ELECTION SYSTEM AND ELECTORAL PROCESS IN INDIA

A democratic system cannot function effectively without a well-organized election system. It is only through the apparatus of election that the involvement and participation of the people can be ensured in a democratic political system. The government gets its legitimacy through free, fair and periodic popular elections. A good electoral system is, therefore, the bed-rock of genuine representative government. The electoral system must operate in an efficient and impartial manner. Stressing the importance of electoral administration, Pollock observed, “Unless public elections are conducted with accuracy and efficiency, not only the public services are discredited but the whole democratic system is endangered.”

**Features of Indian Election System**

1. **Direct Election of Representatives** - The Indian Constitution provides for the direct elections of the representatives of the people. Members of the Lok Sabha (Art.81) and the State Legislative Assemblies (Art.170) are chosen by direct election from territorial constituencies in the States. Members of the Municipalities (Art.243 R) and Village Panchayats (Art.243 C) are directly elected by the people.

2. **System of Indirect Election** - The members of the Rajya Sabha and the State Legislative Councils are indirectly elected. According to Art.80 Clause 4 “The representatives of each State in the Council of States shall be elected by the elected members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote.” The President and the Vice-President of India are also indirectly elected in accordance with a system of proportional representation.

3. **Joint Electorates** - The system of communal electorates, which had been introduced by the British vide the Minto Morley reforms in 1909 and continued till 1947, was done away with by the Indian Constitution. This system was replaced and the system of joint electorates was introduced by the Constitution of India. All eligible voters without any discrimination form a common electorate for electing their representatives. This is very clear from Art.325 which states that, “There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them.”

4. **Universal Adult Franchise** - The Indian Constitution provides for universal adult franchise i.e. all citizens have the eligibility to vote without any discrimination. Art.326 of the Constitution states that the elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage. Earlier 21 years was the minimum voting age, which was lowered to 18 years by the 61 Constitutional Amendment Act, 1988.

5. **Reservation of seats for Scheduled Castes and Scheduled Tribes** - Art.330 of the Indian Constitution provides for the reservation of seats for the Scheduled Castes and the Scheduled Tribes in the House of the People. The 95 Constitutional Amendment Act 2009 amended Art 334 to extend the reservation of seats for SCs and STs in the Lok Sabha and states assemblies from Sixty years to Seventy years. At present, the number of constituencies reserved for Scheduled Castes has increased from 79 to 84, after the delimitation of constituencies. Likewise, the number of seats reserved for Scheduled Tribes has increased from 41 to 47. Art.332 provides for the reservation of seats for the Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States. At present the Kerala State Legislative Assembly has 14 SC and 2 ST representing constituencies.

6. **Provision for Nominations** - There is also provision for nominations of members to the Union Parliament and the State Legislatures in the Indian Constitution. The President can nominate 12 members to the Rajya Sabha from amongst persons having special knowledge or practical experience in respect of such matters, namely literature, science, art and social service, vide Art.80 of the Indian Constitution. Also, as per Art.331, the President may nominate not more than two members of the Anglo-Indian community to the Lok Sabha, if the President is of the opinion that the Anglo-Indian community is not adequately represented in the Lok Sabha. Likewise the Governor of a State has the power to nominate members to the Legislative Council’s of States having bi-cameral legislatures, from amongst persons having special knowledge or practical experience in respect of such matters, namely literature, science, art, co-operative movement and social service, vide Art.171 of the Indian Constitution. Further the representation of the Anglo-Indian community in the Legislative Assemblies of the States by the Governor is provided in Art.333 of the Indian Constitution.

7. **Territorial and Single Member Constituencies** - Indian election system provides for the creation of single-member territorial constituencies. All the voters in a particular and defined territory constitute one constituency. Each territorial constituency elects one representative. Each Constituency is divided into as many constituencies as is the number of seats in its Legislative Assembly. In Kerala there are 140 Legislative Assembly constituencies. For elections to the Lok Sabha 7 Assembly constituencies are combined to constitute a single Lok Sabha constituency from which one MP is elected.

8. **Delimitation of Constituencies** - The task of delimiting the constituencies for the Assembly and Parliament elections is performed by a Delimitation Commission. After every census the boundaries of the
constituencies are delimited or redrawn. The Delimitation Commission is a three member body constituted as per the Delimitation Act, 1952 enacted by the Parliament. The Chief Election Commissioner is an ex-officio member of this commission. The two other members are nominated by the President from serving or retired judges of the Supreme Court or High Courts. The decisions of the Delimitation Commission are final and cannot be challenged in any court.

9. **Secret Ballot System**- Voting in elections is done on the secret ballot basis. The voters can exercise their votes in accordance with their wishes and opinions. Special steps are taken to ensure and maintain secrecy in the elections. Secret Ballot is essential for ensuring a free and fair electoral mandate.

10. **Qualifications and Disqualifications for Membership of Legislative Bodies**- The Indian Constitution has specified certain qualifications and disqualifications for membership of the legislative bodies at the centre and the states. **Art.84** specifies the qualification for membership of Parliament, while **Art.173** provides the qualification for membership of the State Legislatures. Likewise the disqualifications for membership of the Parliament are covered in **Arts.101-104**; whereas the disqualifications for membership of the State Legislatures is covered in **Arts.190-193.** **The Representation of the People Act, 1951** also has specified certain qualifications and disqualifications for the membership of the Parliament and the State Legislatures.

11. **Regular Revision of Electoral Rolls**- The function of revising the electoral rolls enumerating the names of all the eligible voters is entrusted to the Election Commission. After each census, which is held in every ten years, the electoral rolls are revised with addition or deletion of names. The Election Commission also revises the electoral rolls before any election. It is essential that a person has his name in the electoral rolls in order to exercise his franchise on the day of the election.

12. **Relative Majority Vote Victory System**- The victory in the election is determined on the basis of relative majority of votes or the first past the pole principle. In other words, the candidate who secures more number of votes than every other fellow contestant in the constituency is declared elected as representative to the Lok Sabha or the State Legislative Assembly, as the case may be.

13. **Introduction of Electronic Voting Machines**- The Election Commission has introduced the Electronic Voting Machines (EVMs) for the recording and counting of votes. The EVMs reduce the time in both casting a vote and declaring the results compared to the old paper ballot system. EVMs were first used in 1982 in the by-election to North Paravur Assembly Constituency of Kerala for a limited number of polling stations (50 polling stations). Since 2004, EVMs are being used for the conduct of Parliament and Assembly elections.

14. **Single Independent Machinery for the conduct of Elections in India**- The Election Commission of India has been entrusted the responsibility of the conduct of elections in India. **Art.324** of the Constitution lays down that, “The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in an Election Commission.”

15. **Election Petition for Settlement of Election Disputes**- The Constitution lays down the method for the settlement of election disputes. The election of any representative can be challenged through a petition before the High Court and the appeals against the decisions of the High Court can go to the Supreme Court. The election of a successful candidate can be challenged on the ground of breach of provisions of the Representation of the People Act or alleged electoral malpractices committed by the candidate.

16. **Power of the Parliament and State Legislatures to make provisions in respect of Elections**- **Art.327** of the Indian Constitution vests the Parliament with the power to make provision with respect to all matters relating to the elections to either House of the Parliament. Similarly, **Art. 328** vests the Legislature of the States to make provision with respect to elections to the House or either House of the Legislature of the State. Under the provision of **Art.327,** the Union Parliament passed the **Representation of the People Act, 1951.** However, till today no state Legislature has exercised the power available under **Art.328.**

Thus, the Indian Constitution provides for a well-structured election system which has been designed to meet the objective of holding free and fair elections at periodic intervals. There are several constitutional provisions and Parliamentary Acts to ensure the functioning of the democratic process in an efficient manner.

**Electoral Process in India**

The electoral process in India is operationalised in different stages.

1. **Delimitation of Constituencies**- The first step in conducting the elections can be described as the delimitation of constituencies which is done by a three member Delimitation Commission appointed after every census by the President. Single member territorial constituencies are demarcated by this commission. The proportion of population in all constituencies is approximately equal. The decisions of the Delimitation Commission are final and cannot be challenged in any court.

2. **Preparation of Electoral Rolls**- The electoral rolls, containing the names of the eligible voters in each constituency, have to be prepared before the conduct of elections. These electoral rolls are revised after each census as well as after regular intervals.
3. **Notification of Elections and Appointment of Returning Officers and other staff**-When general elections are to be held, the President sends a communication to the Election Commission. After consulting the central and state governments, the Election Commission announces the poll calendar i.e. the dates for filing the nomination papers, scrutiny of nomination papers and withdrawal of names by the candidates. The Election Commission then appoints the Returning Officers for the various constituencies. The Regional Election Commissioners help the Election Commission in the smooth conduct of elections.

4. **Filing of nominations Papers**- The candidates seeking to contest in an election have to file their nomination papers with the Returning Officer of their respective constituencies in the forms prescribed by the Election Commission. The name of each candidate has to be proposed by a voter and seconded by another voter. Candidates can be sponsored by political parties or can be independents owing allegiance to no political party. Every candidate has to make a security deposit at the time of filing the nomination. For Lok Sabha every candidate has to make a security deposit of Rs.10,000/- and for State Legislative Assembly, Rs. 5,000/-. Candidates belonging to the Scheduled Castes and Scheduled Tribes are required to deposit Rs. 5,000/- for contesting Lok Sabha elections and Rs. 2,500/- for Legislative Assembly elections. The security deposit is forfeited if the candidate fails to get at least 1/6 of the valid votes polled.

5. **Scrutiny of Nomination Papers**- After the last date for the filing of the nomination, all the nomination papers is scrutinized by the Returning Officer in the presence of the candidates. The Returning Officer then notifies the names of those candidates whose nomination papers are found in order.

6. **Withdrawal of Nominations**- The candidates are allowed to voluntarily withdraw their nominations by the date fixed by the Election Commission. A candidate has to apply in writing to the Returning Officer.

7. **Election Campaign**- Once the candidates are fielded for the election, the political parties start their election campaign. Different political parties announce their policies and programmes in the form of election manifesto. Many campaign techniques are involved in the election process such as, holding public meetings, distribution of handbills and pamphlets, door to door canvassing, broadcasting and telecasting speeches of political leaders. The official campaign lasts at least two weeks from the drawing up of the list of nominated candidates, and officially ends 48 hours before polling closes.

8. **Polling of Votes**- The date of the polling and the polling hours are fixed by the Election Commission. In order to conduct polling, large number of polling booths is set up in each constituency. Each polling station is placed under the charge of a Presiding Officer, who is assisted by polling officers, to conduct the poll. Voters after establishing their identity, record votes on the ballot paper given and deposit it in the ballot box/ or record vote in the Electronic Voting Machine. After the polling ends, the sealed ballot boxes or voting machines are dispatched to the office of the Returning Officer for counting.

9. **Counting of Votes and Declaration of results**- On a fixed day and time the Returning Officer and his staff members open the ballot box or the voting machine in the presence of the agents of the candidates and counts and records the votes polled by each candidate. A candidate who gets the maximum number of valid votes is declared elected. The Returning Officer makes the announcement of the results and sends them to the Election Commission.

10. **Election Petition for Settlement of Disputes**- After the declaration of results, the election of a winning candidate can be challenged either by the defeated candidates or by a voter or a group of voters. An election petition can be filed can be filed before the High Court within a fixed period. The petition can be preferred on grounds of electoral mal-practices or irregularities in the conduct of elections. The candidate can appeal in the Supreme Court of India against the decision of the High Court.

**Important Electoral Reforms proposed by the Election Commission**

1. **De-criminalization of politics** – For preventing persons with criminal background from becoming legislators, the Commission has made a proposal for disqualifying (from contesting election) a person against whom charges have been framed by a Court for an offence punishable by imprisonment of 5 years or more. Under the existing law (Section-8, ROP Act, 51) there is a disqualification once a person is convicted and sentenced to imprisonment of two years or more. As a precaution against foisting false cases on the eve of election, it has been suggested that only those cases in which charges are framed six months prior to an election should be taken into account for that election.

2. **Political party’s reforms** – The Commission has suggested that legal provisions be made to regulate the functioning of political parties and the Commission should be empowered to regulate registration as well as de-registration of political parties. The political parties should be legally required to get their accounts audited annually. The audited accounts should be put in public domain. There should be transparency in the fund raising and expenditure of political parties. Income tax exemption for donations should be given only for those political parties which contest election and win seats in the Parliament/State Legislature.
3. **Misuse of religion for electoral gain** – A Bill was introduced in the Lok Sabha in 1994 [R.P. (second amendment) Bill, 1994], whereby an amendment was proposed providing for provision to question before a High Court, acts of misuse of religion by political parties. The Bill lapsed on the dissolution of the Lok Sabha in 1996. The Commission has proposed that the provision in that Bill should be considered again.

4. **Amendment of law to make ‘paid news’ an electoral offence**– The Commission has been proposed amendment in the Representation of People Act, 1951, to provide therein that publishing and abetting the publishing of ‘paid news’ for furthering the prospect of election of any candidate or for prejudicially affecting the prospect of election of any candidate be made an electoral offence under chapter-III of Part-VII of Representation of People Act, 1951 with punishment of a minimum of two years imprisonment.

5. **Punishment for electoral offences to be enhanced**– Undue influence and bribery at elections and publishing false statement are electoral offences. Considering the gravity of the offences in the context of free and fair elections, the punishments has been proposed to be enhanced and made cognizable.

6. **Government-sponsored advertisements**– For six months prior to the date of expiry of the term of the House, there should be a ban on advertisements on achievements of the Government.

7. **Prohibition of Campaign during the Last 48 Hours**– Section 126 of the Representation of the People Act, 1951, prohibits electioneering activities by way of public meetings, public performance, processions, advertisements during the period of 48 hours before the time fixed for conclusion of poll. However, this Section does not include print media. The Commission has proposed that Section 126 should apply equally to the print media also. The Commission has further proposed that house to house visits by candidates/supporters should also be specifically prohibited during the said period of 48 hours, to allow the electors period of tranquility to decide their options.

8. **Punishment for false affidavit by candidates**– The Commission has recommended that Section-125A of R.P. Act, 51, should be amended to provide that any complaint regarding false statement in the affidavit filed by the candidates in connection with the nomination paper shall be filed before the Returning Officer (RO) concerned within a period of 30 days from the date of declaration of the election and that it shall be the responsibility of the RO to take proper follow-up action. The complaint can also lie directly to the Magistrate Court.

9. **Negative/neutral voting**– In the ballot paper and on the ballot unit, after the particulars relating to the last candidate, there should be provisions for a column ‘none of the above’ to enable a voter to reject all candidates if he so desires.

10. **Amendment of law to provide for filing of election petition even against defeated candidates on the ground of corrupt practice**– As per the existing law, election petition (EP) can be filed only for challenging an election of the winning candidate. The Election Commission has recommended that the law should be amended to provide for filing of EP in cases of commission of corrupt practice by a losing candidate as well.

11. **Ban on transfer of election officers on the eve of election**– In the case of general election, there should be a ban against transferring any election related officer without the concurrence of the Commission for a period of six months prior to the expiry of the term of the House.

12. **Rulemaking authority to be vested in the Commission**– The Commission should be given the power to frame rules under the R.P. Act, 1950 and 1951.

13. **Use of Totalizer for counting of votes**– The proposal is for amendment of the Rules to provide for the use of totalizer for counting of votes at EVM elections.

**THE ELECTION COMMISSION OF INDIA - COMPOSITION**

There exists a single independent machinery for the conduct of elections in India. The Election Commission of India has been entrusted the responsibility of the conduct of elections in India. **Art.324** of the Constitution lays down that, “The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in an Election Commission.”

The Constitution provides that the Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners as the President may from time to time fix. When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission. The Chief Election Commissioner and other Commissioners are appointed by the President subject to the provisions of the law made by the Parliament. The term of the Election Commissioners is six years from the date of appointment or till the attainment of 65 years, whichever is earlier. The CEC and other commissioners can quit office by submitting their resignations to the President. The President can also remove the election commissioners before the expiry of the full term upon the recommendation of the Parliament. Any Election Commissioner can be removed by the President only when a resolution charging him with proven misbehaviour or incapacity is passed by each House of the Parliament with a majority of the total membership and 2/3 majority of the members present and voting. The founding fathers of the Indian Constitution on, 25 January 1950 gifted to
the nation a precious institution by the name of Election Commission of India to ensure representative democracy. Sri. Sukumar Sen was the first Election Commissioner. In order to encourage more young voters in the political process, the Government of India decided to celebrate 25 January as National Voter’s Day. The National Voter’s Day was launched on 25th January 2011. The Election Commission was made a multi-member body in October 1993. Apart from the Chief Election Commissioner Sri. T.N. Seshan, two more Election Commissioners were appointed- Sri. G.V.G. Krishnamurthy and Dr. M.S. Gill. The Election Commission of India continues to be a three member commission- one Chief Election Commissioner and two other Election Commissioners. The present CEC is Dr. S.Y. Quraishi, with Sri. V.S. Sampath and Sri. H.S. Brahma are the other two election commissioners.

POWERS AND FUNCTIONS OF THE ELECTION COMMISSION
The Election Commission of India has to perform multifarious duties assigned to it under the Constitution. Some of the principal functions of the commission are:

1. **Demarcation of Constituencies**
   To facilitate the process of elections a country has to be divided into several constituencies. The task of delimiting the constituencies is generally performed by a delimitation committee. As an outcome of the recommendation of the Election Commission the Parliament enacted the Delimitation Act, 1952. The Delimitation Commission was to consist of three members, two of whom were to be nominated by the President from serving or retired judges of the Supreme Court or High courts while the Chief-Election Commissioner was to be an ex-officio member.

2. **Electoral Rolls**
   The second important but tedious function of the Election Commission is to prepare for identification the up-to-date list of all the persons who are entitled for voting at the poll.

3. **Recognition of Political Parties and allotment of symbols**
   A new part (Part IV A) has been added to the Representation of the People (Amendment) Act, 1951, on registration of political parties. Section 29 A now inserts for provides for registration with the commission, of associations and bodies of individual citizens of India as political parties for purposes of this Act. This provision came into force from June 15, 1989. A recognized political party has been classified either as a National party or as a State party under the paragraph 7 of the Elections Symbol Order, 1968.
   Another important function of the Election Commission is to allot symbols to the political parties and the candidates, and also to accord the recognition to the political parties. The Commission has specified certain symbols as reserved and others as free. The reserved symbols are only available for candidates sponsored by the political parties and the free symbols are equally available to other candidates.

4. **Scrutiny of the Nomination Papers**
   Another function of the Election Commission is to examine the nomination papers of the candidates. These papers are accepted if found in order, but rejected otherwise. This duty is performed by the Returning Officer who notifies to all the contesting candidates the date, time and place for the formal scrutiny of nomination papers.
   The Returning Officer summarily but judicially examines all the nomination papers and decides the objection raised. He is also to see whether the requisite requirements of security deposits, election symbol, election agent etc. have also been fulfilled. He is empowered to reject the nomination papers either by upholding the rejection raised by a rival candidate or on his own motion or any of the following grounds : (a) that the candidate either is not qualified or is disqualified to fill the seat under any of the relevant constitutional provisions viz. Article 84, 102, 173 and 191; (b) that the provision of Section 33 and 24 of the Representation of the people’s Act, 1951 have not been complied with and; (c) that the signature of the candidate or the proposer on the nomination paper is not genuine.

5. **The conduct of the poll**
   Another stupendous task that the Election Commission has to undertake is the conduct of the poll throughout the whole of India. In a Parliamentary or Assembly Constituency, the Returning Officer is to make necessary arrangements for conduction the poll with prior approval of the Election Commission. The commission can order a re-poll in the whole constituency under compulsion of circumstances. Article 324 confers on the Election Commission necessary powers to conduct the elections including the power to countermand the poll in a constituency and ordering a fresh poll therein because of hooliganism and breakdown of law and order at the time of polling or counting of votes.

6. **Election Expenses**
   Another must controversial function that the Election Commission has to perform is to scrutinize the accounts of election expenses submitted by contestants in elections. In India every contesting candidate is required to maintain and file the accounts of his election expenses within a prescribed period of 45 days, after publication of the result of his election. Within 10 days from the last date of filling the returns, the Returning Officer submits to the Election Commission a list of all the candidates and their agents together with their returns as also his observations in respect of candidates who have failed to lodge returns in the specified time and in accordance with the procedure prescribed by law. The Commission scrutinizes the accounts and decides whether the returns are in proper form.
and whether they have been lodged in time. In case of default it notifies the candidates for their agents of their disqualification by publishing these in official Gazette.