Chapter 4

ELECTION COMMISSION AND ITS ROLE IN CONDUCTING FREE AND FAIR ELECTIONS IN INDIA AND IRAQ

4.1 INTRODUCTION:

Generally, to ensure free and fair elections, a democratic Constitution provides, *inter alia*, for establishment of the Election Commission, a Constitutional body that is autonomous in character and is expected to be free from political or executive influence. Both the Constitutions of India and Iraq have vested in the Election Commission of India and the Independent Election Commission of Iraq [hereinafter referred to as *IECI*] the power of superintendence, direction and control of the entire process for conduct of elections to Parliament and Legislature of every State/Province and to the offices of President and Vice-President of India and Iraq.¹ For better understanding, it is pertinent to have a detailed critical analysis of the two independent Constitutional bodies hereunder.

4.2 ELECTION COMMISSION OF INDIA:

India is the largest democracy in the world.² Since 1947, elections have been held at regular intervals as per the principles of the Constitution, Electoral Laws and System. At the beginning, the Constituent Assembly was in a dilemma in deciding about whether to have a Centralized Election Commission as in U.K. or to allow the States to have their own separate Election Commissions as in the U.S.A.³

¹ Part XV, *infra* note 7 & Chapter 4, *infra* note 120.
Dr. B.R. Ambedkar, Chairman of the Drafting Committee, advocated for an Election Commission with jurisdiction of all elections to Parliament, Legislatures of every State and also offices of the President and Vice-President. There was further justification for centralization of election authority as the Government in certain provinces was intruding and managing things in such a surreptitious manner that those who do not belong to them racially or culturally or linguistically were being excluded from electoral rolls. In view of this, K.M. Munshi made a bold statement that certain Provincial Governments could not be "trusted to be as impartial in elections as they should be"\(^4\).

As a result, the architects of the Constitution entrusted the "superintendence, direction and conduct" of elections to an independent body appointed by the President and termed it as the 'Election Commission'. After a full debate,\(^5\) Part XV was inserted to the Constitution which exclusively deals with the composition, powers, functions \textit{etc.}, of the Election Commission. Let us delve deep into it.

\textbf{4.2.1 ELECTION COMMISSION OF INDIA: ITS COMPOSITION}

There were two divergent alternatives before the Constituent Assembly on the composition of the Election Commission:

- to have a permanent body of four-five members who would continue in office without any break, or
- to have an \textit{ad-hoc} body appointed at the time when there is an election on the anvil.

The Constituent Assembly, rightly, decided to adopt a middle course\(^6\) that is to have one person, namely, the Chief Election Commissioner permanently in office under whose direction and guidance the election staff and machinery would function to ensure the continuity

\(^4\) The \textit{Constituent Assembly Debates} 905-960, (Vol. VIII).
\(^5\) \textit{Ibid}.
\(^6\) \textit{Supra} note 4 at 905.
of functioning of the Commission. However, other Election Commissioners could be appointed as and when required.

Article 324(2) provides that the 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 fix. The appointment of these executives shall be made by the President subject to the provisions of any law made in this behalf by Parliament. Further, clause (3) of Article 324 makes it clear that when any other Election Commissioner is appointed by the President, the Chief Election Commissioner shall act as the Chairman of the Election Commission. Furthermore, the President is also empowered to appoint Regional Commissioners, after consultation with the Election Commission, if he may consider necessary to assist the Election Commissioner in the performance of its functions set-out in clause(1) of Article 324. While the Election Commissioners are members of the Election Commission, the Regional Commissioners are not its members. The Regional Commissioners have never been appointed even once since the inception of this provision. Hence, it is time to think of scraping this provision from the Constitution.

Although the Constitution provided for a multi-member Election Commission, it was left to the discretion of the President whether to have a single member or multiple members on the Election Commission. Till 1989 the Commission functioned as a single member body. However, there were demands made from time to time by various political parties to convert the Election Commission into a multi-member body in view of the enormous powers conferred upon it for conducting free and fair elections and that too without incorporating adequate safeguards for

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7 Art. 324 (4), the Constitution of India, 1950.
preventing their misuse under the enabling law. Even the Supreme Court in *S.S. Dhanoa's Case* expressed its opinion in favour of multi-member Election Commission in the following words:

There is no doubt that two heads are better than one and particularly when an institution like the Election Commission is entrusted with vital functions, and is armed with exclusive uncontrolled powers to exercise them, it is both necessary and desirable that the powers are not exercised by one individual, however, all-wise he may be. It ill-conforms the tenets of the democratic rule. It is true that the independence of an institution depends upon the persons who man it and not on their number. A single member may sometimes prove capable of withstanding all the pulls and pressures, which many may not. However, when vast powers are exercised by an institution which is accountable to none, it is politic to entrust its affairs to more hands than one. It helps to ensure the judiciousness and want of arbitrariness. The fact, however, remains that where more individuals than one, man an institution, their roles have to be clearly defined, if the functioning of the institution is not to come to a naught.

In 1989, for the first time two additional members were appointed as Election Commissioners, though for a shorter duration.

Most of the Chief Election Commissioners have opposed the idea of converting the Election Commission into a multi-membered body for following reasons:

- Quick decision is needed at the time of elections which could not be taken if there is a multi-member Commission;

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11 Ibid.
• there is not enough work which would justify a multi-member Commission;¹³

• a multi-member Commission composed of three or more Commissioners will more or less assume the character of Judicial Bench, where as most of the work done by the Commission is of administrative nature and cannot brook any delay;

• the Commission does not act arbitrarily, it consults the administrative authorities, political parties etc., on all important matters.¹⁴

There is *prima facie*, some weight in the point raised against multi-member Commission causing delay in decision making process. Because at the time of elections, quick decisions have to be taken on ticklish issues and multi-member Commission, it is rightly apprehended, may not act quickly.¹⁵ But, this is one side of the coin. The other sides need to be viewed in the height of the functioning of a Cabinet or a Public Service Commission. If a Cabinet with 40 to 50 members can take quick decisions or a multi-member Public Service Commission can sort out any internal difference without any undue delay, why can't a multi-member election Commission, consisting of men of great caliber, function cohesively and settle controversial issues through quick discussions.¹⁶ Moreover, the ever increasing workload also justifies the case for multi-member Commission.¹⁷ Presently, the Election Commission has been converted into a multi-member body in India.

The Chief Election Commissioner cannot be removed from office without following the procedure applicable for the removal of a Supreme

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¹³ “Mr. T. N. Seshan Said That He Did Not Have Even Ten Minutes Work in His Office as Chief Election Commissioner, The Hindustan Times (New Delhi), June 12, 1994 p.1.

¹⁴ *Supra* note 3 at 43.

¹⁵ *Supra* note 3 at 43.


Court Judge and his conditions of service can not be varied to his disadvantage during the tenure of his service\(^\text{18}\). Such protection is not given to other Election Commissioners and they can be removed on the recommendations of the Chief Election Commissioner.\(^\text{19}\) The Presidential Ordinance, which later was enacted as the *Chief Election Commissioner and Other Commissioners (Conditions of Service) Act*, 1991, maintains a clear distinction between the Chief Election Commissioner and other Commissioners in respect of their salary, tenure of service and removal *etc.*, and places the former on a higher pedestal. The said Act was further amended in 1994 placing the Chief and other Election Commissioners at par as regards to their salary, age of superannuation, but as far as removal of Election Commissioners is concerned the earlier position is kept intact due to the Constitutional limitations on the Parliament's power on this issue.\(^\text{20}\) In the circumstances, after the appointment the other Election Commissioners whether enjoy same independence as is available to the Chief Election Commissioner the Supreme Court has observed:

The condition that the President may increase or decrease the number of Election Commissioner [as per requirement], that their service conditions may be varied to their disadvantage and that they may be removed on the recommendation of the Chief Election Commissioner, *mitigate against their being of the same status as that of the Chief Election Commissioner* whose service condition *inter alia* shall not be varied to his disadvantage and he shall not be


\(^{19}\) Art. 324 (5) second proviso, *ibid.*

\(^{20}\) Art. 324 (5) first proviso, *ibid.*
removed from his office except in like manner and on the like grounds as a judge of the Supreme Court\textsuperscript{21}.

The above observations, however, were overruled by the same Court in \textit{T. N. Seshan}\textsuperscript{22} by holding that the Chief Election Commissioner \textit{does not enjoy a status superior to Election Commissioners}, though he has been under the first proviso of Clause (5) of Article 324 given special protection of service tenure which is not extended to other Election Commissioners. But, in the matters of salary \textit{etc.}, all are kept at par. So, it is not appropriate to state that the Chief Election Commissioner is superior to other Election Commissioners. Thus, the Chief Election Commissioner and Election Commissioners stand \textit{pari pasu}, and some Constitutional differentiation between them does not confer a superior status on the Chief Election Commissioner to the Election Commissioners. Article 324 contemplated a permanent body to be headed by a permanent incumbent, namely, Chief Election Commissioner. In order to preserve and safeguard his independence it has become inevitable to treat him differently as it is rather impossible to have an Election Commission without a Chief Election Commissioner. But, same is not the case with the Election Commissioners as they are not intended to be permanent incumbents.

Often, clash of egos plays the spoilsport in ensuring the smooth functioning of the multi-member body like Election Commission. No doubt, it is the Constitutional compulsion imposed upon all concerned not to get into such petty things but to strive hard to carry on the affairs of the Commission by preferably unanimous, if not possible, by taking majority decisions. It is a stark reality that howsoever one is careful, sometimes, due to the clash of egos even taking a majority decision becomes difficult.

\textsuperscript{21} \textit{Supra} note 10, \textit{[emphasis mine]}.
\textsuperscript{22} \textit{T. N. Seshan v. Union of India}, (1995) 4 SCC 611, 629, \textit{[emphasis added]}. 
forget about arriving at the much hailed unanimity as it has happened in case of Mr. T.N. Seshan, the former Chief Election Commissioner and the other two Commissioners Mr. M.S. Gill and G.V.G. Krishna Murthy in 1994.\textsuperscript{23} In such a situation, the Constitutional body becomes unworkable. So, there is a need for suitably amending Article 324 and to do away with the distinction between the Chief and the other Commissioners as regards their removability from service. Multi-member Election Commission is the order of the day to conduct elections in India, therefore, the number of Election Commissioners to be appointed should be restricted to two only\textsuperscript{24}. There has been a proposal to have a five member Election Commission in recent times which, probably, is unreasonable as 'too many cooks spoil the broth' would be applicable to the multi-member Jumbo Election Commission as well. It is, undoubtedly, paramount to strengthen the Election Commission and to clear the ambiguities both legal and otherwise surrounding the status of persons manning this body urgently.

Further, in view of the doubt raised in the Constituent Assembly regarding undue political influence on the exercise of President's power to appoint Chief and other Election Commissioners on the advice of the Cabinet\textsuperscript{25}, it is suggested that a High level selection committee comprising of, \textit{inter alia}, the Chief Justice of India, the leader of the opposition in the Parliament, three members each from the ruling Government and the opposition ought to be constituted so that the President may have consultation with it before he proceeds to make such appointments. In case of a tie while deciding on a particular name to be suggested for consideration by the President to be taken on Election Commission, the President’s writ should run.

\textsuperscript{23} Supra note 3 at 34-37.
\textsuperscript{24} Supra note 8.
\textsuperscript{25} Art.74, supra note 7.
4.2.2 POWERS AND FUNCTIONS OF ELECTION COMMISSION IN INDIA:

The Election Commission plays a pivotal role in the country's electoral mechanism which is entrusted with the task of superintendence, direction, control of the preparation of the electoral rolls for the conduct of free and fair elections periodically as per the schedule. Democratic practices are sustained and strengthened through such elections. In this endeavor, the Election Commission primarily performs administrative functions. However, some of its functions have adjudicative and legislative tinge too. The Election Commission is expected to exercise powers and perform its functions in such a manner as to instill confidence of the political parties, the contesting candidates and more importantly, the general public in a representative democracy. It has to involve in multi-task operations to succeed in its avowed object of conducting free and fair elections that too from time to time without dilly-dallying.

For this purpose, it has been conferred with wide range of powers under the Constitution and is further supplemented by the relevant enactments, Rules, Orders, the use and abuse of which has been critically evaluated in the succeeding part of this thesis.

When the powers of the Election Commission are considered, Article 324 of the Constitution has, aptly, been described as "a reservoir of powers. Whenever law is silent on any electoral aspect or is insufficient to deal with a particular situation the Election Commission


27 The Representation of People Act, 1950; the Representation of People Act, 1951; the Delimitation Commission Act, 1972; the Registration of Electors Rules, 1960; the Conduct of Election Rules, 1961; the Central Civil Services (Classification, Control and Appeal) Rules, 1964; the Presidential and Vice-Presidential Election Rules, 1974; the Election Symbols (Reservation and Allotment) Order, 1968; the Delimitation of Parliamentary and Assembly Constituencies Order, 1976, et.al.

has the inherent and plenary power to act in such vacuous area within its allowed domain with banking upon any external authority for conferment of powers. The Supreme Court on this issue, quite emphatically, has observed as follows:

…[T]he Election Commission …has [wide] amplitude of powers in the conduct of elections, of course in accordance with the existing laws. But where these are absent, and yet a situation is to be tackled, the Chief Election Commissioner has not to fold his hands and pray to God for divine inspiration to enable him to exercise his functions or perform his duties or to look to any external authority for the grant of powers to deal with the situation. He must lawfully exercise his power independently, in all matters relating to the conduct of elections, and see that the election process is completed properly, in a free and fair manner. 29

Further, the Apex Court added that the power under clause (1) of Article 324 is in the nature of residuary power to deal with any situation which is not dealt with by a law of Parliament or State Legislature. 30 It would be more convenient to critically evaluate the powers and functions of Election Commission of India under different heads.

4.2.2.1 DELIMITATION OF CONSTITUENCIES AND THE ROLE OF ELECTION COMMISSION:

Delimitation of Constituencies is the first and foremost function which the Election Commission is empowered to take up. The Chief Election Commissioner has been designated as an ex-officio member of the Delimitation Commission constituted under the Delimitation Act, 1972 and has been entrusted with this responsibility. 31

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29 Ibid.
30 Ibid.
31 S. 3(1)(b), infra note 35 read with S.8, infra note 33.
Further, the Election Commission is empowered to consolidate and correct any printing mistakes in any of the Orders made by the Delimitation Commission and where the boundaries, area or extent of any constituency is altered in the Order then, for bringing the Order up-to-date the Commission ought to make necessary amendments. It is also equipped with the power to determine the constituencies to be reserved for Scheduled Tribes in certain States.

While performing its functions the Commission is free to choose its own procedure and is conferred with all the powers of a Civil Court under the Code of Civil Procedure, 1908. But, the Commission has no power to add or delete any area from the constituency.

4.2.2.2 ELECTORAL ROLLS: ELECTORAL COMMISSION’S CONTRIBUTION IN PRE-PREPARATION FOR THE GRAND FINALE:

The electoral rolls for every constituency is prepared in accordance with the provision of RPA-I under the "superintendence, direction and control" of the Election Commission. The Commission may at any time for reasons to be recorded, direct a special revision of the electoral roll for any constituency or part of a constituency in such manner as it thinks fit. Further, general or special directions may also be issued by the Election Commission to Electoral Registration Officers regarding the correction of entries in electoral rolls.

Moreover, the Commission has power to issue instructions regarding the order of name of electors and form or language to be used.

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32 Supra note 27.
33 S.9, the Representation of People Act, 1950.
34 S. 9-A, ibid.
35 S. 7, the Delimitation Act, 1972.
37 S.15, supra note 33.
38 S.21(3), ibid.
39 S.22, ibid.
for the preparation of rolls.\textsuperscript{40} The minimum period for lodging claims for the inclusion of names in the electoral rolls and objections to the entries in it is thirty days from the date of publication of the rolls in the draft but if the Election Commission thinks fit it can reduce this period to fifteen days and it can also extend the period by notification in the official Gazette in respect of the constituency as a whole or in respect of any part thereof.\textsuperscript{41}

In view of the above, what remedy is available when the Electoral Registration Officer by mistake or misconception prepares electoral roll for a particular constituency including in it an area not belonging to that constituency? In Katragadda Rajagopalrao,\textsuperscript{42} a Division Bench of Andhra Pradesh High Court on similar issue has ruled that in such a situation the Election Commission in exercise of its power under Article 324 of the Constitution of India read with Section 21 (3) of the RPA-I, can direct a special revision of electoral roll of the said constituency and correct the mistake by excluding that area from the electoral roll which is not the part of it.

Further, the question is what if such direction issued to the Electoral Officer is not complied with? The Supreme Court in Laxmi Charan Sen,\textsuperscript{43} while addressing similar issue has observed that the directions issued to the Electoral Officers are of course binding upon such officers but the non-compliance of such directions could not result in the invalidation of elections. Thus, these directions do not create rights or liabilities in favour of individual voter or contestant.

\textsuperscript{40} R.4 & 6, the Registration of Electors Rules, 1960; supra note 27.
\textsuperscript{41} S.12, supra note 37.
\textsuperscript{42} Katragadda Rajagopalrao v. Election Commissioner, AIR 1968 AP 218.
\textsuperscript{43} Laxmi Charan Sen v. A. K. M. Hussain Uzzam, AIR 1985 SC 1233.
In the past countrywide summary revisions\textsuperscript{44} of electoral rolls have been ordered by the Election Commission. Steps have been directed to be taken for the improvement in the quality of electoral rolls that includes computerization and making them readily available on even internet to meet the requirement. Books and CD-Roms are also produced for securing accuracy of electoral rolls which is a welcome sign indeed.

\textbf{4.2.2.3 REGISTRATION OF POLITICAL PARTIES: A CONDITION PRECEDENT FOR ALLOTMENT OF SYMBOLS:}

Yet another vital power of the Election Commission is to register political parties and allot symbols to them. It is obligatory on the part of political parties to get registered by making an application to the Election Commission.\textsuperscript{45} Further, it is expressly provided under the law that the decision of the Election Commission with regard to the registration of a political party shall be final.\textsuperscript{46}

As per the law, any association or body of individual citizens of India calling itself a political party and intending to avail the benefits under the relevant provisions, shall make an application to the Election Commission for its registration as a political party within thirty days of its formation.\textsuperscript{47} The law cautions the Commission that unless political parties bear true faith and allegiance to the \textit{Constitution of India}, to the principles of socialism, secularism and democracy, and uphold sovereignty, unity and integrity of India, they shall not be registered.\textsuperscript{48} But principles of socialism and secularism are so abstract that it is very difficult to examine the claim of political parties whether they are in fact really believers of these principles.

\textsuperscript{44} \textit{The Hindustan Time}, Feb.9, 1999, p.3.
\textsuperscript{45} S.29A, the \textit{Representation of People Act}, 1951.
\textsuperscript{46} S.29A (8), \textit{ibid.}
\textsuperscript{47} S.29(1),(2),(3),(4),and (6), \textit{ibid.}
\textsuperscript{48} S.29A(7), \textit{ibid.}
One party claiming to be secular and others blaming it to be communal is a common factor in Indian political arena. However, it is submitted that in case after the registration, a party violates the broad principles of socialism, secularism and democracy, there should be a clear provision for the cancellation of registration of that political party.\(^{49}\) In the absence of such express provision one can bank upon the well settled law that the authority empowered to do a certain act is also, by necessary implication, empowered to rescind such action and cancel or withdraw any order passed by it. But the Election Commission when served with an application by Mr. Arjun Singh, the then Union Minister for derecognition of B.J.P., a political party, and freezing of its symbol, has dismissed it on the ground that the Commission had no express power to deregister or derecognize a political party under the law.\(^{50}\) Similar stand has been taken in case of other applications on such issue.\(^{51}\)

The Election Commission, however, has amended the *Election Symbols Order* in 1994 and inserted para 16A which has clothed the Commission with the power to suspend or withdraw the recognition of a Political Party if it did not adhere to the model code of conduct or failed to follow or carry out directions and instructions of the Commission. Model Code of Conduct is implemented at the mercy of morals of all concerned in the process. Ironically, at present, morals in India in democratic elections are at nadir. Therefore, there is need for *Constitutional sanction and statutory framework* to be given to the Model Code of Conduct which need to be drafted incorporating all the required details to be followed in elections to maintain the sanctity of democracy.

Only registered political parties are considered for recognition at National or State level. This registration and recognition process is of

\(^{49}\) *Supra* note 8 at 70.

\(^{50}\) *Supra* note 3 at 55-56.

\(^{51}\) *The Hindustan Times* (New Delhi), March 1, 1992, p.12.
great importance for the purpose of allotment of symbols. Under the *Election Symbols (Reservation and Allotment Order)*, 1968 symbols have been classified as reserved and free symbols.\textsuperscript{52} The political parties have been classified to be recognized and unrecognized political parties. Reserved symbols are allotted to the recognized National or State Parties and there is freedom in allotment of free symbol to any candidate or non-recognized party.\textsuperscript{53}

In *Kanhaiya Lal Omar*,\textsuperscript{54} the Constitutional validity of the above stated Order was challenged before the Supreme Court on the ground that power to issue symbols Order is not conferred to the Election Commission under Article 324. But the Supreme Court observed as under:

> While construing the expression 'superintendence, direction and control' in Article 324(1) one has to remember that every norm which lays down a rule of conduct cannot possibly be elevated to the position of legislation or delegated legislation. There are some authorities or persons in certain grey areas who may be source of rules of conduct. One has also to remember that the source of power in this case is the Constitution, the highest law of the land, which is the repository and source of all legal powers and any power granted by the Constitution for a specific purpose should be construed liberally so that the object for which the power is granted is effectively achieved. Viewed from this angle, it cannot be said that any of the provisions of the Symbols Order suffers from want of authority on the part of the Commission, which has issued it.

\textsuperscript{52} Supra note 27.

\textsuperscript{53} Jagannath Mohanty v. Election Commission of India, AIR 2000 Ori 44.

\textsuperscript{54} Kanhaiya Lal Omar v. R. K. Trivedi and Others, AIR 1986 SC 111.
Thus, the Election Commission not only is empowered to allot election symbols to political parties but also authorized to decide disputes relating to symbols when there is a split or amalgamation of political parties.

On the question whether the symbol determination orders of the Commission can be appealed against under Article 135\(^ {55}\) of the Constitution, the Supreme Court in *W.A. Sangma*,\(^ {56}\) has ruled that the Election Commission is a tribunal for the purposes of Article 136 while deciding disputes relating to symbols of political parties in election or with regard to adjudication of disputes of recognition of political parties. However, the Commission in such disputes has no power to decide about the property of political parties but only about which of the rival sections or groups of a political party is entitled for a particular name or symbol. For property matters of such political parties Civil Court is the proper forum to decide the case.\(^ {57}\)

**4.2.2.4 CONDUCT OF ELECTION UNDER THE CONTROL AND SURVEILLANCE OF THE ELECTION COMMISSION:**

The function of the Election Commission regarding the conduct of elections beings from the notification of the election and continues upto the declaration of results and during this entire process the Election Commission has to see that the elections are conducted according to the rules. Notification for general election to the *Lok Sabha* or to the Legislative Assembly has to be issued by the President or Governor.

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\(^{55}\) Under this Article the Supreme Court may, in its discretion, grant special have to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India, *see*, Art 136, *supra* note 7.


respectively.\textsuperscript{58} However, such notifications will be issued on such date as may be recommended by the Election Commission.

The position is quite different in case of by-elections. Here the power lies with the Election Commission to fill up such a vacancy within six months from the date of such seat falling vacant.\textsuperscript{59} This is an "outer limit" and the "inner limit" would be as soon as it could be because "no segment of the Indian people should ever be left unrepresented in governance, either at the State or National level for [an unreasonable] length of time".\textsuperscript{60} It is surely a healthy practice.

Under the RPA-II, the Election Commission is empowered in case of general elections as well as by-elections to fix by notification in the Official Gazette the date for filing nomination, the date for its scrutiny, the last date for the withdrawal of candidatures, the date or dates on which a poll shall be conducted and the date before which the election shall be completed.\textsuperscript{61} Further, the Commission is empowered to extend the time for completion of election, to postpone it, to cancel the same and order re-poll in case when poll has been interrupted or obstructed by any riot or open violence, in cases of destruction \textit{etc.}, booth capturing or destruction or loss of ballot papers at the time of counting.\textsuperscript{62}

In the past, instance of postponement of the polls, cancellation of notifications for elections and the ordering of re-poll have increased enormously probably due to the fact that the discretion of the Election Commission cannot be challenged in the Courts of law. A catena of cases dealt with below would establish this point.

\textsuperscript{58} Ss. 14 & 15, supra note 33.
\textsuperscript{60} \textit{The Hindustan Times} (New Delhi), March 9, 1997, p.7.
\textsuperscript{61} S. 30 (a), (b), (c), (d), & (e), supra note 45.
\textsuperscript{62} Ss. 57, 58, 58-A & 64-A, \textit{ibid}.
In *Punnuswami*, the Apex Court stated that the word 'election' is used in a wide sense covering the entire process culminating in the candidate being elected and it is in the same sense used in Article 329(b). Further, by virtue of the power conferred under Section 57 of RPA-II the Election Commission is authorized to adjourn the polling at any polling station if they are interrupted or obstructed by any riot or violence or natural calamity or for any other sufficient cause. It was further added that this provision deals with adjournment of the poll at a particular polling station or stations but does not expressly cover the cancellation of election of whole constituency.

Later, in *Mohinder Singh Gill*, the Court went a step ahead and held that election Commission is entitled to exercise certain powers which are necessary for performance of its duties under Article 324 on its own in an area not covered by RPA-I, RPA-II and Rules. The Election Commission can, therefore, cancel polling in the whole constituency and order for the re-poll to protect the purity of election and erase the effects of the serious malpractices.

In *A.K.M. Hassan Uzzam*, expressing its regret at the High Court's move of interfering with the direction of the Election Commission has observed that far from showing any reluctance to interfere with the programme of proposed election, the High Court has only too readily passed the interim order which would have had the effect of postponing the election indefinitely. Considering that the election process was just round the corner, as per the Supreme Court, the High Court ought not to have interfered with it.

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63 N. P. Punnuswami v. Returning Officer, AIR 1952 SC 54.
64 Supra note 28.
Similar strictures were passed by the Apex Court in *Election Commission v. State of Haryana.*\(^66\) In this case the State Government filed a petition before the High Court praying for a stay of by-election on the ground that the law and order is not congenial to conduct elections which granted by the High Court. But on appeal, setting aside the said order the Supreme Court held that when there was a question between the Election Commission and the State Government about the position of law and order in the State for holding elections, the High Court must not interfere. The Apex Court ruled that *it is only the Election Commission who has power to decide such controversy.*\(^67\)

Later, in *Shivaji,\(^68\) the Supreme Court observed that the Bombay High Court had erred in interfering with the poll schedule. Postponing the dates of withdrawal of nomination or the dates of poll is within the jurisdiction of the Election Commission. Therefore, as per the Supreme Court, the Bombay High Court has no jurisdiction to entertain the writ petition and stay the election process. The Apex Court went to the extent of stating that the entire proceeding in the High Court of Bombay in this case amounted to an abuse of the process of the Court.\(^69\)

The polling which was to take place in Kalka Assembly Constituency on May 19, 1993 came to be interdicted by an order of the Chief Election Commissioner and it was challenged before the High Court of Punjab and Haryana wherein the Court issued an *ex-parte* order directing the election process to continue. Against this order of the High Court the matter was brought before the Supreme Court in *Satpal,\(^70\) where the Court was of the view that even before the President or Governor issues the notification, when the poll dates are announced by

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\(^{67}\) Ibid.


\(^{69}\) Ibid.

the Election Commission and formal notification under Section 30 of RPA-II is yet to be issued it would be inappropriate for Courts to interfere in the dates of poll as power to fix dates include power to alter dates and the Election Commission would be competent even to alter calendar of events. In the circumstances, the Apex Court disapproved the action of the High Court and stayed the order. The highest Court of the land, further, observed that in a matter which had such far reaching consequences, it was inappropriate for the High Court to have made an *ex-parte* order.

In *Election Commission of India v. The Union of India and others*\(^7\), the facts in brief are the Election Commission passed a general order in August, 1993 postponing all elections under its control till further orders. One of the candidates challenged this order in a writ petition before the Bombay High Court wherein two interlocutory orders were passed with the effect that the poll as scheduled earlier be proceeded with followed by the counting to its votes. Aggrieved by these orders the Election Commission approached the Supreme Court wherein it was held that the Court's jurisdiction does not extend to issue directions to the Election Commission to conduct the particular poll on a particular date independently of perception by the Election Commission as to its feasibility and practicability consistent with the requirement of the purity of electoral process. The Supreme Court was of the view that although there is no un-reviewable discretion under the Constitutional dispensation, yet the overall Constitutional function to hold free and fair election, is of the Election Commission.

When the Election Commission orders for the postponement of election on certain exigencies without even hearing the contesting

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\(^7\) (1994) Supp. (3) SCC 643.
candidates due to time constraint, it would not be violative of principle of natural justice as per the Madhya Pradesh High Court.\(^{72}\)

The ratio of various cases, thus, establish that there is a wide discretion conferred on the Election Commission for conducting election and in fixing of calendar of events in the course of election. It is expected that the Courts ought to follow self-restraint rule in interfering with the orders of the Commission because the presumption is always in favour of the Commission that it might have acted \textit{bonafide} to foster democracy by ensuring conduct of free and fair elections. It is also true that the Election Commission is authorized to work but being within the ambit of Article 324 along with other relevant provisions of the Constitution and various Statutes, Rules made there under. The Court can interfere if those provisions are violated.\(^{73}\) Accordingly, in \textit{Ram Deo Bhandari},\(^{74}\) the Supreme Court directed that the Election Commission shall not withhold elections to the Legislative Assemblies of Bihar and Orissa on the ground that the said governments had failed to complete the process of issuance of photo identity cards by the deadline fixed by it.

No doubt the Election Commission has been conferred with a wide range of powers however, there are certain limitations imposed as well on the arbitrary exercise of such powers. These limitations primarily flow from statutory provisions, Principles of Natural Justice and Judicial Review. This has been made very clear by the Supreme Court in various cases.\(^{75}\) For example, in \textit{A.C. Jose},\(^{76}\) where by an order of the Election

\(^{72}\) Sayed Ahmad v. Brijendra Nath Pathak and others, AIR 1998 M.P. 293, in the instant case the situation was that the Election commission felt that the purity of election was being jeopardized because Governor of another State was helping his son in the election. Earlier in \textit{N. Krishnappa v. Chief Election Commissioner}, AIR 1995 A.P. 212, the High Court was of the view that the plenary powers of the Commission under Article 324 include the power to recommend the rescission of election process.

\(^{73}\) Jameel v. Gul Mohammad, AIR 1980 Raj. 166.


\(^{75}\) See, e.g., supra note 28.

\(^{76}\) \textit{A. C. Jose v. Sevari Pillai}, AIR 1984 SC 921.
Commission casting of votes in some polling stations took place by Electronic Voting Machine, the validity of the method of voting was questioned as it was not authorized to be used under the relevant law then. The Supreme Court while setting aside the election, also considered the scope of the powers of the Election Commission and ruled that the plenary powers of the Election Commission under Article 324 do not prevail over the Acts and Rules and should be read in harmony with and not in isolation of other relevant Articles. It is also agreed that the Election Commission must act according to rules of natural justice but the application of these rules depends upon circumstance of each case and cannot be generalized.

The Election Commission is the creature of the Constitution and is invested with not only administrative but also certain judicial powers, however, fractional it may be. For instance, it is the prerogative of the Election Commission exclusively to resolve disputes, *inter alia*, between rival political parties in respect of the claim for being a recognized party for the purpose of electoral symbol. But, it is quite clear that the Election Commission has to work within the framework of Article 324 of the Constitution and subject to the mandatory provisions of the laws and statutory rules and the Court can interfere if those provisions are violated.

In the case of postponement of elections in Assam and Jammu and Kashmir by the Election Commission, the Apex Court has made it very clear that the orders of the Election Commission are subject to judicial review and its powers are not "unbridled". The Division Bench of the Supreme Court while emphasizing that the rule of law is the basic structure of the Constitution of India and democracy stated that,

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77 The Election Commission has been authorized to use the Electronic Voting Machines under Section 61A of the RPA-II, which has been added by Act 1 of 1989 (w.e.f. 15-3-1989).
"[t]he Chief Election Commission cannot defy the law armed by Article 324 of the Constitution [because] his functions are subject to the norms of fairness and he cannot act arbitrarily [as] unchecked power is alien to [the Indian] system".

The Supreme Court further added that "the Court, at the appropriate stage, with the potency of its benign power and within the leading strings of legal guidelines, could call the bluff, quash the action and bring order into the process." As per the Court, "when a high functionary like the Chief Election Commissioner is vested with wide powers the law expects him to act fairly and legally." But it is obvious that the review of the Chief Election Commissioner's order would depend on the "facts and circumstances of each case." In view of the above, it can be fairly stated that judicial review as a Constitutional requirement should also be taken seriously by the Election Commission because nobody is above the Constitution including the Chief Election Commissioner. Chief Election Commissioner being a human is not infallible. It is quite likely that some decisions he may take probably require judicial scrutiny through judicial review. Therefore, it is suggested that the Chief Election Commissioner’s decision culminating in actions and inactions should be subjected to judicial scrutiny.

4.2.2.5 REQUISITION OF AND CONTROL OVER ELECTION PERSONNEL:

The Election Commission is empowered to nominate, designate or appoint the electoral personnel such as Chief Electoral officers of the States, District Election Officers, Electoral Registration Officer and Assistant Returning Officers. Besides the Election Commission can ask for requisition from the President or the Governor of a State, as the case

78 The Hindustan Times (New Delhi), August 24, 1993, p.12.
79 S. 13A (1), supra note 33 read with Ss. 13 A (1), 13 B(1), 13 C(1), 21, 21(1), supra note 45.
may be, such staff as is deemed necessary for the discharge of the functions conferred on it.\textsuperscript{80}

Further, it is also empowered to cancel the appointment of the electoral personnel. Here, the question is, whether the Election Commission is also equipped with the power to prevail against the erring electoral personnel and take disciplinary action?

Section 13CC of RPA-I provides that the Chief Electoral Officers, District Election Officers etc., "[s]hall be deemed to be on deputation to the Election Commission for the period during which they are so employed and such officers and staff shall, during that period, be subject to control, superintendence and discipline of the Election Commission" [\textit{emphasis mine}]. Such period commences from the date of the notification of the election and extends up to the date of declaration of results of the election.\textsuperscript{81}

In \textit{K.P Roy},\textsuperscript{82} various Presiding Officers who were appointed by the District Election Officer contended that they cannot be unilaterally appointed without their consent. The Calcutta High Court ruled that such power lies with the District Election Officer\textsuperscript{83} and refusal to act or non-performance of the obligation imposed by such appointment would be an offence under Section 134 of RPA-II, if it was without any reasonable cause. This takes us to the next question \textit{i.e.}, can the Election Commission shortlist, say for example, the officers of the State Bank of India for entrusting election duty and penalize those who refuse to do such duty? In \textit{State Bank of India},\textsuperscript{84} the Supreme Court on similar question has held that the expression “such staff” in Article 324(6) can only mean that staff which is under the control of President or the

\textsuperscript{80} Art 324 (6), supra note 7.
\textsuperscript{81} S. 28A, supra note 45.
\textsuperscript{82} \textit{K. P Roy v. D Rudra}, AIR 1971 Cal. 461.
\textsuperscript{83} S. 26, supra note 81.
\textsuperscript{84} \textit{Election Commission of India v. State Bank of India}, AIR 1995 SC 1078.
concerned Governor and not any staff over which they do not exercise control. Further, the penal provisions under RPA-I and II relate to those officers who are covered there under and not to any other person. Therefore, as per the Apex Court, neither the officers of the State Bank of India can be compelled to do election duty nor they can be penalized for their refusal to take up this task.

Next, whether prior permission of the Election Commission should be taken before effecting transfers of employees deputed for election duty? This was one of the issues before the Patna High Court in *Kanhaiya Prasad Sinha*. The facts in brief of this case were, the Sub-divisional Officer of Muzaffarpur whose services were sought by the Election Commission was transferred by the State Government ignoring the direction of the Commission. The Court held that the directions issued under Article 324 of the Constitution even if directory in nature, cannot be easily ignored but to be respected and implemented. If not so, then in appropriate cases the Court may examine the same and pass suitable orders.

Regarding taking disciplinary actions against the public servants who violate their election duty the Central Government and the Election Commission are at loggerheads. On this issue the stand of the Government has consistently been that the Election Commission does not have exclusive disciplinary jurisdiction over officials deputed for election work. But, if there is any misconduct on the part of Government Officers during the period of their deemed deputation, it is open to the Commission to report to the concerned Government about the same. If any such complaint is lodged then it is a reasonable expectation that the Commission ought to be assured of prompt action against such delinquent employee under the law. But, in fact despite of reporting of several such

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cases there is reluctance on the part of the concerned Governments to take action against such staff.\[^{86}\]

The word "discipline" under Section 13 and 28A of RPA-I and II respectively requires a judicial interpretation to avoid the existing confrontation between Government and the Commission. However, it is better to leave the power to the Government to discipline the erring officials in this regard because such cases take considerably longer time but the jurisdiction of the Commission over the staff on election duty ceases after the elections are over. Any action of the Election Commission against such officials may be crippled due to this reason. One would agree that "the Constitution [of India] demands consultation and not confrontation. [I]t is expected that the Constitutional authorities would act in the spirit of co-operation and not bring about a crisis situation by [adopting] any confrontationist approach"\[^{87}\] on the present issue. There should be smooth co-operation between the Government and the Election Commission.

**4.2.2.6 ELECTION COMMISSION AND THE MODEL CODE OF CONDUCT:**

The Code of conduct is a residuary measure sought to regulate the general conduct of political parties, candidates, election meetings, processions, conduct of all concerned on the polling day, entry into the polling booths, instructions to party in power so that the electorate may not be influenced by misuse of governmental power, official machinery, public money and property.\[^{88}\]

Although the term "corrupt practices"\[^{89}\] is defined under RPA-II, it is impossible to cover all activities which may cause hindrance in smooth

\[^{86}\] Supra note 3 at 60-63.
\[^{87}\] The Hindustan Times (New Delhi), August 6, 1993, p.1.
\[^{89}\] S. 123, supra note 45.
conduct of elections within its fold. Therefore, after consultation with representatives of political parties the Election Commission has formulated the Model Code of Conduct the publication of which may provide an opportunity to all concerned to understand the nature of activities prohibited by the Commission. In view of the last concluded elections for fifteenth Lok Sabha, the fundamental question as to the violation of the Code of Conduct whether would invite any legal sanction has opened the Pandora’s box.

Many recommendations have been made by the Election Commission like for e.g., adding specific provision to RPA-II preventing the use of temples, Churches or other places of worship as forums for election purposes and prescribing suitable penalty for default. But till date they have, ironically, fallen on deaf ears. However, the Election Commission in its honest efforts to ensure free and fair elections had directed for banning sale of liquor during elections way back in 1991 and for the disappointment of the concerned the Bombay High Court granted stay to the impugned order on the ground that Article 324 does not enable the Election Commission to override any of the legislation or rules having force of law in any of the States. But, against similar ban order in Karnataka the Division Bench of the High Court held that such direction can be issued by the Election Commission and what precautionary measures are to be taken for ensuring free and fair elections are matters which should be left to the discretion of the Election Commission. In the opinion of the researcher, the Karnataka High Court’s view stated above is worth supporting but not the Bombay High Court’s observations on this issue stated earlier in this para.

The supreme Court seems to be quite supportive for the Election Commission as it had set-aside the stay order granted against the direction of Election Commission banning on certain duration the use of loudspeakers mounted on mobile vehicle for the election campaigns by observing that the *prima facie* position and the balance of convenience seem to be in favour of public good in a matter which cannot be said to be unrelated to the area of powers of the Election Commission under Article 324.\(^{92}\)

Often the direction issued by the Election Commission has become controversial. For example directions with regard to ban on exit polls,\(^{93}\) preventing misuse of official vehicles and free travel passes,\(^{94}\) prohibiting defacement of property,\(^{95}\) banning use of loudspeakers, videography of activities of candidates and their agents,\(^{96}\) compulsion for regular maintenance of accounts of election expenses,\(^{97}\) prevention of transfer of officers engaged in election duty or engaged in maintaining law and order during the polls.\(^{98}\) There are allegations of rampant manipulation and violation of these directions by the State Government, political parties, candidates and their agents as per the Commission.\(^{99}\) However, the

\(^{92}\) *Election Commission of India v. All India Anna DMK.*, (1994) Supp. (2) SCC 689.


\(^{94}\) “Election Commission of India”,
http://eci.nic.in/eci_main/CurrentElections/ECL_Instructions/00_9_MCC_-

\(^{95}\) “Election Commission of India”,

\(^{96}\) *Campaigner Mover High Court for Use of Loudspeakers*, The Times of India, April 26, 2009,
http://articles.timesofindia.indiatimes.com/2009-04-26/ahmedabad/28039767_1_loudspeakers-public-
meeting-gujarat-high-court.

\(^{97}\) “Maintenance of Accounts of Election Expenses”,
http://eci.nic.in/archive/handbook/CANDIDATES/ch11/ch11_1.htm, [accessed on 12-08-2013].

\(^{98}\) Supra note 8 at 78, 79.

\(^{99}\) See, “FIR against Manik Chand Surana for violation of Election Code of Conduct”, The Times of
for-violation-of-election-code-of-conduct/articleshow/26012767.cms; *SEC finds Prasanna guilty of
violating election code*, Times of India, Dec.18, 2013; *Election Commission Pulls up MP minister
Vijayvargiya for Violating Model Code of Conduct*, Times of India, Nov. 18, 2013,
http://timesofindia.indiatimes.com/assembly-elections-2013/madhya-pradesh-assembly-
success of these allegations getting proved and the responsible punished is highly debatable.

The other side of the argument is, the Election Commissioners, being fussy bureaucrats are alleged of taking the Model Code to ridiculous lengths. In the elections, in Andhra Pradesh the District officials directed to cover with cloth all statues of national leaders like Indira Gandhi, Rajiv Gandhi, N.T Rama Rao, Jagjeewan Ram etc., except those of Mahatma Gandhi and B.R. Ambedkar, to prevent the electorates from getting influenced in making their electoral choice. Same order in West Bengal targeted pictures of Subhas Chandra Bose and Rabindranath Tagore to be removed from Government offices which was strongly protested by the Chief Minister hence, the Election Commission meekly withdrew its order.

When the All India Democratic Students Organization on account of Bhagat Singh’s death anniversary on March 23, 2009 organized an

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exhibition on his life in Vadodara, the Election Commission asked it to wind up the expo, as it violated the Model Code of Conduct.\textsuperscript{103}

Come elections, it is alleged, India ceases to be a political democracy because bureaucrats take over the country, interpreting its law as per their whims, holding elected representatives and election candidates to ransom. They don’t even hesitate to interfere in routine administrative matters. Assam Chief Minister Tarun Gogoi was compelled to lose his temper when his police chief was told not to brief him even on the Ulfa threat or accompany him on official tours due to Model Code of Conduct.\textsuperscript{104}

Rigid interpretation of the Model Code has robbed the elections of its fun and charm. Earlier, elections in the country used to be noisy and colorful, with flags and festoons adorning the streets, loudspeakers blaring out songs and leader making speeches on everything under the sun. Now elections are getting quitter and elitist, with the man on the street being denied a sense of participation. According to Anand Gadgil, Spokesperson for the Congress in Maharashtra, “[p]osters and banners should be allowed on condition that the candidate will have to remove them after the elections [as] total ban is nothing less than an attempt to curb a politician’s freedom of speech”.\textsuperscript{105}

Politicians believe the rigid rules are affecting political discourse. Veerappa Moily, a Congress leader complained, “[t]he commission talks about creating awareness among voters. This job should be left to parties. But with no posters, banners, wall writings or party flags, how [politicians] are supposed to create awareness? How will people know

\textsuperscript{103} Ibid. See also, “SUCI Candidate’s Show on Bhagat Singh Cancelled by Cops”, http://archive.indianexpress.com/news/suci-candidate-s-show-on-bhagat-singh-cancelled-by-cops/438158/, [accessed on 17-01-2014].

\textsuperscript{104} Supra note 102 at 39, 40.

\textsuperscript{105} Id., at 40.
who the candidates are? There are no TV debates”. In the course, independent candidates are the biggest sufferers, as they have to work harder to make voters aware of their presence and symbol.

Frustrated Mallika Sarabhai, who contested against L.K. Advani in Gandhinagar questions “What campaigning can we do in our constituency, where a large chunk of voters are illiterate, without showing our election symbol… [as it] was given only a fortnight before the elections?” There are endless vows on this count, the genuineness of which is suspected in view of the powerful influence of the politicians in every field in India.

It is suggested that the State Governments should step-down themselves or by law that need to be framed, during the election which would bring to an end of complaints like political interference booth capturing, use of muscle power and misuse of Government machinery in favour of ruling party candidates etc.

A short spell of Governor’s rule in the State after the elections are announced, is suggested by the Commission which has been instantly rejected by all major political parties. However, Governor’s rule in a State as suggested is not possible under the Constitution unless it is amended to that effect, but the suggestion of Commission indicates the necessity of making Model Code of Conduct a rule of law and more purposive. Presently, the Code is merely a gentleman’s agreement between Election Commission and the political parties. It has merely a moral sanction and morality, it is aptly said, has no takers these days.

106 Id., at 41.
107 Id., at 41, 42.
108 Supra note 8 at 79.
110 Supra note 108.
4.2.2.7 POWER OF ELECTION COMMISSION TO DISQUALIFY CANDIDATES:

Under the law the Election Commission is empowered to disqualify a candidate who has failed to lodge an account of the election expenses within the time in a prescribed manner by law. It also has power to remove disqualifications which are imposed on the ground other than corrupt practices.

Under Part II of RPA-II, it can also reduce the duration of any of those disqualifications. While doing so the Election Commission is duty bound to record reasons. Thus, disqualifications imposed on grounds of, for e.g., conviction for certain offences, disloyalty, Government contracts, office under Government or failure to submit account of election expenses, may be removed by the Commission for reasons to be recorded.

Further, even a person can be disqualified from voting for conviction of certain offences and corrupt practices under the law. However, the Election Commission can do away with this disqualification by recording reasons for doing so. In this connection, the inquiry has to be instituted by the Election Commission providing hearing to the affected party or person. The Supreme Court in All Party

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Hill Leaders Conference v. W.A. Sangma,\textsuperscript{115} has held that the Election Commission, in this regard, acts as a Tribunal and the duty to arrive at a conclusion whether a person is qualified, is a quasi-judicial function, therefore, hearing of the affected person is mandatory.

Where the issue of disqualification of Members of either Parliament\textsuperscript{116} or State Legislatures\textsuperscript{117} crops up, it is referred to, the decision of the President or the Governor, as the case may be. Before deciding against any member, the opinion of the Election Commission ought to be obtained\textsuperscript{118} and the President or the Governor has to decide according to the opinion of the Commission. While conducting inquiry before tendering its opinion the Election Commission has the powers of the Civil Court\textsuperscript{119} and it is up to the Commission to decide whether there is any necessity to conduct such inquiry at all. Further, the Commission has discretion to select its own procedure including the fixing of place and time of its sitting and to decide as to sit in public or in camera.

With this information about the Constitutional mandate and the underlying legal discourse pertaining to India let us find out what is in store from the point of view Iraq, an altogether new democracy.

\textbf{4.3 THE ROLE OF ‘INDEPENDENT ELECTION COMMISSION OF IRAQ’ IN CONDUCTING FREE AND FAIR ELECTIONS:}

Elections, of course, have the potential to contribute to the restoration of peace and stability in Iraq. It is crucial for the legitimacy and success of the Constitutional exercise that the National Assembly represents a broad and diverse cross-section of Iraqi society. The electoral

\textsuperscript{115} AIR 1977 SC 2155. The ratio of this case has been followed by various High Courts, viz, C. Parasuram Naidu v. M. Vankatarami Naidu, AIR 1985 A.P.169; Guraj Singh v. Union of India, ILR(1990) 1 Punj. & Har. 418.
\textsuperscript{116} Art 102, supra note 7.
\textsuperscript{117} Art. 192, ibid.
\textsuperscript{118} Arts 103 (2) & 192(2), ibid.
\textsuperscript{119} S.146, supra note 45.
process must, therefore, seek to gain the greatest inclusiveness and transparency offering the widest opportunity for Iraqi nationals to participate as voters and candidates.

4.3.1 ELECTION COMMISSION OF IRAQ: IT’S COMPOSITION:

The Iraqi Council of Representatives\textsuperscript{120} is responsible for the vetting, nomination and confirmation of the IHEC Board of Commissioners, a nine-member body made up of eight Commissioners and a Chief Electoral Officer, which serves for five years and which is chaired by one of the members selected by the Board of Commissioners.\textsuperscript{121}

At least two members of the Board of the Commissioners must be law professionals having expertise and experience in elections selected by majority of Council of Representatives.\textsuperscript{122} More importantly, they must be known for their competence, integrity and independence in dealing with matters relating with elections.\textsuperscript{123}

The Chief Executive Officer is a non-voting member of the Board of Commissioners and is responsible for implementing the policies of the Board. This Board of Commissioners elects its Chair, a Rapporteur, a Spokesperson and a Deputy Chair.\textsuperscript{124}

\textsuperscript{120} Under Art.49 of the Constitution of Iraq, 2005 the Council of Representatives consists of a number of members, at a ratio of one seat per 100,000 Iraqi persons representing the entire Iraqi people who are elected through a direct secret general ballot.


\textsuperscript{122} Art.3, the Independent High Electoral Commission, 2007.

\textsuperscript{123} \textit{Ibid.}

As per the Election Law, the members of Iraq’s Electoral Commission must be Iraqi citizens residing permanently in Iraq and possessing a first University degree. Moreover, a member must:

- not be less than thirty five years old;
- be of good behavior;
- not have been convicted of a dishonorable crime;
- be competent and experienced in the field of administrative work;
- not be covered by the De-Ba’thification law, or enriched himself/herself on the account of public money, or committed a crime against the Iraqi people, or be affiliated to repressive apparatus; and
- be politically independent.

The Council of Representatives has oversight responsibility for the IHEC Board of Commissioners, which is governed by the Iraqi Constitution and the Election Laws of Iraq. The staff members of the IHEC work in accordance with the civil service code.

The seat of the member of the Commission can be declared vacant incase a member resigns or dies or becomes incapacitated or if he/she is convicted of a dishonorable crime. Besides, if majority of members of the Board of Commissioners recommends for removal of one of its members for violating the Code of Conduct and the Council of Representatives ratifies the same, a member can be removed from office.


\[126\] Art.3(2), *ibid. See also, Electoral Assistance”, supra note 124.

\[127\] Electoral Assistance”, *supra note 124.

\[128\] Art.6(1), (2) & (3), *supra note 122.

\[129\] Art.6(4), *ibid.*
Further, where it is proved that the information supplied by the member while assuming office is incorrect, the Election Law provides that he/she shall be removed from his office.\textsuperscript{130}

4.3.2 POWERS AND FUNCTIONS OF ELECTION COMMISSION IN IRAQ:

The IHEC is a professional, governmental and independent body, subject to the supervision of Iraqi Council of Representatives. The IHEC is empowered to promulgate Rules and adopt principles for Federal, Regional and Local elections and referenda throughout Iraq.\textsuperscript{131} This apart, the Commission is charged to perform the following functions:

4.3.2.1 DELIMITATION OF CONSTITUENCIES AND THE ROLE OF ELECTION COMMISSION:

Election, by and large, is a complex operational and political task.\textsuperscript{132} It is more so in turmoil ridden nascent democracy like Iraq. Elections require extensive and complex field operations to prepare, which commences with detailed proper planning right from the beginning,\textsuperscript{133} the UN has been directly advising the Board of Commissioners of the IECI on variety of options available for each key decision they must consider.\textsuperscript{134} Main concerns involve both the impact on the timing of elections and how these decisions affect the minimum standards of a credible and fair election.

\textsuperscript{130} Art.6(6), ibid.
\textsuperscript{131} Art.2, ibid.
\textsuperscript{134} “Iraq: Electoral Fact Sheet”, supra note 132.
At the request of the Iraqi Governing Council [IGC] and Coalition Provisional Authority [CPA], the UN was requested to assist in the formulation of the electoral system for Iraq. Between March and May 2004, the UN had undertaken wide ranging discussions with political, academic, religious and social actors throughout Iraq along with the Electoral Committee of the Iraqi Governing Council. The issue regarding the choice of suitable electoral system to be followed was of immediate concern. Therefore, several electoral systems were discussed and “proportional representation system” was selected through consensus as it would facilitate to avoid delays, increase inclusiveness and was considered close to practicality. Thus, the choice was further conditioned by the requirements of the Transitional Administrative Law [TAL], which included fixing of number of seats at 275 and a goal of 25% representation for women coupled with a fair representation for minorities.

The elections for the Iraqi National Assembly in 2005 were conducted according to a ‘Closed List Proportional Representation’ system where the entire country was considered as a single electoral district. This election, with all its initial hiccups, for the first time in the history of Iraq enfranchised all Iraqis to participate as voters and candidates. It was organized by following the principle of “universal adult suffrage” and a “secret ballot”. The entire credit for its success goes to the UN assistance coupled with the commendable efforts of IECI

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136 Ibid.
and the courage gathered by Iraqi voters to fight against all odds and to reach the polling stations to cast their votes.

Out of the 275 Members of the House of Representatives, 230 seats shall be distributed to the electoral districts and 45 of them shall be distributed as compensatory seats.\textsuperscript{139} As per Clause two, each Governorate is to be considered as one electoral District in accordance with official borders and shall be allotted a number of seats proportional to the number of registered voters in the Governorate in accordance with the elections of January 30, 2005 “based on the public distribution list”.\textsuperscript{140}

Further, the seats allotted to electoral Districts shall be allocated to entities through the system of proportional representation and in accordance with the following procedures:

- The total number of valid votes in the district shall be divided by the number of seats allotted to the district to obtain “the election quota.”
- The total number of votes obtained by each entity shall be divided by "the election quota" to determine the number of the seats to be allocated to each entity.
- The remaining seats shall be allocated by the method of the largest remainders.\textsuperscript{141}

This apart, the compensatory seats shall be distributed as follows:

- The total number of valid votes in Iraq shall be divided by the number of the seats in the House of Representatives, to obtain the “national average”.
- The total number of votes obtained by each entity shall be divided by the "national average" to determine the number of seats allotted to it.

\textsuperscript{139} Art.15(1), the Election Law, 2005.
\textsuperscript{140} Art.15(2), ibid.
\textsuperscript{141} Art.16, ibid.
- Compensatory seats shall first be allocated to entities which did not obtain representation in the election districts, but that obtained at least the national average of votes.
- The remaining seats shall be distributed to the entities that have been allocated seats in the electoral districts based on ratio of the number of its votes to the total votes.\textsuperscript{142}

For effective implementation of above requirements, the condition precedent is, proper delimitation of constituencies because neither the Governorates nor the population therein will remain stagnant. As such there will be need for fresh delimitation of constituencies and increasing the number of members to be elected for the House of Representatives in democratic Iraq. As the country is still amateur in working out the representative governance, present laws fall short for providing scope for such eventualities. Therefore, all the relevant laws \emph{i.e.}, Constitution, Election Laws and Rules need to be adequately amended. For this Indian legal framework can be consulted as and when required.

\textbf{4.3.2.2 ELECTORAL ROLLS: A PRE-PREPARATION FOR THE GRAND FINALE:}

The IECI is also responsible for preparation of the electoral rolls by facilitating the eligible Iraqi citizens to register themselves.\textsuperscript{143} To carry on this task, over 458 registration centres were made operational prior to 2005 election. Iraqis were also provided with the facility to check if their names are properly registered on a provisional voters roll prepared by the IECI with the help of UN electoral experts and the information provided in the ration cards used for the UN oil-for-food program, which began in

\textsuperscript{142} Art.17, \textit{ibid}.
\textsuperscript{143} Art.4(1), \textit{supra} note 122.
Iraqis whose ration-card information was correct were considered registered. As per the statistics available Iraq has a population of more than 34.6 million people, but 37.2% of them are under the age of 14 years. This young populace leaves just 15.5 million Iraqis eligible out of which over 1.2 million are living outside the country. It should be mentioned that both India and Iraq have fixed 18 and above years of age for claiming right to vote along with other requirements.

The IECI in Regulation 10 defined out of country voting which scheduled to take place in 14 countries. Here, a person can be registered to vote if he was born on or before 31 December 1986, deemed an Iraqi citizen or entitled to reclaim Iraqi citizenship or eligible for Iraqi citizenship. Persons seeking to register to vote were obligated to prove their claim using documents identified for this purpose by the IECI. Further, the IECI had signed a Memorandum of Understanding with the International Organization of Migration [IOM] to implement the out of country voting on behalf of the IECI. While the IOM was at the assigned task, the IECI with the assistance of the UN had evolved a program to monitor the implementation of the Iraqi out of country voting exercise and provide regular feedback to the IECI on its progress and operation. To ascertain this goal, the IECI had dispatched monitoring teams composed of one IECI official supported by one UN provided

144 Section 3, the IHEC Law No.12, 2009.
148 Art.3, supra note 139.
149 Those countries were Australia, Canada, Denmark, France, Germany, Iran, Jordan, Sweden, Syria, Turkey, UAE, Britain and the US, see, http://www.iraqocv.org, [accessed on 15-1-2009].
150 Section 2, supra note 144.
151 Supra note 137.
152 Supra note 134.
international electoral expert to each host country where out of country voting of Iraq was carried on.\footnote{153}

Public information campaigns are essential components of successful elections. The UN has been advising and supporting the IECI in the development and production of information campaigns directed at voters, candidates and political entities for the upcoming elections.\footnote{154} These include voter and civic education campaigns, to enlighten Iraqis on how to register as voters and exercise their political rights in the electoral process. The public information campaign in Iraq in 2005 elections heavily relied upon satellite televisions, radio and print material including posters, pamphlets and newspapers.\footnote{155} In this context, the IECI has also approved Regulation 9 that sets out the official electoral campaign period.

Iraq, being a small democracy in size compared to India comprises of around 13.8 million voters on its electoral roll who participated in the last Provincial Council elections of the country early 2013.\footnote{156} Even with such a small number of voters the country is still struggling to have its electoral roll updated. In the first election, as stated earlier, Iraq relied upon 1997 census for deciding the number of seats for electing the representatives for governance as the then Constitutional provision under “Article 49(1) adopted the criteria of (1) seat for each (100,000) of the Iraqi population. In the next election, under the Amended Constitution, the criteria adopted in Article 15(2) of the Elections Law No. 16 of 2005 was, (1) seat for each (100,000) of the Iraqi registered voters in each province which faced Constitutional challenge before the Federal Supreme Court of Iraq. The Court way back in 2007 declared the said amendment of Article 15(2) as unconstitutional and directed the

\footnotesize{\begin{itemize}
\item \footnote{153}{Art.3, supra note 139.}
\item \footnote{154}{Supra note 134.}
\item \footnote{155}{Supra note 137.}
\item \footnote{156}{“Elections in Iraq”, http://en.wikipedia.org/wiki/Elections_in_Iraq, [accessed on 12-8-2013].}
\end{itemize}}
legislators to legislate a new law that is consistent with the provisions of Article 49(1) of the Constitution of Iraq.\textsuperscript{157} However, until 2009, the law makers were not able to legislate on this count though the country was planning for upcoming elections. The country was in a dilemma as elections were to be held in 2010 and even if the new law were to be there it was herculean to get the fresh census done before elections. Therefore the law makers decided to go by the statistics supplied by Ministry of Trade for ration cards. Further tragedy was the statistics provided by the Ministry of Trade were unlikely to account for the actual Iraqi population because some Iraqis, especially those living overseas, did not receive food rations. Nevertheless, the up-to-date ration card registry was assessed to provide a better, or at least less controversial, approximation of the Iraqi population than the outdated voter registries.\textsuperscript{158} The last census is of 1997 which ironically did not include data for the three Kurdish provinces of Erbil, Dahuk, and Sulaymaniyah, so reliance upon this census how far is justified haunts the researcher. In the present turmoil ridden Iraq new census however best tried has not become a reality. In such circumstances Iraq governance need to give top priority for revising and updating electoral rolls.

4.3.2.3 REGISTRATION OF POLITICAL PARTIES: A CONDITION PRECEDENT FOR ALLOTMENT OF SYMBOLS:

The IECI is authorized for certifying political parties, associations, groups and independent candidates as political entities to compete in the election.\textsuperscript{159} Further, it was the arbiter of electoral disputes and was

\textsuperscript{157} Al-Mahkama Al-Ittihadiyya Al-Ulya, Decision No. 15/t/2006.
\textsuperscript{159} Part 2, the IHEC Regulation No. 15. See also, “Iraq’s politicians, IECI discuss role of civil society in local elections”, http://www.kuna.net.kw/ArticleDetails.aspx?id=1879061&language=en, [accessed on 19-01-2014].
empowered to impose penalties against political entities for election related offences.\textsuperscript{160} Obviously, it was expected to be independent, impartial consistent in reality and perception while carrying its tasks.

Political parties, associations and independent candidates are able to register as political entities with the IECI to contest in the election. To do so, they must collect up to 500 signatures and if they are independent candidates then, in addition, ought to deposit 2.5 million Iraqi Dinars and the amount would increase to 7.5 million Iraqi Dinars if they form a group.\textsuperscript{161} However, parties, associations or groups having militia wings were prohibited from getting registered. Further, there was restriction upon the candidate to represent one political entity but not to get one’s name enlisted in more than one lists.

Under Article 57B of the Transitional Administrative Law all the three elections \textit{i.e.}, for the Iraqi National Assembly, the Governorate Councils and the Kurdistan National Assembly were called at the same time in 2005. The Iraqi National Assembly was to be elected to draft Iraq’s new permanent Constitution which has already been completed and even adopted through direct referendum. This, undoubtedly, represents a milestone in the transition from dictator to a fully democratic Government. This Assembly also formed the Iraqi Transitional Government that replaced the Iraqi Interim Government and entrusted with the task of administering turmoil ridden Iraq throughout the rest of the transition period.

The Transitional Administrative Law under Article 57B had also called for the election of Governorate Councils and the Kurdistan National Assembly along with the above election as stated earlier. In a major step towards realizing Governorate Council elections, the IECI in

\textsuperscript{160} Art.4(2) & (5), the \textit{IHEC Law} No.11, 2007.

\textsuperscript{161} “Electoral Fact Sheet”, \url{http://www.un.org/News/dh/infocus/iraq/election-fact-sht.htm}, [accessed on 22-01-1014].
agreement with the council of Ministers, determined, by adopting
Electoral Regulation 8 that the number of seats of all Governorate
Councils will be set at 41, with an exception of Baghdad which will be
51. The electoral system adopted for the Iraq National Assembly i.e.,
proportional representation with lists and independent candidates was
followed in this election as well and the lists were of minimum three
candidates extending up to the maximum number of seats for the
Governorate. Next, the number of seats of the Kurdistan National
Assembly was fixed at 111 as established by the election law in effort in
Kurdistan. In all 223 political entities and 34 coalitions have taken part in
January 2005 elections in Iraq. In total, approximately 18,900 candidates
made up the lists of which 7785 were running for the 275 seats of the
Iraqi National Assembly and 463 for the 111 seats of the Kurdistan
National Assembly. In these elections Iraqis did not choose a specific
name from a list of candidates. Nor they selected a political party, in the
traditional sense. Instead, the voters chose one of the lists among the
available lot that have been certified by the IECI.

The most popular of these lists were not parties per se, but loose
cCoalitions of multiple political parties and interest groups. They contained
as few as two names or as many as 275. To choose a list, the voters were
facilitated to step behind a curtain, check a box on a single ballot with the
name, number and identifying logos of the lists contested in the election
and then drop the ballot into a plastic box. A lottery determined the order
in which lists appears. This was because insurgent violence had made
campaigning quite difficult. Added to the agony, there were so many
similar list names, therefore, voters were requested by the political
entities to remember their preferred list’s number. Ultimately, the seats in

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162 Supra note 137.
163 “How Iraq’s Elections Set Back Democracy”
the National Assembly were distributed according to the proportion of votes each list has received. For example, if list ‘X’ got 32% of the votes, then that list would be entitled to 32% of the Assembly’s 275 seats, which comes to 88 seats. To fill those seats, list ‘X’ would put forward the first mentioned 88 names on its list. Therefore, candidates vied intensely for high placement on lists during registration. However, it also stated that people were afraid of getting enlisted due to the life threat at given by the insurgents against participating as candidates in elections. In addition, it is alleged that many names were inserted in the lists without seeking the permission of those persons.

In the last election, Iraq adopted ‘Open List System’ wherein the voters were given choice to vote based on not only the list but also on the names found in the list they prefer. Thus, political parties have been made more responsible for choosing and incorporating contestants with competitive and positive antecedents to impress the voters.

In the ultimate analysis, Iraq should craft an all-inclusive law that paves way for separating religion from politics. In this context, strict prohibition on issuing and use of religious symbols by the Election Commission and the political parties, respectively in elections would help a great deal.

4.3.2.4 CONDUCT OF ELECTION UNDER THE CONTROL AND SURVEILLANCE OF THE ELECTION COMMISSION

The exclusive jurisdiction for the oversight, organization and conduct of elections had been vested in the IECI established by the Coalition Provisional Authority [CPA] through its Order 92 issued on 31 May 2004.\footnote{Supra note 165}
The IECI function generally begins from notification of the election till declaration of results. The Commission is mandated to ensure that elections are carried out as per the provisions of law. This apart, the IECI is also empowered to conduct by-elections whenever a vacancy occurs.\(^{166}\) This is mainly meant to ensure that all Iraqis are represented in governance, either at the Governorate or Federal level.\(^{167}\)

Further, the IECI is empowered to extend the time for completion of election, to postpone it, to cancel the same and order re-poll in case when poll has been interrupted or obstructed by any riot or open violence, \textit{etc.}\(^{168}\)

The IECI is invested with not only administrative but also certain judicial powers, however, fractional it may be. For instance, it is the prerogative of the Election Commission exclusively to resolve disputes, \textit{inter alia}, between rival political parties in respect of the claim for being a recognized party for the purpose of electoral symbol.\(^{169}\)

Further, The IHEC Board of Commissioners has exclusive jurisdiction to resolve disputes arising out of the preparation for and execution of national, regional and Governorate elections, and may delegate jurisdiction to resolve disputes in the first instance to the electoral administration. The IHEC has adopted procedures related to electoral complaints. These procedures ensure all complaints are reviewed as quickly as possible, the most important complaints are

\(^{166}\)“Iraq’s Political Showdown over Elections Law: Iraq Update”, \textit{http://iswiraq.blogspot.in/2013/10/iraqs-political-showdown-over-elections.html}, [accessed on 19-01-2014].

\(^{167}\)“Anbar and Nineveh Form New Provincial Governments”, \textit{http://gulfanalysis.wordpress.com/category/iraq-local-elections-2013/}, [accessed on 19-01-2014].


\(^{169}\)Art.4(5), \textit{Supra} note 122.
considered first and complainants can find out what decision has been made.  

4.3.2.5 REQUISITION OF AND CONTROL OVER ELECTION PERSONNEL:

It is the duty upon the IECI to select, recruit and deploy large number of Iraqi electoral staff to perform the necessary functions of the election.  

During 2005 elections, the number of IECI core staff was over 1,000 at both Head Quarter and in the Governorate electoral offices. In addition, it had 6000 staff at the district level. The IECI finalized the hiring and training of approximately 1,94,000 staff to operate polling stations, work in warehouses and provide assistance at head quarters during the 2005 electoral process.  

The development of senior Iraqi electoral staff to carry out the work of the IECI was the goal. In this regard, the UN had prepared and trained several senior officials in electoral and administrative work, and continues to support them in their day-to-day tasks in an advisory role. This is mainly meant to deliver credible and inclusive elections.  

Moreover, the UN has for long been providing technical, administrative, logistic and financial support. The UN, at the request of the IECI, is responsible for coordinating all international assistance to the electoral process. At present, the organization has fifty six electoral

170 Complaints may be submitted at any stage of the process to the Independent High Election Commission, which will investigate and issue a decision in response. Complaints can be submitted to the Commission’s National Office and to Governorate Electoral Offices. On polling and counting complaints, voters and political entity agents are allowed to submit complaints to the Polling Station Manager using Complaint Form 110. Complaint Form 110 is generally available on Election Day at polling centers, Governorate Electoral Offices, Governorate Counting Centers, and the Independent High Election Commission National Office. After Election Day, Complaint Form 110 is available at the same places, except for polling centers and Governorate Electoral Offices counting centers. A complaint must be submitted within forty eight hours of the start time of polling.  
171 Art.4(9), supra note 169.  
173 Supra note 134.
experts working inside Iraq and in locations outside of the country to support the preparations for elections.\textsuperscript{174} It is however, important to note that the UN is not responsible for supervising the elections or determining key decisions. This duty is cast upon the IECI.\textsuperscript{175}

Electoral observers, political entity agents and media representatives have an important role in ensuring that the elections are free and fair. The IHEC registers only accredited organizations or networks of organizations, and not individual observers. Domestic and International Organizations are mandated to nominate individuals to enable the organization to perform the role effectively.

To ensure free and fair elections, the IHEC is duty bound to permit political parties and candidates’ agents to be present at the polling station when it opens as well as during polling and counting.\textsuperscript{176} Political entity agents have the right to object to decisions of the Polling Station Manager. However, the Polling Station Manager is not obliged to act upon each objection. Political entity agents have the right to submit a complaint to the IHEC by completing a Complaint Form 110, which are available from the Polling Center Coordinator.\textsuperscript{177}

It should be appreciated that Iraq from the inception is recruiting staff needed for preparation and conduct of free and fair elections. There is need for increase in regular recruitment of competent staff so that there should not be any debt in the upcoming election of 2014. Adequate financial assistance should be Constitutionally made available for recruitment of election staff by the IHEC.

\textsuperscript{174} Ibid.
\textsuperscript{175} Emphasis mine.
\textsuperscript{176} Part 2, the IHEC Regulation No.14.
4.3.2.6 ELECTION COMMISSION AND THE MODEL CODE OF CONDUCT:

Fundamental principles of the electoral campaign are equality between all candidates, neutrality of the administration and transparency of the campaign. Campaigning and campaign paraphernalia cannot be displayed in Government buildings or in polling locations in Iraq.\(^{178}\)

In February 2013, the IHEC announced that the electoral campaign period would start on March 1 instead of March 25 to give entities and candidates more time to launch their campaigns for the forthcoming general elections.\(^{179}\) Political campaigns conclude at midnight on April 19 – a day before scheduled election.

This apart, the IHEC has, in consultation with the Communication and Media Commission of Iraq, passed regulations governing the media during the election period. The regulations stipulate the roles the Communication and Media Commission, the IHEC and the judiciary play in controlling the media.\(^{180}\) For instance, the media campaign period for all political entities, coalitions and candidates is required to end twenty four hours before voting commences.\(^{181}\) Further, the IHEC not only issues accreditation and provides the media with access to IHEC facilities to observe during voting, but it also issues the Media Code of Conduct, which regulates media during election period. According to these regulations, the media must not interfere with IHEC staff in the conduct of the electoral process; must respect the secrecy of the ballot; and must not interfere with the movement of voters inside polling centers.

\(^{179}\) Ibid.
\(^{180}\) Ibid.
\(^{181}\) S.2(1), IHEC Regulation No.19. See also, ibid.
Under the rules, the accredited media are free to cover polling, counting and sorting processes inside polling centers and polling stations. However, media representatives are prohibited from disrupting processes inside polling centers and stations, which means no interviews are allowed inside polling stations; accessing or filming behind a voting screen is prohibited. Media representatives are further not allowed to carry any electronic equipment (cameras, recording devices) except in certain polling centers identified by the IHEC.

The regulations also prohibit posting campaign material at certain venues, such as religious sites and Government offices.\(^{182}\) It also prohibits certain content, such as Government logos and images of religious figures who are not running as candidates.\(^ {183}\) The IHEC may withdraw media accreditation from media entities that violate these regulations.\(^{184}\) Violations may be referred to the Communication and Media Commission of Iraq for action.\(^ {185}\)

**4.3.2.7 POWER OF ELECTION COMMISSION TO DISQUALIFY CANDIDATES:**

Elections have the potential to contribute to the restoration of peace and stability in Iraq as well as conveying legitimacy on the present Government. It is crucial for the legitimacy and success of the Constitutional exercise that the National Assembly represents a broad and diverse cross-section of Iraqi society as possible. The electoral process must therefore seek to gain the greatest inclusiveness and transparency as possible – offering the widest opportunity for Iraqis to participate as voters and candidates.

\(^{182}\) S.3(6), ibid.
\(^{183}\) S.3(9), ibid.
\(^{184}\) Art.6, ibid.
\(^{185}\) S.4, ibid.
Political parties, associations and independent candidates are entitled to register as political entities with the IECI to contest in the election in Governorate and National elections.\textsuperscript{186} The IHEC submits the list of candidates to the Justice and Accountability Commission to determine eligibility of candidates within ten days from submission of application forms by the contesting candidates.\textsuperscript{187}

Once potential candidates are vetted through the Justice and Accountability Commission, they are put forth for approval by the IHEC. Approved candidates are then eligible for nomination to the councils through an open list system in which voters select a list or any candidate from the list. The number of candidates on a list is limited to double the number of seats allocated for the constituency.\textsuperscript{188} However, parties, associations or groups with militia wings are not permitted to be registered. The IECI is therefore empowered to disqualify any candidate who is found guilty of being part of such unlawful groups, or who uses fraudulent means to be cleared by the Justice and Accountability Commission, and/or who falsifies documents in order to be permitted to contest elections.\textsuperscript{189}

The constitution, composition, powers and functions of the Election Commission of India and the Independent Electoral Commission of Iraq, etc., has been comprehensively carried out in this Chapter. Let us now turn to the next Chapter where issues pertaining to preparation and revision of electoral rolls, issues regarding qualifications and disqualifications of candidates and members of legislatures, etc., shall be undertaken.

\textsuperscript{186} Part 3, the IHEC Regulation No.17. See also, supra note 134.
\textsuperscript{187} Supra note 178 at 15.
\textsuperscript{188} Ibid.
\textsuperscript{189} Part 6, supra note 186.