INTERPLAY OF INTERNATIONAL LAW AND MUNICIPAL LAWS GOVERNING FREE AND FAIR ELECTIONS IN INDIA AND IRAQ: SOME FACTS AND FANCIES

INTRODUCTION

1.1 PRELUDE:

Democracy simply means a “government by consent”. If democracy is the end, free and fair election is the only effective means to achieve it. An unfathomable faith in democratic election is thus, the bedrock of any successful democracy. Indisputably, it is the man’s capacity for justice that makes democracy possible; but his inclination to injustice makes democracy rather inevitable.\(^1\)

As a result, in the present millennium, it is observed that the majority of the world’s population lives under systems of constitutional democracy. However, democratic form of governance is not of a recent origin.

We have oldest successful democracies like the U.S.A. or the U.K., following either Presidential or Parliamentary form of government being federal or unitary in nature on one hand and on the other, huge democracy like India, having based it’s governance on the principles of co-operative federalism, in it’s youth with a rich experience of more than sixty four challenging years of Independence.

We also have nascent democracy like Iraq which is on it’s turbulent way struggling to establish its success as the first Arab democracy in a true sense on the global horizon. Being human centric, democracy as a form of government thus, is in the process of constant expansion in the universe.

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\(^1\) The Children of Light and Children of Darkness (1944), Forward, quoted in, Tushar Kanti Saha, Democracy in Danger Criminality and Corruption in Lok Sabha Elections 1, (New Delhi: Kanishka Publishers, Distributors, 2000).
Countries around the globe in the past have tried various political regimes like for *e.g.*, Timarchy\(^2\), Oligarchy\(^3\), Tyranny\(^4\), Aristocracy\(^5\), Theocracy\(^6\), Civil or Military Dictatorship\(^7\). But, these systems have been severely criticized for exploitation of the vulnerable class in the name of governance by oppression, cruelty, injustice, denial of human rights, concentration of wealth and power by rulers at the cost of general public and discarded as “imperfect systems”\(^8\).

It can be averred that the emergence of modern democracies world over is an inevitable outcome of social, economic and political revolutions that had played decisive role in almost all political crisis. Such revolutions have paved way for securing justice, liberty, equality and freedom for all through democratic rule. Revolution in America facilitated in securing natural rights for all where as in France, it helped to overthrow corrupt and autocratic monarch\(^9\).

Latin-American war of independence compelled Spain to withdraw its domination and blessed Latin-Americans with an opportunity to build their own lives and fortunes\(^10\). American civil war resulted in the abolition of Negros slavery\(^11\) whereas, Gandhian Non-cooperative Movement against colonial regime in India brought an end to the British rule and put the system of constitutional democracy on track for

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\(^3\) *See*, http://en.wikipeida.org/wiki/Oligarchy [accessed on 26-6-2013].

\(^4\) A form of government in which the ruler is an absolute dictator not restricted by a Constitution or laws or opposition etc., Douglas Harper, *Online Etymology Dictionary* (2001).


\(^6\) *See*, http://en.wikipedia.org/wiki/Theocracy [accessed on 26-6-2013].

\(^7\) *See*, http://en.wikipedia.org/wiki/-dictatorship [accessed on 24-6-2013].

\(^8\) Anand Ballabh Kafaltiya, *Democracy and Elections Laws..., supra note 2 at 2.


providing, preserving, protecting and promoting freedom, equality and dignity for its citizens.

It is universally accepted that democratic elections and democracy complement each other. Constant rise in the relevance and requirement of democracy as a form of governance has made International community and International Organizations to become increasingly involved in the affairs of assistance, organizing and monitoring elections, of course, by being within the contours of the International Law governing democratic elections. It is worth stating that the Treaties and Conventions that guarantee the rights to free and fair democratic elections and democracy are amongst the most important areas of development in International Law and International Relations. The systematic process of election or selection will guard against unnecessary tensions and conflicts which could lead to undesirable consequences. Hence, the concept of free and fair democratic election becomes important within the spheres of both International and Municipal Laws of any democratic country including Iraq and India.

1.2 STATEMENT OF THE RESEARCH PROBLEM:

At the dawn of the present millennium, the occupation of Iraq by American and Allied Forces in the guise of search for chemical weapons, it is alleged, challenged the sovereignty of the country. Undoubtedly, this has helped in ending dictatorial regime of Saddam Hussein and brought a new hope of democracy on the political horizon of the country. Now, Iraq is in its transitional phase and has adopted a written Constitution wherein Parliamentary form of democracy based on “principle of separation of
powers"\textsuperscript{12} has been voted for by the citizenry through direct referendum\textsuperscript{13}.

Both Iraq and India, will be involved in the process of elections to re-elect the representatives for self-governance in 2014. Conducting election is rather an uphill task for both the democracies in the prevailing conditions. India, however, has already experienced several such elections after independence but for Iraq this will be the third of its kind. It is the stark reality that several stones have been left unturned in achieving perfection in Indian elections where as for Iraq, it will be a novel experience altogether. Hence, it is pertinent to research over and bring in refinement in the existing pattern of elections for better handling of the affairs of governance in both the countries keeping in view the International law requirements governing democratic elections.

1.3 SIGNIFICANCE OF THE RESEARCH PROBLEM:

'Election' literally means, "the public choice of a person for office"\textsuperscript{14}. In the context of politics, 'election' is the "blood and breath of democracy". Elections, it is aptly said, "is the language through which people voice their final verdict"\textsuperscript{15}. The majesty of election is that it gives the electorate an opportunity to sit in judgment upon the facts and fancies of the aspiring candidates or parties\textsuperscript{16}. Election is also viewed as a process \textit{Politischer willens bildung}, that is, a means through which political will is built up\textsuperscript{17}. Actually, in a democracy, by exercising the electoral rights it is the people who make and unmake the Government.

\textsuperscript{12} Article 47, \textit{Doustour Joumhouriat al-Iraq} of 2005.
\textsuperscript{15} Tushar Kanti Saha, \textit{Democracy in Danger Criminality and Corruption in Lok Sabha Elections...}, supra note 1 at 4.
\textsuperscript{16} \textit{Id.}, at 5.
\textsuperscript{17} \textit{Ibid.}
The *credo* of universal adult suffrage as the foundation of democratic government had to steer clear many hurdles in the path and admit supreme sacrifice as it faced the fury of rough weather in the long chequered journey of suffrage history. On electoral status of the people numerous restrictions and discriminations pervaded globally in various forms and practices reflecting the fear and prejudice of people. H.L. Wayland had warned, probably with justification that “universal suffrage without universal education would be a curse.” While John Stuart Mill vehemently opposed the very introduction of the system of universal suffrage but strongly advocated its extension to women in the following words:

Men, as well as women… do not need political rights in order that they may govern, but in order that they may not be misgoverned… Nobody pretends to think that woman would make a bad use of suffrage. The worst that is said is that they would vote as mere dependants, at the bidding of their male relations. If it be so, so let it be. If they think for themselves, great good will be done, if they do not, no harm. It is a benefit to human beings to take off their fetters, even if they do not desire to walk.

History, thus, bears testimony to the struggle of the suffragettes in England who had to wage a long battle of bitterness which eventually earned them limited right to franchise in 1918 finally leading to full-fledged enactment of *Equal Franchise Act* in 1928. Similar was the situation in United States and women were compelled to wait till 1920

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18 *Id.*, at 3.
19 *Ibid.*.
20 *Ibid.*.
22 Tushar Kanti Saha, *Democracy in Danger Criminality and Corruption in Lok Sabha Elections…*, *supra* note 1 at 3.
when Ninetieth Amendment granted the right to vote to women exclusively of thirty and above years of age\textsuperscript{23}.

On the contrary, New Zealand was the first country of its kind to recognize the right to franchise to her women folk as far back in 1893\textsuperscript{24}. Indian Constitution recognized equal rights of franchise to male and female alike from the inception adding a fitting feather in its cap. Moreover, an adult below the age of twenty-one years who was not an electoral adult became eligible on lowering the age to eighteen years under Section 2 of the Constitution (Sixty-first Amendment) Act, 1998\textsuperscript{25}.

The Law of Administration for the State of Iraq for the Transitional Period [hereinafter referred as 'TAL'], which was adopted to govern the country's affairs during the transitional period under Article 20(A) conferred electoral rights upon every Iraqi, who fulfilled the conditions stipulated in the electoral law to stand for election and to cast his ballot secretly in free, open, fair, competitive and periodic elections\textsuperscript{26}. Further, in clause (B) of the said Article, it is stated that "[n]o Iraqi may be discriminated against for purposes of voting in elections on the basis of gender, religion, sect, race, belief, ethnic origin, language, wealth, or literacy"\textsuperscript{27}. Thus, the TAL right from the inception has recognized equal right to vote for men and women alike adding a shining leaf to its bosom. The present Constitution of Iraq which has replaced TAL also contains similar provisions.\textsuperscript{28}

According to J.S. Mill, representative form of Government demands the "whole people or some numerous portion of them exercise

\textsuperscript{23} Ibid.
\textsuperscript{24} Ibid. See also, Aliyu,Nasiru Adamu, “Concept of Democratic Election Under International Law”, http://www.eurojournals.com/rjis_10_02.pdf, [accessed on 24-6-2013].
\textsuperscript{25} Supra note 22 at 4
\textsuperscript{27} Id., at 1352.
\textsuperscript{28} Art.20, the Constitution of the Republic of Iraq, 2005.
periodically elected by those the ultimate controlling power which in every Constitution, must reside somewhere\textsuperscript{29}. However, the representative character of the government chosen by the electorate had been questioned by Rousseau in his work "The Social Contract". He was of the opinion that sovereignty lies essentially in the 'General will' and cannot be represented. The deputies of the people, as per Rousseau, are not and cannot be its representatives: they are merely its stewards and can carry through no definite acts. His assertion is quite convincing to the effect that "[t]he [electorate] of [any representative democracy] regards itself as free; but it is grossly mistaken, it is free only during the selection of members of Parliament [and] [a]s soon as they are elected, slavery overtakes it…."\textsuperscript{30}

On the defects of representative government C.D. Burn succinctly opines that "[n]o one denies that existing representative assemblies are defective; but even if an automobile does not work well, it is foolish to go back to a farm cart however romantic\textsuperscript{31}. So, what remains to be done for the success of representative governance is truly found in the following observation of Nani A. Pakhiwala, a noted Indian jurist:

The duty of the citizen is not merely to vote but to vote wisely. He must be guided by reason, and by reason alone. He must vote for the best man, irrespective of any other consideration and irrespective of the party label. The right man in the wrong party is any day preferable to the wrong man in the right party\textsuperscript{32}. But the irony is, neither the Indian citizenry has sensed its importance in sixty four plus years of democratic regime nor Iraq is hopeful in this context in the near future. While explaining the reason for low turn out of

\textsuperscript{29} Supra note 21 at 228.
\textsuperscript{31} Tushar Kanti Saha, Democracy in Danger Criminality and Corruption in Lok Sabha Elections..., supra note 1 at 6.
\textsuperscript{32} Pakhiwala, N.A., We the People of India - The Largest Democracy 52, (Bombay: Strand, 1984).
American voters, Clinton Rossiter has observed "many voters see nothing to choose between the Tweedledumism of the democrats and Tweedledeeism of the Republicans. Lacking any third choice, they fail to choose at all". Pathetic is the situation in India where multiple choices are available. Iraq in its national election adopted into “Closed List” wherein its citizens were required to vote for a single political party list rather than individual candidates. Seats were distributed to the political lists based on the percentage of votes received. Considering the past experience in both the democracies the choices provided in the form of candidature for electing resemble with the choice between the devil and the deep sea.

Voting is not only a valuable right but also rightly viewed as a “social trust” that opens up the golden channel of communication between the rulers and the ruled. After all, it is the election which legitimizes the right of the rulers to govern. However, it is the reality that “the electorate is soon rendered powerless once the ballot becomes a spent force”. After the representative is elected neither he can be recalled nor controlled by the electorate both in Iraq and India. In the circumstances, making of right choice assumes utmost importance and a right choice of representative can be a reality only under free and fair atmosphere. Election held in a ritualistic manner without being free and fair loses its meaning, purpose and moral force.

Factually, right to recall is rarely granted and appears to be a distant dream especially in case of larger democracies like India as there may be practical limitations to go back to the people for their mandate.

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33 Clinton Rossiter, Parties and Politics in America 33, (1960), quoted in, supra note 14 at 7.
34 Coalition Provisional Authority Order No. 96, The Electoral Law, pmbl. para. 7, Doc. No. CPA/ORD/7 June 04/96 (June 15, 2004).
35 S.3, ibid.
36 Tushar Kanti Saha, Democracy in Danger Criminality and Corruption in Lok Sabha Elections..., supra note 1 at 7.
37 Ibid.
often which would not only be taxing financially on the exchequer but also quite cumbersome. However, smaller countries like Iraq whether can give a serious thought for conferring this right to maintain the sanctity of the representative democracy has to be researched over as the country has started afresh to experience the democratic form of governance a few years ago. Tendency of clinging to power by hook or crook rather than realizing that the membership of Parliament confers a great honour which carries with it a special duty to maintain the highest standards of probity on the part of politicians is not uncommon world over including India and Iraq. In addition to this, the chaos of coalition politics is causing concern and adding agonies in its own way.

In view of the above, it is quite obvious how significant free and fair elections are for the success of any democracy. The justification provided in the succeeding paragraphs of this Synopsis would re-emphasize upon the assertion of the researcher in this context.

1.4 UNDERLYING REASONS AND JUSTIFICATIONS FOR SELECTION OF PRESENT TOPIC FOR RESEARCH:

Democracy, according to Abraham Lincoln, is the “government of the people, by the people and for the people”. But, after a close scrutiny of the prevailing state of affairs in several democracies including India and Iraq, one is compelled to redefine democracy as a “government off the people, buy the people and far from the people.” Although eligible citizens are responsible for voting in, any political party or alliance to install the government, once citizens job of voting is over nowhere the aspirations of the electorates are cared for. It is the stark reality that the political parties/entities to grab the power stoop to their lowest possible levels and even dare to “buy” the voters by exercising their money and muscle power. Government run under the thumb of such bought over leadership can only be “far” from the people whose action of voting in
favour of such leadership is instrumental in installing them as a
government. Ironically, such is the distorted description of democracy
with a degree of difference witnessed in many countries world over.
Despite of such distortion, democracy is one of the most sought after
forms of government universally in the present millennium.

Successful democracy and free and fair elections go hand in hand,
the absence of one renders the other useless. But conducting elections in a
free and fair manner is a Herculean task due to the inherent woes, like for
example, criminalization of politics or politicization of criminals,
communalism, casteism, insurgent/sectarian violence, mushrooming of
political parties, problem of independent candidates, unattended demand
for women’s reservation of seats at Centre and State/Governorate politics,
mounting election expenses, irresponsible role playing by media, least
regard of the concerned for the Model Code of Conduct, insatiable greed
for easy money leading to political corruption resulting in Members of
Parliament and State Legislatures becoming merchantable or subject of
horse-trading culminating in large scale defections and counter-defections
adding uncertainty and instability to the very survival of the government
in power in case of coalition governments, involved in it.

Further, the Constitution of India has neither recognized voting as a
right nor imposed it upon the citizenry as a duty. It is reality that majority
of voters though having the right to vote abstain from voting both in Iraq
and India.\textsuperscript{38} Instead of going for voting, they prefer to enjoy the holiday
declared to facilitate every eligible citizen to vote. On the one hand, it is
the Indian cosmopolitan educated citizenry whose choice of candidate
matter a lot, ironically, keep themselves away from voting for the reasons

\textsuperscript{38} A good example is the recently concluded Karnataka Assembly elections wherein Bangalore Urban
Area with even more educated persons recorded only 52.83\% of voter turnout, “Karnataka State
Assembly Elections”, http://zeenews.india.com/karnataka-elections-2013/70-23-voter-turnout-in-
karnataka-assembly-elections_846570.html, [accessed on 26-6-2013].
best known to them. On the other hand, in Iraq, it is the sectarian violent attacks that compel the majority to remain safe by abstaining from voting. In view of this, it is pertinent to research and find out whether it is time now to convert this right into a duty in both Iraq and India. There are already ten democracies like for e.g., Australia, Singapore, Brazil, etc\(^{39}\) having compulsory voting.

Moreover, there are number of short comings in the existing electoral laws in India whereas, in Iraq there is dearth of electoral laws as the country has adopted democratic form of governance in the last decade and the political atmosphere is not permitting to amend the electoral laws as per the requirement.\(^{40}\)

Today value-based politics is disappearing in majority of democracies including India and Iraq. The issue of criminalization of politics or politicization of criminals has, indeed, attracted media attention followed by debates at various fora in the past\(^{41}\). Determined political parties through public opinion can only check this menace. So, there is need to find out whether under the law should it be made compulsory for the political parties to file a declaration with Election Commission to the effect that they will not field candidates of criminal background\(^{42}\)? Can the Election Commission be empowered to impose punishment up to the extent of de-recognizing and de-registering the erring political parties? Should such political parties be legally prevented from collecting funds from candidates seeking tickets which may help in persons of character and integrity having no money can also be


\(^{41}\)Anand Ballabh Kafaltiya, Democracy and Elections Laws..., supra note 2 at 349.

\(^{42}\)Ibid.
considered for their candidature by political party which may help in providing good governance\textsuperscript{43}.

Inability of political party to acquire the required majority on its own to form Government results in shortening the life span of governments which cause huge loss to the nation. Speedy progress and development of a nation is possible only if there is a stable Government. Coalition era, inevitably, has become the order of the day in India. Consequently, outside support, unholy alliances, criminalization of politics or politicization of criminals, frequent and at the same premature dissolutions of *Lok Sabha* and Legislative Assemblies have, become the hallmark of Indian democracy. The foundations of all the democratic institutions have been shaken questioning the credibility of Parliament, Judiciary, Bureaucracy, Police etc. The Indian voter currently stands betrayed by his own representatives who he sends to the Parliament or the Assembly. To his utter dismay, his electoral representative keeps on changing colors like a chameleon for quick personal gains.

In the era of outside support and coalition Governments both at Centre and States, it is an admitted fact that the representatives of people accept money to support a particular Government\textsuperscript{44}. Public interest and well-being is secondary for the present day politicians. In Indian politics defections and counter-defections by representatives have become common in their lust for power. Political parties which are ideologically opposed to each other, on several occasions, are entering into coalition. Further, factionalism, leg-pulling, groups within the same party are extremely rampant. After several aborted attempts\textsuperscript{45} now India has anti-

\textsuperscript{43} *Id.*, at 350.

\textsuperscript{44} See, Report of the Committee on Defections dated 7th Jan., 1969; See also, P. V. Narsimha Rao v. State (CBI/SPE) etc., *AIR 1998 SC 2120*, an example of bribery in the JMM Case.

defection Law\textsuperscript{46} on the statute books adding Tenth Schedule to the Constitution of India but to no avail. Because, despite of the insertion of Tenth Schedule the past experience has shown that it has failed in curbing defections. It may, to some extent, have helped to curb the individual defections but the trend now has shifted to \textit{en masse} defections involving at least one \textendash;third members of the party which does not attract the provisions of this law. There are several such lacunae which need to be addressed. As far as Iraq is concerned on these issues, it should start from square one.

The social matrix of the Indian society is deeply embedded in the complex caste-structure. Communalism in India has been a long standing problem and is one of the major factors that have kept India back from advancing to nationhood. Various castes and communities are becoming extremely self-conscious, assertive and accordingly organized. One must confess that religion, caste or community has continued to play its havoc in Indian electoral politics. Politicians are squarely responsible for mixing religion and caste with politics for their electoral gains. In view of the above, it can be averred that Indians indeed are constitutionally secular in words rather than in deeds. Though in Iraq Constitution, Islam has been adopted as a State religion, the country is not free from mayhems based on religion. The politicians for their electoral gains are indulged in sectarian politics in Iraq. Therefore it is necessary to research and find the ways and means to get rid of the ill effects of communalism and sectarian politics on elections both in India and Iraq.

In India, it is observed, a large number of candidates contest election as independent candidates. The two areas where the Election Commission found itself burdened with an avoidable baggage of superficial concern was in respect of the demand for recognition of new

\textsuperscript{46} The Constitution (Fifty - Second Amendment) Act, 1985.
political parties and the entry of large number of non-serious candidates into the election fray. It is argued that there is a deep rooted conspiracy in putting up large number of candidates\(^47\). Just to be in public gaze and satisfy their bloated ego or to acquire some political clout or money by retiring later from the fray in favour of a particular candidate or on caste considerations to steal the vote bank of a candidate of same caste due to rivalry many candidates contest elections. The phenomenon of a large number of independent candidates is not a manifestation of democracy but an outcome of a gross misuse of the democratic process and its principles. It even subverts democracy and distorts the will of the voters\(^48\). It is surprising and also disappointing that neither the Parliament has legislated nor the political parties have pleaded for electoral reforms that could help to de-pollute the democratic system and rid the poll process of corruption and malpractices practiced by the frivolous contestants\(^49\). There is, undoubtedly, an urgent need to check this malady in the future Parliamentary elections.

Women constitute almost 50% human population world over but they have been discriminated in all walks of life including political franchise. They occupy a very negligible percentage of seats in political institutions in the whole world\(^50\) and the condition in India is still worse\(^51\). Despite the Constitution conferring special protection to promote gender justice\(^52\) nothing concrete has been done by the Parliament to reserve seats proportionately through law that facilitates increase in women participation as contestants for grabbing membership of Parliament and


\(^{48}\) The Election Commission observed: "If a clear verdict is to be obtained from the electorate grouped in single-member constituencies, it is essential that the contest should be limited to a few worthy candidates, and light-hearted participation by individuals who do not have any substantial electoral support must be checked," see, *the Third Report on General Elections*, 1962, p.90.

\(^{49}\) Anand Ballabh Kafliya, *Democracy And Election Laws…*, supra note 2 at 368, 369.

\(^{50}\) *The Hindustan Times*, Feb. 14, 1997 p. 10.


Legislative Assemblies through electoral process. But the electoral laws in Iraq constitutionally aim to achieve a percentage of women representation of not less than one-quarter of the Council of Representatives members.\textsuperscript{53} It is worth appreciating that the Constitution of Iraq right from its inception has aimed at providing at least 25\% reservation for women. However, in India, the land where women have been worshipped as god incarnates\textsuperscript{54} even after sixty four plus years of being independent and following democratic principles, they are being compelled to struggle to get 33\% reservation of seats in the Parliament and State Legislatures seats which they have failed to achieve for the reasons best known to the male dominated law making bodies till date.\textsuperscript{55} In essence, reservations on any ground, it is argued, are anti-democratic in spirit because they cause unequal protection of laws and discriminate among the citizens. But fifty percent of the county’s population if neglected further would not augur well. Hence, political empowerment along with social and economic empowerment of women whether should be prioritized need to be assessed through research. Whether there is need for enhancing the percent of women reservation in Iraq Constitution also requires keen attention of the researcher.

Electoral reforms over the years, have been the subject of innumerable nation wide Seminars in India. Several Committees have spent their time and energy on them. The Election Commission of India, a nodal institution under the Constitution, put in charge of conducting free and fair elections in the country, has periodically made several suggestions to plug the loopholes in the election law. However, the

\textsuperscript{53} Art. 47 (4), ibid.
\textsuperscript{54} Ram Jois, Seeds of Modern Public Law in Ancient Indian Jurisprudence 190, 2\textsuperscript{nd} edn., (Luck now: Eastern Book Co., 2000).
\textsuperscript{55}Women reservation in LS-SP against quota bill, says Mulayam, The Time of India (Pune), June 5, 2009, p.5, col.5. See, “To get women quota, Bill may be diluted-Samajwadi Party Pushes. For 20 Percent Cap; Sushma Wants Decision By Consensus”, The Times of India (Pune), June 10, 2009, p.7col.1.)
politicians who are busy in pursuit of power have not shown the required inclination and urgency they ought to have in pushing electoral reforms. In the past, ironically, the Election Commission itself was involved in an avoidable controversy\textsuperscript{56} which has compelled all concerned to give a serious attention for re-writing the law that regulates the contours of powers and status of Election Commission and the persons manning this machinery in India. The lessons if properly learnt from Indian experience would definitely help in shaping election laws in Iraq and elsewhere in the world.

Among other things, there is an urgent need to find out whether it is essential to redraw the electoral constituencies in India\textsuperscript{57}. Also, on the issue of minimizing electoral expenses\textsuperscript{58} by legally avoiding sheer wastage of money by all involved in electoral process and putting curbs on State funding, it has to be verified whether any positive step need to be taken. In the ultimate analysis, free and fair elections play crucial role and therefore many concrete steps should be taken to help in bringing stability and good governance in the country. As a precursor, there is a dire need to identify the ailments involved in the Indian democratic process and to attempt to address them adequately.

The problems involved in conducting free and fair elections in new democracy from the Middle East like Iraq are to a great extent different from the problems faced by seasoned democracy like India. Populace in Iraq is seriously into sectarian politics and ethnic violence\textsuperscript{59} which in all probabilities would prove fatal for the new democracy to breathe. Religious Fundamentalists pose all together a different set of challenges

\textsuperscript{56} "Row within EC goes to Prez" Sunday Times, 1 February 2009, p.1, "CEC cannot act like political boss: Govt", The Times of India, 3 February 2009, p.1.
\textsuperscript{57} Anand Ballabh Kaftiya, Democracy and Election Laws..., supra note 2 at 375.
\textsuperscript{58} Id., at 376-387.
by issuing “fatwas”\textsuperscript{60} that come in the way of enjoying real freedom by citizens specially women folk.

Strong political parties are considered to be quintessential for democratic process to take off and to fulfill the task of formation of the representative Government. Till the beginning of the last decade, Iraq was under the dictator’s regime wherein hardly there was any scope for the development of leadership capable of taking the mantle of building up strong political parties with a potential to get into cut throat, but at the same time, healthy competition in the electoral process with an aim to provide efficient representatives for self-governance. Democracies flourish only when people have adequate choice among the candidates contesting in elections. Otherwise they get frustrated and consequently, democracies doom.

From several decades in Iraq the reigns of power were in the hands of Sunna community as they were preferred for every prime post by Saddam Hussein, the dictator, as he was belonging to the same sect. Immediately after American occupation the reigns of power to rule the country although on seemingly democratic principles were shifted through elections to the Shia community who were not well equipped educationally and otherwise\textsuperscript{61} for the tough job. Now the challenge before this and other similarly situated sects in the forth coming elections is to provide better choice to the voters in the form of candidates contesting in the election which ought to be free and fair.

In 2005, “closed party list”\textsuperscript{62} system was adopted in the first democratic elections in Iraq. Rather than choosing a specific candidate, voters across the country chose from among rival lists of candidates

\textsuperscript{60} [A]n authoritative ruling on a point of Islamic Law”, see, Judy Pearsall (ed..) Concise Oxford English Dictionary …, supra note 12 at 517.

\textsuperscript{61} “Civil War in Iraq” http://www.danielpipes.org/comments/39096, [accessed on 23-6-2013].

\textsuperscript{62} Supra note 54.
backed and organized by political parties. This system was entirely unsuitable but there was no other alternative given the security situation, the lack of accurate census figures, heavy intimidation from ethnic and religious militias, gross interventions by Iran, dismantled State institutions and the use of religious symbols by parties to influence voters. Many electoral lists weren’t made public until just before the voting. Consequently, the contesting candidates were simply unknown to ordinary Iraqis. This gave rise to the sectarian Parliament, controlled by party leaders rather than by the genuine representatives of the people.

In 2010 elections “open list system” was adopted giving more scope for choosing the candidates from the list. It need to be further assessed whether a new electoral law be devised to move Iraq towards a completely district-based electoral system, like the American Congress, or a “mixed party list” system like that in Germany, in which some representatives are directly elected and other seats are allotted based on the parties overall showing or should the “first past the post” system followed in India be considered as a role model.

Furthermore, a new law banning the use of religious symbols and rhetoric by candidates and parties which have no place in democratic elections whether should be enacted has to be seen. For India whether the first past the post system shall be replaced by the German model need to be assessed.

The only possible solution for all owes in Iraq governance is, to give a chance for the true representative democracy to take its deep roots. For this free and fair elections are the condition precedent. However, there are numerous problems that prevent conventional nation-wide

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63 Supra note 56.
64 Ibid.
65 Ibid.
66 Ibid.
democratic elections from being held in Iraq under the present conditions. There are no national, credible political figures or parties⁶⁷ and the credit goes to the past dictatorial regime of Saddam Hussein for more than three decades as the policy then adopted was not to allow any rival political figure or party to gain such credibility. Consequently, low caliber representatives are the only option for candidature in the elections.

The national census conducted in 1997 has been rejected by many of the present political forces. Moreover, this census did not include the Kurdish north as that area was not under the control of the Central Government at that time which was under the thumb of Saddam Hussein⁶⁸. A wide spectrum of ethnic, religious and sectarian diversity stressed and distorted by decades of violent oppression is making a national consensus rather impossibility if engineered from the top⁶⁹. Even wide diversity of “life-styles” ranging from Iraqis truly living in twenty-first century to, they literally living in the dark ages is an added agony⁷⁰. A new census was scheduled to begin on October 24, 2010. However, Prime Minister Maliki postponed the census until December 2010 and it begun even in January 2011⁷¹. Without authentic census how can any effective electoral process be set into motion?

Moreover, the apprehension of democracy within Iraq resulting in tyranny of some dominant segments over minorities is looming large⁷². Infiltration by self-designated captains of the former regime, extremists and fundamentalists with an intention to sabotage the electoral process so

⁶⁷ Abu Khaleel, “Is there A Solution”, supra note 56.
⁶⁸ Ibid.
⁶⁹ Ibid.
⁷⁰ Ibid.
⁷² Ibid.
as to hold hostage the democratic governance in the country\textsuperscript{73} is yet another challenge.

Prevailing ignorance and backwardness among the Iraqi electorate may also be one of the reasons for their distortion about the democratic process\textsuperscript{74}. As a result, many illiterate, racist, rich and undesired persons may get elected. However, one has to learn to live with it as democracy has repeatedly proved that it can be self-correcting.

The electorates only get what they themselves choose. When people realize the importance of the voting power they posses and its immediate effect on their lives they will naturally use it to their own benefit in the end. Sometime or other any country desperate to be democratic has to go through that pain of the birth of a true democracy, as it is universally accepted there can be no gain without undergoing pain. To minimize such pain through research is the objective behind selecting the present research problem.

1.5 REVIEW OF THE LITERATURE:

In research, review of literature increases the depth and breadth of knowledge on the subject apart from formulating the researchable questions or hypothesis\textsuperscript{75}. In fact, literature review establishes how familiar the researcher is with the previous relevant data generated by experts through their research in the same subject. More importantly, review of literature facilitates the present researcher to identify the opposing views on the issue under consideration and to avoid repeating the mistakes of the previous researcher\textsuperscript{76}. Ultimately, it establishes the worth and validates the researcher’s choice of area for further research.

\textsuperscript{73} Abu Khaleel, "Possible Dangers and Suggested Safeguards", supra note 56.
\textsuperscript{74} Ibid.
\textsuperscript{75} "Writing a Literature Review", \textit{http://www.flinders.edu.au/slc_files/Documents/Brochures/lit_review.pdf}, [accessed on 28\textsuperscript{th} June 2013].
\textsuperscript{76} Ibid.
In view of the above, the researcher in the present research has undertaken an exhaustive review of relevant literature generated on review of electoral laws. This endeavor has helped the researcher in shaping up the entire thesis in a better way.

Initially, the relevant provisions from both the Indian and Iraqi Constitutions clubbed with International Conventions and Recommendations on electoral laws were subjected to review. Next, a critical study of various domestic laws like for e.g., the *Representation of People Act*, 1950; the *Representation of People Act*, 1951, the *Representation of People Act*, 1950 (Amendment Ordinance), 2002; the *Delimitation Commission Act*, 1972; the *Registration of Electors Rules*, 1960, the *Conduct of Election Rules*, 1961 has been undertaken in case of India. The judicial interpretation on various issues surrounding electoral laws as per the requirement is also reviewed.

The researcher has been enlightened with the views and comments of legal luminaries like for e.g., H. M. Seervai, M. P. Jain, Upendra Baxi, N. A. Palkhiwala, Clinton Rossiter, Ishwara Bhat, Zoya Hasan, Nalini Rajan, Pickles Dorothy, B. Shiva Rao, J.A. Schumpeter, Tashar Kanti Saha, Anand Ballash Kafaltiya, while

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Panchayat Justice: An Indian Experiment in Legal Access, http://upendrabaxi.net/documents%5CPanchayat%20justice%20an%20experiment%20in%20legal%20access.pdf; [accessed on 1-7-2013].
80 We the People of India - The Largest Democracy, (Bombay: Strand, 1984).
81 Parties and Politics in America, (1960).
conceptualizing certain key terms such as ‘democracy’ and ‘election’ in the initial Chapters of the thesis.

Low voter turnout is one of the greatest menace majority of democracies world over including India and Iraq are facing. It is more pathetic to know that cities like for e.g., Bangalore Urban which is considered as the Silicon Valley of India recently registered only 52.83% of voter turnout in the State Assembly Elections. In the present research, the researcher has proposed to convert the right to vote into a duty to vote both in India and Iraq. In this context, the researcher has found support in the opinions of Jonathan Leuth and Lisa Hill\(^{90}\) expressed in their Article appreciating the Australian compulsory voting system and its impact on voter turnout. There are several e-sources\(^ {91}\) pertaining to different democracies having compulsory voting which have been reviewed to seek support for the idea mooted by the researcher on this issue.

While dealing with several aspects pertaining to prescribing qualifications for the Members of Parliament and Legislative Assemblies or to deal with the difficulties faced in demarcation of electoral constituencies or regarding political empowerment of vulnerable groups including women through reservation of seats in the Parliament and State Assemblies/Governorates the opinions expressed in their commentaries on Electoral laws by S. V. Rama Devi and S. K. Mendiratta,\(^ {92}\) Anand Ballabh, Kafaltiya,\(^ {93}\) etc. are of great import. No doubt, there is some difference in the line of argument developed by the researcher in his endeavor on these issues from the earlier experts. But the literature

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91 “Compulsory Voting”, http://en.wikipedia.org/wiki/Compulsory_voting#cite_note-10, [accessed on 26-6-2013];
93 Supra note 83.
subjected to review has helped in proposing concrete suggestions in this regard.

While critically evaluating the provisions relating to Election Commission and its working in both India and Iraq, support is taken of relevant literature generated by experts in the form of commentaries, peer reviewed journal articles, articles available in e-sources etc., the exhaustive list of which is enclosed in the thesis under the caption bibliography and webliography.

The literature review has proved quite handy to establish how laws have been inadequate to tackle the irregularities like for e.g., criminalization of politics or politicization of criminals, castesim, menace of multiple political parties, problem of independent candidates, mounting election expenses, irresponsible role playing by mass media, least regard for model Code of Conduct, corruption leading to defections, insurgent/sectarian violence, in the present work. In this regard, commentaries like for e.g., How India Votes- Election Laws, Practice and Procedure by V. S. Rama Devi and S. K. Mendiratta, Democracy in Danger Criminality and Corruption in Lok Sabha Elections by Tushar Kanti Saha, Democracy and Elections Laws authoured by Anand Ballabh Kafaltiya, have provided a lot of inputs. There are several e-sources dealing with all the above challenges which have been reviewed for this research.

It is worth noting that in case of Iraq there is dearth of literature in the form of commentaries in English as the democracy in the present form is of recent origin. However, review of Iraq history established that democratic governance is not altogether new but in the present form it is!

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Therefore, most of the literature generated presently is in the e-form which is subjected to review in this thesis. In the considered opinion of the researcher, Iraq can learn a lot from the keen assessment of the working of Indian electoral laws.

The research topic selected has wider dimension influencing and affecting several aspects of good governance in a democracy. Hence, the literature studied and relied upon is all inclusive. The primary data thus, comprises of Constitutional provisions, Legislative enactments and Rules, Ordinances, Judicial decisions, International Treaties, Conventions, Bill of Rights and many other International Declarations, documents, and Reports which are listed in the bibliography/webliography.

In addition, the researcher has minutely studied Commentaries, Articles from various Indian as well as foreign law journals, Law websites from the Internet which serve as the source of secondary data for legal research.

1.6 HYPOTHESES/RESEARCHABLE QUESTIONS:

Hypothesis is a statement that makes some assertion which the researcher intends to either prove or disprove by means of evidence and arguments. According to William Zikmund, hypothesis is an “unproven proposition or a possible solution to the problem”\(^95\). In simple terms, it means “a guess”\(^96\) “a hunch” “an imagination” or “an assertion”\(^97\). For Chava and Davis, “hypothesis is a tentative answer to research problem”\(^98\). They further elaborate that it is “tentative” because “it is meant to be tested through the process of research”.\(^99\) Similarly, Geoff and Judy noted that “a hypothesis is a tentative suggestion about what we

\(^96\) Ibid.
\(^99\) Ibid.
might find”. If the hypothesis is disproved it does not in any way affect the importance and value of the research undertaken because, even the negative results can be as vital and a valuable contribution to knowledge as positive results.

It is argued that formulation of hypothesis generally is essential aspect in research design when research involves field study that requires the adoption of non-doctrinal method. However, where the doctrinal research method is followed in the legal research formulation of simple questions to guide the research will take the place of hypothesis.

In the present research, doctrinal research method is adopted for collection of data based on which following assertions in the form of researchable questions to take the place of hypotheses are formulated:

- Neither in India nor in Iraq elections conducted till date are up to the satisfaction of the citizenry of the respective countries. Several attempts made to improve the electoral process in India in retrospect have proved futile exercises to a great extent. On many issues surrounding conduct of free and fair elections the cures found out, however, have proved to be more dangerous than the disease itself. Iraq on this count is totally inexperienced.

- To conduct free and fair elections in both the countries is rather a tough task but not impossibility altogether provided the electoral reforms that encompass and embrace, inter alia, “the organic law, the electoral system, the legal and administrative framework” coupled with the most needed “political will” of the actors and

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102 *Id.*, at 29.
103 *Supra* note 71.
players in the field are worked out meticulously and implemented immediately.

- The interplay of International Law and Municipal laws in the present context whether is *sine-qua-non* for positive results?
- For restoration of sanity and sanctity of conduct of free and fair elections whether concentration upon legal reforms alone may be a *panacea* to insure the installation of a genuinely elected democratic government in any country around the world including India and Iraq?
- Multi-pronged efforts in the right direction are required to be taken at the earliest. In this context it is pertinent to find out whether there is dire need to address the below stated challenges at the earliest:
  a) The issue of converting the right to vote into a duty both in India and Iraq;
  b) qualifications for the Members of Parliament and Legislative Assemblies;
  c) percentage of reservation of seats in the Parliament and State Assemblies/Governorates for vulnerable groups including women;
  d) criminalization of politics or politicization of criminals;
  e) communalism/castesim;
  f) menace of multiple political parties;
  g) problem of independent candidates;
  h) mounting election expenses;
  i) irresponsible role playing by mass media;
  j) least regard for model Code of Conduct;
  k) corruption leading to defections;
  l) insurgent/sectarian violence.
These are the hypotheses/researchable questions the Researcher, intends to put to rigorous test with the help of collected data in the subsequent chapters of this Doctoral Thesis.

1.7 SCOPE OF THE PRESENT RESEARCH:

Research in any discipline including law, by and large, should not be of a general nature but should be confined to a particular time-period, geographical area, place, people, institution, etc. In this context, it is essential to draw the delimiting lines and to identify the scope of the research before the Hypotheses are put to test. The process of delimitation in research as Keith Punch suggests involves "drawing of boundaries around a study and showing clearly what is and what is not included"\textsuperscript{104}. This is to enable the interested, to know the essential purpose of the research and the limits of the study as determined by the researcher. Any research, to be meaningful, must have specific objectives and a paradigm\textsuperscript{105}.

In the present research, as the researcher being an Iraqi national studying in India is formidably well acquainted with the problems faced in the election process in both the countries, focuses upon the critical evaluation of the Laws governing elections both in India and Iraq in view of the fact that some of the State Assembly elections have just concluded in India and in Iraq for all the governorates. As democratic form of governance is gaining global acceptance there is need for increasing interplay of International Law and Municipal Laws of every democratic country in this matter. To research over each country in the present work is neither feasible nor warranted. So the researcher has chosen Iraqi and


\textsuperscript{105} Anwarul Yaqin, \textit{Legal Research and Writing Methods} 39, (Nagpur: Lexis Nexis Butterworths Wadhwa, 2008).
Indian laws. However, nothing bars the researcher from selectively referring to some of the other democracies wherever needed.

To begin with, a brief history behind the evolution of 'democracy' and 'elections' will be brought within the scope of the present study along with the conceptual analysis of 'representative democracy' and the inevitable 'elections'. Discussion on different types of methods adopted world over for electing the representatives for self-governance will be incorporated within the ambit of this research and an attempt will be made to find out which of the methods suit both India and Iraq.

Constitution, whether written or unwritten, is the foundation on which representative democracies are built up. The requirement of periodic, free and fair elections and the related rights sprout from the Constitution itself. Further, it is the Constitutional provisions that empower the law makers to make laws that govern the entire process of, *inter alia*, elections. Therefore, all the relevant provisions of both Indian and Iraqi Constitutions pertaining to elections will be properly perused. Special emphasis is placed upon Part XV of the Indian Constitution which exclusively deals with elections and the composition, powers, functions *etc.*, of the Election Commission which is entrusted with the task of “superintendence, direction and conduct” of elections at Centre and State level in India in a free and fair manner. The corresponding provisions if any under the Iraqi Constitution will also be critically evaluated.

For better understanding of the legal frame work of elections in India and Iraq relevant provisions of several legislations like for *e.g.*, the *Representation of People Act, 1950*, the *Representation of People Act, 1951*, the *Representation of People Act, 1950 (Amendment Ordinance), 2002*; the *Delimitation Commission Act, 1972*; the *Registration of Electors Rules, 1960*, the *Conduct of Election Rules, 1961* and several
other Statutes and Rules relating to elections to the Legislative bodies will be relied upon in case of India. Moreover, in respect of Iraq whatever little has been brought on the statute books in this regard will be considered as and when required in this research.

'Elections' in world over democracies, with a degree of difference, are filled with irregularities, corrupt practices, electoral offences, instances of defections and counter defections to topple Governments in power with an ulterior motive of protecting and promoting vested personal or party interests. India and Iraq, unfortunately, are not exceptions on this issue. Hence, the relevant provisions of the Representation of People Act, 1950; Indian Penal Code, 1860; the Evidence Act, 1872, Criminal Procedure Code, 1973, Anti-defection Laws along with their periodic Amendments will also be brought in at appropriate places for better appreciation of the present research problem.

Free and fair elections and Human Rights are cardinal principles of democracy. The Treaties and Conventions that guarantee the right to free and fair democratic elections in any democracy are amongst the most important areas of development in International Law and International Relations. It is, therefore, essential to incorporate a thorough analysis of the said part of the International Law in the present research.

It is quite obvious from the above that all is not well either in India or in Iraq in relation to elections. Even under the International Law there is need for purposeful insertions that help in smooth functioning of democratic governance in the world democracies in general and Iraq and India in particular. Inspite of the fact that election being the “darling of democracy”, it has been reduced to a plaything by political parties world over. Both countries are in dire need of electoral reforms as they are the pivot to the successful political future of both the countries in the coming years.
1.8 METHODOLOGY ADOPTED FOR COLLECTING DATA FOR THE PRESENT RESEARCH:

Law cannot operate in a vacuum. A Legislative enactment signifies, often, a response to a manifest or an imminent or an intelligently perceived problem. Any branch of law is not static but has an organic growth. It is universally accepted that any law cannot be "perfect and final, and cannot be so in a dynamic society."106 As the societal requirements change with the passing time so also is the law applicable to such society. Such change can be successfully addressed adequately through legal research.

"Legal research", it is stated, "is the branch of knowledge which deals with the principles of law and legal institutions." There are three main sources of Law, viz., Legislation, Precedent and custom. These sources of Law, as stated above, change with the changing requirements of the people in the society and if these changes are not taken into account in interpreting the law, the existing law is bound to fail in its efficacy. The aim of law therefore, is to regulate the human behavior in the present society and hence, legal research must be directed towards the study of laws and their efficacy in regulating human relations. For this, if there is no law or the law which is available is full of ambiguity then, the aim of legal research would be to suggest either for the enactment of the new legislation or to amend the existing law to plug the loopholes so as to make it effective.

Legal research may be under taken by collecting data by adopting either Doctrinal or Non-doctrinal research techniques. One can even research by relying upon the combination of both. It all depends upon the nature of the research problem.

The present research work is concerned with the lacunae involved in laws governing the process of conducting free and fair elections in India and Iraq and the critical review thereof with a view to recommend reforms or changes in the extant laws. This cannot be undertaken without reference to the substantive statutory provisions, the Rules promulgated there under, the judicial decisions bearing upon the same and collecting views and comments of legal luminaries researched over earlier on this democratic process. Basically, the researcher in this research heavily relies upon doctrinal research method for collecting data. This method of data collection would be of primary concern for a legal research because of the exclusive normative character of the discipline of law which seeks to promote stability and certainty of law and prompts to pursue social values. It is worthwhile, at this point, to recall what S.N. Jain has said to highlight the importance of doctrinal research method of data collection in the area of legal research:

… What distinguishes law from other Social Sciences (and law is a Social Science on account of the simple fact that it regulates human conduct and relationship) is its normative character. This fact along with the fact that stability and certainty of law are desirable goals and social values to be pursued, make doctrinal research to be of primary concern to a legal researcher. Doctrinal research, of course, involves analysis of case law, arranging, ordering and systematizing legal propositions, and study of legal institutions, but is does more - it creates law and its major tool (but not the only tool) to do so is through legal reasoning or rational deduction …

The present research, in a way, is also analytical and critical. It relies on Primary Sources like the Constitutional provisions, International Conventions and Recommendations, Statutory Enactments, Rules promulgated there under, Decisions of the Supreme Court and the High Courts and Secondary Sources, such as, Commentaries, Law Journal Articles, News Paper clippings, Articles from the Periodicals, and e-sources.

1.9 SCHEME OF THE DOCTORAL DISSERTATION/THESIS:

The present research work has culminated into writing of this doctoral thesis containing in all eight Chapters including the ‘Introduction’ and ‘Concluding Reflections and Corroborative Suggestions.’ A brief layout shedding light upon the issues being dealt with in various Chapters of the Thesis is incorporated in the following paragraphs:

In introductory part of the thesis an attempt has been made to introduce the research problem by focusing upon its significance in view of the fact that out of 192 member nations of the world 122 have now adopted democracy as a form of governance. Further, the justifications or reasons for researching over the electoral laws governing the conduct of ‘elections and their relevance’ in the present research, consequent upon the fact that both India and Iraq are going for parliamentary elections in 2014 have been incorporated in this segment. This apart, an analysis of the literature review undertaken to increase the depth and breadth of knowledge of researcher in the present area of research is incorporated. Moreover, the hypotheses/researchable questions formulated which will be put to rigorous test with the help of collected data is spelt out. In addition, the delimiting lines drawn to identify the scope of the research before the hypotheses/researchable questions are tested have also found their way into this segment. Even the research methodology adopted for
the collection of required relevant data has also been discussed in a nutshell. In the last portion the Scheme of the doctoral thesis is inserted.

The Second Chapter deals with the conceptual analysis of the term ‘democracy’ which subsumes discussion about the meaning of the term and its variants. Further, a brief historical survey of the evolution of ‘democracy’ world over with special emphasis upon how it has been rooted in the soils of India and Iraq has been undertaken in this Chapter. The concept of ‘election’ has been conceptualized in this Chapter as any elaboration on ‘democracy’ devoid of discussion on the term ‘election’ conducted in a free and fair manner would tent amount to a half-hearted attempt. This segment of the thesis details out the meaning of ‘election’ not only in ordinary parlance but also from the statutory realm and at the judicial front. In addition, the meaning ascribed to the term election under the Municipal Laws of Iraq and India is compared with the meaning of the said term under the International Law. Further, the basic requirements of free and fair elections are brought in, in this Chapter. Moreover, various types of electoral processes are dealt with so as to find out which would suit the requirements of India and Iraq. Further more, elections in retrospect world over with special attention upon its history in India and Iraq is incorporated in the last part of this Chapter.

The Third Chapter of this thesis deals with the Constitutional commitment which is the bedrock for conducting free and fair elections in India and Iraq. Further, several issues like for e.g., whether right to vote is a constitutional right or a fundamental right or relegated to the position of merely a statutory right? Whether this right has been recognized as one of the basic Human Rights under the International Law and whether its reflection is found in the Municipal Laws of India and Iraq? In view of the low voter turnout both in India and Iraq is it essential to convert this right into a duty? What are the constitutional commitments
that have led for the enactment of several statutory provisions for giving effect to universal adult suffrage both in India and Iraq? Are there any problems in preparation of common electoral roles in both the countries? What criteria are followed for equal demarcation of electoral constituencies? Is there any need for following positive discrimination while allocating seats in elections? What about reservation of seats for women? Is such reservation *sine qua non* for women empowerment? , have been dealt with in this chapter.

The discussion on Election Commission has found its way into the *Fourth Chapter*. How the composition of Election Commission is worked out and what role has been constitutionally assigned to it in conducting free and fair elections? What are the powers and functions of such Commissions in India and Iraq? Is there any controversy in making applicable the Model Code of Conduct in the elections? Whether there are any guidelines in the International Law which can be relied upon while preparing the Modal Code of Conduct along with many more issues pertaining to Election Commission have been critically evaluated in the light of the Constitutional provisions, relevant enactments and judicial verdicts.

The *Fifth Chapter* deals with laws governing conduct of election in India and Iraq. Here issues pertaining to preparation and revision of Electoral Rolls are discussed. Further, regarding the qualifications and disqualifications of candidates and members provided under the relevant laws whether need to be reviewed is considered. More over, the procedure followed for filing the nominations, their scrutiny and withdrawal along with registration of political parties and allotment of symbols for them is critically evaluated. The drawbacks involved in the poll procedure, counting and recounting are also dealt with.
In the *Sixth Chapter* critical evaluation of the irregularities like for example, criminalization of politics or politicization of criminals, communalism, casteism, insurgent/sectarian violence, mushrooming of political parties, problem of independent candidates, unattended demand for women’s reservation of seats at Centre and State/Governorate politics, mounting election expenses, irresponsible role playing by media, least regard of the concerned for the Model Code of Conduct, unquenchable thirst for easy money leading to political corruption resulting in Members of Parliament and State Legislatures becoming merchantable or subject of horse-trading culminating in large scale defections and counter-defections adding uncertainty and instability to the very survival of the government in power in case of coalition governments, involved in conduct of free and fair elections both in India and Iraq is incorporated. What in store the International Law has for tackling the above irregularities is, also considered.

In the *Seventh Chapter* electoral disputes and their resolutions is concentrated upon. In this regard for filing the election petition which is the forum and what procedure needs to be followed have been dealt with. Further, what should be the contents of the election petition and how trials in election disputes are conducted is also discussed. Moreover, the controversy involved in deciding about the degree of proof required and appreciation of evidence has also been incorporated. Finally, the aggrieved party by the decision of the above said forum whether can go for a judicial review has also found its way in this chapter. Whether under the International Law the above issues have any solution is also researched and included herein.

The *Eight Chapter* of the thesis contains the Conclusions drawn from the study and also Suggestions proposed for making both the Constitutions of India and Iraq and the Electoral Laws governing
democratic elections more effective so that they can provide solid support for conducting “free and fair election” which has been declared as the part of the “basic structure” of the Constitution in India by the judiciary of the highest order. In a nutshell researcher’s contribution through this research has also been summed up and incorporated in this part. Finally, an attempt is made to reflect upon areas of further research so as to facilitate future researchers.