Chapter 2
ELECTORAL MACHINERY AND ELECTORAL PROCESS IN INDIA

The Election Commission of India is entrusted with the responsibility of carrying out all the functions and responsibilities for conducting free and fair election. The success of free and fair, secular democratic elections depends upon the behaviour of three elements, which are, electoral machinery, the political parties and candidates and the electorate. Without them elections lose their importance and it becomes a useless exercise in the realm of democratic system. The large scale violence, booth capturing and unbecoming malpractices together with muscle and money power are a black spot on the electoral machinery in India. Therefore, the efficiency, impartiality and adequacy of the electoral machinery assumes key importance in a political life of a Country.

Parliamentary democracy in India as in every Country where in operation, based on the intangible faith of the people in the independence and impartiality of the electoral process. That the people must be assured about the independence and impartiality of each of the components involved with the election process; that is, started from the independent Election Commission, acceptance of nominations to the speedy disposal of election petitions.

If the electoral machinery is defective or is not efficient or is worked by people whose integrity cannot be depended upon, democracy will be poisoned at the source, nay, people, instead of learning from elections how they should exercise their vote, how by a judicious exercise of their vote they can bring about changes in the Constitution and reforms in the administration, will learn only how parties based on intrigues can be
performed and what unfair methods they can adopt to secure what they want.

Election Machinery at the State and District Level:

At the state levels, a senior officer of the State Government is nominated as the Chief Electoral Officer\(^2\). He is usually a senior executive or judicial officers of the State Government. An officer of the State Government is appointed to this important post, because the election machinery in a state has to be in constant connection with the State Government and large number of its officers are deputed for the conduct of elections. The duties of the Chief Electoral Officer are to supervise the preparation of the electoral rolls and the conduct of elections in the state. The Chief Electoral Officer is assisted in the performance of his functions by the election Department of the State Government. The strength of the election department varies from state to state.

For each district in a state other than a Union Territory, an officer of the State Government is designated or nominated as the District Election Officer by the Election Commission in consultation with the State Government\(^3\). District Magistrates /Collectors and executive heads of the Municipal Corporations are nominated as District Election Officers. The District Election Officer co-ordinates and supervises all the work in the District in connection with the preparation and revision of electoral rolls and the conduct of elections. He is also required to perform such other functions as may be entrusted to him by the Election Commission and the Chief Electoral Officer.

The following specific functions, as prescribed by the law, are also performed by the District Election Officers:
(i) provision of polling stations of elections for Assembly, Parliamentary and Council Constituencies;

(ii) appointment of staff for election duty for general and bye-elections;

(iii) receipt of accounts of election expenses of contesting candidates and submission of reports on these returns to the Commission, and

(iv) custody of ballot boxes and election records.

In a Union Territory, the duties of a District Election Officer are discharged by the Returning Officer of the constituency concerned. In the office of Chief Electoral Officer of each State/Union Territory, there is a permanent staff for election work and expenditure on that staff is shared by the Central or State Governments.

From the Chief Electoral Officer down to the Presiding Officers—though most of these are State Government Officials (or in some cases officials of local bodies) every one is answerable to the Election Commission. The Constitution makers attached the great importance to the provision of an adequate and independent machinery to assist the Election Commission in the discharge of its functions properly is evident from clause(6) of the Article 324 of the Constitution. Under this clause, the President or Governors of state makes available to the Chief Election Commissioner such staff as may be necessary for the discharge of his Constitutional obligations.

Now we turn to discuss, in detail the process of election from the preparatory stage to the disposal of election petitions.
(A) Constituencies:

For the purpose of elections, the whole Country is divided into geographically compact areas, known as Constituencies. There are two types of Constituencies: Parliamentary Constituency (for election to Lok Sabha) and Assembly Constituency (for elections to State Legislative Assemblies). All are single member constituencies each Parliamentary constituency consist of an integral number of Assembly constituencies. This number varies from state to state.

The first delimitation of the Parliamentary and Assembly constituencies was carried out by the President. The first general elections to the Lok Sabha and Legislative Assemblies in 1951-52 were held on the basis of this delimitation of the constituencies, provided for in the state. This was not found satisfactory. The Election Commission after completion of the elections, therefore, suggested to the Union Government that in future delimitation of the constituencies should be made by an independent Commission composed more or less by persons in judicial services whose decision should be mandatory. Article 327 confers specific powers on the Parliament to make law with respect to the delimitation of constituencies. Pursuant to these provisions this recommendation of the Election Commission was accepted by the Parliament which passed "the delimitation Commission Act, 1952". Under this Act, the duty of readjusting the representation of the several territorial constituencies in the Legislative Assembly of each state (other than Jammu and Kashmir) as also delimiting the constituencies after every decennial census as incorporate in the Article 81 and 170 of the Constitution (after forty second Amendment Act, 1976 changed) has been entrusted to the Commission called the Delimitation Commission.
Therefore, separate Delimitation Commission were established under specific status after the relevant population figures of decennial census in 1951, 1961 and 1971 were published. This Delimitation Commission is a high powered body consisting of three members, two of whom are to be serving or retired judges of the Supreme Court or High Courts, and the Chief Election Commission, ex-officeo, is the third member. The Commission is normally assisted by ten associate members of the state concerned (5 men were from the House of People) representing the states and 5 members from the Legislative Assemblies of the states) in its duties. The associate members are appointed/nominated by the speaker of the House of which they were members having due regard to the composition of the House or Assembly concerned. None of the associate members has the right to vote or to sign any decision of the Commission.

All the secretarial assistance at all levels to the Delimitation Commission was provided by the Election Commission. In spite of that, when the concept of multi-member Parliamentary and Assembly Constituencies, as was initially provided was given up after the second general elections in 1957 by the two members constituencies (Abolition) Act, 1961, the work of conversion of two member constituencies into single member constituencies was entrusted to the Election Commission.

With a view to securing uniformity of representation to the states in the Lok Sabha and uniformity in the physical demarcation of constituencies therefore, the Constitution of India stipulated that:

(a) There shall be allotted to each state a number of seats in the House of the People in such manner that the ratio between the number and the population of the state is, so far as practicable, the same for all states.
(b) Each state shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it is, so far as practicable, the same throughout the state.

Although it is not possible to create constituencies precisely equal in the size of their population or electorate, but in principle it is accepted that as far as practicable the constituencies should be equal in size in terms of population and in case there is deviation from this rule, justification must be shown for such deviation which carving out the constituency, because the basic aim is to maintain qualitative dimension of constituencies so as to ensure fair and effective representation for all citizens. After 1971 census, the delimitation exercise completed in 1975 took the Lok Sabha strength to 543 seats plus two nominated members from the Anglo-Indian Community. But in 1976 the Constitution was amended to freeze the number of Members of Parliament at this level till 2000. This was done precisely to ensure that those states which successfully curbed their population did not end up with fewer Members of Parliament and therefore less clout at the Centre. Attempts at fresh delimitation have made little head way in1990, a Bill to undertake the exercise was referred to a Parliamentary Committee, but Parliament itself got dissolved and matter lapsed. But now the 2000 is upon us, and the problem has got more acute due to uneven population growth.

For instance, the Chief Election Commissioner Mr. M.S. Gill has appealed to all political parties and the Members of Parliament to accord top priority to the issue of delimitation of Parliamentary constituencies. This shows that the Country should redraw electoral constituencies to even out the number of citizens or electorates each Member of Parliament
/Member of Legislative Assembly represents. As the law stands, the 2001 census can become the basis for refixing seats in Parliament. If population control is made the basis, some states may gain more seats and some may loose their seats which is not justified. Since there is need of rearrangement of the existing constituencies, the only way out is not only to redraw the constituencies to even out their sizes but also to increase seats in Lok Sabha by raising its strength at least 25%. The present allocation of seats to the states should in no case be decreased because of population control. The present move of the Central Government to freeze the Lok Sabha strength upto 2026 is altogether unreasonable.

(B) Electoral Rolls:

Article 325 provides a general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of State. No person is to be included in any special electoral roll on grounds only of religion race, caste, sex or any of them. The preparations of electoral rolls is a very big task carried out by the Election Commission. The electoral roll for a constituency shall contain the names of all the persons eligible to vote at an election in that constituency. The preparation and maintenance of complete and accurate electoral rolls are essential prerequisites for the holding of elections. Any person whose name is not include in the electoral roll of any constituency may get his name include by making an application to the electoral registration officer of the constituency concerned. No such application will however be entertained after the last date for filling the nomination for election in that constituency and before the completion of that election.

There are two methods of revising the electoral rolls:
(1) Intensive revision; and

(2) Summary revision

The intensive revision is carried out through house to house visits by enumerators who record the name of all the citizens ordinarily residing in a house and who have attained the age of 18 years and above on the qualifying date. In summary revision, no house to house visit are made. The existing rolls with supplements, if any, are published for inviting claims and objections after the disposal of claims and objection the rolls are finally published with supplements.

In 1998 the Commission took a historic decision to computerize the entire electoral rolls of 620 million voters this work has been completed and now well printed electoral rolls are available. The photo Identity Card number of the voter has also been printed in the electoral rolls, for cross linking. The books of individual Parliamentary constituency rolls have also been put on Compact Disks Read Only Memory. Both book and Compact Disks are available for sale to general public. National and state parties are provided copies of such books and Compact Disks free of cost after every revision of electoral rolls. In an attempt to improve the accuracy of the electoral roll and prevent electoral fraud, the Election Commission Ordered the making of photo identify cards for all voters in the Country in August, 1993. To take advantage of latest technological innovations, the Commission issued revised guidelines for Electors Photo Identity Cards programme in May 2000. More than 400 million Identity Cards have been distributed till now.

(C) Qualifications for Registration:

Article 326 of the Constitution confers the right to vote at an
election on every adult citizen unless disqualified under the Constitution or law on grounds of non-residence, unsoundness of mind, crime or corrupt or illegal practices. The law provides that every person who is not less than of 18 years of age on the 'qualifying date' and who is ordinarily resident in a constituency is entitled to be registered as a voter in the electoral roll of that constituency.\textsuperscript{13}

(i) Qualifying date: The 'qualifying date' is the first of January of the year in which the electoral roll is prepared or revised.\textsuperscript{14}

(ii) Ordinarily resident: The test of ordinary residence is generally the fact of actual residence. The mere owning or possession of a dwelling house in a constituency will not entitle a person to the "ordinary residence" qualification. Temporary absence of the person from his place or ordinary residence will not amount to his ceasing to be ordinarily resident there in. A Member of Parliament or of a state legislature will not, during the term of his office, cease to be ordinarily resident in the constituency where he is registered as a voter, by reason of his absence from that constituency in connection with his duties as such member. A patient in a hospital or a person detained in prison or other legal custody will not for that reason be deemed to be ordinarily resident therein. In case of doubt as to where a person is ordinarily resident at a particular time the question will be determined with reference to all the fact of the case and to the rules in this behalf.\textsuperscript{15}

(D) Candidates:

(i) Qualifications of Candidate: The qualifications for a Member of Parliament as laid down under Article 84 of the Constitution are that he should be

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(a) Citizen of India,

(b) Be not less than 30 year of age in the case of Council of States and not less than 25 years of age in the case of House of the people, and

(c) Be possessing such other qualifications as may be laid down by the Parliament.

The Representation of People Act, 1951 requires that his name should be registered in any Parliamentary constituency. For seat reserved for scheduled castes and scheduled tribes, a candidate should belong to those castes and tribes is, however, not disqualified to contest election from a general seat, i.e. seat not reserved from members of those castes or tribes, if he is otherwise qualified to contest such a seat. A candidate is also required to make and subscribe before a person authorized in that behalf by the Election Commission, an oath or affirmation of allegiance to the Constitution and to uphold the sovereignty and integrity of India.

(ii) Disqualifications of Candidate: Under Article 102, of the constitution of India a person is disqualified for being chosen as, and for being a member of either House of Parliament of legislature of State respectively, if he/she

(a) holds any office of profit under the Central or any State Government, other than an office declared by Parliament by law not to disqualify its holder; or

(b) is of unsound mind and stands so declared by a competent court;

(c) is an undercharged in solvent; or
(d) is not a citizen of India or has voluntarily acquired the citizenship of a foreign state, or is under any acknowledgement or allegiance or adherence to a foreign state; or

(e) is otherwise disqualified by or under any law made by Parliament.

Certain further disqualifications have been imposed Under Sections 8, 8A, 10, and 10A of the Representation of People Act, 1951, for specific or on some specific conditions the duration of the disqualification being different in each case. The Election Commission may, for reasons to be recorded, remove or reduce the period of any of these disqualifications. For instance, the Election Commission has disqualified Shiv Sena Supremo Bal Thackeray from voting and contesting any election for corrupt practices committed by misusing religion. The disqualification runs for six years with retrospective effect from 1995 upto 10 December 2001. A hue and cry is raised that proper penalty in his case would have been to prohibit him from campaigning because the corrupt practice proved was of during his campaign for Assembly election. It is for the first time that such a punishment or disqualification imposed on any one, and that too on the Chief of a political party. Thus, it shows that the Election Commission is an independent body in this particular case Election Commission has taken decision in free, fair, and impartial manner without any political influence.

(E) Nominations of Candidates:

The electoral process for the elections to the Lok Sabha or Parliament start with the Presidential notification on the recommendation of the Election Commission, calling the general election. The law permits this notification to be issued at any time not earlier than six months before the expiry of the normal five year term or may also be called when it is
dissolved earlier than the expiry of the five year term.

As soon as the notification is issued, the Election Commission shall by notification notify:

(a) the last date for making notifications which shall be the seventh day of the notification.

(b) the last date for the withdrawal of candidatures, which shall be the second day after the date for the scrutiny of nominations;

(c) the date or dates on which a poll shall be taken, a date not earlier than the 20th day after the last date for the withdrawal of candidatures, and

(d) The date before which the election shall be completed20.

The date on which such notification may be issued is recommended by the Election Commission. The Election Commission thereupon publishes the programme for holding the Parliamentary elections, fixing, interalia the last date form making nominations, the date of scrutiny of nominations, the last date for withdrawal of candidatures and the date or dates of the poll.

Following the Commissions notification fixing the time table of election, the Returning Officer of a Parliamentary constituency issues a public notice of the intended election inviting nominations of candidates for the election. A person who wants to contest an election is required to file a nomination paper, in the prescribed form, indicating his name, age, postal address and serial number in the electoral rolls. The candidate is required to be proposed by a registered elector of the constituency and the nomination should be assented to by the candidate21. Besides, a candidate
for the reserved seat is required to furnish a declaration in his nomination paper of his being a member of the Schedule Caste or Schedule Tribe.

If a person intends to contest from a constituency in which he is not a voter, he is required to enclose along with this nomination paper a certified copy of the extract from the electoral roll of the constituency in which he is a voter, or, paper, must be produced before the Returning Officer at the time of scrutiny of nomination.

The nomination paper must be delivered to the Returning Officer or the Assistant Returning officer specially authorized for the purpose either by the candidate in person or by his proposes between 11 a.m and 3pm on or before the last date fixed for the purpose. Not more than four nomination papers can be filed on behalf of any one candidate in one constituency, although he may contest election for more than one constituency. The nomination paper must be accompanied by a treasury receipt issued by the Reserve Bank of India as evidence of the security deposit of Rs. 10,000 Lok Sabha elections. In the case of candidates belonging to Scheduled caste and Scheduled Tribe this deposit is only Rs. 5000/-. The security deposit can be paid in cash to the Returning Officer. For election to the State Legislative Assembly the security deposit is Rs. 5000/- and the Rs. 2500/- for the Scheduled Caste and Scheduled-Tribe candidate. The security deposit will be refund if the candidate is elected or has obtained at least more than one-sixth of the total valid votes polled in the constituency. In other cases the deposit will be forfeited if a candidate was a contesting candidate in more than one constituency for the same House of a legislature he is entitled to refund of only one deposit. If, however, he was contesting an Assembly seat and a Lok Sabha seat simultaneously he would get the refund of deposits made in both, provide
that he obtains more than one-sixth of the total number of valid votes polled in each constituency. The deposit is intended to ensure that the candidate is a serious contestant.

(i) Scrutiny of the Nomination Paper: In the matter of scrutiny of nomination paper, wide powers and duties are conferred on the Returning Officer. It is he who notifies to all candidates the date, time and place for the formal scrutiny, the candidate, his election agent his proposer and one more authorized representative of the candidate are permitted to attend the proceedings for scrutiny. The Retuning Officer allow all candidates a reasonable opportunity to examine all nomination papers so that any one of them can raise any objection to the validity of the nomination of any of his rivals. The candidates whose nomination is challenged is, however, entitled to rebut the same at any time till the next day but one following the date of scrutiny. The Returning Officer examines all the nomination papers summarily, but judiciously decides the objections raised. On objection from candidates as regard any defect in nomination paper, after such summary inquiry or on his own motion as he deem fit or necessary, he may reject any nomination on the grounds mentioned in section 36, but that defect must be of a substantial character.

Thus scrutiny of nomination paper is an important stage in the election process, and it is one of the essential duties to be performed by the Returning Officer before the election can be completed.

(ii) Withdrawal of Candidature: Any candidate may withdraw from election by a notice in writing delivered to the Returning Officer before 3 p.m. On the last date fixed for the purpose, that is, the second day after the date fixed for scrutiny of nomination paper. The notice must be signed by the candidate or his proposer or his election agent who should be duly
authorized by the candidate. The notice of withdrawal is irrevocable\textsuperscript{28}. Immediately after the expiry of the period, the Returning Officer is required to prepare and publish a list of contesting candidates\textsuperscript{29}. In case only one candidate is left in a constituency and his nomination is accepted by the Returning Officer after scrutiny or if more than one candidate is validly nominated but all others except one candidate withdraw, the election is declared as uncontested and the candidate is declared duly elected unopposed after the expiry of the time allowed for withdrawal of candidatures\textsuperscript{30}.

(iii) **Death of A candidate Before Poll:** If a candidate whose nomination has been found valid on scrutiny and who has not withdrawn his candidature dies, and a report of his death is received before the publication of the list of contesting candidates or if a contesting candidate dies before the commencement of the poll, the Returning Officer is required to countermand the poll in the constituency and report the fact to the Election Commission. If that happens all proceedings with reference to the election have to commence a new in all respects as if for a new election\textsuperscript{31}. In case of death of candidate, it says that countermanding of election will be there only if such candidate is set-up by a recognized political party. Death of independent candidate or a nominee of an unrecognized political party will not necessitate countermanding of election\textsuperscript{32}. It was due to growing tendency amongst non-serious candidates filling their nominations without slightest possibility of their winning, the provision was amended in the year 1992. Now the election will not be affected if the candidate does not belong to a recognized political party and dies after his valid nomination or before the commencement of the poll. This provision seems to be helpful in reducing the number of independent candidates.
(F) Recognition of Political Parties:

Political parties are basically groupings of people primarily interested in winning the elections and running the government after the elections are won. They are also interested in particular social, economic and political policies of government. However, a responsible political party is one that attempts to hold its members accountable for the positions they take. The main functions of political parties are to promote the democratic system, select candidates for filling various posts, to run the government, stimulate interest in policy making to educate the voters and to bind people to the political system through their vote. Thus representative democracy cannot function without political parties.

At present there is no law which regulates the formation of political parties in India or we can say that there is no statutory or Constitutional definition of the term political parties. The Representation of People Acts 1950 and 1951 do not contain any reference to political parties. These Acts regulate the conduct of elections. It is the Election Commission of India which determines the political parties will be recognized on both national and state levels and what symbols will be allotted to each party.

The Conduct of Election Rule, 1961 provide that the Election Commission shall by notification specify the symbols that may be chosen by candidates at elections and the restrictions to which their choice shall be subject. The Commission has been specifying certain symbols as "reserved" and certain others as "free" the former are reserved for candidates duly sponsored by recognized political parties and the latter are available for allotment to other candidates. There is also no provision in the Constitution which states that the registration of political party is compulsory. An unregistered political party can also contest the elections.
Hence, it is submitted that the registration of political parties should be made compulsory and the unregistered associations or body of individuals be debarred from contesting elections. This step will help in curbing the multiplicity of political parties. It is further submitted that the power to de-register a political party must be expressly incorporate in the Act and for this purpose necessary jurisdiction should be conferred upon the Election Commission which on the proof of violation of the memorandum field by the political party may de-register it from contesting elections. However, the registration or de-registration of political parties must precede the election process so that Article 329 (b) of the Constitution remain untouched.

(G) Election Campaign:

Candidates for election (other than independents) are usually chosen by the central executives (or Election Committee) of the political parties on the recommendation of their state units. Their names are announced in the press, and the party take care to see that wide publicity is given to its candidates in their respective constituencies. A candidate must make himself known to his voters. It is desirable that he should visit as many voters as possible and particularly in those areas where he is sure of support. Such visiting can be done rapidly, and it is profitable to make these visits in the company of one or two prominent members of each ward or locality who will introduce him to the voters. Where individual visit are not practicable, street or mohalla meetings may be organized. Such meetings, besides enabling the voters to know their candidate, also create interest and build up the votes.

Every election is a time of intense though underground pressure of interest, social and economic, in more or less organized form, disturbing
Constitutional symmetry abrogating its equity. Threats, intimidation, terrorization and victimization of the most diverse kinds become operative and in their obvious and indiscreet forms are forbidden by law everywhere. But the economic power of an employer in an industrial Country or a landed proprietor in an agriculture Country under modern productive methods is subtle, pervasive and legally unregulated.

The law provides for an interval of not less than clear 19 days between the last date fixed for the withdrawal of candidature and the data of the poll. However, on January 19, 1992 the President issued an ordinance reducing the minimum period of campaign for elections to Parliament and Legislatures from 20 days to 14. This period is utilized by the candidates for canvassing and educating the electors. Publicizing the symbol of the candidate is also important. A simple hand bill give the name of the candidate, his election symbol and the date of the poll may be widely circulated among the electors throughout the constituency at an early stage of the campaign.

Wooing the voter is serious business. Sustained effort and enormous organizational skill are needed for a successful election campaign. It should be so organized that the campaign commencing with the announcement of the candidature steadily gathers momentum and is at its peak as polling day approaches. The election agent where a candidate has appointed one can be the key man in the conduct of a candidate's election. The candidate may also employ a number of volunteers for canvassing, speaking and for clerical and other incidental work.

The Constitution guarantees to all citizens the fundamental rights of freedom of association and freedom of expression and speech. In a democracy the exercise of these rights is at no time more valuable than at
election time. The candidate and his political supporters canvass householders, address people in the streets, take out processions, hold public meetings and bring out leaflets, pamphlets, handbills, etc. for explaining the policies and programmes of their political parties and solicit their support in making them successful in the election. All bills, leaflets and similar material must, however, bear in the front the name and address of the printer and publisher; the printer of any such document is also required to obtain from the intending publishing a declaration regarding his identity signed by him and attested by two persons to whom he is personally known. A copy of the declaration and one copy of the printed document is required under the law to be sent to the Chief Electoral Officer / District Magistrate within 10 days of its printing (as per the Commission’s instructions)\(^36\).

On the eve of every general elections some campaigning guidelines are issued by the Election Commission where by candidates are instructed to follow certain norms is carried out their election campaign. Some of these, for example are:

(i) do not appeal to voters to vote or refrain from voting on grounds of religion, race, caste, community or language;

(ii) do not make use of or appeal to religious symbols or national symbols;

(iii) do not promote or attempt to promote feeling of enmity or hatred between different classes of citizens on ground of religion, race, castes community or language;

(iv) do not publish falls statements in regard to the personal character and conduct of any candidate or in relation to the candidature or
The polling day is a crucial date—perhaps more for the candidate than for the voter. Contesting an election is a feat in organizational skill. Number of instances seems to lend weight to the opinion that many an electoral success accrues to a candidate who has put in a superior election organisation. His camp is located near the polling station. His polling agent, who has a copy of electoral rolls with him, goes on tick marking those who have cast their votes. Many voters may be reluctant to cast their votes; persistent visits of these workers result in taking them to the polling booth. The entire party machinery is geared to exert last minute pressure on voters in favour of the candidate; to induce voters to go to the booth; to ensure that no unfair practice is adopted by the rival candidates; and finally, to check impersonation.

(i) **Polling Stations:** Each constituency is divided into a number of polling areas. For polling area, one or more polling stations are provided according to the number of voters. The polling station normally caters to the need of 900 to 1000 voters. Where necessary, separate polling stations are provided for women voters; but in such cases, the polling stations for men and women voters are located in the same building. Outside each polling station there will be displayed prominently a notice specifying the polling area, the electors of which are entitled to vote at the polling station and a list of the contesting candidates.

(ii) **Poll Hours:** Under section 56 of the 1951 Act, the Election Commission is empowered to fix the hours during which the poll will be taken but the period allotted on any one day for the polling should not
be less than eight hours for a Parliamentary or Assembly constituency. The Presiding Officer or the Returning Officer may adjourn the poll to a date to be notified later, if the poll is interrupted or obstructed by any riot or any violence if it is not possible to take the poll in any polling station on account of any natural calamity or any other sufficient cause. On such sufficient cause of adjournment the fact of adjournment of the poll will have to be intimated to the Election Commission and the Commission will appoint a day on which the poll shall commence and shall fix the polling station and place at which and hours during which, the poll will be taken. The votes cast at the polling station shall not be counted until such adjourned poll is completed. The electors who have already voted shall not be allowed to vote again.

(iii) **Fresh Poll:** If any ballot box used at a polling station is unlawfully taken out of the custody of the Presiding Officer or the Returning Officer, or is accidently or intentionally destroyed or lost to such an extent that the result of the poll cannot be ascertained; or any voting machine develops a mechanical failure during the course of the reading of votes; or any such error or irregularity in procedure as is likely to vitiate the poll is committed at a polling station the Returning Officer shall report the matter to the Election Commission. Thereupon the Election Commission shall after taking all material circumstances into account, declare the poll at that polling station null and void and notify a new day and fix hours for a fresh poll.

(iv) **Only one vote:** No person shall vote in more than one constituency of the same class and no person shall vote in the same constituency more than once.
(v) **Tendered votes:** If a person who is not the real voter comes to a polling station and casts his vote in the name of the real voter, thereafter to cast his vote, he will be asked to vote on a special type of ballot paper. This ballot paper, after it is marked and folded, will not be inserted into the ballot box, but handed over the Presiding Officer who will place it in a separate cover. These special votes which are called "tendered votes" will not be counted at the time of counting. They may, however, be scrutinised in connection with an election petition if it is represented that the result of an election has been materially affected by the improper reception of votes.

(vi) **Personation:** In order to prevent the same person from personating another voter and voting again, every voter's left forefinger will be marked by one of the polling officers with indelible ink before a ballot paper is issued to him.

(vii) **Postal Ballot:** Any person having a service qualification within the meaning of section 20(3) of the Representation of People Act, 1950 and his wife as well as the person holding office in India declared by President in consultation with the Election Commission to be an office to which the provision of sub-section (4) of section 20 would apply and his wife would be entitled to vote by postal ballot. Section 60 of the Representation of People Act, 1951, enabling certain classes of persons to vote by postal ballot. The service personnel, staff on election duty, persons under preventive detention and more recently persons displaced from Jammu and Kashmir have been allowed to vote by postal ballot or at a polling station specially create for them outside the constituency because of special circumstances.

Rule 17 to 27 of the Conduct of Elections Rules, 1961 prescribe the
detailed procedure for the use of postal ballots. Rule 18 specifically lists the categories of persons entitled to vote by postal ballot.

It is noteworthy that there has been growing demand from service personnel, specially about 25 lakh armed force personnel that they should be permitted to vote in election to the Legislatures through proxy ballot instead of postal ballot. Proxy voting would mean allowing a voter to authorize some confident, of his wife, father, brother or friends – to cast the vote on his behalf.

The system of proxy voting is sure to ensure much wider participation of the defence forces and other special voters who could not attend the polling station due to special circumstances of his service. It seems that Election Commission is in favour of proxy voting for armed forces personnel. All that is needed is to amend section 59 and 60 of the Representation of the People Act, 1951, the former prohibit the voting by proxy and the later provides special procedure for voting by post for certain classes of special voters or service voters, which can be simplified by authorizing a lawful vote by proxy. Proxy voting is not permitted in India earlier but now is permitted in 2003 Assembly Election.

(ix) **Electronic Voting Machines:** By Act No. 1 of 1989, Section 61-A was inserted in the Representation of People Act, 1951 and thereafter a full chapter from Rule 49-A to 49-X added in the Conduct of Election Rules, 1961 prescribing a full procedure for voting by electronic voting machines. The giving and recording of votes by electronic machines in such manner as provided in rules , may be adopted in such constituencies as the Election Commission may, having regard to the circumstances of each case, specify. The design, preparation and their arrangements at the polling stations are specifically prescribed by rules. The control unit and
balloting unit, of every voting machine to be used at polling station, shall operate the machine as prescribed in Rule 49-E so far as its preparation for voting is concerned. Before permitting an elector to vote the poll officers shall comply with the procedure of identify of the voter and genuineness of his vote. He has to comply with the provisions relating to sealing of voting machines after poll, transmission of voting machines and other articles and packets relating to election, closing of voting machines in case of booth capturing or otherwise on adjournment of poll, etc. Non-observance of rules may cause defective or in valid voting and consequently affect the election result.

It is the duty of the Presiding Officer to close the polling station at the hours fixed for it in the notification. But the electors who are already present at the polling station before the closing time, shall be permitted to cast their votes. If any question arises as to whether a person was present at a polling station or not, the decision of the Presiding Officer shall be final. Thus, Election law provides a complete poll procedure compliance of which is necessary to maintain the purity of elections.

(I) Counting of Votes:

The votes polled at each constituency are counted by, or under the supervision and direction of, the Returning Officer. He is assisted in this by counting assistants who are appointed by him. The candidate, his election agent and his counting agents have the right to be present at the counting.

The Returning Officer will give notice in writing, at least one week before the date of poll, of the date, time and place of counting to each candidate or his election agent.
Each candidate is entitled to appoint as many counting agents as there are one and more for watching the counting at the table of the Returning Officer. Before commencing the counting of votes, all these persons shall take an oath of ‘maintenance of secrecy’.

As a first step, the Returning Officer is required to count the postal ballot papers according to the procedure prescribed in Rule 54-A of the Conduct of Elections Rules 1961. After the counting of the ballot papers received by post is completed, the ballot boxes are to be scrutinized to find out whether the seal is intact and has to satisfy himself that none of the ballot boxes has in fact been tempered with. The examination of the ballot boxes should be made in presence of counting agents. If any ballot box is found to have been tempered with, ballots contained in that box shall not be counted and procedure for fresh poll in respect of that polling station shall be followed. The ballot papers taken out of each ballot box shall be arranged in convenient bundles and scrutinized for the purpose of accepting or rejecting each of them.

(i) **Destruction, loss, etc. of ballot papers:** If at any time before the counting of votes is completed any ballot papers used at a polling station are unlawfully taken out of the custody of the Returning Officer or are accidentally or intentionally destroyed or lost or are damaged or tempered with to such an extent that the result of the poll at that polling station can not be ascertained, the Returning Officer shall forthwith report the matter to the Election Commission. The Election Commission will, after taking all material circumstances into account, issue directions to the Returning Officer either to stop the counting declare the poll at that polling station to be void, and order a fresh poll, or if satisfied that a fresh poll at that polling station will not affect the result of the election to resume and
complete the counting\textsuperscript{57}.

(ii) **Rejection of ballot papers:** A ballot paper will be rejected\textsuperscript{58}

(a) If it bears any mark or writing by which the elector can be identified; or

(b) If it bears no mark at all or bears a mark made otherwise than with the instrument supplied for the purpose; or

(c) If votes are given on it in favour of more than one candidate; or

(d) If it is so damaged or mutilated that its identity as a genuine ballot paper cannot be established; or

(e) If it bears a serial number, or of a design, different from the serial numbers or, as the case may be design of the ballot paper authorized for use at the particular polling station, or

(f) If it does not bear the distinguishing mark prescribed by the Election Commission and the signature of the Presiding Officer.

(iii) **Recording of result:** After the completion of the counting the total number of votes polled by each candidate is recorded in a result (in the prescribed form) and is also announced to those present at the counting\textsuperscript{59}.

(iv) **Equality of votes:** If two candidates contesting any seat happen to secure the highest number of votes and their votes are equal in number, the result will be decided by lot\textsuperscript{60}.

(v) **Declaration of Result:** When the counting of the votes is finally completed and the Returning Officer has completed and signed the result sheet, he will forthwith declare the candidate who has obtained the largest number of valid votes to be duly elected\textsuperscript{61}.
The Election Commission may, for any special reason, direct the Returning Officer not to declare the result; and in that event the declaration will be withheld in accordance with such direction.62

(vi) Recount: When the announcement of the total votes polled by a candidate is made, a candidate or his election agent, who may be dissatisfied with the counting, can apply to the Returning Officer for a recount. The application should be made in writing and should give reasons why such recount is asked for. A recount may be demanded when the votes obtained by two candidates are very close and there may be a possibility of a small number of votes changing the result. The decision of the Returning Officer on every such application is final.

No demand for a recount can be made after the Returning Officer has completed and signed the result sheet.63 The Supreme Court has held that there can never be any hard and fast rule as to the circumstances when an order of recount would be permissible and it should always be dependent upon the circumstances of the case.64

(vii) Report of the Result: After the conclusion of counting all over the country, the Election Commission publishes, in the Gazette of India, a notification containing the names of all persons elected to the Lok Sabha.65 It is on the issue of such a notification that Lok Sabha is deemed to have been duly constituted.

(J) Election Petitions:

Article 329 of the Constitution lays down that no election to either House of Parliament or to the House or either House of the Legislature of a State may be called in question except by an election petition. It is further provided that an election petition has to be presented to such authority and
in such manner as may be prescribed for by or under any Act by the appropriate legislature. Pursuant to this the Representation of the People Act, 1951 has made provisions relating to election petitions. An election may be called in question by presenting an election petition to the High Court within the local limits of whose jurisdiction the election to which the petition relates has been held. No court has jurisdiction to intervene in the electoral process once it is set in motion by the issue of Presidential notification calling upon the constituencies to elect members to constitute a new House of the People.

(i) **Who May present Petition:** An election petition calling in question an election may be presented by any candidate at such election, or any voter who was entitled to vote at such election. The petition must be presented within 45 days from, but not earlier than, the date of election of the returned candidate.

(ii) **Parties to a petition:** A petitioner must join as respondents to his petition.

(a) where the petitioner, in addition to claiming a declaration that the election of the returned candidate is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidatures other than the petitioner, and where no further declaration is claimed, by the returned candidate; and

(b) any other candidate against whom allegations of any corrupt practice are made in the petition.

(iii) **Contents of Petition:** An election petition

a) Shall contain a concise statement of the material facts on which the
petitioner relies;

b) Shall contain full particulars of any corrupt practice that the petitioner alleges, including a possible full statement of the names of the parties alleged to have committed such corrupt practice and the date and place of the Commission of each such practice; and

c) Shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings.

Where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

(iv) Relief that may be claimed: A petitioner may claim by declaration that the election of the returned candidate is void and may, in addition, claim a further declaration that he himself or any other candidate has been duly elected.

(v) Grounds of Challenge: An election petition maybe presented on one or more of the following grounds that:

a) on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or the law;

b) any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent;
c) that any nomination has been improperly rejected.

d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected;

i. by improper acceptance of any nomination, or

ii. by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent or

iii. by the improper reception, refusal or rejection of any vote or the reception of any vote which is void; or

iv. by any non-compliance with the provisions of the Constitution or of the Representation of the People Act, 1951, or of any rules or orders made under that Act.

If in the opinion of the High Court a returned candidate has been guilty by an agent, other than his election agent of any corrupt practice, the High Court may not decide the election of the returned candidate to be void if it is satisfied;

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;

(b) that the candidate and his election agent took all reasonable means for preventing the Commission of corrupt practice at the election; and

(c) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents.
If any person who filed a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the High Court is of the opinion.

(a) that in fact the petitioner or such other candidate received a majority of the valid votes; or

(b) that but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes, the High Court shall after declaring the election of the returned candidate to be void, declare the petitioner or such other candidate as the case may be, to have been duly elected.

Thus, if any of the grounds under section 100 is proved, the High Court will declare the election of the returned candidate to be void. If any of the grounds under section 101 is proved the High Court will after declaring the election of the returned candidate void, also declare the petitioner or such other candidate to have been duly elected.

Election System:

India adopted the Anglo-American majority system with which it had become familiar during the preceding decades. The statute governing Indian elections derived not only its content but even its name from its British counterpart- the Representation of People Act. The System is described as the first-past-the-post system or plurality system, under this system a candidate securing the highest number of votes declared elected irrespective of the number of votes cast against him. But here the question arises is that whether the end results under the current system
Really represent the will of the electorate since it is possible for a party to
secure a substantial percentage of the total votes cast and yet fail to get a
single seat. The chances of distortion are all the more glaring in a multi-
party system wherein a single party gaining the largest number of votes
usually ends-up with a much higher percentage of seats than is justified by
the actual percentage of votes cast in its favour. Under the existing
system, the election held in 1952, 1957, 1962 or thereafter the Congress
party was able to secure 67 percent to 79 percent seats in the Lok Sabha on
the basis of the minority vote ranging from 42.7 percent to 49.2 percent.
Similarly, in the case of opposition, whenever they could combine, and put
up a common candidate, they were able to reap similar benefits in the
election outcomes. Not satisfied with the working of the system, demands
have been made after the Fifth General Election to the Lok Sabha in 1971
for replacing it with the system of proportional representation a system that
would produce a more realistic and equitable relationship between the
party’s share of votes and the share of seats. Most of the Continental
European Countries including Sweden, Norway, Denmark, Belgium and
Switzerland have adopted the system of proportional representation, where
the people vote to political parties which in turn receive seats in the
legislature in proportion to their vote share. This system is said to be
comparatively more representative in form than our present majoritarian
system. And in the present political atmosphere, it is desirable to give
precedence and predominance to political parties over the voters, and
therefore, the proportional representation system should be introduced in
India. However, it is also argued that the adoption of this system may lead
to the following difficulties:

- An unstable government when several political parties are in the
  field. In such a situation, no single party may achieve a clear
majority and unless there is a successful coalition the result would be an unstable government leading to chaos.

- It may cause a situation wherein many of the constituencies may not have a direct representative in the Parliament. For a large democracy, this is not a desirable.

- It may cause a situation wherein defections take place partially due to the electoral system which makes such behaviour profitable. The candidates feel themselves free to advance their personal interests of defecting or by threatening to do so. In a study covering the period 1967-73, out of 2700 recorded defections, 212 defectors got ministerial gaddis and became Chief Ministers.

- It may also cause unfair representation of minorities wherein a sizeable section of the Indian population is more or less permanently under represented in legislatures and other decision making bodies because their supporters are geographically scattered and do not form a majority group in any constituency, or in only a few constituencies.

It is interesting to note that the Federal Republic of Germany has introduced a system which has sought to provide for a combination of 'proportional representation' as well as the 'first-past-the-post system'. Under this system the ballot paper consists of two parts. One part contains the list of individual candidates contesting the election in individual constituencies and the other consists of the list of contesting parties. Thus, the voter has two separate votes, viz., the first vote cast for one of the individual candidates in his constituency (who may or may not belong to a political party) and second vote for one of the party lists in the federal state.
concerned. The parties have also to finalize the list of candidates whom
they propose to nominate well in advance before the date of election. The
voters is thus fully aware of the nominations made by the parties. In the
last, the distribution of seats is decided on the basis of percentage of votes
polled by each party on the basis of second vote that is the party list. In
order to discourage the formation of splinter parties, the German system
stipulates that the parties must secure at least 5 percent of the total popular
votes cast for the party list in the whole Country or to win at least 3
constituency seats in a direct election in order to be eligible for getting
seats on the basis of proportional representation.

The difference between the German system and the one proposed for
India (the proposal is for mixed proportional system of election) is that
while under the former, the total number of seats distributed among the
parties is in proportion to the total number of second votes polled by them,
under the latter system, only half the number of seats would be distributed
among the different parties on the basis of the percentage of second votes
polled by them, the remaining half of the seats being filled in from among
the candidates in individual constituencies on the basis of first-past-the-
post system that is our present system. However, objections were raised
even against this proposed system.

Thus, mixed proportional representation seems to be more
democratic and desirable in the interest of our democracy. But before such
reform, it is needed that the Parliament should appoint a Committee
consisting of intellectuals, eminent jurists, experts on Constitutional law
and representatives of major political parties, to examine the feasibility of
adopting the proposed electoral system or any other system of
representation for election to Lok Sabha and State Assemblies, because
India is such a vast Country and the subject is too complex for an individual to make a firm and suitable recommendations.

Thus, in the conclusion we can say that the success of the general election largely depends upon the competence, integrity, adequacy and impartiality of the electoral machinery and the honesty, integrity, impartiality, and competence of the ordinary officials at lower levels are of no less importance and therefore they must receive full attention in any programme of fair election.
References:


3. *Ibid*, Section 20(a), this office was created by the Representation of People (Amendment) Act, 1966 and give effect to a recommendation of the Election Commission in its report on the Third General Elections.


5. *Representation of People Act, 1950*, Section 6 and 9, The Power to Delimit Parliamentary and Assembly Constituencies for the first General Elections was conferred upon the President.


7. *Delimitation Commission Act, 1952*, Section 5(1) and (2).


16. *Representation of People Act, 1951*, Section 3 and 4; See *Constitution of India*, Article 173 and Section 5 of the Representation of the People Act, 1951 for the qualification of State Legislative Assembly.


21. The candidate is also required to make a declaration in the nomination form regarding his affiliation to a political party, if any with name and the choice of three election symbols in order of his preference.


23. *Representation of People Act, 1951*, Section 34 and 158.


28. Ibid, Section 37.

29. Ibid, Section 38.

30. Ibid, Section 53.

31. Ibid, Section 52.

32. Ibid, for the purpose of this provision, recognized political party means a political party recognized by the Election Commission. Under the Election Symbol (Reservation and Allotment) order, 1968-Explanation to Section 52.

33. Political Parties is a body of united for promoting the national interest in some particular principles in which they are all agreed see Madan Gopal Gupta, *Modern Government, Theory and Practice*, New Delhi, 1969, p. 126.


38. Ibid, Proviso to Section 56.

39. Ibid, Section 57 (1).

40. Ibid, Section 57(2).

41. Ibid, Section 58.
42. *Ibid*, Section 62.


49. *Representation of the People Act, 1951*, Section 61-A.


52. *Representation of the People Act, 1951*, Section 64.


57. *Representation of the People Act, 1951*, Section 64-A.

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59. Ibid, Rule 63.

60. Representation of the People Act, 1951, Section 65.

61. Ibid, Section 66.


63. Ibid, Rule 63.

64. Iqbal Singh V. Gurdas Singh, AIR 1976, SC 27.

65. Representation of the People Act, 1951, Section 73.


67. Representation of the People Act, 1951, Section 81.

68. Ibid, Section 82.

69. Ibid, Section 83.

70. Ibid, Section 84.

71. Ibid, Section 100 and 101.

72. Ibid, Section 101.

73. Also called the Majority System, Cabinet Government, Ministerial Government and Responsible Government the first-past-the-post system.


75. The Hindustan Times, January 23, 1999, p.9

77. The Common variant of proportional representation is the List System and single transferable vote system and a Mixed System as is prevalent in Germany which is a synthesis of simple majority system and the List System.
