court in Azhar
Hussain v Rajiv Gandhi. In a democratic polity election is the mechanism devised to
mirror the true wishes and hate will of her people in the matter of choosing their
political manager and their representative who are supposed to echo their views and
represent their interest in the legislature. The result of the election is subject to
judicial scrutiny and control only with an eye on two ends. First to ascertain that the
true will of the people is reflected in the results and seconds to secure that only the the persons sash are eligible an qualified under the ascertained the Courts will step in to protect and safeguard the purity of election ascertained the Courts will step in to protect and election for if corrupt practices have influenced the result or the election for if corrupt practices have influenced the result or the true will is ascertain The Courts would be therefore so also when requirements are not fulfilled the fact that the totally irrelevant notwithstanding stand. At the point when the race of a hopeful is announced void, any of his demonstrations or procedures in which that competitor has taken part as a Member of Parliament or State Legislature, should not be negated by reason of that request, nor should such hopeful be subjected to any obligation or punishment on the ground of such Support. The High Court should when after the finish of the trial of a decision request, imply the substance of the choice to the Election Commission of India and the Speaker of the House or Executive of the State Legislature all things considered. without interfering, deterring or postponing the advance of the race procedures, legal mediation is accessible if help of the court has been looked for simply to revise or smoothen the advance of the race procedures, to expel the hindrance in that, or to protect an indispensable bit of proof if the same would be lost or devastated or rendered hopeless when the outcomes are proclaimed and the stage is set for summoning the locale of the court.

In choosing and engaging matters identified with the decisions the courts can't fall back on help of standards of value and custom-based law keeping in mind the end goal to extend the extent of their ward in race matters. The privilege to question a decision is a statutory right i.e. at making of the statue and in this manner is liable to the constraints made by the statute. The cut-off points set around the statue as far as discussions which can be drawn nearer can't be transgressed. Thus the width and adequacy of forces High Courts as this Thesis tried to recognize in any case can be appropriately deduced from the above expressed specialists and arrangements of different statutes. The High Courts have been particularly consulted ward to manage race petitions under RPA, 1951. These decision petitions are documented in regard of any question after the races are over and not amid the continuation of the race procedure. Subsequently High Courts have a selective locale to hear decision petitions. Any gathering abused by the choice of the High Court may record an interest to the Supreme Court which might be a last specialist on the matter. There is
no question as respects this locale under the statute. As far as possible on crusade back large affect the very embodiment of portrayal. For voters to settle on an educated decision, it is basic that hopefuls and gatherings communicate as the need should arise to every voter. For voters to settle on the correct decisions they have to comprehend and react to the competitors' approach positions and some of the time cooperate with the hopefuls themselves. With the present guidelines, a honest applicant would not have the assets (budgetary or something else) nor an opportunity to get that going. This infers bring down levels of portrayal and subsequently more noteworthy assertion in voting choices, both of which are hurtful to fair responsibility and majority rule government on the loose. Government officials then swing to go betweens to prepare votes with the very clear negative outcomes. Various lawmakers we have talked with concur that battle back laws should be returned to. The wide powers presented to the High Court’s under Art 226 of the Constitution however have a hazy area as far matters in regard of decisions are concerned. The court more often than not decides on the realities of condition of the case whether they can regard the matter as under the writ purview. The essential test that is connected is whether the requests of the court as looked for by the solicitor would sub-fill the need of fruitful culmination of races according to the time plan. The High Court should likewise send a validated duplicate of the choice to the ECI. Every advance should be favoured inside a time of thirty days from the date of the request of the High Court. Preeminent Court may engage an interest after the expiry of the said time of thirty days in the event that it is fulfilled that the litigant had adequate reason for not inclining toward the interest inside such period.