Chapter 1
ROLE OF THE ELECTION COMMISSION

Election is the basic element of democracy. They constitute the backbone of the democratic system. They play a key role in a democratic polity. India’s independence was significant not only as a major historical event making the end of colonial era, but India chosen representative democracy, a parliamentary form of government and today India is the biggest democratic Country in the world. The earliest electoral practice known in India was dated back to 4 BC under the Republican Federation of Kshudra -Malla Sanga. However, the first evidence of the representative form of government was found in the vedic times known as ‘samiti’ which meant National Assembly of the whole people or yisha, that had a share in the management of the State¹. In the Buddhists literature the vote was known as ‘chhanda’. The Jataka was the pre-Buddhist assembly to elect the King. The little known electoral system disappeared at the rise of Mauryas. During the Medieval and Muslim period there was no election. It was the Indian Council Act, 1892 which had increased the representation of Indian in the Central and provincial Legislative Councils through nomination and not by election. The first direct election but subject to nomination and communal representation was a result of Indian Council Act of 1909. The Government of India Act 1919, had further extended the communal representation and the first general election was held in Nov-Dec 1920 on the communal basis for both the Council of State and Legislative Assembly. Rules were made under the joint operation of the Government of India Act 1915 and 1919 and electorate was extended to 3% of the population of British India i.e. 73 lakhs men and women based on property qualification 10% of the total population. In 1932 a franchise Committee was appointed to consider the recommendation of statutory Commission
for 10% and the recommendation of the first session of Round Table Conference for 25%. These proposals were incorporated in accordance with the report of the Joint Selection Committee in the Government of India Act 1935. The Act of 1935, however introduced a Federal form of government. Life of federal assembly was fixed for five years. Communal representation in election was also retained. Although the elective principle was introduced in 1892 but it had no independent choice before 1947.

After Independence India has adopted open and competitive electoral system. It was in 25th January 1950 the Election Commission of India was set up as a Constitutional body. It has considerable autonomy of action as it derives its power directly from the Constitution under Article 324 and the conduct of elections in India after independence became the responsibility of the Election Commission. So far Election Commission has conducted 14 general elections peacefully for the Lok Sabha i.e. the Lower House of Parliament in the years of 1952, 1957, 1962, 1967, 1971, 1977, 1980, 1984, 1989, 1991, 1996, 1998, 1999 and 2004. The Constitution provides for five year term for the Lok Sabha, but this five year term can be shortened by advancing election by the ruling government is defeated and the Lok Sabha has to be dissolved. This term can also be extended one year at a time during the proclamation of emergency. In 1971, 1984 and 2004, the general elections were advanced, and in 1979, 1991, 1996 and 1998, consequent upon loss of confidence of the government in the Lok Sabha, the Lok Sabha was dissolved followed by midterm elections.

(A) Election Commission the Genesis:

The framers of Indian Constitution were aware of the significance of independent electoral machinery for the conduct of elections. The
Fundamental Rights Sub-Committee unanimously approved that independence of elections and avoidance of interference by the executive in legislative election should be regarded as a Fundamental Right and be included in the chapter dealing with the subject. The Committee resolved:

1. Universal adult franchise must be granted by the Constitution;
2. Election should be free, secret and periodic; and
3. Election should be managed by an independent Commission set up under Union Law.

Consequently, it recommended the inclusion of the following clause in the list of Fundamental Rights:

1. Every citizen not below 21 years of age shall have the right to vote at any election to the Legislature of the Union and of any State thereof.
2. The law shall provide free and secret voting and for periodical elections to the Legislature.
3. The superintendence, direction and control of all elections to Legislature, whether of the Union or the State, including the appointment of Election Tribunal, shall be vested in the Election Commission for the Union or State as the case may be appointed in all cases in accordance with the law of the Union.

The Advisory Committee agreed in principle with the contents of this clause but felt that “instead of being included in the list of Fundamental Rights it should find a place in some other part of the Constitution. The Union Constitution Committee accepted the suggestion of the Advisory Committee and included this clause regarding the
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machinery of election in the Constitutional plan formulated by it\(^1\). When the matter was considered by the Constituent Assembly on July 29, 1947, the mover of the clause, Gopalswami Aiyangar, a member of the Drafting Committee, accepted the amendment of H.V. Pataskar entrusting the Election Commission with the task of federal elections only and charging the Governor with the responsibility for the management and conduct of elections to the legislatures of the states through a separate machinery\(^5\). Thus the Drafting Committee through article 289 of the Draft Constitution provided for separate Commissions for the conduct of federal and provincial elections. In the resumed discussion on the article in the Constituent Assembly 15 June, 1949, the Chairman of the Drafting Committee, B.R. Ambedkar, moved an amendment for substitution of the article 289 of the Draft Constitution with the following article:

The superintendence, direction and control of the electoral rolls for, and the conduct of, all elections to the Parliament and to the Legislatures of every state and elections to the offices of President and Vice-President held under this Constitution, including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections to Parliament and to the Legislatures of states shall be vested in a Commission\(^6\). The new articles he contended “proposed to centralise the Elections Machinery in the hand of a Single Commission, to be assisted by Regional Commissioners working under the supervision, direction and control of the Election Commission” and not under the control of the state Governor as envisaged earlier\(^7\). Ambedkar admitted that it was “undoubted by a radical change”\(^8\). The centralisation of electoral administration, he explained, was done “to prevent injustice being done by the provincial governments to people other than those who belonged to the provinces racially, linguistically and culturally"\(^9\). He said:
The Fundamental Rights Committee come to the conclusion that no guarantee regarding minorities or regarding elections could be given if the elections were left in the hands of the executive of the day. Many people felt that if the elections were conducted under the auspices of the executive authority and if the executive authority did have power, as it must have, of transferring officers from one area to another with the object of gaining support for a particular candidate who was a favourite with the party in office or with the government of the day, that will certainly vitiate the free election which we all wanted. It was, therefore, unanimously resolved by the members of the Fundamental Right Committee that the greatest safeguard for fairness in election, was to take away the matter from the hands of the executive authority and to hand it over to some independent authority.\(^{10}\)

A section of Constituent Assembly including Pataskar pleaded strongly for the retention of the original clause 289, Pataskar felt that the amended clause displayed a distrust of people in the states down from the Governor nominated by the President to the smallest local authority and would be tantamount to depriving the states of the right to manage their elections. It would take away the last vestiges of the state autonomy.\(^{11}\)

Speaking in the Constituent Assembly at the close of the third reading of the Constitution Rajendra Prasad said:

One of the dangers which we have to face arises out of any corruption which parties, candidates or the government in power may practice. It is, therefore, (good) that our Constitution guards against this danger and makes provisions for an honest and straightforward election by voters.\(^{12}\)
A reading of the relevant provisions of the Constitution relating to elections reveals that the framers of the Constitution in their anxiety to ensure an independent position for such election authority made power of Parliament and the State Legislatures to make laws with respect to various electoral matters mentioned in articles 327 and 328 'subject to the provisions of the Constitution', including the provisions of Article 324 of the Constitution. This was confirmed by the Supreme Court in Sadiq Ali V. Election Commission of India.

As far as composition of Election Commission is concerned, there were two divergent proposals before the drafting Committee: (a) either to have a permanent body of four or five members, or (b) adhoc body constituted at the time of peak electoral activity. The Drafting Committee steered a middle course. It decided to have permanently in office one man, namely, the Chief Election Commissioner who formed the permanent nucleus for organizing and conducting bye-elections and to arrange for general elections to legislatures in case of premature dissolution, and arrange for the preparation of electoral rolls for the prospective general elections. The skeleton machinery for the office of the Chief Election Commissioner was to be augmented by large reinforcements, which could be secured for electoral duties from work at the time of general elections to Union and States Legislatures including the appointment of Regional Commissioners. The position has been clearly setout in Article 324 of the Constitution of India:

In Parliamentary form of Government obtaining in India, this tantamounts to, it is contended, leaving the appointment of this high functionary to the Government of the day i.e. the cabinet with the Prime-Minister at its head. An appointment to this post made on ministerial
advice, it is feared, may make room for the exercise of political influence\textsuperscript{15}. The Tarkunde Committee on Electoral Reform appointed by late Shri Jaya Prakash Narayan on behalf of Citizens for Democracy in its Report submitted in February 1975 also expressed similar apprehensions. The Committee suggested that members of the Election Commission should be appointed by the President, on the advised of a Committee consisting of Prime Minister, the leader of apposition (or a Member of Parliament selected by the opposition) in the Lok Sabha and the Chief Justice of India\textsuperscript{16}. In this connection, it is relevant to state that power of appointment of all high functionaries is, almost always, vested in the executive branch of the government, unless these posts are filled through the instrument of election, as in the practice obtaining in some states of the United States of America and Russia. But then, election of these high functionaries in some of these states has given rise to other connected problems. Even in India, the Comptroller and Auditor General, Chairman and Members of the Union Public Service Commission and the Judges of the Supreme Court and High Courts are all appointed by the President on the advice of Council of Ministers.

Apprehension of possible political influence creeping in the appointment of Chief Election Commissioner has also been belied by practice as well. The President on the advice of the cabinet with the Prime-Minister, so far appointed retried and trusted administrator of the unquestionable integrity and not politicians or non-officials to this office. All incumbents, of this post, excepting one, were member of either the Indian Civil Services or Indian Legal Service. They include names like Sukumar Sen, NVK Sundaram, S.P. Sen Verma, Nagendra Singh, T. Swaminathan, S.L. Shakdhar, R.K. Trivedi, T.N. Seshan, J.M. Lyngdoh and T.S. Krishnamurthy. Except for S.P. Sen Verman who was a legal
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luminary and S.L. Shakdher who was the Secretary General of the Lok Sabha, others came from the Indian Administrative Service and had served in the highest position before becoming the Chief Election Commissioner. Each of these appointment appears to have been made after due care. The press and public have on the whole displayed a remarkable confidence in the sincerity and integrity of the individuals who have adorned this august office. A fixed tenure for this high functionary, that is, the Chief Election Commission, is necessary to enable him to function independently without any fear of the executive or the legislature. But initially the provisions of the Constitution failed to provide a fixed tenure for the Chief Election Commission unlike in the case of the Chairman and Members of the Union Public Service Commission, or the Judges of the Supreme Court. The Constitution prescribes a six-year tenure or retirement at the age of 65, whichever is earlier, for a Member of the Union Public Service Commission. A judge of the Supreme Court held office till the age of 65 years. The tenure of the Chief Election Commissioner has earlier, however been determined under the rules made by the President in 1972. That is why, till 1972, the Chief Election Commission could be appointed for any period of time. The first two chief Election Commissioners hold office for eight years, though initially each of them had been appointed for a period of five years only. As per the rules made by the President in 1972, the Chief Election Commission could hold office for five years or till he attained the age of 65 years, whichever was earlier. Now the Chief Election Commission and other Commissioners (Condition of Service) under the Act 1991, the term of his office has been extended upto six years, from the date he assumes office or till the day he attains the age of 65 years, whichever is earlier.
As far as removal of the Chief Election Commission is concerned, the Constitution has, however, made the method of removal of the Chief Election Commission as difficult as that of the judges of the Supreme Court. The Constitution stipulates that the Chief Election Commission can be removed from his office "in like manner and on the like grounds as a judge of the Supreme Court". A Chief Election Commission thus shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehavior or incapacity. As for the Chief Election Commissioner being given any office after retirement is concerned B.K.P. Sinha says that the Chief Election Commission should not be appointed by the government to any other office after retirement\(^{18}\). The Chief Election Commission and the Election Commissioners should be made in eligible not only for any appointment under the government but also to any office, including the office of Governor, appointment to which is made by the President as suggested in the Goswami Report.

Besides the Chief Election Commission and the other Election Commissioners there is also provision under clause (4) of Article 324 of the Constitution for the appointment of Regional Commissioners before each general election to assist the Election Commission in carrying out the functions. Two such Commissioners were appointed in 1951-52 with their headquarters at Bombay and Patna. However, the practice was replaced at the time of second general election with the appointed of Deputy Election Commissioners in 1956 which continues and has proved to be quite successful\(^{19}\). The expansion of Election Commission was also recommended by the Joint Select Committee of Lok Sabha on Electoral
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Reforms in 1972 and later by the Joint Parliamentary Committee on Electoral Reforms. Both the Committees also recommended the appointment of Regional Commissioners for a more systematic conduct of elections.

The Election Commission faces certain disadvantages at times as it has no power to recruit and regulate the conditions of service of its secretarial staff. It depends for its staff requirement for the preparation of electoral rolls and conduct of elections on the Central and State Governments. Realising this, one of the Chief Election Commissioners, S.P. Sen Verma, had suggested to the government in 1970 that a permanent election organisation/machinery independent of government at the Centre and the States be set up in each state to ensure smooth and fair poll all over the Country. It has pointed out that the estimated expenditure was trivial (just about Rs. 50 Lakh annually) but it could create an enormous sense of confidence among people. The government, however, referred it to Parliamentary Committee headed by former Law Minister A.K. Sen which met once on 27, December 1970, before the dissolution of fourth Lok Sabha and that was the end. No action has been taken since to provide a permanent staff to the Election Commission.

However, a small permanent unit of electoral machinery headed by the Chief Electoral Officer does exist in every state and union territory for carrying out works relating to election process. The Chief Electoral Officer is nominated by the Commission from the panel of names submitted by the State Government and is normally a senior secretary to the government. He is assisted by a Joint or a Deputy Chief Electoral Officer who is appointed a full-time officer to attend the election work although the post is yet not recognized by the law. The recommendations of the Election Commission
regarding strengthening of election machinery at state level had been considered by the Joint Committee of the Lok Sabha, most of them were approved also, but they are yet to be implemented.

At the district level, a District Election Officer (DEO) is provided for to supervise and co-ordinate the work of Electoral Registration Officers as well as Returning Officers. The Electoral Registration Officers is supposed to prepare and revise the electoral roll in each constituency. However, in actual practice, no such officer has been appointed. Although the Election Commission has acquired enormous respect there is need to augment the staff at the headquarters as well as at the state and district levels. It is not a simple task to hold regular elections based on universal adult suffrage in a Country like India with nearly 67.15 millions electorate and nearly 8.5 lakhs of polling stations including those located “in sky high and snow-clad mountains in North, scattered tiny islands in South, thick forests in East and vast tracks in marshy and desert lands in West”.

Seeing the vastness of the task, the government should seriously reconsider the plea of the Election Commission for creation of an independent election department or an independent secretariat which was not accepted by the 1972 Parliamentary Committee.

(B) Election Commission the Constitutional Provisions:

The provisions regarding elections are contained in Part XV of the Constitution which consist of six articles (Articles 324 to 329). The position of the Election Commission has been clearly set out in Article 324 of the Indian Constitution which reads:

(1) The Superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to
Parliament and to the Legislature of every state and of elections to the office of President and Vice-President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission).

(2) Clause (2) of Article 324 of the Constitution envisages that the Election Commission shall consist of the Chief Election Commissioner and such number of Election Commissioners as the President may from time to time fix and the appointment of Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.

(3) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission.

(4) Before each General Election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such council, the President may also appoint after consultation with Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the Commission by clause (1).

(5) Subject to the provisions of any law made by Parliament, the condition of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may determine by rule.
The President, or the Governor of a State, shall, when so requested by the Election Commission make available to the Election Commission or to the Regional Commissioners such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1). The above provisions simply provide for the appointment of the Chief Election Commissioner by the President, without prescribing any qualification—educational, legal, judicial or administrative for eligibility to the post or the procedure of its filling. The Jurisdiction of the Election Commission is also wide enough to include all powers necessary for smooth conduct of elections: Article 325 lay down that there shall be one general electoral roll for every territorial constituency for election to either House of Parliament or of a State Legislature. No person is ineligible for inclusion in any such roll on the ground only of region, race, caste, or sex nor can any one claim to be included in any special electoral roll for any such constituency on any such ground. Article 326 provides for adult suffrage as the basis for elections to the House of the People and the Legislative Assembly of every state, namely, a vote for every citizen not less than 18 years of age who is not otherwise disqualified under the law on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice. Article 327 vests legislative power in Parliament to make laws relating to all matters concerning elections to either House of Parliament or of a State Legislature, including the preparation of electoral rolls, the delimitation of constituencies and all the matters “necessary for securing the due consideration of such House or Houses”. Article 328 confers similar powers on State Legislatures to make laws relating to elections to the House or either House of Legislature of the states, in so far as provision is not made on that behalf by Parliament by law. Article 329
bars the jurisdiction of Courts to enquire into the validity of laws regarding the delimitation of constituencies or the allotment of seats to such constituencies. It also lays down that no election may be called in question except through an election petition, presented to such authority and in such a manner as may be provided for by law.

Besides the above provisions the elections are conducted on the basis of two Acts, namely, the Representation of People Act, 1950, and 1951, both shaped by B.R. Ambedkar. The Act of 1950 embodies provisions regarding the delimitation of constituencies, allocation of seats, appointment of election officers and preparation and revision of electoral rolls, whereas the Act of 1951 deals with qualification and disqualifications for membership of Central and State Legislatures, corrupt practices and electoral offences and also with the entire machinery and procedure for the conduct of elections. Both Acts empower the Central Government to make rules there under. Two such important sets of rules are the Registration of Election Rules, 1960, and the Conduct of Election Rules, 1961. One major revision of the Representation of people Act, 1951, was in 1966 when new machinery for disposal of election petitions was provided. The Act abolished Election Tribunals and empowered the High Courts to dispose of the petitions whose orders are final and no appeal could be filed against them except by grant of special leave to appeal by the Supreme Court under Article 136 of the Constitution.

(C) Controversies of Single or Multi-Member Commission:

The structure and powers of the Election Commission and the supervisory arrangements for ensuring efficient and impartial functioning of the electoral machinery are of such crucial importance to the working of the electoral system that any scheme of electoral reform would be largely
ineffectual without certain essential changes in the Commission's structure and powers, and a more adequate system of supervision over the Electoral Machinery.

The Election Commission play a vital role in ensuring free and fair election, but the success of this institution largely depends on the commitment of political parties and leaders to the democratic process and the well being of the people. Therefore, it is necessary to ensure that the Election Commission is so constituted that its integrity and fairness are unquestionable.

The Election Commission consisted of one man at the top, that is, the Chief Election Commissioner. For quite some time proposals has been made by way of electoral reform that the Election Commission should be made a multi-member body to prevent the Election Commissioner from acting arbitrarily. For instance, the Joint Committee on Amendment to Election law felt that an enlarged Commission will be able to discharge more effectively the responsibilities relating to elections. Also in exercise of quasi-judicial functions, a broad-based Commission is likely to reached generally acceptable decisions and command respect. Therefore, the Committee recommended that the Election Commission should be a multi-member body as envisaged in Article 324(2) of the Constitution. While the decision about the exact number of election Commissioners necessary to assist the Chief Election Commissioner in the performance of his duties may be left to the government to determine. The Committee also reasoned that the elections have gradually ceased to be a mere quinquennial affair but are held, if not every year, at least in every alternate year in some part or the other of the Country. The elections have, therefore become a continuing process entailing enormous work for the Election Commission.
The immensity of the task of the Election Commission and the complexities of the duties it is called upon to discharge are to obvious and do not require any elaboration. It is a great burden on a single person to exercise supervisions, direction and control over elections effectively and consequently he is likely to be exposed and become vulnerable to charges of arbitrariness and partiality. However in the year 1993 to make the Election Commission a multimember body, two more Election Commissioners were appointed by the President with equal powers as the Chief Election Commissioner. Regarding emphasis on the need for the appointment of Regional Election Commissioners the Committee felt that there are too many matters on which orders of the Election Commission are necessary under the provision of the Election Laws and it is not possible for the Election Commission at Delhi to take prompt and appropriate steps without the first hand knowledge at their disposal. The Committee, therefore further recommended that Regional Election Commissioners might also be appointed as contemplated in Article 324 (4) of the Constitution in order to assist the Election Commissioners in the performance of their function. Like the Joint Committee Report, the Tarkunde Committee submitted a Report on Electoral Reform, constituted by the late Shir Jaya Prakash Narayan, also felt the need for a multi-member Commission. The Tarkunde Report is of the view that Article 324 of Constitution make specific provision in sub-clause 2 for the appointment of Chief Election Commissioner and a “number of other Election Commissioners”. But this provision has not been so far implemented. The position of the Election Commission is somewhat analogous to that of the Public Service Commissions at the Centre and in the state which consist of several members. The Report suggested that a Commission consisting of a body of three members can arrive at a
consensus on major controversial problems of organizing election which is
decidedly a superior method of ensuring impartiality to the individual
decision of a single Chief Election Commissioner. This Report emphasized
the importance of implementing the existing provisions of the
Constitution. The Goswami Committee Report also felt that the Election
Commission should be a three member body.

A survey was conducted by the Illustrated weekly in 1976 on the
Electoral Reforms in which it interviewed that eminent ruling party
members, members of the parties in opposition, jurists and economists, etc.
Seminar a monthly political magazine, also dealt with this problem of
electoral reforms in its many issues. EMS namboodripad CPI (M), C.
Rajeswara Rao, Mrinal Gore of socialist Party, Piloo Mody, Ex-secretary.
Bhartiya Lok Dal, Naimi Palkhivala- Constitutional lawyer, L.K. Advani
(BJP), Era Sezhiyan (DMK). Balraj Madhok, Hari Krishna Singh Surjeet,
Dinesh Singh and V.R. Kirhsna Iyer. All of them felt that a one man
Election Commission, however independent it may appear constitutionally,
is prone to political pressures from the ruling party. They also feel that
elections are too big a responsibility to be left to the whims and fancies of
one individual. L.K. Advani in the Illustrated weekly of India and B.G.
Verghees as guest editor in the Indian Institute of Public Opinion advise a
multi member Election Commission as they say Article 324 of the
Constitution contemplates it.

L.P. Singh, former Governor North Eastern States and ex-Home
Secretary, Government of India, and second is Ramakrishna Hegde, ex-
Chief Minister of Karnataka, both of them favour a multi-member
Commission. L.P. Singh favours a three member Commission, he feels that
the Election Commissioner should be the chairman and act as the effective
leader and coordinator, and bear the general responsibility for the working
of the whole Commission. If the Commission is to be given additional
statutory powers, as is ought to be to effectiviate the wide ambit of its
Constitutional responsibilities with some enlargement that may be found
necessary, there would understandably be reluctance to do so if the
Commission continues to consist of a single member. Ramakrishna
Hegde also feels that a single member Election Commission cannot cope
with the work in the present situation. He says; On 18 June 1985 the
Election Commission of India sought the views of various political parties
on proposal for electoral reforms. The Janata Party in this replay suggested
that the Election Commission should consist of three members.

The experience of the general pubic with the functioning of the
Election Commission who were albeit appointed by the President and the
successful conduct of general elections has earned for it Kudos from all
over the world, is an eloquent testimony to the integrity and independence
of the one-man election authority. As for the Regional Commissioners, the
system was tried in the very early stages and was given up at the
experimental stage itself. The malady obviously lies elsewhere and. as
such, the remedy is to be found in providing for the greater autonomy of
the Election Commission.

The suggestion for a multi-member Election Commission has been
made on the grounds that:

(i) Such a multi-member Commission will avoid the possibility of
arbitrary action by a single individual. As Piloo Mody, ex-
secretary, Bhartiya Lok Dal says, “General Elections are too big
a responsibility to be left to the whims and fancies of one
individual” as he felt that past experiences have not been rewarding.

(ii) The responsibility relating to elections will be more effectively discharged and in exercise of its quasi-judicial functions. V.R. Krishna Iyer adds—an Election Ombudsman is also an imperative having regard to the investigative and pre-emptive work involved, if only the amplitude envisaged by me were to be effectuated. Power at the peak should never rest with one, lest abuse should creep in, a plurality is, for many reasons, a necessity of every democratic institution.

(iii) Such a Commission is likely to reach generally acceptable decisions and command respect.

It is important to note that the Commission does not agree with the idea of a multi-member Election Commission. The Election Commission had, as early as 1972 expressed the view that a single-member Commission has functioned efficiently and quickly. The ex-Chief Election Commissioner, S.P. Sen Verma, who has been opposed to the idea of a multi-member Election Commission argues in favour of a single Chief Election Commissioner:

In the first place, the framers of the Constitution did not straightaway provide for a multi-member Union Public Service Commission or a multi-member State Public Service Commission. Clause (2) of Article 324 of the Constitution is only and enabling provision authorizing and empowering the President to appoint “such number of other Election Commissioners, if any, as the President may from time to time fix.”
The framers of the Constitution thought that a multi-member Election Commission might not be necessary at all. This view is clear by the presence of the two small words "if any" occurring in clause (2) of Article 324. In the next place, even if "Other Election Commissioners" are appointed, they will not stand on a coordinate footing with the Chief Election Commissioner. If appointed, their position will be subordinate to that of the Chief Election Commissioner. This is clear from the second provision to clause (5) of Article 324 under which "any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner". It is on the basis of this provision that the Regional Commissioners who were appointed at the time of the first general elections of 1951-52 could not continue after those elections were over.

S.P. Sen Verma further adds, with a multi-member body, many practical difficulties and problems will arise specially during the time of a general election when circumstances and conditions may crop up which may demand immediate and prompt opinion, advice or decision from the Election Commission. It might be quite impossible for a multi-member Commission to give any quick decision on the spur of the moment and communicate the same immediately to remote places and areas in the Country. He thought that if the other Election Commissioners are bypassed by the Chief Election Commissioner, there may be resentment. Not only that, there may be strong criticism in such cases of the acts of the Chief Election Commissioner by the candidates and the political parties.

According to the report of the Election Commission legislative assembly (1977-78). There has been a suggestion from some quarters that the Election Commission should be made a multi-member body. The
Commission is of the considered view that a multi-member Commission will be a workable organisation and would create more problems than it would solve. The Reports adds—it is immaterial whether there are one or three persons. But the two additional Commissioners might not have enough full time work. This apart, elections are fast moving affairs and call for instant decisions concerning violence, allegations of malpractice, etc. A multi-member Commission could be at logger heads. One man Commission has worked well for 30 years, without complaint. As far as broad politics are concerned, in these matters the Commission does not act arbitrarily but in consultation with the government, the political parties and the people.

Emphasizing this point the report further adds:

At the time of the general election, it has to organize and conduct massive field operations which can be done only if there is a unified line of command at the Commission level and quick decisions are given. Further, the volume of work is not so much as to keep all the members of the Commission fully engaged throughout the year. In fact, during the lean periods there will not be any work to do. Thus, a multi-member Commission will lead not only to duplication or triplication of the work and delays or indecision if different opinions are held by the members. For like reason, the Commission is also not in favour of appointment of Regional Commissioners.

We find that the Commission does not act arbitrarily; it consult the administrative authorities, political parties, etc. on important matters. The Reports of the Commission shows that there is a lot of work, starting with the supervision of the preparation of electoral rolls, to watching closely the happenings during the elections, and subjecting to a close scrutiny various
issues and problems that crop up during elections. In any case the Chief Election Commissioner would be the Chairman and act as the effective leader.\footnote{13}

Though clause (2) of Article 324 says that Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any as the President may from time to time appoint, the Commission has since its conception consisted only of Chief Election Commissioner. However, on 7 October, 1989, the President fix the number of Election Commissioners (other than the Chief Election Commissioner) at two until further orders. Therefore, S.S. Dhanoa, former Indian Administrative Service officer, and V.S. Seigell, former Indian Police Service officer, were appointed Election Commissioners on 16 October 1989. On 1 January 1990 the President rescinded his earlier notification and order fixing the number of Election Commissioners thereby making the Election Commission a single member body as before.

After his removal a case was filed by S.S. Dhanoa versus Union of India and Others.\footnote{44} The case makes an interesting study. The functioning of the three member Commission was marked by disharmony and disagreements. The case itself shows that there were bickering even on petty issues; although ultimately all the decisions were taken unanimously.\footnote{45} About the abolition of the posts of other Election Commissioners, the Supreme Court observed that:\footnote{46}:

The creation and abolition of post is the prerogative of the executive, and in the present case of the President. Article 324 (2) leaves it to the President to fix and appoint such number of Election Commissioners as he may from time to time determine. The power to create the posts is unfettered. So also is the power to reduce or abolish them. If, therefore, the
President, finding that there was no work for the Election Commissioners or that the Election Commission not function, decided to abolish the posts.

However, the Government again passed an ordinance on October 1993 appointing two additional members to the Election Commission. Thereafter, M.S. Gill, an IAS officer and G.V.G. Krishna Murthy, a central legal service officer were appointed Election Commissioners who started asserting their authority that led to confusion in the functioning of the Commission. In its interim orders, dated 15 November 1993 in a writ petition (W.P. No. 805 of 1993) filed by the Election Commission, the Supreme Court observed:

Until further orders, to ensure smooth and effective working of the Commission and also to avoid confusion both in the administrative as well as in the electoral process, we direct that Chief Election Commissioner shall remain in overall control of the Commission's work.

The idea of Regional Commissioners has found favour only with an ex-Chief Election Commissioner, R.K. Trivedi, R.P. Bhalla, a retired Deputy Election Commissioner has also stressed upon the need for Regional Commissioners. He said:

However, during the General Election to the Legislative Assemblies, 1982-83, the Commission faced some serious problems of enquiry into the allegations of misuse of official machinery, inaction on the part of some of the State Governments in regard to maintenance of law and order and non-observance of the Commission's directions in vital matters. The Commission has, on occasions, no means of ascertaining the position in the field for taking expeditious remedial measures. That is why the Commission has recommended to the government the necessity for
invoking the provision of appointment of a Regional Commissioner in every state three months prior to the holding of a general election in future. If we look back we find that although in the first general elections of 1951-52, four posts of Regional Elections Commissioners were created, only two posts of Regional Commissioners were filled. These two were discontinued after the elections. The Commission's report does not give reasons for their discontinuation.

In 1956, for the first time a new post of Deputy Election Commissioner was created in place of Regional Commissioners. In the 1957, 1962 and 1967 general elections there were only Deputy Election Commissioners to assist the Election Commission. In the mid-term election held in 1969, there was only one Deputy Election Commissioner to assist the Chief Election Commissioner.

Regarding the appointment of Regional Commissioners, only ex-Chief Election Commissioner R.K. Trivedi emphasized on the necessity of a Regional Commissioner in every state wherever elections were to be held. In the second Annual Report for 1984, Trivedi records that before the last general elections to the Lok Sabha the Election Commission had recommended that Regional Commissioners should be appointed—one for each of the areas co-terminus with the East, West, South, North and Central Zones recognized by the Home Ministry. The Regional Commissioners were expected to enquire into complaints made by political parties and to take remedial measures, to approve proposals for the location of polling stations and appointment ofReturning Officers. The Government of India accepted the proposal that six Regional Commissioners including and indicated one exclusively for the North-East.
may be appointed, and that the Election Commission should go ahead with the scheme of the appointment of the Regional Commissioners. The Proposal some how ultimately did not materialize\(^5\).

The appointment of Regional Commissioners will enable the Commission to have a high ranking officer present in the state who can act as a channel of communication with the higher levels of the state administration and coordinate all election work at a fairly high level\(^5\). For instance many foreign countries reveal that they also have a multi-member Election Commission.

Article 1 (5) of the American Constitution lay down that each House shall be the judge of elections, returns and qualification of its members. However, a Federal Election Commission was established in 1976 by the Federal Election Campaign Act (Amendment of 1974). This Commission is composed of six members appointed for a term of six years, by the President. Out of these not more than three members may belong to the same political party. They are elected by their fellow Commissioners. The clerks of the House of Representatives and the senate serve as ex-officio (non-voting) members of the Commission\(^5\).

Like in France, the National Supervisory Commission set up on the eve of an election campaign has its responsibilities limited to ensuring fairness and proper observation of the relevant rules for the election of the President only: it does not concern itself with other elections\(^5\).

The National Supervisory Commission consist of the following five members\(^5\):

1. Vice-President of the conseil d’Etat, (the highest administrative court), who acts as the Chairman of the Commission.
2. The First President of the Court of Cessation.

3. The first President of the Audit Court.

4. Two active or honorary members of the conseil d’Etat, of the Court of cessation or of the Audit Court, appointed by the three statutory members.

In the Federal Republic of Germany Electoral Committees and Electoral Boards are appointed for elections. An Electoral Committee consist of a Returning Officer as chairman and six persons entitled to vote appointed by him as Committee members. The Electoral Board is composed of Electoral Officer as Chairman, his Deputy and of another three to five persons entitled to vote appointed as members. The Electoral Committees and the Electoral Boards meet and reach their decision in public sessions. Decisions are taken by a majority vote; in the case of a tie, the chairman has a casting vote. The members of the Electoral Committees and Electoral Boards perform their function in an honorary capacity. No person can refuse to serve in it except on substantial grounds.

The Malaysian Election Commission also consists of a chairman and three other members.

Beside America, in West Germany also Electoral Committee and Boards consisting of many members; and in Malaysia we find there are many members in the Election Commission. So why not in India? Although in no democratic Country the size of the electorate at all comparable to that of India and beside that, our Election Commission has jurisdiction over the states as well as the Union elections. For example, the Federal Election Commission in USA, unlike its Indian counter part, is not
concerned with the state election; most of the states have their own bi-partisan Commissions.

(D) Changing Trend and Nature of Functions:

The question of introducing electoral reforms for ensuring free and fair election had been engaging the attention of various Chief Election Commissioner. Suggestions for reforms were made by almost all of them for modifying the laws governing the elections as well as “The Representation of the People Act” but with little effect. Electoral Reforms and the problems connected there with assumed an added importance after the general elections of 1989 and 1991.

Ever since T.N. Seshan was appointed the Chief Election Commissioner of India on 12 December 1990. He has made vigorous efforts in this direction, and has been largely successful in provoking political awareness among masses. The office of the Chief Election Commissioner has been the focus of media attention, academic debate and parliamentary scrutiny as never before. Several actions of the Chief Election Commissioner have provoked strong reactions in political and legal circles.

For every thing and anything, the Commission had to go to the government. Sheshan made it clear that he was the “Chief Election Commissioner of India” and not the Chief Election Commissioner of the Government of India\(^{58}\). Accordingly, he proceeded to exert his full powers under the Constitution and the Acts and rules made there under.

To free the secretariat of the Election Commission from the strangle hold of the executive, he decreed that the Commission as a Constitutional authority shall not be addressed by any form of communication except by a
formal letter\textsuperscript{59}. The form and address in a communication reveals the esteem and respect the sender beholds the addresses.

T.N. Sheshan took various steps to ensure free and fair elections. An important aspect of electioneering is the observance of the Model Code of Conduct agreed to long back by all political parties. The parties in power went on violating the code Unscrupulously and with impunity. The government failed to give a legal status to the code which remained a paper tiger earlier. The Commission has been provided claws to it whose violation in any form would result in the cancellation of elections.

Various examples of violations of the Model Code and the action taken by the Commission were seen but some significant cases we discuss here.

(a) Kalka bye-election in Haryana: In February 1993 Commission announced bye-election from Kalka Assembly constituency to be held in May 1993. The programme of election was announced on 6 April 1993 and from this date the Model Code came into effect in the constituency on 6\textsuperscript{th} and 7\textsuperscript{th} April 1993. The Chief Minister of Haryana announced several new schemes and inaugurated new projects in the constituency. After considering the reports of the State Government, the Commission held that the ruling party in the state violated the Model Code and in pursuance of Article 324 and all other powers, the notification for the by-election was rescinded. When the High Court tried to interfere with the order of the Commission, the following observations of the Supreme Court in Ghasi Ram Versus Dal Singh and others were referred to\textsuperscript{60}:
Election is something which must be conducted fairly. To arrange to spend money on the eve of elections in different constituencies, although for general public good, is, when all is said and done, an evil practice, even if it may not be corrupt practice. The dividing line between an evil practice and corrupt practice is a very thin one. It should be understood that energy to do public good should be used not on the eve of elections but much earlier and that even slight evidence might change this evil practice into corrupt practice. The Supreme Court set aside the proceedings before the High Court. Thus, it was probably first time in the history of Legislative Assembly Election when the Election Commission taken the step under Model Code of Conduct against the political party in India.

(b) The second importance case in which the violation of Model Code of Conduct seen was in a bye-election in Tamil Nadu, the date of poll was postponed by three months as the Chief Minister Ms. Jayalalita announced certain schemes.

(c) Third time the violation of Model Code of Conduct was seen in Madhya Pradesh where election was postponed due to misuse of official machinery by the Governor of Himachal Pradesh to further the prospects of the election of his son from Satna constituency. The Governor was forced to resign.

(d) The bitterest example of violation of Model Code of Conduct was that of ten very senior officers of the Tripura Government who publicly took part in electioneering meetings of some politicians of the ruling party and the Commission had charge sheet them. The Commission had no option but to postpone the entire general election in the state.
In February 1992 Seshan compiled and codified the suggestions and demands of the Commission for electoral reforms and sent them to the government. To quote him, instead of bringing forth any legislation to give effect to any of them the government did not even acknowledge it receipt.

However, the inaction of the government did not deter the Commission which went on to exert the inherent powers conferred on it by the Constitution. As a first step, the Commission refused to hold any election unless and until the full quota of security forces asked for by it to conduct free, fair and peaceful elections were made available. Over the years the Election Commission enforcement of India’s remarkably strict election laws grew increasingly lax. As a consequence, candidate flagrantly violated laws limiting campaign expenditure election become increasingly violent. The appointment of T.N. Seshan as Chief Election Commissioners reinvigorated the Election Commission and curbed the illegal manipulation of India’s electoral system. By canceling or repolling elections where elections improprieties had occurred, disciplining errant poll offences and fighting for the right to deploy paramilitary forces in sensitive areas, Seshan forced candidates to take the Election Commission’s code of conduct seriously and strengthened them its supervisory machinery. In Uttar Pradesh, where more than 100 persons were killed in 1991 elections, Seshan succeeded in reducing the number killed to two in the November 1993 assembly elections by enforcing compulsory deposit of all licensed firearms, banning unauthorized vehicular traffic and supplementing local police with Parliamentary units. Seshan succeeded in getting candidates to comply with these limits by deploying 336 audit officers to keeps daily accounts of the candidates election expenditures. Although Seshan has received enthusiastic support...
from the public, he has stirred great controversy among the countries politician.

The Election Commission requires the services of a very large number of election observers and Central and State Government employees to conduct the elections such government servants are directly, and in normal parlance, responsible to the executive either at the Centre or in the States. It has always been an uphill task for the Commission its inception to guard and insulate itself against interference from the executive through its officers and staff and thereby maintain the sanctity of elections.

The differences between the Government and the Election Commission became more apparent when elections to the Legislative Assemblies of Himachal Pradesh, Madhya Pradesh, Rajasthan and Uttar Pradesh were due in November 1993. The Election Commission required the services of a very large number of officers and staff of the government for conducting elections. It also required the deployment of adequate police force for maintenance of law and order conductive to holding peaceful free and fair elections. The Commission had requested the ministry of Home Affairs to let it know the quantum of police force available for election work. The ministry took the view that it was for the State Governments to assess the requirements of police and para-military forces and to manage their actual deployment.

The Election Commission held that it should have the sole authority of deciding as to who and how much staff is required for election work. It further held that the Election Commission shall have the sole disciplinary jurisdiction on the staff engaged in election work. The Election Commission maintained that under Article 324 (6) of the Constitution, it could direct the Central and State Governments to deploy such police force
for maintenance of law and order conducive to the conduct of peaceful, free and fair elections.

The Commission pointed out that under section 13 A of the Representation of the people Act, 1950, what is required is 'consultation' and not 'concurrence' of the State Government for appointment of a particular officer as the Chief Election Officer of the state and that the Chief Electoral Officer shall be a full time officer. When nothing concrete was done by the government, the matter was ultimately referred to the Supreme Court which decided only the issue related to deployment of security forces and observed as follows.

Assessment of the Election Commission as to the state of law and order and the nature and adequacy of the machinery to deal with the situations so as to ensure free and fair elections, prima-facie, prevail. Thus, the court further desired that the Election Commission and the Union Government “should find a mutually acceptable coordinating machinery for the resolution of these differences”.

The Election Commissioner T.N. Seshan was strictly enforced the Identity Card programme from 1 January 1995. vide its notification dated 28 August 1993, the Election Commission declared that Identity cards should be prepared by 30 November 1994 failing which elections in such states going to poll would not be allowed. The states were busy in preparing Identity cards, the cost of which would be borne equally by the Centre and States. Initially the state were reluctant to abide by the directive of the Election Commission, but had to yield under the firm stance of the Chief Election Commissioner.
To stop corruption in the conduct of election, the Commission has ordered video coverage of polling booths to record the events at sensitive polling stations. This will put a stop to corrupt practices indulge in by the contestants and officials conducting the poll. Revenue and Income-Tax Commissioners are appointed as Election Expenditure observers to spot-check the flow of money in the campaign. The Commission divert the attention of the government that the unrealistic ceiling on expenditure at elections which makes a legislator or a Members of Parliament began his career by submitting a doctored and false account of election expenditure. Seshan also decided to implement the law strictly and he give his advice that a register which each candidate has to maintain and submit after the election to the Commission. This measure had a great impact on the campaign style in the May 1994 bye-elections. The days of blaring loudspeakers and glittering video shows on streets become a thing of past. Parties even desisted from using their ‘chriots’ in the poll campaign. Strict orders banning huge expenditure on cut-outs, boarding posters etc. were issued and any violation there of was result in cancellation of elections. These measures taken by Seshan stirred the government and into action the existing ceiling on election expenditure has been enhanced three-fold.

There are number of other measures which has been taken by Seshan to clean the elections of its evils. He was aware that ballot boxes on their way back to the counting centres from polling stations are substituted in some cases. To avoid such possibility, he has ordered that each box shall have a specially engraved serial number on its body so that the box cannot be substituted.

Another major step that caused a stir among the politicians is the strict enforcement of the law relating to contestants at biennial elections to
the Rajya Sabha in which only a person who is an elector in the state concerned can contest. It is common knowledge that some persons get themselves registered as electors in states where elections are to be held so as to get nominated as a candidate to the Rajya Sabha even though they are not residents of that state. Seshan has directed that all such cases should be probed into to decide the residency status of some sitting Rajya Sabha members.

Ever since Seshan took over as the Chief Election Commissioner, as sea-change is evident in the style and functioning of officials connected with elections. There has also been an increase in the general awareness of the voters and the voting percentage has gone up. Thus, his role and style of functioning evoked sharp reaction among political parties and generated many political and Constitutional controversies against his performance in dealing with the electoral issues and problems. The steps and decisions taken by the Chief Election Commissioner attracted unprecedented criticism and serious allegations of his being partisan to those problems. On many occasions, serious doubts were raised about the neutrality of the electoral body, and the parties like Janta Dal and the Bhartiya Janata Party threatened to resort to take a direct action if the Chief Election Commissioner did mend its way of functioning. It was probably the first example of its kind in our Constitutional history when the opposition parties have asked the Chief Election Commissioner to resign voluntarily or face the process of impeachment in Parliament. Despite all these allegations the Election Commission for the first time in its electoral history, stepped up its efforts to foil the attempts of tempering the free and fair elections. It assertively exercised its wide-ranging powers to ascertain that events like poll violence, booth capturing, intimidation to voters, rigging of elections and other malpractices did not take place. On the eve
of elections, the Chief Election Commission boldly subjected to the State Governments of Bihar, Haryana, Utter Pradesh and others to a serious limitation by imposing its embargo to frustrate their efforts to rig these elections. Consequently, the Chief Election Commissioner while acting as a reference of these elections, could not inspire the confidence of the voters, candidates, political parties and even the state administration. His impartiality and neutrality was suspect. His arbitrary behaviour lowered the dignity of the high office. It was an unfortunate development in this history. However, in the end of this discussion we can say that an honest, impartial, practical and efficient person should hold this high profile Constitutional office.

(E) Conflict between Election Commission and Political Parties

(Specially Gujarat):

The conduct of free and fair elections after independence became the responsibility of Election Commission but it has been subjected to criticism that it has failed to conduct free and fair elections as it has been unduly favourable to the ruling party. This line of criticism became more pronounce after 1971, the Chief Election Commissioner Dr. M.S. Gill and his predecessor T.N. Sheshan are also criticized on this ground. Inspite of being under the cloud of debate and controversy, the Election Commission has performed its function with due efficiency and in his capacity it has to check ruling party / parties excesses and arbitrariness before and during elections and as such prevent the abuse of power by them. A few instance can illustrate how the Election Commission has played his role fairly, independently, impartially and without the political influence they are as follows:
The Election Commission’s role during the Kashmir elections in September 2002 is note worthy. At the request of the electorate and the opposition parties it undertook some steps ensured the people’s difficulties in taking part in the electoral process were minimized. In the 1996 elections in Kashmir, the polling stations were clubbed which has been a cause of inconvenience to the voters, the Election Commission decided to undo this in the 2002 election. In 2002, the polling stations were installed on the basis of the list approved in 1998. This added 900 additional locations. The effort of the Election Commission was that the voters do not have to travel more them two km to reach their polling station. The Commission also provided that Kashmiri migrant voters living in Delhi and Jammu could vote through the electronic voting machines (the problem in the earlier election was that many postal votes did not reach the Returning Officers on time causing them to become invalid). Notified voters living else where had the option to vote by post as earlier. Electoral rolls of all the 87 assembly constituencies in the state were computerized in Urdu and copies of the same were distributed. As one time measure, the Election Commission also conceded the request of registered unrecognised political parties who have a legislative presence (at least one member in the legislative assembly) to be provided with one copy of the electoral roll free of cost. In usual practice only recognized parties are provided an electoral roll free of cost. Also, at state cost, the Election Commission decided that one leader of each recognised national and state party (in opposition) in Jammu and Kashmir was to be provided with security cover and reasonable security was to be provided to opposition party leaders for them to carry on their election campaigns.

Another instance of the Election Commission’s openness was the Gujarat case. After post Godhra incidence the main responsibility of the
Election Commission was to conduct the Legislative Assembly election in free, fair and impartial manner that is why there was conflict arose between the ruling party and the Election Commission. In 2002 after the pogroms against the Muslims in Gujarat, opposition groups, Muslim leaders and many non-governmental organizations made known to the Election Commission their opposition to the Gujarat Government's stand for early election in Gujarat. The opposition demanded that they be postponed and electoral rolls be thoroughly revised in the post-riot situation. The ground on which these groups opposed early polls was that the state had not yet recovered from the ruthless anti-Muslim violence of February 2002. Holding assembly elections in these condition of turmoil in the state was not fair, especially, in the context of a larger number of missing or displaced people. In July 19, 2002 Chief Minister Narendra Modi dissolved the assembly and pressed for early polls but the Election Commission was not in hurry to finalise its response to the Gujarat Government's recommendation on state elections by September-end. The Election Commission planned a visit to Gujarat to assess the ground situation in sensitive areas of the state. From the very outset, the Chief Election Commission J.M. Lyngdoh was determined that the Election Commission should gauge for itself weather conditions in Gujarat were conducive for the conduct of free and fair polls. This decision was virtually dashed Modi's hopes of holding early polls and cashing in on the communal polarization following the riots in the state (See Every Day Lost is Hindutva Vote Lost).

Refraining from announcing any poll schedule, the Election Commission enumerated the following reasons:
1. Displacement of a sizeable section of the population has taken place from riot-affected areas;

2. Revision of the voter's list is essential and it will take time;

3. Rehabilitation of riot victims has been sadly inadequate; and

4. The minority community continues to live in fear.

After thoroughly reviewing the situation the Commission was convinced and decided that elections in Gujarat could not be held before the end of November 2002. But in the view of senior Bhartiya Janata Party (BJP) leaders the Election Commission is Constitutionally bound to hold elections with in six months if the assembly is dissolved. According to section 15 of the Representation of People's Act, on the 'expiration or dissolution' of an assembly, the Election Commission is required to act and set dates for polls with in six months. If it does not, it will lead to Constitutional crisis.

The meticulousness with which the Election Commission is going about its task is bound to upset the poll calculations of the ruling Bhartiya Janata Party, banking as it is on the Commission readily acquiescing to an early election. A determined band of senior party leaders, led by former law minister and general secretary Arun Jaitley has vociferously argued before the Election Commission that holding election in Gujarat at the earliest had become a 'Constitutional and democratic compulsion'. The Bhartiya Janata Party leaders repeatedly cited Article 174 (1) of the Constitution to justify early elections. The article stipulates that the gap between two legislative sittings of a House should not exceed six months. However, the Bhartiya Janata Party strategists realize that the article is open to various interpretations (it does not specify whether the six month
provision is applies is the case of a dissolved assembly) This was the grey area which gives the Election Commission scope to exercise its discretion.

Ever since the dissolution of the Gujarat assembly on July 19, 2002 the Election Commission has had to whether sustained criticism and pressure forms the Bhartiya Janata Party. But the former has decided to carefully weigh all factors, keeping in mind the Constitutional powers it enjoys in the conduct of elections. “Free and fair” is its guiding principle. The leaders of the ruling party questioned the Election Commission to decide the timing of the polls under Article 324, which vest it with full powers to take any decision on the timing of elections the Commissions job was just to hold election, nothing else. All the above points indicates that the Bhartiya Janata Party was quite willing to have early poll in Gujarat. Definitely it would be in the interest of the party. The Bhartiya Janata Party has referred the question of holding early election to the Supreme Court through a Presidential reference, instead of moving the apex court directly. According to the government, a Constitutional crisis is on the cards since under Article 174 (1) there can’t be a gap of more then six months between two assembly sittings. Going by this line, the Gujarat assembly has to be convened. On or before October 6, 2002. The Election Commission has ruled out early elections since in its views the ground situation need as to improve first But here the key question was the Election Commissions order has thrown up serious issues of Constitutional import as the Bhartiya Janata Party claims, or has it got to do more with the Bhartiya Janata Party’s hankering and insistence from early election? The three points of Presidential reference to the court raises the following questions:
• Does Article 174 yield to Article 324—meaning, is the time-frame provided by Article 174 subject to the Election Commission’s order under Article 324?

• Can the Election Commission, under Article 324, frame a schedule on the premise that if the time-frame provided under Article 174 is not complied with, then the President will step in under Article 356?

• Is the Election Commission bound by Article 174 to conduct elections in Gujarat before six months have passed after the last assembly session?

Bhartiya Janata Party leader Arun Jaitly has said that, “the move for a reference is a legitimate legal recourse. There’s no disrespect to the Election Commission. But it’s equally true that there is no question of an opinion which seeks a de-facto jurisdiction in the Election Commission to recommend Article 356 being accepted by the Bhartiya Janata Party”.

The Supreme Court gave explanatory answer to the Presidential reference in October 2002, which is as follows:-

• Article 174 and 324 of the Constitution should be seen separately. Both the articles are meant for different situations. Neither of them can be considered subordinate to each other.

• If the House is dissolved before its prescribed term, holding elections with in six months is not an imperative. Therefore, the Article 356 regarding President’s rule is not applicable here.

• The responsibility of holding elections has been entrusted to the autonomous Constitutional institution Election Commission. The Legislature or Parliament has nothing to do with it. To decide on the
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election programme is solely the responsibility of the Election Commission.

Thus, the above questions are of far reaching Constitutional significance, but such a contradiction between Election Commission and political parties are not at all a positive sign of healthy democracy.

In the third instance the Election Commission has been firm on the violations of the Model Code of Conduct. Maharashtra’s ruling Democratic Front (constituting the Congress and the Nationalist Congress Party and other alliance partners) government’s efforts to lure farmers just before the 2004 Maharashtra Assembly election by a proposal to write off about Rs.100 crore as interest on loans taken by them, was stayed by the Election Commission. Though this decision of loan waiver was taken before the announcement of the election schedule, the resolution to implement it was adopted after the announcement. The Election Commission stayed the proposal as this was not in line with the Model Code of Conduct for elections.

The Election Commission during 2004 Lok Sabha elections also took notice of the death of 22 people during the birthday celebrations of Bhartiya Janata Party Uttar Pradesh leader Lalji Tandon, where sarees were freely distributed leading to stampede deaths. The Election Commission sent a notice to the Bhartiya Janata Party for the violation of the code which was followed by a ‘reprimand’. Instances of conflict between the Election Commission and the ruling party are several. Prior to the February 2004 assembly elections in Bihar, the Rashtrya Janta Dal (RJD) chief, railway minister Laloo Prasad Yadav, was seen on television channels on December 18, distributing cash to dalit women at Bihta village in Ibrahimpur near Patna. The Election Commission took notice of the
reports and sought an answer from the party about why the party should not be derecognized over the episode. It held that Prasad was disregarding and failing to abide by the model code of conduct and "severely condemned" his actions. After that Prasad had claimed that his party had always respected the decisions of the Commission and that they had never bribed anyone. While saying this, he not only cancelled the RJD rally in Bihar but also cancelled the inauguration of the newly constructed railway plate forms at Patna and put off unveiling of the statue of a Kargil martyrs from Bihar.

Thus, in most of the cases Election Commission points out that the political parties who have been found to be guilty of violating the model code of conduct have gone on the defensive when asked to explain their conduct. They have though somewhat grudgingly, accepted the decision of the Election Commission. Rather than taking an offensive stance vis-à-vis the Election Commission, they have tried to explain their actions and even rectify the problems. If the problems are of serious nature, the institutions of the Parliament and courts are present to take care of them. These institutions can look into cases of serious breach of the Constitutions. They can intervene, for instance, when there is tampering with the basic structure of the Constitution. The Parliament, after a thorough debate, can bring about amendments to existing laws and make new laws to safeguard democracy. The Supreme Court has the jurisdiction to settle disputes between the governments within the territory of India and also act as an advisory institution to settle ambiguities in law. There are several precedents where they have guided action in the past and can continue to do so. This can prove helpful to the Election Commission to bring malpractices under check without resorting to derecognising of political parties.
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References:

1. In Vedic times, Hindu Society was divided in ganas, tribes or nations. But at the same time, they were conscious of the fact that they all belong to one common race, for all of them called themselves 'Aryas'. The people or the tribe were called Visah.


3. Ibid., p.538.


8. Ibid., p.905.

9. It was brought to the notice of the Drafting Committee and the Central Government that in certain provinces the provincial governments were managing elections in a way which denied the right to be enrolled as voters to those who did not belong to the province racially, culturally or linguistically. This discrimination, Ambedkar remarked, cut at the roots of democratic government, *Ibid.*, p.906.


12. *Ibid*, Vol. XI., November 26, 1949, the word (good) is added. The Manchester Guardian commented: one of the chief consideration which influenced the Assembly (constituent) in the shaping of this Constitution (i.e. relating to Election Commission) was that the authority in charge of the election should be a wholly independent and impartial body, free from executive control and party and provincial bias, Manchester Guardian, London, August 2, 1949.


23. The Representation of Peoples Act, 1950, Section 134-AA (1) and Section 13B.


25. Constitution of India, Article 324 (2), (3) and (4).


27. The Joint Committee was constituted in June 1971 for considering the question of Amendments to Election Law. The Committee consisted 21 members, 14 members from Lok Sabha and 7 members from Rajya Sabha.


29. Tarkunde Committee Report, New Delhi, 1975, pp.3-4.


40. *Ibid*.


44. AIR 1991 SC 1745.
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46. Writ Petition (Civil) No.235 of 1990 in the Supreme Court of India-Original Jurisdiction.


54. The National Commission is set up at least 48 hours before the opening of election campaign.


60. AIR 1968 SC 1191.


63. Writ Petition No.606 of 1993 before S.C.


69. Ibid., The promise of Probity, Outlook, 2002, August, 5,p.30.

70. Ibid., ‘The Quibble of Politik’ Outlook, 2002, September 2 p. 38.
