

**ELECTORAL REFORMS IN INDIA IN THE 1990s:
ERA OF T.N. SESHAN AND BEYOND**

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MADHUMITA



**CENTRE FOR POLITICAL STUDIES
SCHOOL OF SOCIAL SCIENCES
JAWAHARLAL NEHRU UNIVERSITY
NEW DELHI-110067**

2006



Centre for Political Studies
School of Social Sciences
Jawaharlal Nehru University
New Delhi - 110067, India

Tel. : 011-26704413
Fax : 011-26717603
Gram : JAYENU

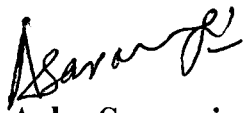
CERTIFICATE

This dissertation entitled **ELECTORAL REFORMS IN INDIA IN THE 1990s: ERA OF T.N SESHAN AND BEYOND** is submitted in partial fulfilment of 10 credits for the award of the degree of **MASTER OF PHILOSOPHY (M.Phil)** of this University. This dissertation has not been submitted for award of any other degree of this University or any other University and is my original work.

Madhumita
(Madhumita)

We recommend that this dissertation be placed before the examiners for evaluation.


Prof. Gurpreet Mahajan
(Chairperson)


Dr. Asha Sarangi
(Supervisor)

Chairperson
Centre for Political Studies.
School of Social Sciences
Jawaharlal Nehru University
New Delhi-110067

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INTRODUCTION

It is more than fifty years now since the democratic elections for Parliament and legislative assemblies based on universal adult franchise have been operational in India. This phenomenon of elections has ceased to surprise any one now. The political history of India reveals that like tea, cinema or cricket, there is something about the Indian elections that makes it appear like an age-old Indian passion.

The origin of India's democracy proved the fact that India was a political exception at the time of its inception. It had an immense imperially seamed territory, with 800 million poor and socially diverse people. Despite this, the political structures remained democratic in India.¹

Before understanding the nuances of the political history of India, it is important to mention the fact that democracy here is understood in terms of the guarantee of electoral principle and provisions for democratic and transparent exercise of power in the course of decision making and implementation. Democracy can be understood through several meanings. It is one powerful continuing that has structured across India for more than half century now.

Different meanings of India's democracy are being produced by the practices of different sections of Indian society. For the liberal and deliberative models of democracy, democracy is a way of negotiating the issue of individual right/ autonomy and negotiating an array of choices through rational deliberation. Representative democracy may be seen as representation of interests and sections of society. It holds on to the principle that all sections merit equal representation. It approaches the question of representation either in terms of political representation or in terms of overlapping plurality. Thus understood, representation becomes a "general category devoid of sectional focus merely a mechanism whereby electors choose a set of decision-makers for taking decisions on behalf of the electorate."²

The concept of democracy can be further broken into layers; procedural and substantive, electoral and agitational, regulative and distributive. These layers are not mutually exclusive, nor are they dichotomous. Substantive democracy refers to the

¹ Khilnani, Sunil, *India's Democratic Career*, in Dunn John, (ed.) *Democracy: The Unfinished Journey*, (Oxford, Oxford University Press 1992), p.189

² Palshikar, Suhas, *Whose Democracy Are We Talking About? Hegemony and Democracy in India* in Palshikar Suhas and Rajendra Vohra (ed.) *Indian Democracy: Meaning and Practices*, (New Delhi, Sage publications 2004), p.129

existence of citizens as “active agents capable of pursuing their interests with a measure of autonomy from entrenched structures of dominance and privilege”.³ The quality and substance of democracy are related to the equitable and just distribution of resources.

In the process of the exercise of vote by the people in choosing their representatives to the Parliament and state assemblies, it is important to connect it with the issues that have an impact on democracy in India. The main concern is the quality of electoral democracy. The electoral arena needs to be understood as a battleground for competing social forces and not just competitive arena for choosing the elites. Elections provide opportunities to the disprivileged and deprived to express their dissent and anguish. Thus, there is a need to decipher the democratic meaning of elections and strengthen that meaning by redefinitions of political choices. Thus understood “electoral democracy can become related to agitational democracy. It refers to movement of people for the expansion of democratic rights, for democratic governance and redistribution of resources”⁴.

Within this broad framework of understanding different meanings of democracy, it is important to establish the relationship between constitutional representative democracy and other state institutions that helped democracy to gain salience. It has generally been observed that India has attained a democratic status through its history of half a century as an independent nation state.

It is indeed noteworthy that the Indian democratic experiment has been remarkable. The continued existence of democratic institutions, practices and struggles along with keenly contested elections, suggest that Indian democracy is a complex phenomenon. It is not merely a case of democracy appropriated by entrenched interests, just as it is not a case of successful transformative democracy.

Indian democracy is a story of continued domination by entrenched interests; it is a story of competitive politics, it is the story of hopes and expectations for the masses because they can resist their subordination. In other words, “it is a story of coexistence of subordination and democracy, the coexistence of domination and democracy”.⁵

There is no simple and conclusive way of accounting for the bases of India’s constitutional representative democracy since 1947. While these bases must be emphatically political in character, much of their complexity stems from the sheer

³ Jalal Ayesha, *Democracy and Authoritarianism in South Asia*, (Cambridge, Cambridge University Press, 1995) p.3

⁴ Palshikar, Suhas, *Ibid*, p.131

⁵ Palshikar Suhas, *Ibid*, p.135

heterogeneity of Indian society. It was not just the structural configuration of society which encouraged the emergence of representative democracy in India but equally significant was the intellectual choices. It is the history of the Indian State, even more decisively than the distinctive configuration of Indian society, which is of fundamental importance in explaining India's relatively durable political stability.

The encounter with colonialization laid the foundations of the modern public sphere in India, making it possible for the multitude of people living in this land to think of themselves as Indians. The successful national movement ensured the passage from subject hood to citizenship, thus creating the collective agency which participates in the election ritual. The creation of a republic institutionalized the idea of popular sovereignty. In operational terms, it was translated in the form of universal adult franchise granted by the Indian constitution. The Constitution also laid down the rules of deciding the winner in the electoral race. It implicitly accepted the existence of organized political interests in the form of political parties.

In other words, the institution of elections came to India at the founding moment of the Indian nation state along with the package of liberal democracy accepted at that time. A fair assessment of India's experience of democracy must, therefore be anchored in an understanding of the Indian model of democratization in its specificity. That perhaps is the most striking attribute of the post independence Indian state that distinguishes it from all the predecessors. The phases of democratization begin with the Nehruvian era.

Institutions and practices of democracy found considerable acceptance during the first phase, which was dominated by Nehru and which lasted till the late 1960s. Aside from Nehru's own commitment to democracy, India benefited in this phase from the presence of two very important institutions; a well functioning civil service and a popular ruling party, the Indian National Congress. The civil service constituted the heart of the State that India inherited from the colonial period. This civil service contributed to effective government and imparted political stability.

The Congress, by contrast, had spearheaded a successful national movement and as a result, enjoyed considerable popularity and legitimacy. These new rulers of India, especially Nehru, utilized this inherited political capital wisely, accommodating rival elites within the large political networks on the back of powerful members of society –often the landowning, upper castes exchanging state patronage for electoral mobilization. This strategy enabled the Congress party to succeed for a while, at least long enough for

practices of democracy to take root. For Nehru, the commitment to constitutionalism was to be the distinctive trait of new Indian State, marking its break from the old political order.

Indian democracy was also helped by the fact that Indian political society in this early phase was not all that mobilized, certainly far less than in the subsequent decades. Political conflict mainly took the form of claims and counter claims by rival elites, especially regional elites demanding a greater share of power and resources vis-a vis the central government. These conflicts could have proven difficult but were successfully accommodated by creating a federal system.

Democracy has often had undemocratic roots. India's case has been no different. An effective civil service and relatively low levels of political mobilization meant that unlike numerous other post colonial experiments, Indian democracy was not seriously debilitated at the outset by poor governance and multiple political conflicts. The Congress party further provided the key governing institutions that not only transformed nationalist legitimacy into a ruling force, but also incorporated to India's unkempt masses. While the Congress repeatedly won elections during this first phase and dominated Indian political landscape, a broader political change was also underway: institutions and practices of democracy took root.

Indian Politics during 1970s and 1980s was dominated by the leadership Indira Gandhi. This phase became considerably more turbulent, even temporarily threatening democracy. As the memory of anti colonial nationalism declined, numerous new elites entered the political arena challenging Congress's hold on power. A rapidly growing population also produced a new generation of potentially mobilizable citizens. The spread of commerce and democracy started undermining the vertical ties of clientelism that had constrained the political choices of the lower strata in the past. The political situation was by now ripe for dramatic changes. After Congress's popularity declined in the second half of the 1960s, Indira Gandhi recreated the Congress during the 1970s and the 1980s as a much more populist and personalistic organ. Indira Gandhi's personalistic and populist politics definitely weakened some of India's democratic institutions.

The balance sheet of political development during this phase, however, was not only towards the weakening of Indian democracy. There were contrary trends as well. First, elections were held regularly throughout the period, and political power remained a function of her securing popular majority support. Even Indira Gandhi's personal power was a function of her widespread electoral appeal to India's poor masses. It was a need to

reconfirm this legitimacy that pressured her to call elections after a brief authoritarian interlude (1975-1977). The fact that she was voted out of power following the Emergency only confirmed the efficacies of Indian democracy.⁶

Second, and related to the first point, following the Emergency, a number of Indian political groups – for example, some of India's communists who had hitherto held an ambivalent attitude towards democracy- realized how much there was to lose without liberal political freedoms and thus felt recommitted to democracy.

The third and current phase that began around 1990s has thus been characterized by a variety of national-level political experiments to find a substitute for the old Congress party rule. This phase is characterized by considerable government instability where as India's first eight general elections were spread out between 1950 and 1990 India held five general elections in the decade of 1990 alone.

However, it is important to juxtapose other recent institutional trends that can be viewed as supportive of democratic consolidation in India. It is healthy for Indian democracy that the hegemony of a single party has come to an end. BJP had been forced to moderate its rulings strategy. This was a singular victory for Indian democracy, underlining the fact that the logic of democratic institutions was stronger than that of extremist forces.

Democracy ensures formal-legal and not socio-economic equality. A growing embrace of citizenship rights by common Indians have, overtime, given rise to numerous demands for more power and resources. Democratic institutions both facilitate such demands and are challenged by them. The balancing act that may facilitate the slow but steady deepening of democracy is never easy and India is no exception to it. The spread of democracy has implied that norms and practices of democracy –not only independent voting, but also expressing dissent, have been embraced by more and more people.

Democracy was the most generalized ideological component of Indian polity at the time of its emergence as a nation state. The anti colonial struggle was seen as a democratic struggle and the post colonial future was seen in terms of democratic polity. In a sense, democracy as an objective and as an ideology was widely acceptable because it was possible to read different meanings into democracy.

When democracy in the classical sense of direct and continuous popular participation, is regarded as impractical, representation may be the closest we can come to

⁶ Kohli, Atul (ed.) *The Success of India's Democracy*, (Cambridge, Cambridge University Press, 2001) p.9

achieving government by the people. The representative process is intrinsically linked to elections and voting. Elections may not in themselves be a sufficient condition for political representation, but there is little doubt that they are a necessary condition. Elections to the legislature have been portrayed as the very heart of democracy. Perhaps no question in politics is as crucial as what kind of politicians we elect who rule over us and under what rules are these elections held? Elections are seen as nothing less than democracy in practice.

The health of a democracy depends on the choice of representatives and leaders, which in turn is directly linked to the way political parties function and elections are conducted. Flawed electoral process is increasingly alienating public spirited citizens from the political and electoral arena. The persons best equipped to represent the people find it impossible to be elected by adhering to law and propriety. If elected, decent citizens cannot survive for long in elective public office, without resorting to dishonest methods. Even if they survive in office, their ability to promote public goods is severely restricted. It requires a change in the rules of the game, and citizens cannot be content with mere change of players.

The elections to Parliament and state assemblies are largely plebiscitary and the people vote for a platform or a leader or a promise or vote to reject the incumbent government or party in power. At the macro level, when one examines the whole state, the electoral verdict does broadly reflect public opinion.

India's enduring record of democratic elections in a setting of surprising constitutional continuity suggests how political competition has created a system of constructive rivalry. This has proven to be rewarding for citizens, cultural groups, regional communities and the disadvantaged sections of the society. The overall effect however generated through numerous national, regional and sub-regional elections conducted over five decades, has cumulatively strengthened a sense of multicultural assurance. As has been stated, "It should be recognized as a profoundly valuable resource of national construction and development".⁷

The electoral process and apparatus form one of the essential parts of the design of democratic institutions. Every electoral system is built on the political system, rule of law, system of government, the separation of powers, constitutional provisions, democratic values, and economic practices, social and cultural values and so on. Therefore it is

⁷ Dasgupta, Jyotirindra, *How Contention Promotes Multicultural Resilience* in Paul Wallace and Ramashray Roy, *Indian's 1999 Elections and 20th Century. Politics*, (New Delhi, Sage publications. 2003), p.24

essential to identify and understand the electoral system. Depending on the need and necessity, the electoral reforms can be suggested accordingly. In fact, no electoral system is the same and all systems have their own special features and peculiarities. Thus more importance is to be placed upon the electoral system. India has its present electoral system for the past 50 effective years since the first general elections were held in the year 1952.

Election to the legislative body is a decision-making process whereby people vote for preferred political candidates or parties to act as representatives in government. Hence the electors should be free to vote without fear or intimidation. A secret ballot was therefore said to be “the prerequisite for the free expression of the will of the citizens”.⁸

When India embarked upon a new democratic project with elections to the legislative body based on adult franchise many India watchers expressed apprehension about its smooth sailing. Educated classes and urban intelligentsia looked contemptuously at the project and thought that it was destined to fail since it had enfranchised the illiterates. Notwithstanding these doubts, India came up as one of the few countries which could boast of a democratically constituted government and free and fair elections. Elections to the legislative body have ensured the accountability of the government to its citizens. An important gauge in the vibrancy of India’s democracy is the participation of the electorates in elections. The marked growth of the Indian electorate from 173 million voters in 1952 to over 602 million in 1998 (62% of the population), shows the popularity of elections from the village to the national level despite India’s great diversity of languages, religions and ethnic groups. The ballot has been an important ingredient in the making of democracy in India.

More people in 1996 believed close to 60 percent, that their vote had an effect on how things shape up in the country. Twenty five years earlier in 1971 only 48 percent thought so. This is an enormous increase in the trust people have acquired in the potential and power of their vote. This is also reflected in the fact that “for ordinary people the act of franchise has by now become a carnival of democracy, a celebration of their power”.⁹ This fortitude with which people express trust in some of the democratic institutions and mechanisms is due to the fact that the Election Commission of India played a key role in strengthening the democratic process.

Democratic elections and their recurrence discourage fixities in the formulation of

⁸ Sezhiyan Era, *Council of States or Council of Nominees*, The Hindu, February, 2006

⁹ Alam, Javeed *What is happening inside Indian Democracy*, in Palshikar Suhas, and Vohra Ranjedra (eds.) *Indian Democracy: Meaning and Practices* (ed.) (New Delhi Sage publications, 2004), p.79

group or leadership claims. These legislative elections convey a sense of shared participation in a procedural system that promises to live open viable options regarding substantive outcomes and their revisions over policy time. Henceforth, this institution or rather mechanism should be free from all anomalies.

The Indian electoral system was free from any substantial drawback till the fourth general election of 1967. The distortions in its working appeared in the fifth general election and multiplied in subsequent elections. The core electoral problem that vitiated the electoral process are the use of money and muscle power at elections, criminalization of electoral politics that encourages practices of booth capturing, violence and rigging. Other problems are like misuse of government machinery by the party in power, participation of non-serious candidates in the election, violation of the model code of conduct etc.

One may argue or wonder how, despite massive irregularities, the electoral verdicts still seem to largely reflect public opinion and how parties in power often lose elections. The answers are simple. Happily for us, though parties in power are prone to abusing authority for electoral gains, there has never been any serious state-sponsored rigging in most of India. The irregularities are largely limited to the polling process alone. Most of the pre polling activities including printing and distribution of ballot papers, and post polling activities including transport and storage of ballot boxes and counting of ballots are free from any political interference or organized manipulation. Before understanding the meaning of electoral reforms, it is important to understand the institutional role played by the Election Commission of India in furthering the electoral reform agenda for more than over five decades now.

The Election Commission is created by the Constitution of India under the Article 324. The Election Commission is the constitutional body primarily concerned with superintending, directing and controlling elections in India. While ascribing the responsibility of holding elections onto the Election Commission, the Constitution has simultaneously given precedence to the political will of the people as expressed by the representatives in Parliament. At the same time, however, where such voice is not forthcoming, the Election Commission is devolved with residuary powers, which implies, that unless the Parliament explicitly stakes its claims in electoral governance, through rules and acts, the Election Commission possesses the powers /responsibilities which remain unclaimed. According to the provisions of the Constitution of India, the Election Commission can be a multi-member body. But until 1993, the Commission was a single

member body with Chief Election Commissioner as its head. There were Regional Commissioners but the practice was discontinued. On 1st October, 1993, the Commission had become a multi-member body on appointment of two Election Commissioners. Now the Commission has Chief Election Commissioner and two other Election Commissioners. The President appoints Chief Election Commissioner and Election Commissioners who have equal voting on decisions. They enjoy the same status and service conditions as enjoyed by the judges of the Supreme Court of India. They have tenure of six years or up to an age of 65 years. The Chief Election Commissioner can be removed from office only through impeachment by Parliament unlike other Election Commissioners who are removed from office on the recommendations of the Chief Election Commissioner. There are two Deputy Commissioners who are appointed from Civil services on tenure basis to assist the Commission. These two Deputy Commissioners are assisted by a team of officers consisting of Directors, Principal Secretaries, Secretaries, Assistant Secretaries and Deputy Directors including Section Officers. There is functional and territorial distribution of the work in the Commission. The main functional divisions are planning, judicial, administration, information systems, media and secretariat ordination. The Commission appoints the Chief Election Officer in the state concerned to supervise the election at the state level subject to overall superintendence, directions and control of the Election Commission. The Election Commission designates the District Collectors/Magistrate, Deputy Collectors, Revenue Divisional Officers, Electoral Registration Officers, Returning Officers, Assistant Electoral Registration Officer, Assistant Returning Officer etc. for election work.

As regards the powers and obligations, the Election Commission enjoys supreme power on deciding election schedules, location of polling stations, assignment of voters to the polling stations, locations of counting centres etc. In accordance with the constitutional provisions, the Commission has advisory jurisdiction in the matter of post election disqualification. In addition to it, the case of persons found guilty of corrupt practices at elections for which decisions are pronounced by the Supreme Court and High Court may also be referred to the Commission for its opinion. The Commission has the power to disqualify a candidate when he has failed to lodge an account of his election expenses within the time and in the manner prescribed by law. Similarly, the Commission has the power to remove or reduce the period of such disqualification under law. Thus the Commission is a quasi judicial authority. The decisions of the Commission are subject to judicial review in the High Court or in the Supreme Court of India, except during the

actual election process. Normally the judiciary does not interfere during the conduct of elections.

Such decisions can be reviewed through proper election petition before the High Court of the state concerned and in case of elections for President and Vice President. The Election petition should be filed before the Supreme Court. The Election Commission deputed official enumerators, from house to house to collect data about eligible electors, and on the basis of it the electoral rolls are prepared. These electoral rolls are revised every year to include new names who are eligible to vote on the 18th January at 18 years of age and exclude the names of those who died or have moved out the constituency. If some one is eligible to vote and his/her name is not included in the electoral role, he/she can apply to the Electoral Registration Officer of the constituency to update the register.

Any elector or candidate can file petition for alleged malpractice during the election in that constituency before the High Court of the state. The decision of the High Court may lead to re-election if malpractice is established or it may dismiss the election petition. On finding malpractice, the decision of the High Court is subject to appeal in the Supreme Court. The election petition has to be filed within 45 days of the declaration of result. The Election Commission appoints Observers to ensure free and fair poll. Election Expenditure Observers closely monitor the expenditure made on election by the candidate and the party.

India has a comprehensive structure of laws to administer and conduct its elections. The formal legal framework for all these elections rest on certain provisions of the Constitution, the Representation of the People Act 1951, the Presidential and Vice-Presidential Elections Act 1952, Delimitation Act 1972 and the various rules and regulations framed and orders issued under these statutes. In addition, certain provisions of the Indian Penal Code are relied upon to provide for punishment as well as disqualification of candidates and members of the various Houses.

Election Commission supervises elections in India, the world's largest democracy. It is a complete maze of 3.5 million officials, with bureaucracy, police, paramilitary and military forces. India's political system has shown the institutional capacity to tackle the problems related with the mechanism of choosing representatives. The institutions that are rewarded by people with high trust are the Election Commission and the Supreme Court. They have time and again rejuvenated their efforts towards ensuring a fair mechanism in the electoral process. There are various challenges that have come to the fore since the past one decade due to governmental instability. The challenges

have crystallized but experience with successive elections establishes the fact that people are able to deliver electoral verdicts in a democratic way. There are substantial irregularities and loopholes in the electoral laws and the system is incapable to punish the deviant. Criminalization, communalism, corruption and casteism have vitiated the political atmosphere in the country. In full recognition to the problems that the malformations of our electoral system have created, there have been many exercises aimed at reforming it by the Election Commission. In fact the two institutions of Indian state, the Election Commission and the Supreme Court have opened up new life for democracy in India. As has been stated, "in a political culture where rigging, booth capturing and violence in elections are not uncommon emanating more often than not, from the candidates and their followers themselves, the Election Commission has been able to hold on the autonomy which the Constitution conferred on it, discharging its responsibilities in manner which has earned considerable credibility."¹⁰ The Indian democracy is broadening and deepening in terms of the democratic upsurge manifested in increased participation of people. This is the consequence of the "institutionalization of democratic uncertainties" embodied in the functioning of the Election Commission.¹¹ The significant role played by these two bodies would be analyzed in the subsequent chapters of the thesis. It has successfully retained what the framers of the Constitution had envisaged, its impartially and non-partisan character. The Election Commission has evolved gradually in its multiple roles from conduct of elections to furthering reform agenda for the exigencies of the circumstances.

Electoral reforms have come to occupy a prominent position in the national discourse. So at the very outset, it is important to understand the meaning of reform. The meaning of reform is to add, delete, modify, alter or replace with changes for the future requirement and for the present challenges, on the basis of the failures in practice or for improvement of the existing. Today in the era of globalization and liberalization, electoral reform is the process of evolving an electoral system. It is a process of strengthening the democratic process of a given society that includes global, national, provincial, regional, municipal, local self government and community council. Independent to the electoral system, there is no electoral reform even though there are external forces that may exert influence on the electoral system without falling under the classification of electoral reform. In the process of it, there is a tremendous pressure on the democratization process.

¹⁰ Singh, Ujjwal, Kumar, *Electoral Processes and Governance in India: Statutory Framework and Institutional Arrangements*, in Ethnic Studies Report, ICES Publications. January-July 2002. p.84

¹¹ Singh, Ujjwal, Kumar, *Ibid.* p. 85

Electoral reform is an inbuilt mechanism and is a continuous process of strengthening democracy

Democracy includes a system, a set of norms and procedures and a set of institutions on the one hand and actors, functionaries and officials who run these, on the other. For the people, it is also a pattern of experiences. The current debate on electoral reforms acquires significance only when viewed within the larger discussion on political reforms that seek to make representative democracy in India more substantial. Electoral reforms can be considered as a necessary initiative for improving the representative fibre of the political system and a way and means to strengthen the democracy. This improvement is measured in two ways: (i) in terms of the 'process' by which representatives are chosen, that is, through a fine tuning of the various aspects of the selection process, and (ii) in terms of the 'outcomes' of this process of selection, that is through attempts at improving the representative character of the result. Electoral reforms should therefore be regarded as an ongoing exercise since there will always be scope for improvement in both the 'process' and 'outcomes' of the way in which a representative democracy comes into being.

The debate on electoral reforms in India as has been stated can be disaggregated into three distinct sets of issues.¹² The first set involves measures that can be met administratively within the powers conferred by Article 324 of the Constitution. All it requires is an imaginative Election Commission, one that has the clarity and political will to initiate and enforce administrative directives. To this group of reforms belongs directives of the Election Commission on issues such as (i) use of official vehicles, (ii) use of loudspeakers, (iii) ban on transfer of government officials, (iv) disbursement from discretionary funds (v) poll-eve bonanzas, (vi) counting arrangements, (vii) preparation of electoral rolls, (viii) intimidation, (ix) impersonation, (x) election petitions and so on. This group of electoral reforms is concerned only with good management. They seek merely to improve the efficiency of the process, ensure a climate of fairness, free from fear and intimidation in the selection exercise for both voters and candidates. This set of administrative reforms does not require the Election Commission to rely on any authority outside its own.

The second set of electoral reforms requires the help of the legislature. The ability of the Election Commission to pursue these will only emerge if its powers are extended by

¹² Peter R de Souza, *The Election Commission and the Electoral Reforms in India*, in D.D. Khanna (ed). *Democracy, Diversity, Stability; 50 years of Indian Independence*, (New Delhi, Macmillan, 1998)

legislation. To this group of reforms belong recommendations such as those that argue that there should be (a) statutory backing for the Model Code of Conduct, and (b) statutory status for Commission's Observers. This statutory backing, will go a long way in disciplining political parties, particularly the party that is in power.

The third set of electoral reforms belongs to the group of what can be called structural reforms. This concerns reforms that cannot be met by either effective 'administrative' or 'legislative' measures, but require a fundamental redesign of political institutions. The following reforms belong to this group. The first is the suggestion of reservation of one third seats for women in Parliament to give them greater political representation in the context of a patriarchal society and the state. This empowerment, it is argued, will enhance their capacity to bargain for resources from the state. It will strengthen their struggle for 'equal citizenship.'

The second is to bring the State Election Commission (SEC) whose mandate it is to conduct election to Panchayati Raj and Nagarpalika institutions under the umbrella of the Election Commission so that the integrity of the office of the SEC gets strengthened. Having a State Election Commission that functions as a department of the Election Commission would improve the independence of the State Election Commission.

The third is to endorse the insistence of the Election Commission that political parties regularly, and in a free and fair manner, conduct internal elections before they can earn the recognition of the Election Commission.¹³ This insistence on inner party democracy is based on the argument that parties should be bound by democratic constitutions and that autocratic parties, such as the Shiv Sena, should be debarred from participating in elections. Since parties are so central to the democratic system some policing of their internal process of selecting leaders and representatives should definitely take place. This ensures that the exercise of authority within the parties is based on a democratic culture, and not an authoritarian one. This suggestion is concerned with the expanded role of the Election Commission. The Election Commission should also play a role in the matter of defections.

The Election Commission became a pro-active tool of parliamentary democracy in this country with the tenure of T. N. Seshan as the Chief Election Commissioner. Starting in 1991 with the tenure of T.N Seshan, the Election Commission joined the Supreme Court in improving the legal conditions that make representative government and

¹³ A. Chousalkar, *Party Election: Long Road to Inner-party Democracy*, EPW, September 13, 1997

democratic participation possible. Some 521 million people were eligible to vote in 1991. Efforts were made by the Election Commission to see that the polling booths are situated not more than two kilometers from a voter's place of residence. In 1991, this objective required some 600,000 polling stations for the country's 3,941 state legislative assemblies and 543 parliamentary constituencies. To attempt to ensure fair elections, the Election Commission in India deployed more than 3.5 million officials, most of whom were temporarily seconded from the government bureaucracy and 2 million police, paramilitaries and military forces. Over the years, the Election Commission's enforcement of India's remarkably strict election laws grew increasingly lax. As a consequence, candidates flagrantly violated laws limiting campaign expenditure. Elections became increasingly violent (350 persons were killed during the 1991 campaign, including five Lok Sabha and twenty-one State Assembly candidates) and voter intimidation and fraud proliferated¹⁴.

T. N. Seshan as the Chief Election Commissioner in 1991 reinvigorated the Election Commission and curbed the illegal manipulation of India's electoral system. By cancelling or repolling elections where improprieties had occurred, disciplining errant poll officers, and fighting for the right to deploy paramilitary forces in sensitive areas, Seshan forced candidates to take the Election Commission's code of conduct seriously and strengthened its supervisory machinery. In Uttar Pradesh, where more than 100 persons were killed in the 1991 elections, Seshan succeeded in reducing the number killed to two in the November 1993 assembly elections by enforcing compulsory deposit of all licensed firearms, banning unauthorized vehicular traffic, and supplementing local police with paramilitary units.

In state assembly elections in Andhra Pradesh, Goa, Karnataka and Sikkim after raising the ceiling for campaign expenditure to realistic levels, Seshan succeeded in getting candidate to comply with these limits by deploying 336 audit officers to keep daily accounts of the candidates expenditures. Although Seshan received enthusiastic support from the public, he had stirred great controversies among the country's politicians. In October 1993, the Supreme Court issued a ruling that confirmed the supremacy of the Chief Election Commissioner, thereby deflecting an effort to rein in Seshan by appointing an additional two election commissioners. All these issues and perspectives of the Election Commission of India vis-à-vis the era of T.N. Seshan onwards would be dealt in the

¹⁴ [http: www.eci.gov.in/infoeci/about_eci/about_eci_fs.tm](http://www.eci.gov.in/infoeci/about_eci/about_eci_fs.tm)

subsequent chapter that focuses on the electoral reforms in the decade of 1990. In a nationwide poll conducted by the Centre for the Study of Developing Societies for the Indian Council of Social Science Research and 'India Today', after the eleventh national election in June and July 1996, 62 percent of 15,030 respondents rated the Election Commission as trustworthy, the highest score.¹⁵

This legacy of successful conduct of elections to Parliament was carried forward in an efficient way by the Election Commission that was well evident in the February 2005 assembly elections in Bihar. It has been stated that, "Bihar was a gargantuan mess. Indifferent voters, a three way fight that degenerated into free for all. A gaggle of largely rootless predatory parties that snatched victories by all means. Independent and defectors who upset calculations. A deadlocked verdict that demanded a patch between two sworn enemies. And finally the unedifying spectacle of mass defection leading to hurried dissolution of the House and announcement of second election in seven months".¹⁶ Undeterred by the allegations of high handedness and partiality raised against it, the Election Commission carried out the daunting task of the successful conduct of election for the legislative assembly with full responsibility.

However keeping all assumptions aside, India treaded a path of being a successful democracy for more than half a century now. Democracy has gained salience in India. Democracy is the only system which demands constant selection, nurturing and development of capable leadership. If the best men and women that society can offer are repelled by the political process and politics acquires a pejorative connotation, the result is collapse of ethics in public life, and with it public confidence in governance. With the most competent and qualified persons eschewing politics, some how wining elections and retaining power or to amass individual wealth at the cost of the public, the people are swindled.

This legal plunder ensures that public goods and services are of appalling quality and wholly insufficient to meet the requirements of a civilized society or growing economy. Public exchequer will soon be depleted and fiscal collapse will be imminent. These features of dysfunctional democracy are evident in contemporary India.

Political participation made the diffusion of institutional norms possible and also generated legitimacy. As already stated, political power in India originates through the

¹⁵ Llyod I. Rudolph and Suzanne H. Rudolph, *Redoing the Constitutional design: From an Interventionist to Regulatory State* in Atul Kohli (ed) *Success of India's Democracy*, (Cambridge University Press,2001) p.155

¹⁶ Subrahmanium, Vidya, *Reluctant Voters, Fragmented Votes*, The Hindu, October 10, 2005

consent of governed and expressed through regular elections at the level of federal parliament, regional assemblies or Gram panchayats. In order to curb the dysfunctioning in the working of democracy in India, electoral reforms should focus on all aspect of election scenario, pre-election and post election.

In this thesis, I engage with the following aspects related to the relationship between electoral reforms and democracy. In the first chapter I discuss the history of electoral reforms in independent India till the year 1990. This chapter focuses on the efforts made on the part of different government agencies. It gives the background to understand the development on electoral reforms further.

The following chapter focuses on the electoral reforms during the era of T.N Seshan.

In the third Chapter, I examine electoral reforms in the post Seshan era.

The fourth Chapter specifically examines the role of judiciary in the decade of 1990 in furthering the electoral reform agenda.

The idea for choosing the decade of 1990 to study the electoral reforms was that it was the decade that witnessed major transformation in the political, economic and social landscape during the post liberalization phase of India. It is an attempt to study the process of electoral reforms in this changed scenario along with the role played by the state institutional mechanisms. The discussion would further unravel whether the electoral reforms had a deepening impact on the democracy or not.

CHAPTER – ONE

THE HISTORY OF ELECTORAL REFORMS IN INDEPENDENT INDIA

Elections are particularly conspicuous and revealing aspects of most contemporary political systems. It highlights the basic nature and actual functioning of the system as a whole. Elections to the legislature are complex events involving individual and collective decisions which directly affect and are affected by the total political and social process. Legislative elections open up channels between the polity and the society, between the elites and the masses, between the individual and the government. They are major agencies of political socialization and political participation.

Much attention has been given to the legislative elections in the Indian political system. Their important functions as intervening and independent variables should not be overlooked. This shift in balance or approach is particularly important to note in analyzing the place of democratic elections in the Indian political system. Legislative elections have contributed to Indian political development. Imtiaz Ahmed has referred to '*the immense transformational impact of our electoral system*'.¹⁷ Many refer to the legislative elections in India as 'creative processes' and as 'integrative processes'¹⁸. Democratic elections to the legislature have become 'a part and parcel of the Indian political life. They are now taken for granted'¹⁹. Elections in India can be now seen not merely as useful indicators but actually as the events through which the party system and hence, in a measure the political system achieve their evolution²⁰.

Elections to Parliament and Legislative assemblies are thus the life breath of our political system. Every care has to be taken to ensure that elections are free and fair and the verdicts of the people find full expression. This is a prerequisite for the health and vitality of Parliamentary democracy. Elections to the union and state legislatures conducted over the past fifty-five years have been successful and widely acclaimed in the

¹⁷ Ahmed Imtiaz, et, al *Elections and Political Process: Studies in 5th Parliamentary Elections* unpublished paper issued by the Centre for the Study of Political Development JNU, New Delhi

¹⁸ Krishna Gopal, *One-Party dominance-Development and Trends*, Indian Journal Of Public Administration, (Jan-March, 1986)

¹⁹ Fadia, B. L., *Indian Government and Politics*, (New Delhi, Sahitya Bhawan Publication, 2003) p.696

²⁰ Fadia, B. L., *Ibid*, p.697

country and abroad. India is listed as one of the thirty nine countries with stable democracy in the World Atlas of Elections.²¹

Mandatory for any democratic government is an electoral system which allows the people to vote for a candidate in a manner which makes for total discretion and confidentiality of choice. Without these two attributes, no election can be free and fair. Every country includes in its electoral system these two factors which ensure that the citizens can cast their votes without being subject to any type of pressure. This simple and rational concept of total freedom and confidentiality of the vote requires an elaborate and complex mechanism of statutes, rules and administrative guidelines to make the electoral system full proof. In a country like India, which is the world's largest democracy and has the lowest literacy rate and highest poverty level among world democracies, the supporting mechanism for the electoral system has to be elaborate and all encompassing to a very high degree.

Part XV of the Constitution, consisting Articles 324 to 329, in particular provides for electoral rights and electoral process in the country.

Subject to various principles and the provisions of the Constitution, Parliament has passed a series of enactments to prescribe the mode of elections to Parliament and state legislatures and the formation and delimitation of the constituencies relating to the election. The Government of the Union Territories Act 1963 makes provisions for the number of seats in the legislative assemblies of Union Territories. Section 3 of the Representative of People Act, 1950, deals with the allocation of seats to the various states and Union Territories in the House of People. The Representation of People Act, 1951 provides legal sanction for actual conduct of election by making special provisions to maintain law and order during elections. It also ensures dignity and fairness of electioneering and enforces neutrality of civil services.²²

The election laws of the country are covered by Presidential and Vice Presidential Election Act, 1952, the Representation of the People Act 1950, 1951, the Government of Union Territories Act, 1963, Registration of Election Rules, 1960, Conduct of Election Rules, 1961. Added to this there is the two- member Constituencies (Abolition) Act, 1961, Amendment to the Conduct of Electoral Rules, 1962 and the Delimitation Commission Acts, 1962, 1972. These were later supplemented with the Election Symbols (Reservation

²¹ Bhalla R. P., *Electoral Reforms in India* in Gadkari S. S., Kamath M. V. (ed.) *Electoral Reforms in India*, (New Delhi, Wheeler Publishing, 1997) p.123

²² Tyagi Ruchi, *Electoral Reforms: From Seshan to Krishna Murthy* South Asia Politics, July 2004, p.27

and Allotment) Order, 1986 (issued by the Election Commission). To add a few more, the Representation of People (Amendment) Act, 1988, Chief Election Commissioner and other Election Commissioners (Conditions of Service) Act, 1991, 1993. To constitute a multi-member Election Commission was initially promulgated as an ordinance by the President on October 1, 1993. It was converted into the Act the same year. In the year 1996, the Representation of the People Amendment Act was brought forward, the Representation of the People Amendment Act 2000 was passed as a response to the Supreme Court verdict and Election Commission's directives. It made it mandatory for all contestants for both Parliament and assembly elections to declare their assets and liabilities and also disclose their criminal antecedents. The Election and other Related Laws (Amendment) Bill, 2003 was to bring greater transparency and accountability into election funding, particularly the donations to political parties.

Despite of all these provisions, our electoral system depicts certain short-comings. As has been observed, "Elected members do not get sufficient number of votes to represent the people in the true sense in the Parliament and the state Legislatures. They get elected even with 20 percent or less than 20 percent of votes. They would be better representatives if they get more than 50 percent at least of the votes cast."²³ Further, the people in our country have a constitutional right to vote, but this right does not correspond with duty to vote. As a result our general elections record 50 to 60 percent voting. It was 57.86 percent in 2004 elections to the parliamentary seats. The representatives in the legislatures, therefore, do not represent the people as a whole. The emergence of new parties pursuing desperate regional, sectarian and segmental causes and fragmentation of erstwhile vote banks, mounting expenditure on elections, public apathy resulting in lower turn out for voting is some of the evils that have so affected the situation that electoral reforms have become unavoidable.

Several electoral reforms have been suggested at various points of time. The history of electoral reforms in India dates back to the post independence years. The ills afflicting the system referred above have been identified at many times over by the Parliament, Committees appointed by government, the Tarkunde Committee appointed by Jai Prakash Narayan, Subcommittee on Cabinet, Joint Parliamentary Committee, Committee on Electoral Reforms etc.

²³ Tyagi Ruchi, Ibid, p. 28

The first step in regard to election reform came from the Election Commission in the form of reports to the government for changes in election law and procedure in the interest of administrative efficiency and public convenience. Some of the suggestions advanced in these reports were accepted by the government in modified form and converted into law by amending the Representation of the People Acts 1950 and 1951 during the years 1956, 1966, 1974, 1975, 1988 and 1989. Election Commission's proposals for substantial reforms in consolidated form however came in 1971 by S. P. Sen Verma, the Chief Election Commissioner. These proposals were considered by the Joint Parliamentary Committee on Amendment to Election Law that submitted its report in 1972.

JOINT COMMITTEE 1972

In 1972, the Joint Committee on Amendments to Election law had submitted its reports in two parts. The Joint Committee consisted of 21 members with Sri Jagannath Rao as chairman. There were 14 members from the Lok Sabha and 7 members from the Rajya Sabha. The Joint Committee submitted its report part- I to the Speaker of the Lok Sabha on the 18th January 1972 and the second part of the report was adopted by the committee on the 23rd February 1972. The recommendations were as follows:-²⁴

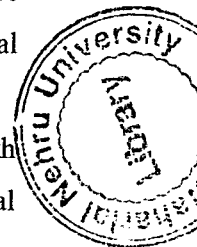
- (i) The Committee recommended for the appointment of multimember body of Election Commission under Article 324(2).
- (ii) The Committee recommended the revival of Regional Commissioners who were appointed earlier to 1952, first general election but subsequently discontinued, Article 324(4).
- (iii) The Committee approved and recognized the appointment of Deputy Election Commissioners who were appointed in 1956 for the first system.
- (iv) Even though the Committee desired that the Election machinery would be such that would function effectively in each village and town, it did not make any specific proposals.
- (v) The Committee welcomed the initiatives on appointing Joint or Deputy Chief Election Officer.

²⁴ Rathnaswamy P., *Electoral Reforms – Law and Institutions of India and World*, (Blackwell Publication, 2004) p.71

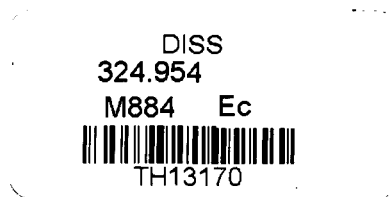
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- (vi) The Committee recognized the important role of the Chief Election Commissioner who continues to be the sole authority in all matters pertaining to the rolls and the conduct of elections to Parliament and the state legislatures and to the offices of President and Vice-President. While appreciating complex but important role of conducting free and fair election, the Committee recommended that the Election Commission should be a multi-member body as envisaged in Article 324(2) of the constitution.

It is observed that, "while the decision about the exact number of Election Commissioners necessary to assist the Chief Election Commissioner in the performance of his duties may be left to the Government to determine, the Committee considers that an enlarged Commission will be able to discharge more effectively the responsibility relating to elections and in exercise of its quasi – judicial functions, that command respect"²⁵.

- (vii) The Joint Committee had suggested that Regional Commissioners may be appointed under Article 324(4) to assist Election Commission at regional levels.
- (viii) In accordance with Article 327, the parliamentary democracy is adopted with majority system of election. The Committee examined the proportional representation through list system with merits and demerits and sought the views of Election Commission, which did not favour it. Hence, the Committee suggested for the appointment of an expert committee, consisting of eminent jurists and experts on constitutional law.
- (ix) The Committee recommended reducing the voting age from 21 to 18 amending Article 326 of our Constitution.
- (x) The Committee considered the proposal abolishing the system of counting by constituency wise which was introduced by the general electorate in accordance with Rule 56(1) of the Conduct of Election Rules No 196, which prescribes that the ballot papers taken out of all boxes used in a constituency shall be mixed together before arranging them in bundles for counting and the new system introduced in 1971.
- (xi) The Committee recommended that equal time should be given to all recognized political parties for broadcasting facilities during the election period.



²⁵ Report – Part II, C. B. (11) No. 258, Joint Committee on Amendments to Election Law, Lok Sabha Secretariat, New Delhi (1972)



- (xii) The Committee recommended that sections 28(3) of the 1950 Act and section 163(3) of the 1951 Act should be amended. Representation of Peoples' Acts 1950 and 1951, in order to give effect to the rules framed under them till the rules were approved in the Parliament.
- (xiii) The Committee recommended for the consolidation of these two Acts.
- (xiv) The Committee suggested to frame Model Code of Conduct to political parties
- (xv) The Committee proposed to constitute the Political Council.
- (xvi) The Committee suggested for suitable legislation to deal with defections of legislators and offered the views of not eligible of defecting legislator for appointment as a Minister, Parliamentary Secretary, Speaker and Deputy Speaker of Lok Sabha and State Legislatures.
- (xvii) It suggested suitable amendments to the Constitution that if a person who is not a member of the Lower House, is appointed Prime Minister/Chief Minister, he may continue as such at the end of six months only if he has in the meanwhile been elected to the Lower House.
- (xviii) It also recommended that the council of ministers should not exceed 10% of the Lower House in case of unicameral and to 11% in case of a bicameral Legislature of the centre and states as well.

The government accepted some of the Committee's recommendations and introduced a Bill in the Lok Sabha for incorporating amendments in certain provisions of the Act. The Bill, however, lapsed following the dissolution of the House in January 1977.²⁶

In the year 1977 another significant development was the submission of report by the Tarkunde Committee suggesting wide ranging electoral reforms. The recommendations of this committee could not however be implemented. In 1977, the government, through an executive order, allowed the use of public media of television and radio for election broadcasts and telecasts by political parties. This practice is continuing since then.

In 1977, the Election Commission drew a package of proposals on the basis of merit and priority and sent the same to the government for changes in election law and procedures. The proposals related to elimination of non serious candidates, disqualification of persons with criminal records for contesting election for a specific

²⁶ Bhalla R.P., Ibid, p. 125

period, ban on contesting election by a person for more than two constituencies, stringent penalties for booth capturing and delimitation of constituencies etc. These proposals were again reiterated to the government in 1982 and 1986 with minor modifications.

During 1974-76, however, certain amendments were effected in Section 77 relating to the election expenses. Some of these were the following

- i) Election expenses to be counted from the date of nomination of the candidate and not from the date of notification of the election (Act No.40 of 1975)
- ii) Election expenses by political parties or individuals other than the candidate or his agent not to be taken into account (Act No.58 of 1974).
- iii) Expenditure by a government servant during the course of his duty to be excluded (Act No.40 of 1975)

TARKUNDE COMMITTEE

The next important landmark in regard to electoral reforms was the appointment of a Committee by Shri Jaya Prakash Narayan in August 1974 on behalf of the *Citizen's for Democracy*. This Committee was under the chairmanship of Justice V.M.Tarkunde. This was the most comprehensive exercise in electoral reforms till then. Some of the recommendations of the Tarkunde Committee were quite radical and aimed at reducing or curbing some of the advantages enjoyed by the party in power which has been more or less the monopoly of the Congress. It has been in power for nearly 39 of the 43 years since the first general elections in 1952.²⁷

The Committee recommended a three member Election Commission to be appointed by the President on the advice of the Prime Minister, Leader of the opposition in Lok Sabha and the Chief Justice. The Committee also suggested that the voting age should be lowered down to 18 years. The television and radio were to be placed under the control of autonomous statutory corporation. Formation of a Voter's Council was recommended to ensure free and fair election.

The other recommendations of Tarkunde Committee included:

- (i) "Introduction of a partially Proportional Representation system of election;

²⁷ Gadkari, S.S., *Electoral Reforms in India*, (New Delhi, Wheeler Publishing, 1996) p.14

- (ii) Appointment of the Chief Election Commissioner by the President in consultation with a committee consisting of the Chief Justice, the Prime Minister and the leader of the opposition in the Lok Sabha (instead of consultation only with the Prime Minister).
- (iii) The government in office should work only as a caretaker government during the election period.
- (iv) Prohibition of contributions by companies to political parties.
- (v) Audit of accounts of candidates and parties.
- (vi) Some limited financial assistance to all political parties by the state.²⁸

Rajiv Gandhi had also got some far-reaching changes. They were:

- (1) Reduction of the minimum age for voting to 18 years.
- (2) Insertion of the Tenth Schedule of the Constitution to put some checks on defections.
- (3) Provision for registration of political parties.
- (4) More stringent punishment for booth capturing which was declared a 'corrupt practice' if practiced by a candidate or his agent.
- (5) Permitting companies to make contributions to political parties.
- (6) Use of voting machines.

AMENDMENT TO ELECTION LAW

The sustenance of any system needs an in depth examination of its basic law and procedure from time to time in the light of ground realities. A part of this exercise in regard to electoral system was undertaken in eighties. During the decade, either new statutory measures were enacted or the existing law was amended to strengthen the system. The first noteworthy measure in this respect was taken in 1985 with the passage of the Anti Defection Law.

It was a general observation that people have come to realize that their vote had no sanctity after the general elections to Parliament or state assemblies. Even if a candidate got elected on a platform, there was no guarantee that their representative would not defect to a party with an entirely different agenda and ideology and betray the people's verdict purely for personal gain. Public office was seen as a private property and in handling it the trust reposed by voters was of little consequence.

²⁸ Gadkari, S.S., Ibid p.15

The Tenth Schedule of the Constitution incorporated by the 52nd amendment was popularly known as the Anti-Defection Act. These provisions had a major bearing on parties, public discourse, legislative and parliamentary voting. The Anti-Defection Act was obviously well intentioned and was meant to ensure that the people's mandate is respected and elected legislators do not violate the trust reposed in them by the public. Candidates are generally elected on the basis of the platform or party and their defection often in return for money or favours is a gross insult to democracy. However the Anti Defection Act completely failed to prevent defections. There are countless instances of defections in Parliament and state legislatures since 1985, after the law came into effect. As has been stated, "the only novel feature now is that individual defections invite disqualification for legislative office and therefore there is no incentive for such defection. However, collective defection is now legitimate and amply rewarded. The provision that if 1/3 legislators defect, it is a split in the party and is permissible in a classic sense of missing the wood for the trees."²⁹

Opportunistic alliances and vertical splits in the parties have been the root cause of political instability for the short-term Lok Sabha and elections much before they became due. This law did bring a change in the political morality, but it proved disastrous for the larger goal of stability. After the Anti-Defection Law came into being, defections started taking place in groups to avoid disqualification. This caused a massive destabilizing impact on the polity. The 12th Lok Sabha, with duration of 412 days, was the shortest in Indian history. It was also ferociously bipolar.

The Companies Act was also amended in the same year. To permit any company (other than a government company or a company in existence for not less than three years) to contribute any amount to a political party for political purposes up to five percent of the average net profit of the company during three immediately preceding financial years. This enactment liberalized under the table donations made by business houses to political parties.

Towards the end of 1988, alteration in Article 326 of the Constitution was effected for lowering the voting age of a citizen from twenty-one years to eighteen years. This amendment brought the country at par with other advanced western democracies.

The provisions of the Representation of the People Act, 1951 were tightened in the same year to eliminate the malpractice of booth capturing. An additional section 135 A

²⁹ <http://www.rcw.raifoundation.org/mass> communication.

was inserted in the Act providing stringent punishment, ranging from six months to two years fine for the offence. The offence of booth capturing was also made a corrupt practice through insertion of a new sub-section in section 123 of the Act. Section 58 was added to the Act empowering the Election Commission to countermand the poll in the whole of a constituency on the basis of the returning officer's report, if it is satisfied that result of election was materially affected on account of capturing of booths on large scale.

The registration of political parties with the Election Commission was made obligatory through insertion of section 29A in the Act. Further, the officials connected with the conduct of elections, during the period of their work, are to be treated on deputation to the Election Commission. This was achieved by adding section 13CC in the Act of 1950 and 28A in the Act of 1951.³⁰

In the beginning of the same year, the Supplementary Note to the Sarkaria Committee Report on Centre-State relations had urged the necessity of election reforms. Nothing, however, was done in the matter in the following two years.

In January 1990, however, a Committee comprising prominent members of National and state parties and experts in election law headed by Dinesh Goswami, the then Law Minister, was appointed by the government to suggest suitable electoral reforms. The Goswami Committee submitted its report in May 1990 recommending reforms in vital areas of elections. In 1991, the Government accepting some recommendations of the Committee introduced four Bills in the Rajya Sabha dealing with delimitation of constituencies, rotation of reserved seats, elimination of non-serious candidates and appointment of Chief Election Commissioner and other Election Commissioners passed by the Parliament. Meanwhile, the Lok Sabha was dissolved and the other Bills lapsed.

The provision of the Chief Election Commissioner and other Election Commissioners (Conditions of Service) Act, 1991 prescribed six years term or till the age of sixty-five, whichever is earlier, for the office of the Chief Election Commissioner and six years term or till the age of sixty two for an Election Commissioner. In terms of salary and other monetary benefits including post retirement benefits, the Chief Election Commissioner was equated with a judge of the Supreme Court and an Election Commissioner with a judge of the High Court.

³⁰Pinto Ambrose, *Vox populi 1999: Analysis of Parliamentary Elections*, (New Delhi, Indian Social Institute, 1999) p.18

THE REPRESENTATION OF THE PEOPLE AMENDMENT ACT 1988

The purpose of this reform was to deal with electoral malpractices and for ensuring free and fair poll. Clause 16 of the Act which amended the Representation of People Acts, 1950 and 1951, among other things, sought to facilitate polling by permitting use of electronic voting machines. It also provided for registration of political parties and penal provision to deal with booth-capturing and rigging. The main provisions of this Amendment were recommended by a Committee headed by Mr.V.N.Gadgil. Some of the important provisions of this Act are

- i) The amended Act envisaged introduction of electronic voting machine in 150 'sensitive' constituencies in the country. In the second phase, the machines were to be introduced throughout the country.
- ii) For the first time, it provided for definition of a political party and laid down the procedure for its compulsory registration and the allotment of symbols for each political party.
- iii) The political parties were now required to include specific provisions in the memorandum or rules or regulations governing their function that they would fully abide by the principles enshrined in the Preamble to the Constitution.
- iv) One of the striking features of the Amendment was the deterrent punishment for booth capturing. Under the Amendment, booth capturing has been made a cognizable offence for the first time. Such an act would be punishable with a minimum imprisonment of six months and a maximum of two years accompanied by fine. Punishment would be greater in case a government servant was resorting to booth capturing.
- v) Another welcome addition was the disqualification of a number of categories of offenders from contesting elections. This would include persons convicted of offences against women. Apart from this FERA violators, smugglers or those committing terrorist acts would be debarred from electoral contests.
- vi) It had brought the designated officers of the state governments under the control, supervision, superintendence and discipline of Election Commission, while discharging their functions in the election.

- vii) To prevent 'frivolous' candidates from contesting elections, the number of proposers had been increased to 10 percent of the total electorate or 10 proposers, whichever was less.
- viii) The Amendment sought to provide for deterrent punishment for disturbing election meetings with imprisonment ranging from six months to three years and enhanced fines.

But the Election Commission was not happy with these reforms because some of the vital issues and recommendations such as those relating to organizational elections within a political party and money power had been ignored. The government had also overlooked the Commission's recommendation on state funding on the plea that the state does not have sufficient funds and this would not, in any case, debar candidates from taking money from industrialists.

GOSWAMI COMMITTEE REPORT 1990

The Committee had made 108 recommendations. Nevertheless, it is more relevant to state the consensus views which have emerged during the discussion in the meeting, and these are on the outlines of areas of electoral reforms indicated by Prime Minister.³¹

These are:

1. Change of electoral system with special reference to Proportional Representation System and List System on which divergent views were earlier expressed.
2. Strengthening of the Election Commission and securing its independence including making the holder of the post of the Chief Election Commissioner ineligible for any office under the government after his term.
3. More stringent laws to deal with evil of booth capturing and impersonations.
4. Fresh delimitation to cure the various distortions; provision for rotating of seats reserved for scheduled castes and the reservation of seats for women.
5. Expeditious disposal of election petitions and appeals by sitting judges and to manage their work by appointment of ad hoc judges.

³¹ .Rathnaswamy Ibid, p.74.

6. Examination of the present provisions of Anti-Defection Law and introduction of necessary changes to limit its application only to certain areas of the presiding officers of the legislatures.
7. Public funding of elections.
8. Fixation of rational basis for ceiling of expenses and need for removing the present distortions.
9. Multipurpose photo identity cards to voters.
10. Statutory time-limit for holding bye-elections.
11. Statutory backing to certain provisions of model code.
12. Statutory backing to the observer's role.
13. Combating the evil of non-serious candidates contesting elections.
14. Elimination of misuse of official machinery.

There are 108 recommendations in thirteen chapters. Some of the most important recommendations are³²

1. There should be a multi-member body of the Election Commission with three members. The President in consultation with the Chief Justice of India, and the Leader of the opposition should appoint the Chief Election Commissioner. The remaining two members/Election Commissioners shall be appointed in consultation with the Chief Justice of India and Leader of Opposition. The salaries and other perks and allowances shall be similar to that of the Chief Justice of India and judges of the Supreme Court respectively. The expenditure of the Commission shall continue to be 'voted' as of now. They are not eligible for appointment to any offices under Government of India including the Governor after the tenure. The term of their offices should be five years or sixty years of age whichever ever is later and in no case they will continue beyond sixty-five and for more than ten years in all.
2. The Committee recommended to set up the secretariat of the Election Commission similar to Lok Sabha secretariat for which a suitable legislation was suggested in the line of Article 98 (2). The Committee also proposed to amend Section 28 (A) of the Representation of the People Act

³²Rathnaswamy, P. Ibid, p. 76

1951 so to subject the officers in duty during the conduct of election under the disciplinary control of the Commission. It was recommended that the chief Electoral Officer must be exclusively appointed for election work only. The transfer of officers in connection with elections should be in consultation with the Election Commission.

3. The Committee favoured a detailed examination before extending the jurisdiction of election machinery to the elections of Panchayati Raj Institutions.
4. Empowering the Commission with the power of contempt was not desired.
5. Section 32 of the Representation of the people Act 1950 should be further strengthened so as to provide for more stringent punishment for breach of official duty in connection with preparation, revision etc of electoral rolls.
6. The officers connected with the preparation and revision of electoral rolls should also be brought under the control and disciplinary jurisdiction of the Election Commission as in the case of officers connected with the conduct of poll.
7. A person should not to be allowed to contest elections from more than two constituencies.
8. The age qualification for contesting elections to Lok Sabha and legislative assemblies should be reduced to 21 years and in the case of Legislative Council and Council of states the age should be 25 years.
9. The registration of political parties contained in section 29 (A) of the Representation of the People Act 1951 should be deleted and it should be left to the Election Commission to decide.
10. The security deposit should be Rs.500/- for assembly elections and Rs.1000/- for Lok Sabha elections.
11. The Committee recommended for inclusion of eleven proposals in the model code of conduct as statutory provisions and on violation of them or any of them should be made an electoral offence and not corrupt practice.
12. Section 58 (A) of the Representation of the People Act should be amended to enable the Election Commission to take action on booth capturing even without the report of the returning officer.

13. Section 52 of the Representation of people Act 1951 should be amended to provide to the effect for countermanding election only on the death of a candidate belonging to a recognized political party.
14. Section 77 (3) of the Representation of the People Act 1951 should be amended for the Election Commission to lay down the ceilings on the election expenses instead of central government.
15. There should be a complete ban on donations by companies and the relevant law should be amended accordingly.
16. State funding of elections were suggested on prescribed quantity of fuel or petrol to vehicles used by candidates, additional copies of electoral votes, payment of hire charges for microphones and distribution of voters identity slips.
17. Any unauthorized expenditure incurred by any person other than the candidate or his election agent should be prohibited and treated as an electoral offence and that such offence should be made punishable with imprisonment for a period of not less than one year in addition to fine.
18. It proposed state funding of elections through state assistance;
 - (i) Provision of prescribed quantity fuel or petrol to vehicles used by candidates.
 - (ii) Supply of additional copies of electoral rolls.
 - (iii) Payment of hire charges for prescribed number of microphones used by candidates.
 - (iv) Distribution of voters' identity slips now being done by contesting candidates should be exclusively undertaken by electoral machinery and all candidates should be prohibited from issuing such slips. The details of the manner and mode of state assistance in the above areas and its implementation should be left to the Election Commission to workout. The law should contain minimum enabling provision for the purpose.
19. The state assistance of the above items should be extended only to candidates set up by regular political parties.
20. There was no need for any ban on private expenditure in respect of items proposed for state assistance.

21. It is proposed to appoint adhoc judges for timely disposal of election petitions.
22. Propose to reexamine the quantum of punishment in respect of Sections 127 and (A), 129, 130,131,132,134,135 of Representation of People Act 1951.
23. Recommended for the amendment of section 134 (A) of Representation of People Act 1951 for imposing penalty for government servant acting as election agent, polling agent or counting agent.
24. Recommended for the inclusion of new provision for impersonation in the list of offences.
25. Recommended for conviction under the prevention of National Honour Act 1971 for disqualification for the period of 6 years.
26. They proposed certain amendments to Anti Defection law, which is in the 10th schedule of the Constitution.
27. The Committee recommended for the appointment of expert committee to examine the present electoral system.
28. Post offices should be the focal points for preparing electoral rolls.
29. The Committee did not support the Tarkunde Committee's recommendation regarding state government functioning as caretaker governments during election periods.

A Bill to implement some of these recommendations was introduced in the Rajya Sabha as *Bill No. XXV* of 1990. It may be noted that two important recommendations of the *Goswami Committee* :- those relating to identity cards and ban on donations by companies were not included in the Bill – apart from the recommendations regarding defection which would have required an amendment of the Constitution.

PERI SHASTRI 1990-

In 1990, the Election Commission has made certain proposals on the aspects of electoral reforms which may be classified into two groups basically.³³

³³ Rathnaswamy P., Ibid, p.77

1. The items aimed at reform of the electoral system, nameiy, relating to proportional representation – list system
2. All the remaining items which are aimed at making the operation of the electoral system move effective, objective, fair and equitable.

1. *Proportional Representation – List System*

Mr. Peri Shastri, the Chief Election Commissioner had observed the following on the introduction of list system.

- I. The introduction of list system may have to be accompanied by the abolition of the scheme of reservation of seats;
- II. Difficulties would arise in the case of small states, which had only one seat or two seats in Lok Sabha.
- III. The preparations of candidates by the political parties, in a list system are as complex as in the present system.
- IV. ‘Even at present our parliamentary constituencies are very unwieldy in size and will have to have bigger multi – member constituencies for the purpose of any list system’

After mentioning the above problems, the Election Commission pointed out that the electorate did become more and more mature and was adjusting to the implications of the existing electoral system as at present, the competition was among the top two or three candidates only and the winning candidates were able to secure more than 50 percent of the votes cast in view of these argument. Shri Peri Shastri, the Chief Election Commissioner agreed to the views of the report of Mr. Sen Verma on the fifth General elections.

2. The Election Commissioner had proposed to remove certain evils which affect effective functioning of the Electoral System.
 - I. Among the evils, the most important evils were the misuse of Government machinery during election, by the party in power, delay in disposal of election petitions, slackness in enforcement of the law in cases of contraventions, part time electoral machinery down below the Chief Electoral Officer, ‘electoral immorality’ or ‘non observance of electoral ethics,’ and the absence of regular and full time supervisory officers.
 - II. An Indian Election Service may be created and the Chief Election Commissioner may be chosen from them. It was more important for

effective electoral management rather than opting around the views of the selection of chief Election Commissioner in consultation with the opposition parties or otherwise. Similarly, it was proposed to have multimember body of the Election Commission and other Election commissioner may be selected from the panel of names proposed to the Election Commission by the Chief Election Commissioner. This would facilitate him.

- III. There was a need for independent secretariat to the Election Commission. The Election Commission must be entrusted with all the power over the secretariat and there was a need for the formation Indian Election Service which includes officers and staff. There shall be head quarters and offices of the Election Commission at two districts or three districts in regard to the supervisory officers of the office of Chief Electoral Officers.
- IV. The Commission must have freedom to fix the dates of bye-election, and for the same there was a need for cooperation from all the parties both in power and in opposition.
- V. It was recommended that the model code of conduct must have statutory support.
- VI. The voluntary organization should also be associated as observers.
- VII. The Commission may have adequate power to order repoll in an entire constituency.
- VIII. The officers involved in the election work should not be transferred without the prior approval of the Commission.
- IX. In reference to Section of the Representation of People Act-1951, disqualifications resulted upon the violation of such provision should include among others. The public financing should begin with stages to the winning candidates of the recognized parties and to begin with stationeries etc. The cash equivalent of any such assistance may be given to a candidate belonging to the registered unrecognized parties in the event of winning the election. The Commission was open to extent this financing to independent candidates.
- X. There should be realistic ceiling on election expenses. The persons/ candidates who are convicted for the electoral offence should be disqualified not merely from being chosen for being a member of a

legislature but also for holding any office of profit under government including the office of a minister for a period of 10 years.

- XI. Electronic voting machines designed by the Commission would help in measure in dealing with the problem of booth capturing and also the problem of non-serious candidates.
 - XII. It was suggested that non-serious candidates should be prosecuted under section 171E or 171F of the Indian Penal Code as electoral right under sections 171 A of the code includes the right of a person to stand or not to stand as a candidate at an election.
 - XIII. Suggested for the implementation of the recommendation, which was being accepted regarding appointment of ad- hoc judges to facilitate the speedy disposal of election petitions.
 - XIV. While welcoming the reduction in voter's age, it had not accepted the reduction of age for MLA, MP and MLC.
3. It proposed to continue the existing electoral system, rather yielding to proportional representation / List system.

This was the brief history of Electoral Reforms in India that started in the late 1960s till the 1990. The chronology of the process has been long. As evident the comprehensive proposals for electoral reforms came forward from time to time by the initiatives of the Election Commission. Right from the period of Mr.S.P. Sen Verma, the then Election Commissioner as early in 1972, the report for electoral reforms was placed before the Joint Select Committee of Parliament. Later, another Chief Election Commissioner, Mr. S.L. Shakdhar, sent revised proposals to the Janata party government. Before the cabinet could decide, the Morarji Desai Ministry too collapsed and the Lok Sabha was dissolved in August 1979. In September 1982 Mr. R.K. Trivedi, who succeeded Mr. Shakdhar, sent revised proposals but they also gathered dust. Yet another Chief Election Commissioner, Mr.Peri Shastri, made yet another set of proposals in 1986, some of which were enacted by the Rajiv Gandhi Government.

The V.P.Singh Government, which took office in December 1989, setup a committee on electoral reforms under the Chairmanship of the Law Minister, Mr. Dinesh Goswami in January 1990.

Hence the purity of public life in a democratic set up depends on the purity of the process by which the Government governing the public life is elected.

Experience with the Representation of People Act, 1951 and other election laws of the past fifty seven years, express the need to go in for drastic electoral reforms, Election Commissioners, in their annual reports and other wise also, have repressed the need of change in the law and have made several suggestions.

The objectives of the intended change in the law of election can be spelt as under:³⁴

- a) Inherent defects in the system which do not permit true public opinion and choice of the people to be reflected in the results because of inequities and distortions will have to be removed by suitable correction of the system.
- b) Play of the money power in the election ultimately resulting into corruption in the public life needs to be curbed.
- c) The working of the political parties, so far is relevant with the election in the country, needs to be curbed.
- d) Procedure for the appointment of the Election Commission and its power are to be redefined.
- e) Though the speedy disposal of the election petitions is desirable, too technical approach adopted by the statutory provision entailing dismissal of the election petition for a very minor and inconsequential lapse will have to be changed.
- f) Events on which a candidate has no control should not be made a ground for setting aside an election, which would unseat a duly elected candidate for no fault of his. For instance, rejection of a nomination paper by the Returning Officer.
- g) Stricter penalties for electoral offences should be thought for.
- h) A better respect for Model Code of Conduct should be given by supporting it with penal consequences.
- i) Measures to have speedier disposal of election disputes will have to be introduced.

Electoral offences: Certain undesirable acts in relation to election are offences under the law. The object of making certain acts during election offences, punishable with fine or imprisonment or both, is to ensure peace and order during election and to make the general

³⁴ Ali, Raisa, *Representation, Democracy and Concept of Free and Fair Elections*, (New Delhi, Deep and Deep Publications, 1996) p.328

election as fair and free as possible, particularly at the time of polling. The electoral offences are.

1. Offences relating to Election under the Indian Penal Code

Certain undesirable acts in relation to election are offences under the Indian Penal Code, which are dealt in section 171 B to 171 – I of the said code. Most of the offences are corrupt practices mentioned in section 123 of the Representation of the People Act, 1951. The following are offences relating to elections under the Indian Penal Code.³⁵

- I. Bribery (section 171-B)
- II. Undue influence at elections (section 171-C)
- III. Personation at elections (section 171-D)
- IV. False statement in connection with an election (section 171 – G)
- V. Illegal payments in connection with an election (section 171-H)
- VI. Failure to keep election accounts (section 171-I)

2. Electoral offences under the Representation of the People Act, 1951

Electoral offences are contained in sections 125 to 136 of the Representation of the People Act, 1951. The offences under sections 125, 133 and 135-A are also corrupt practices. The following are electoral offences under the R.P. Act 1951:

- I. Promoting enmity between classes in connection with election (section 125)
- II. Holding or attending any public meeting on the day preceding the election day. (Section 126).
- III. Disturbances at election meeting (section 127).
- IV. Printing or publishing of pamphlets, poster, etc. in contravention of sub-section of section 127 A
- V. Violation of the provisions regarding the maintenance of secrecy of voting (section 128)
- VI. Doing of any act for candidates or influencing voting by officers, etc (section 129).
- VII. Canvassing in or near polling stations (section 130).
- VIII. Disorderly conduct in or near polling stations (section 131)

³⁵ Ali, Raisa, Ibid, p.329

- IX. Misconduct at the polling station (section 132).
- X. Failure to observe procedure for voting (section 132-A)
- XI. Illegal hiring or procuring of the conveyances at elections (section 133).
- XII. Breaches of official duty in connection with elections (section 134)
- XIII. Government servant acts as an election agent, or a polling agent or accounting agent of a candidate at an election (section 134-A)
- XIV. Removal of ballot papers from polling station (section 135).
- XV. Booth capturing (section 135-A).
- XVI. Other offences (section 136):-
 - a) Fraudulently defacing or destroying any nomination paper.
 - b) Fraudulently defacing, destroying or removing any list, notice or other document affixed by or under the authority of a Returning officer.
 - c) Fraudulently defacing, destroying or removing any ballot paper of the official mark on any ballot paper or any declaration of identity or official envelope used in connection with voting by postal ballot.
 - d) Without due authority supplying any ballot paper to any person or receiving any ballot paper from any person or keeping any ballot paper in possession.
 - e) Fraudulently putting into any ballot box anything other than the ballot paper.
 - f) Without due authority destroying, taking, opening or otherwise interfering with any ballot box or ballot paper then in use for the purpose of the election.
 - g) Fraudulently or without due authority as the case may be, attempting to do any of the aforesaid acts or willfully aiding or abetting the doing of any such acts.

Thus, we see that there is an elaborate mechanism and well prescribed Election Laws under various sections of the Representation of the People Act, 1951 to ensure the conduct of free and fair election procedure. Nonetheless, various discrepancies have been noticed in the conduct of elections to Parliament and state assemblies. Indian elections being a mammoth exercise, involve political mobilization and organizational complexity on an amazing scale. In General Elections 2004 to Lok Sabha, the House of the People of Indian parliament, there were 5435 candidates for 543 seats. Out of an electorate size of

671.5 million, 389 million exercised their franchise at 687, 402 polling stations. During these elections, Electronic Voting Machines (EVMs), which are reliable and tamper proof, were used in all constituencies for the first time. The total number of EVMs used in these elections was 1.075 million. The direct cost of these elections was approximately Rupees 13000 million (US\$ 280 million). While around four million civil employees were engaged in conduct of these elections, another approximately, two and a half million central paramilitary and police personnel performed the law and order duty. In these elections, there were six national parties, forty-five state parties and 702 registered unrecognized parties.³⁶

Thus elections in India involve a “complex political, mobilizational and organizational logistics that remain unparalleled in the world.”³⁷ This was obviously evident in the decade of the 1990s. Rise in electoral offences, criminalisation of politics, money and muscle power in elections, require an elaborate and sustained effort towards the introduction of new set of electoral reforms to strengthen democracy in India. Ever since our polity graduated into the “coalition is inevitable” age in the 1990s all the above problem have acquired alarming proportion.³⁸

A democratic polity operates on the assumption that those who work its institutions do so in the interests of society and that they stand above the temptations of sectional interests and personal gains. The Indian state could acquire its legitimacy in the early years of post-independence only because the political leadership consisted of those who were seen to have made sacrifices in the cause of national liberation. It was the credibility and reputation of post Independence leader that helped republican values and democratic institutions gain traction.

This faith was gradually betrayed. By the 1990s, the political class could no longer be deemed to have the capacity or undertake the unfinished task of ushering in an egalitarian social order. It can be concluded that the success of any electoral procedure has to be tested on the sole ground that, whether it enables voter to make up his mind freely and make his choice on relevant considerations and whether he is allowed to cast his vote according to that choice. When suffrage is extended to all individuals who are not equal in their financial or social status, those who are powerful are likely to influence those who are not. In most of our elections to Parliament and Assemblies, we had adopted procedure

³⁶ The Election system in India, Published by Election Commission India, 2004

³⁷ Verma Arvind, *Policing Elections in India*, India Review vol4. July – October, 2005

³⁸ Khare Harish, *Time to dismantle the immunity regime*, The Hindu, June 9, 2006

of secret voting. If it is known that the voter has voted to a particular candidate or party, it is likely to be followed by punishment or reward. Therefore, there is no mark on the ballot paper identifying voter and if it is so, the ballot paper is invalid. Election Commission has also followed the practice of mixing of all votes in constituency and then count it to ensure that village or town should not meet with discriminatory treatment at the hands of those who will gain power. Secret voting is one of the essentials for equality in right of voting.

Secret voting alone does not adequately protect freedom of vote. Power has tendency to corrupt and those who want to gain it, may be tempted to corrupt the voter who gives that power. As already stated, several elections to legislature have witnessed some voters being prevented from going to polling stations. Poor sections of society are intimidated and asked to vote for a particular candidate or party. Voters are purchased by distributing money or articles of daily use. They are induced to vote for particular candidate or party by an appeal on the ground of religion, caste, or language. In a society whose history is full of religious and caste conflicts, such appeal is often effective. It may be direct enough to attract legal consequences or a subtle one which evades them. Minorities are tried to be influenced by intimidation or by appeasing them, both equally dangerous for our polity. Another factor which interferes with free and fair election is money power. The election expenses have gone so high that they are not within the reach of any honest candidate with moderate resources. Exhibition of political powers is often coupled with vulgar show of money power and is resorted to influence voters. How to curb all these evils is a question which poses great challenge to our electoral system. The next chapter specifically highlights the effort of the Election Commission of India beginning with the era of T.N. Seshan in the year 1990 and how far the challenge was successfully met. It is true that despite of all this, Indian masses have generally shown great maturity in exercise their voting rights. The political awareness of a common man would be guarantee for the purity of any electoral system, since he is the purpose and centre of the whole activity. Sir Winston Churchill rightly said, "At the bottom of all tributes paid to democracy is the little man, walking into the booth, with a little pencil, making a little cross on a little bit of paper. No amount of rhetoric or voluminous discussion can possibly diminish the over whelming importance of the point."³⁹

³⁹ Chapalgaonker N.P. , *Law of Elections*, (New Delhi, AIR Publication 1999),p 6

CHAPTER – TWO

ELECTORAL REFORMS IN THE 1990s: THE ERA OF T.N SESHAN

Electoral management for the general and assembly election is essentially about the administrative infrastructure required to support the democratic process of elections. Successful elections do not happen without preparation and planning. They are huge and costly events entailing the completion of a myriad of task and sub-task and involving large number of people, all of whom should be aware of their responsibilities in the electoral process and accountable under the law for their actions.

Elections also are not the only test of a democratic society. Increasingly on the world stage it has been accepted that the holding of election is no guarantee that a country is able to pass a “democracy health check”.⁴⁰ Elections and the possibility of bringing new leader into office are a critical part of any democratic system but it is the interaction between the people and the various branches and levels of government during the interval between elections that is a more reliable indicator of the health of a democracy.

The 1980s and 1990s saw democratization and the holding of elections to the Parliament and assembly seats accelerate at an unprecedented rate. They also saw electoral management become more sophisticated. It is increasingly recognized that successful elections are achieved by an administration that is professionally staffed, well equipped and adequately funded. T.N Seshan, a former Chief Election Commissioner of India and the man responsible for elections in the world’s largest democracy, commented in the fall of 1996 that “..... good elections require four elements: an election law that is fully tuned to provide free and fair elections; an Election Commission which is truly autonomous and fearless, administrative procedures that ensure even the smallest man and women can exercise their franchise freely and without fear; and an electorate which is fully aware for its rights and responsibilities”.⁴¹

As has been stated before, the Election Commission is a constitutional authority established under Article 324 of the Indian Constitution. The Election Commission consists of a Chief Election Commissioner and such number of other Election Commissioners as the President may fix from time to time. The appointments of the Chief

⁴⁰ http://www.eci.gov.in/infoeci/about_eci/abouteci_fs.htm

⁴¹ http://en.wikipedia.org/wiki/T.N._Seshan

Election Commissioner and other Commissioners are made by the President who in view of Article 74, is required to act according to the advice of the Council of Ministers. This means that for all practical purposes, the Commissioners are appointed by the government. Article 324 also authorizes the President to appoint State Election Commissioners after consultation with the Chief Election Commissioner of India.

The Chief Election Commissioner can be removed in the same manner and on the same grounds as a judge of the Supreme Court but other Commissioners and Regional Commissioners cannot be removed except on the recommendation of the chief Election Commissioner. These provisions indicate a significant difference between the status of the Chief Election Commissioner and other Commissioners.

From 1950 until the 1989, the Election Commission had been a single member authority (except for two Regional Commissioners appointed for six months for the first general election in 1952). During these thirty nine years, there were eight Chief Election Commissioners, and most of them were opposed to a multi-member Commission on the ground that there was not enough work for the three Commissioners, and a multi-member Commissioner would dilute the authority of the Chief Election Commissioner and create difficulties in the working of the Commission.

On October 16, 1989, however, the government of Mr. Rajiv Gandhi appointed two 'other' Commissioners (Mr. Seigill and Mr. Dhanoa). This strengthening of the Election Commission was supposed to be for the additional burden likely to devolve on the Commission under the Panchayati Raj Bill then under consideration.

It is important to take note of the state of India's electoral system at the time of Seshan's takeover on December, 1990. During his early weeks on job, Seshan identified over one hundred common electoral malpractices. Some of these included the preparation of inaccurate elections rolls, mistakes in setting up polling station, coercive electioneering, spending more than legal limit to campaign for a parliamentary position, using goons to snatch polling booths, and general abuses of authority. Moreover, state elections were often marred by violence perpetrated between competing political camps.

Previous Election Commissioners have conducted the elections on a logistical basis and stopped short at resolution of electoral disputes. Seshan went beyond this and introduced election reforms in defiance of political pressures, even going to the extent of challenging the government to question his constitutional authority. As a constitutional

appointee, the Election Commissioner is independent of the Indian Administrative Service.⁴²

Seshan's reform initiatives can be grouped into the following categories:

1. Insuring the autonomy and integrity of the Election Commission.
2. Empowering the voters.
3. Reforming or changing electoral procedures.
4. Changing the election laws.

In resolving electoral cases, Seshan acted swiftly guided by his own confident sense of right and wrong. His predecessor had been notorious for thoroughness and in one high-profile case (involving a dispute between Subramaniam Swamy and the Janata Party), held multiple hearings and took, 1,600 pages of notes without ever reaching a decision. Seshan heard the case once and settled it. Indeed, during his term as Chief Election Commissioner, Seshan reviewed more than forty thousand alleged case of false election returns and disqualified fourteen thousand potential candidates for public office. He was impervious to the demands of politicians so much so that, in 1992 when he cancelled elections in Bihar and Punjab, some of them tried to impeach him. The speaker of Parliament, however, overruled the move.⁴³

The gargantuan task of executing national elections in India involves, among other things, running 825,000 voting booths. Some five million personnel are needed in addition to large security force. India meets this need at election time by temporarily deputing state employees to the Election Commission. Seshan observed that many of these employees took their duties lightly. In 1992, he began cracking down. When state officials objected, Seshan argued that once these officials were assigned to the Election Commission, they fell under his jurisdiction. It was essential that they obey directives of the Commission and perform their duties honestly and efficiently. The very authority of the Commission was at stake, as the issue was not only the efficiency of the Commission but also its independence.

Many local bureaucracies were under the thumb of local politicians and political lords or bosses. For elections to be fair and to be seen as fair it was essential to neutralize the influence of these powerful actors. That was why Seshan insisted on controlling the deputed personnel strictly.

⁴² http://www.eci.gov.in/infoeci/about_eci/about-eci_fs.htm

⁴³ http://www.en.wikipedia.org/wiki/T.N_Seshan

The state officials and local political bosses fought back. Eventually, the Supreme Court itself ruled in favour of Seshan's authority over the deputed personnel. It was assumed that the positive result was the "curbing of illegal commands of local officials and political bosses making it easier for deputed election workers to report infringements of the election rules."⁴⁴

Seshan's tussles with the bureaucracy came to head over the 1993 elections in Tamil Nadu. Seshan ordered the Central government to deploy security forces in Tamil Nadu and ordered the state to make full use of them and to file a report of compliance with the Election Commission by a specific date. In making this order, Seshan found himself at odds with India's Home Minister, who stated that, "states could not have a force foisted on them".⁴⁵ When he refused to execute Seshan's order, Seshan decreed that no elections would be held in the country until the government recognized the power of the Election Commission. This standoff took political leaders by storm.⁴⁶ Again the issue was referred to the Supreme Court. Before the case could be heard, however, Seshan relented and rescinded his order banning elections. After having made his point, this tactical withdrawal earned him credit in the eyes of the electorate.

To curtail Seshan's powers in October 1993, Parliament amended the Constitution and added two additional Commissioners to share power with the Chief Election Commissioner. Appointed were M.S. Gill and G.V.G. Krishnamurthy who were expected to neutralize Seshan's independent streak. Seshan fought back by challenging the new appointment in the Supreme Court. Specifically Seshan's petition challenged Parliament's authority to make the power of the two new Commissioners equal to that of Chief Commissioner, the Court agreed. It issued an interim order giving the Chief Commissioner complete control over the work of the Election Commission in giving instructions to the staff and to its collaborating agencies. While the Chief may consult the added Commissioners, the Court said, he was not bound to follow their advice. Seshan's authority prevailed for the time being at least. His victory was applauded by many Indian citizens who were disillusioned with politics as-usual and happy to witness someone actually clip the wings of the country's politicians. For them, Seshan became a role model.

But the interim order did not hold. The case dragged on and as the feuding Commissioners went public with their affidavits, causing the Court to admonish them for

⁴⁴ Oscar L. Evangelista, *Biography for T.N. Seshan*, http://en.wikipedia.org/wiki/T.N._Seshan

⁴⁵ http://en.wikipedia.org/wiki/T.N._Seshan

⁴⁶ http://en.wikipedia.org/wiki/T.N._Seshan

their use of “non court, non-parliamentary language.”⁴⁷ Final judgment on Seshan’s petition was reserved for the five-judge Constitution Bench headed by the Chief Justice. On the advice of the Constitutional Bench on February 2, 1996, the Supreme Court finally ruled that the position of the Chief Commissioner vis-à-vis the two other Commissioners was “no more than that first amongst equals; the principles of majority rule should hence fourth prevail”.⁴⁸

Seshan continued to assert that his actions in defense of the constitutional authority of the Commission and its Chief Commissioner were designed solely to ensure that the Commission was an effective instrument for safeguarding free and honest elections.

Another avenue for safeguarding elections was to empower voters. Seshan made great strides during his incumbency in promoting public awareness about voters’ right. In speeches, he exhorted citizens to vote. This effort was complemented by a National Voter Awareness Campaign. The Commission also circulated publications on voter’s rights and duties as well as the steps to be taken to strengthen democracy and the role of citizens in cleaning up corrupt practices. Voters were constantly reminded that it was their responsibility to safeguard the freedom and fairness of elections and choose leaders wisely. Seshan went on tours all over India to campaign against electoral corruption, winning plaudits for his eloquence.⁴⁹

In order to circumvent the rampant practice of voter impersonation in 1992, Seshan called for the government to issue photo identification cards. Politicians bitterly protested this move claiming that it was unnecessary and expensive. After waiting eighteen months for the government to act, Seshan announced that if no identification cards were issued to voters, no elections would be held after January 1, 1995. Infact, a number of elections were postponed because voters were not issued cards. The Supreme Court eventually interceded and ruled that voting was an inherent right of citizens thus voting could not be postponed indefinitely because identification cards were lacking. Even so, because of Seshan’s insistence, the government began issuing ID cards and by 1996 two million voters already held them.

Being aware of yet another anomalies that had been remedied by previous Elections Commissioners, Seshan also introduced electoral reforms in areas of election expenses, ostentatious campaign displays, and residency requirements.

⁴⁷ *Supreme Court Defers Verdict on Seshan’s Plea*, Observation of Business and Politics. 1994

⁴⁸ *Landmark Judgments on Election Law*, vol. III, New Delhi.2004 Published by the Election Commission of India

⁴⁹ Oscar L. Evangelista, *Biography for T.N. Seshan*, http://en.wikipedia.org/wiki/T.N._Seshan

Elections in general were costly for both the government and the candidates. On both the federal and state levels, misuse of unaccounted funds was a common problem, due often times to shady deals between politicians and administrative personal under their employ who assisted officially in the conduct of elections. To curtail this, Seshan instituted Election Inspection Observers, drawn from senior officers of the National Tax Bureau. These were assigned in each constituency to check poll expenses on a day to day basis. This had the effect of limiting egregious election expenses minimizing the use of government funds to buy votes. More importantly, it deprived the ruling party of government machinery during elections. Seshan was also explicit in condemning the common practice by which the party in power compromised government officials with promises on the eve of the elections.

In a broader effort to curb overspending by candidates, Seshan implemented section 77 of the Representation of the People Act of 1951, which made it obligatory for candidates to keep accurate accounts of expenditures. He then added the following requirements to compensate for the laws "toothless" procedures: "all election expenses must be explicitly accounted for; the accounts filed must be dated accompanied by an affidavit of oath (making it possible to prosecute candidates for giving false information) and; the accounts must be certified by the district election officer".⁵⁰

Seshan established 20,000 to 40,000 rupees as campaign spending limit for assembly seats and 150,000 to 170,000 rupees for Parliament. After Seshan implemented the limit, Prime Minister, P. V. Narasimha Rao's government attempted to raise the expense ceiling to what it called a more realistic level. This drew a response from Seshan that any violation of the ceiling would not be pardoned. Indeed, during the national elections of 1993, he monitored electoral expenses around the clock from a control room at Commission's headquarters where one of his officers was assigned to each state. Altogether, 1,488 candidates for Lok Sabha were disqualified for three years because they failed to submit their expense accounts. This show of exemplary regulation provided a positive incentive for politicians to obey the rules.

One of Seshan's more controversial policies concerned ostentatious election displays. He banned election graffiti outright (defaced walls had to be cleaned by the candidates) as well as noisy campaign convoys, blaring loudspeakers, and wall writing and posters on public and private property. Responses were varied. The *Deccan chronicle*

⁵⁰ http://en.wikipedia.org/wiki/T.N._Seshan

reported that the “Seshan effect dampened the enthusiasm of the contesting parties because of the near absence of colour and sound which dominated election time”. The chronicle also reported the dismay of an influential candidate in Nellore, who preferred to use propaganda to bolster his candidacy but who, because of Seshan’s rules, now had to go to the slums and actually meet voters. The same report called Seshan a “snob” who was “allergic” to the normal exhibition of “popular” enthusiasm and support during election times”.⁵¹

But other observers noted that the “Seshan effect” had disciplined the pools resulting in less noise, cleaner walls, and more limited use of money power.⁵² It had, moreover, ushered in a new era of campaign that required new strategies such as *door-to-door* campaign. While the politicians worried that their candidates might not win without the usual fanfare, many commoners were happy to be spared blaring loudspeaker and garish multicoloured posters. One measure of the mass appeal of Seshan’s tough measures was the school in Karnataka that unveiled a large portrait of the Chief Election Commissioner on the school grounds.

As for residency requirements, Seshan invoked a 1950 law to propose that only bonafide resident of a state can represent state in the Rajya Sabha. Under his ruling, candidates who claimed falsely to be residents were guilty of the crime of perjury. The legislators were not happy and there was, infact, a move to drop the residency clause of Rajya Sabha members. But the government chose not to act for fear that the motion would not pass. The ruling stood. For Seshan, democracy had won.

Though a very religious man, Seshan was against sectarian campaigning. He issued a five page order stating that the Election Commission was deeply concerned with the unabashed attempts by some candidates and political parties at exploiting narrow sentiments of certain sections of the electors based on community, caste, creed, race, language and region. The Commission appointed special observers to monitor and report candidates trying to win support through these sentiments. The special observers were empowered to inspect political manifestos and to monitor the public speeches and utterances of candidates. The Commission warned that it would postpone elections and prosecute candidates who were found violating the order.

⁵¹ *Seshan Effect Dampens Enthusiasm*, Deccan Chronicle, New Delhi, (April 2, 1994).

⁵² *Seshan Effect Discipline Poll*, Free Press Journal, (November 21, 1994).

Among Seshan's other innovations were the deployment of video teams during elections, the phasing of election dates for better supervision, and the relocation of certain polling stations for easier access to voters.

Many of Seshan's more important reforms were in fact embodied in India's Model Code of Conduct an earlier reform effort of the mid 1970s. A series of electoral norms that the code described had never been adopted. Among them were the continued provision of relief and rehabilitation measures in areas afflicted by floods, droughts, pestilence, and other natural calamities, the impartial provision of public spaces to all parties, the requirement that criticism of candidates by their opponents be limited to their policies, programs, and past records, and the observation of restriction on processions and the plying of vehicles on polling days.

These norms in the model code negated using official vehicles, personnel, and machinery for electioneering, issuing advertisements at the government's expense touting the achievements of the party in power. Others such as offering financial inducement to voters criticizing any aspect of the private life of candidates (or party leaders) not connected with their public activities, using places of worship for election propaganda and displaying posters, flags, symbols or other propaganda materials near election booths on polling day. A variety of other corrupt practices was also prohibited.

Against the protest of politicians, Seshan implemented the model code as a moral code to be followed by government officials and politicians alike. Through the model code, he was able to implement electoral reforms strictly – or as his detractors had it, harshly. When faced with the charge that the code had no legal sanction, Seshan's defense was to say that explicitly legal sanction was not required for one not to tell lies. No one can object, he said, if the government: does not announce grants to gain favour from the electorate; does not requisition government travelers bungalows for the use of their own supporters and does not use government air craft and transportation for electioneering purposes.⁵³

His announcement that the "high and mighty" were not excluded from following the model code put him at logger heads with Chief Minister, Prime Minister and members of the Parliament⁵⁴. But Seshan remained unrepentant. About his country's senior officials and politicians, he was breathtakingly outspoken. In the process, he managed to offend a great number of them.

⁵³ http://en.wikipedia.org/wiki/T.N._Seshan

⁵⁴ http://en.wikipedia.org/wiki/T.N._Seshan

Nevertheless, he was powerful and effective. For fear of Seshan's wrath, politicians – a great many of them, in any case – became careful in their campaign speeches, they adopted new campaign strategies and ceased using illegal posters and other propaganda materials. They kept their speeches within the official time limit (monitored for Seshan by the police) and they became meticulous in accounting for their expenses and their use of public resources, such as official vehicles. For many common people, these changes were obviously a boon. The press hailed the disciplining of the polls, and even the political parties supported the enforcement of the model code, to the extent of suggesting that it be made into a “punitive law” to address excesses. In a 1995 poll taken for the *Times of India* ninety four percent of the respondents supported Seshan in strictly enforcing the Model Code for government workers, political parties and candidates. On the other related issues, 95 per cent approved of his, “no ID cards, no vote”, policy, while 94 percent supported his threat to disqualify candidates violating the prohibition of appealing to voters on the basis of religion, caste or language. Additional evidence of his popularity with the people included the hundreds of supportive letters he received on a daily basis.

The net result of Seshan's many reforms and innovations was the execution of clean and honest elections in India for the first time in many years. These reforms sowed panic among India's politicians and received accolades from the general public. One key to his success was the effective and uniform enforcement of rules and laws; another was the creation of efficient electoral procedures; yet another was building voter awareness through widespread information campaign.

It has been suggested that Seshan's overall impact was institutional: strengthening Election Commission to make it an effective arm of the state and making it possible for the reforms he instituted to be continued by future Commissioners. Seshan was quite aware of the shortcomings of Indian democracy and of the structural weaknesses of the country's government. As has been stated, “in more than fifty years of existence, India's democracy has shown great strides but for Seshan, corruption would continue to haunt it for as long as money power prevails”.⁵⁵

Although the Supreme Court had said that Article 324 was vast reservoir of powers, in reality Seshan had only two powers to force governments and the political parties – one was the power to fix the date of election and the other to recognize parties

⁵⁵ http://en.wikipedia.org/wiki/T.N._Seshan

under the Election Symbols (Reservation and Allotment) Order 1968. The main points of dispute between him and the governments were the issue of identity cards, adequate security precautions especially in Bihar, violation of the code of conduct by ministers and control over the election staff.

Election to the Bihar state assembly were postponed indefinitely first on the issue of identity cards but the Court forced him to hold elections without identity cards. Even then, there was a sort of constitutional crisis as the term of Bihar Assembly expired before elections to all the Assembly seats could be completed; and President's rule had to be introduced for a short period.

In April 1995, Seshan cancelled nine by-elections to Lok Sabha on the ground that general elections to the Lok Sabha were due in less than a year. Actually the terms of the Lok Sabha were due to expire in June 1996, but Seshan cited with Home Secretary's letter saying that elections would be held by April 1996. At the same time Seshan allowed by – elections to the Kerala Assembly.

In June 1995, Seshan postponed a by – election for the Latur Constituency in Maharashtra because the Collector allowed a candidate to use the compound of the Collector's office for holding an election meeting. The state government transferred the Collector but Seshan insisted that he should be suspended.

In the dispute between the Janata Dal and its breaking group (the Samata Party), Seshan in October 1994, indicated that he would go by the constitution of the parties and that he would derecognize under the Symbols Order, parties which did not follow the provisions of their constitutions and parties which did not follow the Election Commission's instructions.

Seshan, however, also took an unprecedented step of appointing retired income tax officers to keep a watch on the expenditure of candidates and held up elections till adequate security arrangements were made.

As a result of these actions, the elections to the State Assemblies of MP, UP, Himachal Pradesh, Rajasthan, Andhra Pradesh, Karnataka, Maharashtra and Bihar held between 1993 to 1995, were far more peaceful, clean and free form practices like rigging and booth capturing than before. Even Mr. Lalu Prasad Yadav whose state had to bear many postponements, said in a statement after the elections in Bihar that there were certain villages and communities in the state which could never vote in elections because of the pressure of other communities but which were for the first time able to go to the polls because of the strict security arrangements insisted on by Seshan.

SESHAN AND ELECTORAL REFORMS

There have been several attempts by various reform committees to introduce reform in the electoral process through bills but all amendment have fallen through. All reforms more or less consolidate the position of the party in power. As has been stated, "those with varying intellectual inclinations – Liberal, Weberian or Marxist would share the view that the establishment of sound democratic norms would greatly depend on the uninterrupted and continuous work of successive holders of office of Chief Election Commissioner in accordance with the legal, political, administrative, psychological and communicative desiderata that it embodies. In general sense, corruption and violation of the electoral process in one form or another undermine democratic norms leading to frustration and demands for summary reform. It is the spaces opened up by a systematic widening of gap between norms and practices that the authoritarian personality appears to be in the form of monstrous dictators or a home grown version, T.N. Seshan."⁵⁶

One overlooks the importance of the link between the requirements of the Chief Election Commission's role and character of its incumbent. The most important point to note relates to the fact that Seshan's predecessors, without exception treated the Chief Election Commissioner's job as extension of their former careers, even though adding to them the dignity of silence, aloofness and constitutional immunity. They did not seem to recognize the importance of detailed and cumulative field work of spotchecks and reforms and of the political spadework needed to enable democratic norms to take root. So much so that the canker of the other vote rigging came to pose a real threat as it spread out from Bihar and eastern UP to other parts of the country in the decade of 1990s especially.

The political instability that followed since the 1990s has enabled corruption to spread its tentacle far and wide. The entire electoral process was put into jeopardy as could be seen in the massive poll rigging and violence during every election in recent times.

⁵⁶ T.V. Satyamurthy, *Seshan And Electoral Reforms*, Hindustan Times, December 6, 1994.

TABLE 1.1

VIOLENCE IN LOK SABHA ELECTIONS (1991-1998)

Year	Incidence of poll violence	No. of deaths
1991	3,363	272
1996	2,467	213
1998	2,450	65

Source: Election Commission of India.

The public undoubtedly welcomes any sincere move by the authorities to ensure that elections are free and fair. The Chief Election Commissioner T.N. Seshan's consistent efforts to check poll mal practices are highly commendable.

TABLE 1.2

**REPOLL IN GENERAL ELECTION TO LOK SABHA AS IT IS RECORDED
FROM THE YEAR 1977 ONWARDS.**

Election Year	Number of Repoll
1977	66
1980	39
1984	264
1989	407
1991	2603
1996	2024

Source: ECI Reports

TABLE 1.3**TURNOUT IN DIFFERENT LOK SABHA ELECTIONS**

Year of Election	(%)
1952	45.70
1957	47.70
1962	55.40
1967	51.30
1971	55.30
1977	60.50
1980	57.00
1984	64.10
1989	62.00
1991	56.70
1996	57.9
1998	61.9

Source: ECI Reports.

TABLE 1.4

COST OF ELECTIONS Borne by Election Commission		NUMBER OF CANDIDATES For Lok Sabha Election		ELECTION DEATHS	
Year		Year		Year	Dead
1952	10.45	1952	1,874	1977	10
1957	5.90	1957	1,519	1980	97
1962	7.81	1962	1,985	1984	48
1967	10.95	1967	2,369	1985	83
1971	14.43	1971	2,784	1989	197
1977	29.81	1977	2,439	1990	96
1980	37.07	1980	4,629	1991	285
1984	78.28	1984	5,493	1996	213
1989	110.00	1989	6,160	1998	85
1991	302.79	1991	8,953	1999	—
1996	508.68	1996	13,952		
1998	664.00	1998	4,750		
1999	850.00	1999	4,648		

Source: ECI Reports

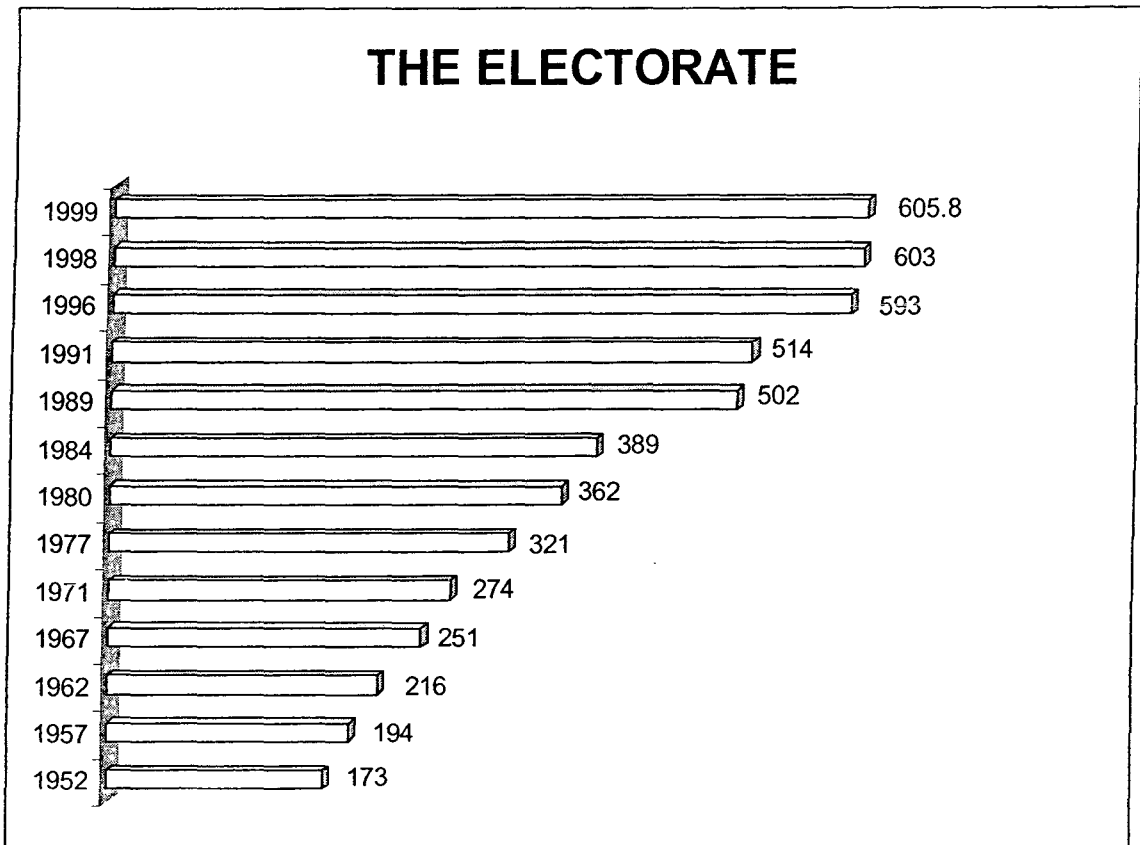
TABLE 1.5

LOK SABHA ELECTIONS: 1952 TO 1999

	1952	1957	1962	1967	1971	1977	1980	1984	1989	1991	1996	1998	1999
Electorate (million)	173.21	193.65	217.68	274.60	274.09	321.17	363.94	400.00	499.00	514.00	592.57	605.58	605.88
Total no. Of seats	489	494	494	520	519	542	527	542	543	543	543	543	543
Seats contested	479	482	491	515	518	540	526	507	523	508	543	543	543
Poll percentage	61.16	63.79	55.42	61.33	55.29	60.49	56.92	62.63	60.11	55.57	57.94	61.97	58.3

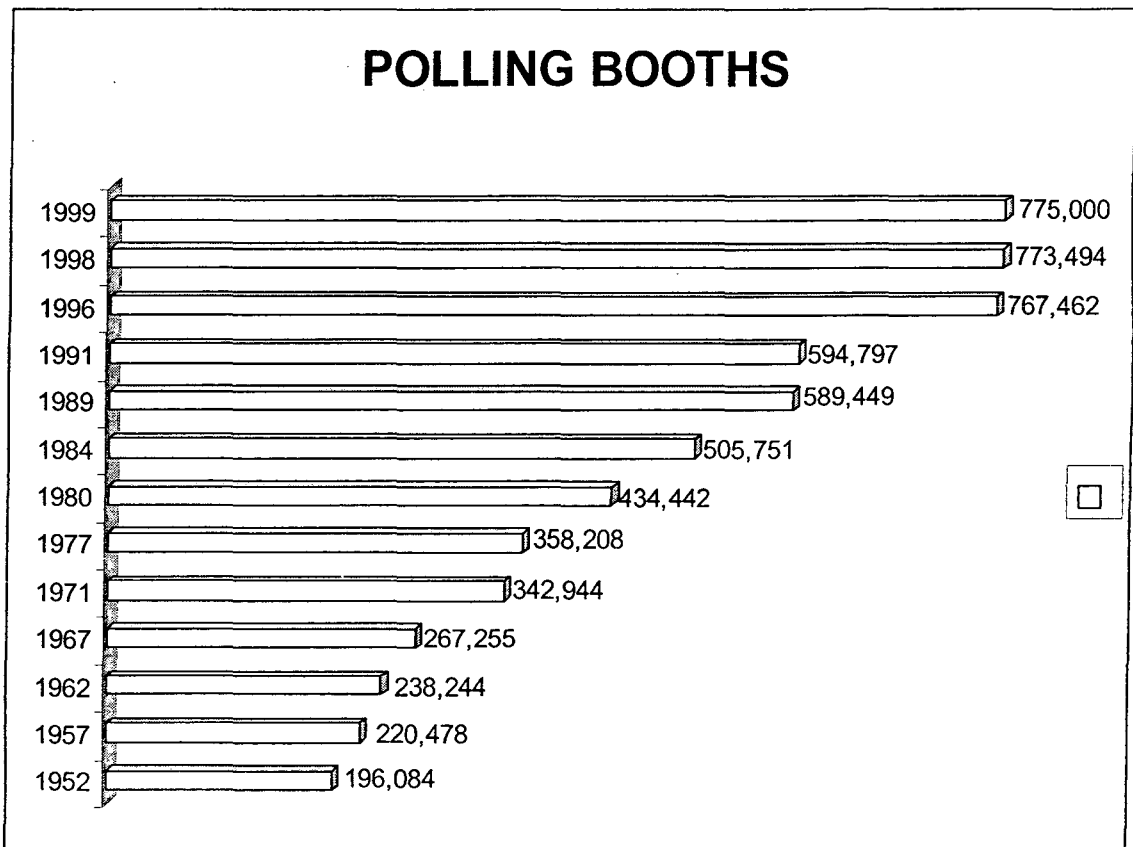
Source: ECI Reports

CHART 1



Source: ECI Reports

CHART 2



Source: ECI Reports

PHOTO IDENTITY CARD

The Election Commission had, as early as 1993 given a directive stipulating that photo-identity card should be issued to all voters and that November 1994 would be the deadline. The Election Commissioner had also warned that it would not notify elections after January 1, 1995 in places where photo identity card were not issued.

Opinion was divided over the Chief Election Commissioner's diktat of 'no identity cards – no elections'. Legal experts admitted that the objectives were laudable but there was doubt whether the order would stand the judicial test.

However, as the introduction of identity card involved both financial constraint and difficulties, the Commission would have to be reasonable and consider the genuine

difficulty in meeting the deadline. According to the former Attorney-General, Soli-Sorabjee, Seshan had given a reasonable period to the Government to issue identity cards. His job was to conduct free and fair elections and so he must exercise his jurisdiction in a reasonable manner. Identity cards were designed to prevent impersonation in elections and there was "nothing arbitrary or irrational" in Seshan's insistence on the requirement of such cards for election.⁵⁷

Seshan however, was certain about the legality of his stand. He was adamant about the issue of identity cards as a pre-condition for holding the polls. At a news conference in Patna (August 9, 1994) he said that he would not issue the notification for holding elections to the six State Assemblies, where it was due, if the respective state governments failed to issuing of the identity cards by November 30. Seshan said that under Rule 28 of the Representation of People Act, he was competent enough to do this. Seshan said that identity cards would be must in Bihar's case even if the poll was held in December 1994. Although Seshan did not think that the issuing of the identity card would put an end to booth capturing and rigging, he maintained that it would definitely put some brake on malpractices resorted to by different parties.

In a special report, '*crisis on the cards*', India Today, December 1994 he accused the centre of sleeping, and snoring and slumbering, over the scheme for two years.

The first communication on the subject was Seshan's letter to Rao in February 1992, reminding him of the multi-purpose identity card scheme which Rajiv Gandhi has agreed to implement in 1988. It is stated that, "When there was nothing but enormous silence", Seshan issued orders on August 28, 1993 asking the states to provide the cards by the end of December 1994.⁵⁸

The matter finally came to the Supreme Court. The petition said since India became an independent democratic country in 1947, electorates have been participating in the election without identity cards. No authority has the power to stall the democratic process to elect Legislative Assemblies and Lok Sabha when their term came to an end.

On January 16, 1995 Election Commission gave an undertaking before the Supreme Court that it would not withhold elections provided the Bihar Government completes the photo identity cards preparation for its six crore electorate.

A positive feature of the Supreme Court's intervention was that uncertainty over the assembly elections had been lifted. The Supreme Court averted a crisis. This was

⁵⁷ Chowdhary, N.K. *Assembly Elections 1994-95*, (New Delhi, Shipra Publications, 1998), p.235

⁵⁸ Chowdhary, N.K. *Ibid*, p.236

something that brought relief to those who appreciated Seshan's effort to stop a whole lot of nonsense that goes on in the name of elections.

ELECTION EXPENSES

Enacting measures to ensure purity of elections by insulating them against use of money power had a long history. In 1974, an amendment was made to the Representation of People Act. Under that amendment, every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent between the date on which he has been nominated and the date of declaration of the results there of, both dates inclusive. The incurring or authorizing of expenditure in contravention of Section 77 was deemed to be a corrupt practice.

The Election Commission had on September 1, 1994 warned candidates that serious note would be taken for non-submission and maintenance of proper accounts incurred in connection with contesting elections. In a communication to all the Chief Electoral Officers, the Commission said election expenses should be maintained by either the candidates, their agents or any person as authorized by them. Under the conduct of election rules, the nature of the expenditure, dates on which expenses were incurred, names of the payees, vouchers, bills, their serial numbers, addresses of the payees and the persons to whom amounts were outstanding was to be mentioned in the registers maintained by candidates. A standard proforma had been prepared by the Election Commission for this purpose. District Election Officers were directed to issue the standard proforma prepared for maintaining expenses immediately after nomination of the candidates. The Commission however reserved the right to "super check" the authenticity of the accounts. Income-Tax officials were engaged for the first time in the country to monitor the expenses of candidates in the state assembly elections. The Commission engaged 500 senior income tax officials for the purpose.⁵⁹

To ensure that the monitoring of the expenditure was flawless and did not lead to complications the expenditure observers were drawn from the Indian Revenue, the Indian Audit and Accounts and the Indian Economics Services. The Commission desired that the Central observers and the expenditure observers should prepare their reports

⁵⁹ Chowdhary, N.K. Ibid, p.237.

independently so that the Commission was able to scrutinize the candidates, expenditure return in the light of the observations and findings of the observers.

MODEL CODE OF CONDUCT

The Model Code of Conduct for guidance of political parties and candidates is a unique document, evolved with the consensus of political parties in India. It is a singular contribution by them to the cause of democracy and to strengthen its roots in the political system of the country. It has no statutory backing and many of its provisions are not legally enforceable. Public opinion is the moral sanction for its enforcement. Armed with such moral sanction, the Election Commission ensure its observance by political parties, including the ruling parties at the centre and in the states, and candidates in the discharge of its constitutional duties of superintendence, direction and control of elections to Parliament and state legislatures under Article 324.

Historically, it is the politically conscious state of Kerala which deserves the credit for adopting, for the first time, a code of conduct for observance at elections as early, in the legislative elections in February 1960. The Code of Conduct had undergone several revisions from time to time. With a view to ensure free and fair elections, T.N. Seshan formulated in 1991, Model Code of Conduct. Thus an agreement was reached between the Election Commission and the Union of India regarding enforcement of the Model Code of Conduct. Its provisions were:

That the Model Code of Conduct may come into force from the date of announcement of election and not from the date of notification thereof.

That the announcement of elections would be made ordinarily not more than 3 weeks prior to the date of notification.

The Code to which political parties and candidates adhere to voluntarily does not have statutory backing, but this has not affected the competence of the Election Commission to enforce it with the objective of holding free and fair election. The Code stipulates that the party in power, be it at the centre or in the states, shall ensure that no cause is given for any complaint that it has used its official position for the purpose of its election campaign. It appeals the ruling party to avoid issuing advertisements in newspapers and other media at the cost of public exchequer and misuse of the official

mass media during election period for partisan coverage of political news and for publicity.

The Election Commission announces the poll schedule two weeks prior to the notification of the elections and the code would come into force from the date the Election Commission announces the schedule. Though the Constitution does not specify the code of conduct, according to experts that does not detract from the legality of current code of conduct, said Constitution expert Fali Nariman: "The fact that the code of conduct is not a parliamentary law does not diminish its legal enforceability".⁶⁰

The model code so revised in 1979 was subsequently amplified in certain respects in consultation with the political parties from time to time. It was last so re-issued in January 1991 and constituted the present Model Code of Conduct. It still retains its form of 1979, though its contents, particularly of part VII, have undergone some significant changes. Part I of the Code lays stress on certain minimum standards of good behaviour and conduct of political parties, candidates and their workers and supporters during the election campaign. Part II and III deal with the holding of public meetings and taking out processions by political parties and candidates. Part IV and V describe how political parties and candidates should conduct themselves on the polling day and at the polling booths. Part VI exhorts them to bring their complaints to the notice of the observers appointed by the Election Commission for remedial action. Part VII deals with parties in power. It was only from the time of the tenth general elections to the House of the People in 1991, that the Election Commission became pro-active to ensure the observance of the model code in its true letter and spirit by all concerned.

On the eve of assembly elections, the centre and state governments were asked not to take policy decisions after the polls were announced. The central government was restrained from presenting the annual budget in Parliament on the traditional date in February 1996. Bihar government was directed to stay the implementation of a Bill till the assembly election was held. Inauguration of a railway track near Calcutta was questioned on the ground that it would influence voters in Bihar. Central government's decision to relax the age limit for other backward classes (OBCs) in the Civil Services Examination was taken as "clear and flagrant" violation of Model Code of Conduct.⁶¹

Seshan banned poll propaganda based on religion. He banned the sale of liquor and seized unlicensed guns during the election. Television programmes to analyze the election

⁶⁰ Saran Rohit, *Policing the polls*, India Today (September 6, 1999)

⁶¹ Election Commission of India, *Manual of Election Laws*, June 6, 1997, Nirvachan Sadan New Delhi,

trends and results before the completion of polling were banned. Seshan approved of the proposals to give legal sanction to the Model Code of Conduct.

SESHAN ON CORRUPTION

Seshan regretted that no electoral reforms had been carried out though the conditions demanded of them. According to him, basic standards should be set like a minimum educational qualification for a person to contest for a seat in the Assembly or Parliament. Lamenting that his suggestions for auditing of political parties had not been accepted, he said that contestants spent huge amounts during elections but showed negligible amount on paper. He advocated barring of convicted persons with criminal records from contesting. As regarding criminalization of politics, the situation was worst in Uttar Pradesh where 180 MLAs of the 428 member Assembly have been convicted of criminal offences and some of them even charged of involvement in multiple murders. Seshan said that there was a need to revitalize the bureaucracy in the country as the "backbone of the civil services had broken into pieces" and the civil servants were no longer neutral. The government can conduct 'operation administration' for reviving the bureaucracy. As it was stated, "corruption had engulfed all spheres of life and the high echelons of government services have also fallen prey to it".⁶²

INNER PARTY DEMOCRACY

On October 17, 1994 the Chief Election Commissioner issued orders that political parties which were not organized according to their constitution would be derecognized. The Commission pointed out that, "any dispute may result in a declaration that none of the rival group is the recognized party".⁶³ The question had arisen because of the demands made by S. R. Bommai and George Fernandes, both claiming to represent the Janata Dal, regarding the "wheel" symbol. The order virtually gave an ultimatum to the parties to constitute their various Governing bodies/Committees and elect their office bearers within four months. It however, failed to evoke the kind of response that it was presumed to bring forth.

⁶² Chowdhary, N.K. Ibid, p.243.

⁶³ Election Commission of India, Manual of Election Laws, June 6, 1994, Nirvachan Sadan New Delhi.

PRE-ELECTION TRANSFERS

It was a common tactics on the part of the government in power to transfer inconvenient officers occupying key positions before the elections. The Election Commission had as early as August 12, 1994 warned the states that it would not remain a silent spectator to such highjacking of free and fair elections. In an order to the Chief Secretaries and Chief Electoral Officers of these states, the Commission said it had been brought to its notice that ruling political parties in some of the these states had started undertaking a number of such activities which are likely to vitiate the possibilities of holding of peaceful, free and fair elections. The Commission said it had received complaints that, "inconvenient officers occupying statutory position in the conduct of elections, maintenance of law and order, are being replaced on a large scale based on political considerations."⁶⁴

POLITICAL LEANINGS OF SENIOR BUREAUCRATS

Much before the scheduled elections to the ten state Assemblies, Seshan asked the Chief Electoral Officers of the concerned states to send reports by September 1, 1994 on the "suspected political leanings" of all the District Magistrates, District Election Officers and Returning Officers. The states were Sikkim, Karnataka, Andhra Pradesh, Goa, Manipur, Bihar, Gujarat, Orissa, Maharashtra and Arunachal Pradesh. By another order, the Election Commission asked the Chief Electoral Officers and the Chief Secretaries to monitor strictly the entry of unauthorized persons into polling and counting centres.

MAKING THE CAMPAIGN SECULAR

The Election Commission on December 27, 1994 warned the election candidates and political parties including their leaders that it would even cancel an election and launch prosecution against those who indulged in making an appeal to voters in the name

⁶⁴ Chowdhary, N.K. Ibid, p.246.

of religion, caste or language. It also warned that a person found guilty could be imprisoned for three years and be disqualified from becoming a legislator.

The Commission in its order directed that the special observers be appointed for the first time, would do a constant monitoring of "such illegal tactics" of candidates and send regular reports to the Commission during the process of electioneering. The Commission had all the powers under Representation of the People Act to intervene and stop such "corrupt practices" and initiate legal action against the persons concerned, as such tactics constituted legal offence under the Representation of People Act and the Indian Penal Code.⁶⁵

POLL TREND ANNOUNCEMENTS

On March 10, 1995 the Election Commission banned broad casting or telecasting of programmes with analysis of poll results and projections and interviews of political leaders as it would influence voters in Bihar where polling was to continue till the end of March. In accordance with the Election Commission directive, All India Radio and Doordarshan decided to cancel all programmes on analysis and discussion planned by the electronic media as part of its coverage of the counting and results of Assembly elections. However by March 13, the Chief Election Commissioner, Mr. T.N. Seshan realized that this ban order had come under public criticism and received "adverse notice". The Commission decided that its order be "treated as totally withdrawn pending detailed examination".⁶⁶

Among other reform proposals, Seshan recommended fresh delimitation of the constituencies on the basis of the 1991 census and endorsed the government proposal to the constituencies reserved for the scheduled castes in the 71st Amendment Bill. As for the preparation of the electoral rolls, Seshan wanted the cut off period for the qualifying age of 18 to be the 1st of January, April, July, October rather than the first of January only. He had opted for an intensive revision every alternative year. In order to save cost he wanted computerization of the electoral rolls which can be used for Panchayat elections. Seshan wanted the power to deregister a political party in the event of flouting the mandatory undertaking to bear the faith and allegiance to the Constitution and to the principle of

⁶⁵ Chowdhary, N.K. Ibid, p.246

⁶⁶ Chowdhary, N.K. Ibid, p.247

secularism and socialism. One may not minimize the signal services Seshan rendered by his crusading zeal to purify the elections.

Viewed in this background, one has to evaluate the phenomenon of T.N. Seshan's crusade against electoral malpractices. With all his drawbacks and proactive postures, Seshan had established the authority of the Election Commission refusing to be pliable to the ruling establishment. He certainly could have done without some of his hectoring postures, but there is no gainsaying the fact that he has put on the defensive those who were tampering with the electoral process. The menace of booth-capturing, large scale rigging, scaring away genuine voters and abusing official machinery for the benefit of the party in office, all of this has not yet been eliminated but Seshan had minimized these aberrations beyond any doubt. In essence, he had clearly demonstrated that there are sufficient provisions in the existing laws and regulations by which a free and fair poll could be ensured to a very large measure. Seshan had in the process highlighted the public awareness and consciousness for vigilance in ensuring proper polling. In short, what Seshan had shown is that with all the shortcomings, it is possible to minimize the scope of corrupt practices in the poll practices. As Seshan pointed out, "if parties find the Election Commission's dictates an infliction, it's a self-imposed infliction. After all, they are responsible for frequent elections".⁶⁷

⁶⁷ Saran Rohit, *Policing the poll* India Today, September 6, 1999.

CHAPTER THREE

ELECTORAL REFORM IN THE POST SESHAN ERA

T.N Seshan retired in 1996, and his successor Chief Election Commissioner Dr. M.S. Gill and Election Commissioner G.V.G. Krishnamurthy and J.M. Lyngdoh continued the reforms. As he emerged out of the long shadow of his predecessor T.N Seshan, Gill had introduced a number of new interpretations of the Mode Code of Conduct.

- (i) he banned advertisement on television and radio
- (ii) disapproved political discussions on Kargil
- (iii) denied media entourage on the Prime Minister's official aircraft
- (iv) stalled amendment of cable TV network Act
- (v) stalled Doordarshan's plans to launch direct to home telecast
- (vi) objected to the governments implementation of the new telecom policy
- (vii) halted disinvestment of government shares in Air India
- (viii) prohibited use of Cable TV for campaigning fixed campaigning time between 6:00am and 10:00 PM.

Immediately after the announcement of 1998 poll, the Commission announced that it was the moral duty of all political parties to ensure that criminal and history-sheeters were not given the ticket. Strict instructions were issued to resident and liaison Commissioners of all states and Union Territories at Delhi to ensure that no part of state guest houses were utilized for any political activities such as party-meetings, press conferences and consultations. Hoardings containing messages and highlighting individual leader or leaders or incorporating any political message could not be displayed on public property. Defacement of property for use of posters, etc. was strictly prohibited.

In the RJD-RJP order, the Commission laid down a clear policy for the future that, "if people break away from a party to which they have been elected, they will not get the Commission's recognition till they have contested the next election on their strength and obtained their own mandate".⁶⁸

⁶⁸ Ahuja M.L., *General Election's in India: Electoral Politics, Electoral Reforms and Political Parties*, (New Delhi, ICON Publications, 2005) p.32.

The election law had also undergone some important changes, through the Representation of the Peoples' Amendment Act 1996. Some of the important changes were as under

1. *Disqualification on Conviction under the Prevention of Insults of National Honour Act 1971:* Any conviction under Section 2 (offences of insulting the Indian National Flag or the Constitution of India) or Section 3 (offences of preventing singing of National Anthem) of the Prevention of Insults to National Honour Act 1971 shall here after entail disqualification for contesting election to Parliament and state legislatures for a period of six years from the date of such a conviction.
2. *Increase in Security Deposits and Number of Proposers:* In case of election to the House of the People, the amount of security deposits had been increased from Rs. 500 to Rs. 10,000 for the general candidates and Rs. 250 to Rs. 5,000 for a candidate who is a member of Scheduled Castes or Scheduled Tribe. In the case of state legislative assembly, the candidate will have to make a deposit of Rs. 5,000 in case of general candidates and Rs. 2500 for Scheduled Castes or Scheduled Tribes. The amended law further provided that the nomination of a candidate in a parliamentary or assembly constituency should be subscribed by 10 electors of the constituency as proposers, if the candidate has not been set up by a recognized national or state party. In the case of candidate set up by a recognized party, only one proposer was sufficient.
3. *Restriction on Consisting election from more than two constituencies:*
4. *Listing of Names of Candidates:* Candidates shall be classified as (a) candidates of a recognized political parties (b) candidates of registered – unrecognized parties (c) other independent candidates. Their names in the list of contesting candidates and in the ballot papers would now appear separately in the above order and in each category they would be arranged in alphabetical order.
5. *Death of Candidate:* No election would be countermanded on the death of a contesting candidate. If the deceased candidate was set up by a recognized National or State Party, the party concerned would be given an option to nominate another candidate within seven days of the issue of the notice to that effect by the Election Commission.
6. *Prohibition of going armed to near a polling station:* Going armed with any kind of arms, as defined in Arms Act 1959, within the neighborhood of a

polling station is now a cognizable offence punishable with imprisonment up to two years or with a fine or both.

7. *Grant of Paid Holiday to Employees on the Day of Poll:* All registered electors, who are employed in any business, trade, industrial undertaking or any other establishments, shall be entitled to a paid holiday on the day of the poll. Any employer contravening the law shall be punishable with fine up to Rs. 500.
8. *Prohibition on Sale, etc. of Liquor:* No liquor or other intoxicants shall be sold, given or distributed at any shop, eating place, hotel or any other place within a polling area during the period of 48 hours ending with the hour fixed for conclusion of poll. Any person contravening the law shall be punishable with imprisonment up to six months or with fine up to Rs. 2,000 or with both.
9. *Time Limit for holding by-election:* By-election to the House of Parliament or a state legislative assembly would now be held within six months of occurrence of the vacancy in the House/Assembly. However, this stipulation would not apply where remainder of the term of the member, whose vacancy was to be filled, was less than one year or where the Election Commission, in consultation with the central government, certifies that was difficult to hold by election within the said period.

Clause (2) of Section 126 of the Representation of the People Act prohibits “display to the public any election matter by means of cinematography, television or other similar apparatus, during the 48 hours ending with the hour fixed for conclusion of the poll.”⁶⁹ Contravention of this is a penal offence punishable with imprisonment up to two years or with fine or both.

Accordingly, on January 21, 1998 the Commission placed restriction on the dissemination of information through opinion polls. The Commission barred publication of results of opinion polls for 14 days from February 14, 1998 and exit polls for 12 days from February 16, 1998. In its guidelines, it laid down that the agencies conducting the opinion or exit polls, while publishing the results, must indicate the size of the electorate and geographical spread of survey so conducted. They must invariably give details of methodology and the key professionals involved in the conduct of the polls.

Donning the environmentalists green mantle, the Commission decided to appeal to all political parties and candidate in 1999 not to use plastic posters and banners

⁶⁹. Ahuja M.L. Ibid, p.33

campaigning since it was felt that after the electoral battle was over they were likely to choke the drainage system and pose environmental hazard.

Similarly, the Commission rescheduled the election process in four other seats after it was discovered that the Returning Officers concerned had misled the Nationalist Congress party candidates resulting in the rejection of their nomination papers for Karnataka assembly seats. Earlier, Shiv Sena Chief, Bal Thackeray, was disenfranchised and debarred from contesting election for six years for misusing religion during an assembly by-election campaign in Maharashtra in 1987.

The Election Commission of India, had taken initiatives towards suggesting reforms in the electoral system in its publications '*Elections in India – Major Events and New Initiatives 1996-2000*'. The comprehensive proposals were as follows:

1. *Disqualification of a person found guilty of corrupt practice.*
2. *Enhancement of required minimum number of valid votes polled to save security deposits from 'one-sixth' to 'one-fourth'.*
3. *Compulsory maintenance of accounts by political parties and audit there of by agencies specified by the Election Commission.*
4. *Regulation and donation by companies to political parties.*
5. *Registration and deregistration of political parties – strengthening of the existing provisions.*
6. *Rationalizing size of electorate for each constituency.*
7. *Curbing of role money power in elections improvising existing arrangements.*
8. *Anti-defection law empowering the Commission to adjudicate and recommend action.*
9. *Empowering Election Commission to countermand an election on report from any election observer in addition to returning officer.*
10. *Empowering Election Commission to issue instructions and to make recommendations in connection with election.*
11. *Amendment has been made at the insistence of the Commission, to section 159 of the Representation of the People Amendment Act, 1998. Permitting the deployment of employers of public sector undertakings, autonomous bodies, statutory and non-statutory bodies aided by the government etc., for election duties even outside their state.*

12. *The Election Commission of India has recommended to the government that the Commission should have its own independent Secretariat for securing the real independence of the Election Commission of India.*
13. *Debarring persons properly charged by a court in respect of certain offences from contesting elections.*
14. *Empowering Election Commission on to frame disciplinary rules in respect of election offices.*
15. *Ban on transfers of elections officers on the eve of election.*
16. *Proxy voting for service votes.*
17. *Appointment of appellate authority in districts against orders of electoral registration officers.*
18. *Making consultation with election officers of compulsory for police arrangements during elections.*
19. *Making of false declaration in connection with elections to be an offence.*
20. *Rule making authority to be vested in Election Commission.*

From December 1997, central government raised the maximum ceiling on election expenditure by candidates, for Lok Sabha constituency to Rs. 150,00,000 and for Vidhan Sabha to Rs. 6,00,000. In October, 2003 this ceiling on election expenses was further enhanced for Lok Sabha constituencies to 25 Lakhs and for state assembly seats to 15 lakhs. Later, the Representation of People Amendment Act was further amended to allow each party to bill the travel costs of 40 campaigning leaders to the party account, which practically had no ceiling.

All these efforts still proved to be insufficient to ensure free and fair elections. It was felt that there should be a proper mechanism to check, expose, evaluate and eliminate the unwanted candidates. The increasing criminalization of politics continued to erode Indian democracy. In 1995, the Vohra Committee revealed a nexus between criminals and governance at all level. In 1997, it was estimated that 40 members of Lok Sabha and 700 MLAs out of 4,072 were charge-sheeted for serious crimes.⁷⁰

In 1999, the Law Commission suggested that even the candidates charge-sheeted of serious crimes should not be allowed to contest. In 2002, this view was echoed by the National Commission to Review the Working of the Constitution. The reports of this Commission would be addressed in the latter part of this chapter.

⁷⁰ Tyagi Ruchi, *Electoral Reforms: From Seshan to Krishan Murthy*, South Asia Politics, July 2004, p.30

The decade of 1990 saw three successive Lok Sabha elections. Elections to Parliament and state assemblies had become costly affair and in a way they stalled the developmental activities. In the 11th Lok Sabha election (1996) Rs. 542 crore was spent, in the 12th Lok Sabha election (1998) Rs. 750 crore and in the 13th Lok Sabha (1996), the amount was likely to be more than Rs. 1000 crore⁷¹. Hence it is the extraordinary and additional responsibilities of the electorate apart from political parties and the Election Commission to make- the polls fair and the whole exercise of their electoral power healthy.

Undoubtedly the role of Election Commission is the most important of all institutions that ensures a check on the domination of money and muscle power in election along with a catalytic role in the process of election. Nevertheless, these issues vitiating the electoral process are also connected with the broader question of social values and of the system itself. As has been already stated, after the coming of T.N Seshan, there was a lot of change in the office of the Chief Election Commissioner. Till Seshan was in office he used to be the most talked about person in any election, towering above candidates, making his presence felt on all the government, parties and the people. He was the person who discovered and made to operate the untapped power of the Election Commission hidden in the Constitution through the firm implementation of Model Code of Conduct and the photo identity cards during elections. Though after Seshan that initial momentum has slowed down but the trend continues and the office of the Election Commission and its wings in the states may not now be taken for granted.

Other than the Election Commission, several other state mechanisms like the Law Commission of India also gave several proposals for reform in the election process. The Law Commission of India in the 170th Report 1999, made a detailed report on electoral reforms. It waded the necessity for providing law relating to internal democracy within political parties. It proposed to analyze the views and conclusion regarding the list system. Debarring of independent candidates to contest Lok Sabha elections. Analysis of views and conclusions regarding amendments to the tenth schedule of the Constitution.⁷²

Regarding control of election expenses, the Law Commission, proposed to delete Explanation 1 to Section 77, with insertion of Section 78A (Maintenance, Audit and Publication of Accounts by political parties) and state funding of elections. It also proposed for framing of charges by Courts, as a new ground of disqualification. It visualized the procedure in case of perjury during judicial proceedings. It provided the

⁷¹ Roy A.K., *Role of Election Commission in Ensuring Fair Poll*, EPW September 11, 1999.

⁷² Deshpande J.V., *Reforming the Electoral System*, EPW, December 19, 1998.

ineligibility of candidates to contest election unless the candidates furnished the particulars regarding the lawful assets possessed by him or her and his or her spouse and dependent relations and the particulars regarding criminal cases pending himself or herself.

To overcome the malady of political instability caused by the frequent elections, the Law Commission came out with the solution that pre-poll alliances of fronts of political parties be treated as a single political entity. That once a candidate is elected as a member of the Lower House on the ticket of a particular party or front he/she must remain in that party or front until the dissolution of the House or till the end by resignation or otherwise. It has been recommended that if after election, one partner opts to move away it should be treated as defection. It will help discourage opportunistic alliances after election. The idea of extending support from outside will also be given up. The Law Commission sought to amend Subsection (c) of Section 8 of the Representation of the People Act 1951. The Subsection provided for disqualification of an elected member on the ground of "conviction" in cases related to the FERA violation, drug trafficking, TADA, misuse of religious institutions and unlawful activities among others.⁷³ The Law Commission proposed that farming of charges by a court itself should provide sufficient ground for disqualification of a member. At present a member can be disqualified only after conviction.

There are generally three main sources of threat to the fairness of the election process. The first is the advantage to the ruling party being seated in power. A second threat to the fairness of the election process stems from all kind of malpractices by party members and their supporters including bribery, intimidation, impersonation, double voting and so on, compounded by the entry of anti-social and criminal elements into the electoral arena and quite often, a nexus between political parties and anti social elements leading to criminalization of politics. The main threat to the fairness of the election process arises from the advantages of the possession of personal wealth. Strict limits to election expenditure have to be set according to guidelines approved by the Election Commission.

In August 1997 the Election Commission issued an order under Article 324 of the Constitution requiring all candidates for elections to Parliament and state legislatures to file affidavits about their conviction in cases covered by section 8 of the Representation of the People Act 1951, which disqualifies persons convicted of those specified offences. It

⁷³ Ahuja M.L, *Ibid*, p.48

was clarified that the conviction by trial court was itself sufficient to attract disqualification and even those released on bail during the pendency of their appeal against the conviction are disqualified for contesting elections.⁷⁴

According to sub-section (1) of Section 77 of the Representation of the People Act, 1951, every candidate at an election to the House of the People or a state legislative assembly, is required, either by himself or his election agent to lodge with the district election officer the account of his election expenses within 30 days from the date of the election of the returned candidate. The Election Commission can declare the candidate disqualified for a period of 3 years from the date of order if the candidate fails to lodge his account.

While a number of recommendation of various Committees discussed previously have been implemented and several amendments were made to the electoral laws, still there are several issues of electoral reforms which are engaging attention. The issues are discussed below under different sub-sections.

CRIMINALIZATION OF POLITICS

There has been widespread concern in India over a period of time about the growing menace of criminal elements entering the political arena. Parliament itself has been conscious of the alarming deterioration of ethical norms in public life during the past 50 years. At the special session of Parliament on the occasion of the Golden Jubilee of Independence celebrated during August-September 1997, the Lok Sabha adopted a resolution which urged, among other things, that “continuous and proactive efforts be launched for ensuring greater transparency, probity and accountability in public life so that the freedom, authority and dignity of the Parliament and other legislative bodies are ensured and enhanced. All political parties shall undertake all such steps as will attain the objective of ridding our polity of criminalization or its influence.”⁷⁵ In the present situation, persons endowed with real qualities of good intentioned leadership are inclined to refrain from taking part in national political life. Mostly under these circumstances, situation does not call for men who have capacity in constructive statesmanship or men

⁷⁴ Gupta Naresh, *Electoral Systems and Process in India*, Election Commission of India, (New Delhi, 2003) p.277.

⁷⁵ Ahuja M.L, *Ibid*, p.37

who are capable of bargaining for the favour of majority. Consequently, mostly wrong people have come in politics.

In this way, it was felt that if the situation is allowed to deteriorate, voters will have no choice but to prefer from amongst the tainted contestants. These candidates will not be able to provide good governance and show accountability towards people. As the numbers of such candidates grow, the numbers of good politician dwindle. In our Parliament, as the decision lies with the majority, right people, howsoever good they may be, would not be able to get their proposals put into action. It is commonly observed in this scenario that the political activities get dominated by people for whom politics is the means to power and money. The voters are getting disinterested which is reflected in the gradual dwindling of voters' turnout. The turnout of 50 per cent voters illustrates the deplorable state of democratic affairs. If this continues, democracy will no long hold good as it will alienate people from the process of decision-making.

The Vohra Committee submitted its report on 5-10-1993 and it recommended the creation of nodal agency under the Ministry of Home Affairs to collect and compile information received from various agencies. The Vohra Committee probed the criminal politician nexus. The Committee concluded that "the country was being run by a parallel government".⁷⁶ The growing criminalization of India's political system is encouraged by political parties who want candidates strong enough not to be intimidated by rivals. Related to the problem of criminalization of politics is the issue of politicization of the state. There is a lot of evidence to suggest that both the criminalization of politics and the politicization of the state have become much worse in the past few decades. The Vohra Committee suggested that criminals had a higher chance of being elected than non-criminals.⁷⁷ In some states like UP, the proportion of members with criminal records had exceeded 40%.

Measuring attacks on legislators is a useful indicator of political violence because their deaths, unlike those of town councilors and ordinary political workers, tend to be reported. However, Election Commission has made vigorous efforts to curb the menace of criminalization. Indian Law prohibits a person from contesting election if he or she has been convicted of any criminal charges. But these provisions have shortcomings. They are easily circumvented. The Election Commission purged the electoral process of criminal elements through a prior screening procedure involving submission of affidavit by

⁷⁶ Ahuja M.L, Ibid, p.37

⁷⁷ Steven I. Wilkinson, *Cleansing Political Institution*, Seminar, October,2001, p.24

individual contestants. The declarations by candidates were to be put up for public scrutiny. Any false statement could be contested by the candidates' opponents or even the electorate. Section 8 of the Representation of People Act bars those convicted in a host of criminal offences from contesting.

Candidates with a criminal record were not allowed to contest the 12th General Election as the Election Commission announced. To check the entry of criminal into the electoral field, "Special Watch" on certain sensitive parliamentary constituencies was mounted to curb the growth of criminal elements. About 1800 election observers, including 600 expenditure observers all senior level government officials, were assigned a computerized code for easy identification and supplied relevant and latest guides as well as rule books to make them self-sufficient.⁷⁸ The Chief Electoral Officers were asked to furnish details of all the candidates so that a proper vigil could be maintained. The observers, key police and administration officials were asked to look up only to the Commission and discharge their duties in a neutral and fearless manner. To bar the entry of the criminals in the electoral arena, the Commission appealed to all the recognized political parties to nominate "ideal" persons for contesting the polls to ensure that people under appeal or on bail are kept out of legislature. In spite of all this, the Election Commission was helpless. Of the 72 candidates with criminal proceedings against them, 27 were elected to the 12th Lok Sabha. The 14th Lok Sabha had a number of tainted MPs. Because of the compulsions of coalition government, some of them with criminal record have been included in the Union cabinet. As stated, "in a notorious case recently, Shibu Soren of the Jharkhand Mukti Morcha had to resign his cabinet position when a warrant for his arrest in a murder case was issued".⁷⁹

Citing the very recent case of the 2004 national elections, very disturbing example of criminalization of politics has been brought to the fore. In the district of Siwan, Bihar, the Rashtriya Janata Dal (RJD) candidate who was one of the most notorious offenders was Mohammad Shahbuddin. Criminal cases pending against him ranged from murder to extortion, kidnapping, violation of prohibitory orders, and theft. As many as 32 candidates with pending charges contested the second round of general elections in Uttar Pradesh during May 2004. As stated, "one candidate Upesh Singh Chauhan, the Bahujan Samaj Party nominee from Jalesar had as many as 68 criminal cases pending against him. Atiq Ahmad with 38 cases, Babloo Srivastav with 41 cases were two known dangerous

⁷⁸ M.L Ahuja, *Ibid*, p.38

⁷⁹ Verma Arvind, *Policing Elections in India*, India Review, July-October, 2005, p.360

criminals contesting the election in UP. A number of candidates in Bihar like Kali Pandey of Gopalganj, Rajen Tiwari of Motihari, Munna Shukla of Vaishali and Suraj Bhan of Mokamah were elected while in prison and spent their term in jail rather than the assembly since they were never released”.⁸⁰

One very interesting phenomenon that is observed in India is that every political party resists the demand to curb entry of people charged with criminal offences. The reason given is that false criminal cases would be lodged to debar a genuine person from contesting and that many cases were politically grounded. Politicians saw advantages in harbouring offenders who helped win elections by force, through booth capturing and voter intimidation. As a result of it criminals, once victorious, are wooed by political parties looking for majoring support in the national and assembly elections. Elected criminals still gain ministerial birth.

Nevertheless, continuous efforts have been made by the Election Commission, civil institutions and state mechanisms to ensure a free and fair election to make democracy a success in India. Taking the case of Parliament and assembly elections in Orissa on April 2004, a few indicators like the educational backgrounds, criminal records of candidates, their assets and liabilities gave enough evidence to suggest the fact that corruption, violence, criminalization and politicisation of state institutions have been rampant. Apart from this the data collected from five other states for the 2002 and 2003 Assembly Elections further this point more resolutely. It suggests that the menace of criminal offences did not cease in the decade of the 1990s alone. It has further spread its tentacles.

Booth capturing is the forcible casting of votes in favour of particular candidate or the use of force to prevent genuine voters from exercising their rights to vote. As has been observed, Indian elections are generally marred by violence and booth capturing. The campaigning phase, called “electioneering” in India is short barely two weeks before the poll date. The intensity and media attention reaches a fever pitch. Parties use catchy slogans and banners to convey their viewpoints. Sometime, the process includes running negative campaigns to denounce the opposition. Clashes between the opposing parties and their workers are common features of the elections. All candidates also organize processions, hold rallies and convene mass meetings. Prominent political leaders travel throughout the length and breadth of the country, addressing large public meetings for

⁸⁰ Verma Arvind, Ibid, p.360

their party candidates. Further large scale campaigning requires large financial resources that go much beyond the limit stipulated by the Commission. The role of money has become significant in Indian elections. It is observed that “the culture of corruption is deeply intertwined with the ways in which power is won, exercised and retained in India’s democracy”.⁸¹

Booth capturing has become a serious problem especially in states like Bihar and Uttar Pradesh. It is however very interesting to note that booth capturing now occurs in systematic and planned manner. In large parts of India caste and class affiliations and the local patterns determine voting behaviour. People vote for candidates belonging to their own caste, although different castes do build alliances. Local leaders play critical role in mobilising support, specific candidate or political party through the offer of incentives. These leaders act as vote bank and play an important role in getting people from their area to vote for a specific candidate or political party. The logic behind booth capturing is simple. If these leaders support a particular candidate then booth capturing becomes easier. The leaders use their influence and power to have votes polled for their candidate. In many places only a pre-determined electorate has the opportunity to cast their vote. In 2004, some special officers appointed by the Election Commission found blatant evidence of violence, intimidation and silent booth capturing in the Chapra constituency from which Rashtriya Janata Dal leader Laloo Yadav contested.⁸² The inquiry prompted the Election Commission to invalidate the results and order re-polling. However, in most cases, it is not easy to detect such well organized operations.

The likelihood of some violence somewhere is almost a given. Hence the deployment of force has to be done carefully. The Indian police on election duty functions at the district level under the general control and guidance of District Magistrate who is the chief administrator and election officer in the district. The absence of proper force only would leave open the opportunity for booth capturing or preventing others from reaching and casting their votes. The Election Commission bans all pre-poll transfer of the district administrator in order to avoid any loophole in the conduct of elections.

⁸¹ Verma Arvind, Ibid, p.363

⁸² Verma Arvind, Ibid, p.368

STATE FUNDING OF ELECTIONS

In his address to the joint session of the Parliament at the beginning of the budget session in March, 1998, the President laid stress on the need for electoral reform.

“One of the cause of corruption and corrosion of values in our polity, as well as criminalization of politics, stems from flaws in the electoral process. To ensure free, fair and fearless elections and to prevent the use of money and muscle power, government will introduce a comprehensive Electoral Reforms Bill for which considerable ground work has already been done.....”⁸³

In pursuance of the decision taken in the all party meeting on electoral reforms held on the 22nd May, 1998 ,the Government of India constituted a high powered Committee on State Funding of Elections under the chairmanship of Mr. Indrajit Gupta. The summary of the recommendations of the Committee are set out in brief below:⁸⁴

1. State funding elections, i.e. for grant of state subvention to political parties is fully justified in order to establish such conditions where even the parties with modest financial resources may be able to compete with those having higher resources, on a level playing field and with a fair chance of success at the hustings.
2. State funding should be confined to only the parties recognized as national or state parties.
3. Political parties have to begin with, to be contended with partial funding by the state.
4. Any state funding should be in kind and not in cash.
5. All facilities to parties at state cost like free accommodations, telephone, free air time on Doordarshan, AIR, private channels, petrol, paper for election literature, postal stamps, 5 copies of electoral rolls for his constituency, loudspeakers, refreshments etc.
6. To avoid ostentatious show of money power, reasonable restriction should be provided by law on wall writings, banners, flags, vehicles, public meetings and posters.

⁸³ Gupta Naresh, Ibid, p.303

⁸⁴Gupta Naresh, Ibid, p.304

7. Political parties should compulsorily submit their annual accounts showing all details of receipts of expenditure to the Income Tax Authorities and Election Commission.
8. The ban on donations by government companies for political purposes should continue.
9. The question whether election expenses of political parties should be included or not in the accounts of election expenses of candidates may be decided by the Parliament.
10. Periodic revision of election expenses may continue to be done by the central government in consultation with the Election Commission.
11. A separate election fund may be created for meeting the expenses of state funding of elections. Share between the central and the state on 50:50 basis.

There were several Committees that proposed the state funding of elections in the past also. As already discussed, the Goswami Committee (1990) had recommended for state funding to the candidates belonging to recognized political through material supports. Jagannadha Rao Committee as early in 1971 had opted for state funding. Inter - Parliamentary Council, 1994 had also proposed state funding of elections.

Law Commission in its 170th Report in January 1999 had also endorsed the recommendations of the Inderjit Gupta Committee.⁸⁵

1. There should be appropriate provision on state funding both in the Constitution of India and the relevant legislations, Representation of People Act 1951.
2. The state funding should be available to both the candidates political from the party and independent candidates without discrimination.

It is well recognized in all modern democracies that political parties play essential role in any form of democratic governance and their existence is necessary for sustaining a representative democracy. These act as channels for participation of citizens in the governance of the country. Political parties are performing the vital public functions of sustaining democracy. And for performing such public function they need to be financed from public funds.

Similarly in the case of India raising funds for elections is a pressing imperative for politicians and in turn it is the most powerful cause of political corruption. The Hawala Scandal that broke in January 1996, focused public attention on both corruption and the

⁸⁵ 170th Law Commission Report, PP.49-53, <http://www.nic.in/lawcom/lc170.htm>

unlikely imperative for politicians of raising election funds for their parties and themselves. So did the *tehelka.com* website's expose of corrupt fund raising in connection with arms deal in March 2001. They highlight the need for reform of party and election finance, including the possible option of state funding of elections. Political finance reform is also linked to the stability of democracy because if election funds are raised by corrupt means, cynicism about parties and politicians can become widespread.⁸⁶

Political parties basically need funds for three activities: election campaigns, inter-election maintenance of their organizations and political activities and support of research and information infrastructure for the parties. Historically, this has made political parties essentially dependent on big business and wealthy individuals. The need for election finance reform was mainly felt due to corruption scandals, rising campaign costs and public concern for equal opportunity for political participation. In India, it was widely felt that a free for-all system of election fund raising gave excessive power to wealthy individuals and big business. Traditionally, political parties in India financed themselves through private donations. Company contributions to political parties are legal subject to certain restrictions, and have to be declared in the company's accounts. There are limits on election expenditure since the Representation of the People Act 1951. Company donations to political parties are banned with effect from 1969. An important development was the amendment of Representation of People Act in 1975 to nullify the Supreme Court's judgments in the *Kanwar Lal Gupta versus Amar Nath Chawla* case that party spending on behalf of a candidate should be included in election expenses for the purposes of the ceiling.⁸⁷ Explanation 1 to section 77(1) of the Representation of the People Act was appended, by which party and supporter expenditure not authorized by the candidature did not count in election expenses. This made the limit on election expenditure farcical.

Political parties were exempted from income and wealth taxes from April 1979 provided they filed annual returns including audited accounts and identities of donors. The main developments in the 1980s was the amendment of the Campaigns Act in 1985, which by Section 293A once again allowed company donations to political parties and individuals under certain condition, most importantly a ceiling of five percent of average net profit over the previous three years. It was subject to approval by the board of directors and disclosure in the profit and loss account. However, the overwhelming majority of the contributions have continued to be key to the black money route.

⁸⁶ Sridharan E., *Reforming Political Finance*, Seminar, October, 2001, p.29

⁸⁷ Sridharan E., *Ibid*, p.32

Any reform of political finance has to be not only in the public interest but also in the interest of existing political parties to have a realistic chance of acceptance. The party systematic changes have been in progress since 1989 leading to the emergence of multi party system. It can be said in a way that best available option would be the comprehensive state funding of elections only. It should be complemented by the limits on expenditure and reporting and disclosure requirements. The state funding is not the panacea to the corrupting influence of money in the electoral process. It is necessary to adopt other measures irrespective of whether state funding is provided or not.

ELECTION VOTING MACHINE (EVM)

In order to prevent election fraud, violence and criminalization ballot manipulation and booth capturing the Election Commission of India made a major innovation with the introducing of electronic voting machines. Indistinct marking or uncertainty about the symbol allotted to a particular candidate causes confusions amongst the voters. More significantly, it leaves important discretionary decisions in the hands of officers who determine whether the vote was validly cast in favour of particular candidate.⁸⁸ In comparison, the stamping of a ballot paper is a simple process that barely takes any time. Criminals have, over the years, perfected the techniques of capturing booth, snatching ballot papers and stamping as many as they could handle before the arrival of the police. These problems prompted the Election Commission to deploy Electronic Voting Machine (EVMs).

In India, two public sector companies first developed concept of Electronic Voting Machines (EVMs) in 1997, BEL and ECIL. On an experimental basis the first prototypes were built in 1980 and were put on a number of tests.⁸⁹ It was tried out in a by-election in Kerala in 1981, but the result was challenged by a political party and consequently struck down by the Supreme Court on the grounds of the Representation of People Act, which provided only for paper ballots.

The Representation of the People Act 1951 was amended to facilitate use of electronic voting machines in election by inserting Section 61-A with effect from March 15, 1989. The Election Commission ordered 150,000 EVMs at a cost of Rs. 750

⁸⁸ Verma Arvind, Ibid, p.369

⁸⁹ Ahuja M.L, Ibid, p.42

million. EVMs could not be introduced in the country due to lack of finances for nine years. In 1999, the EVMs were tried in 46 Lok Sabha constituencies spread over 17 states and Union Territories for the speedy dissemination of detailed results on its website and the internet. The results from the constituencies where EVMs were deployed were declared a few hours after counting began at 8 am on December 6, 1999 and ended at 5:30 pm. Given the excellent communication network that had been put in place, the lead positions in the various constituencies were known across the country by the afternoon of October 7, 1999 through television and radio.

Electronic Voting Machine is a simple electronic machine that is reliable, easy to operate and difficult to manipulate. The machine registers one vote at a time and is designed to accept only a fixed number of votes in stipulated time period. This ensures that even if criminals overpower the polling officer, it will still take them almost the whole day to cast all the votes. This time period is large enough for police and polling supervisors to reach the venue and prevent forcible casting of votes. Electronic counting and instant display of results are further advantages of this machine.

A study conducted by the Centre for the Study of Developing Societies concluded that EVMs were more efficient and easier to handle and did not compromise fairness. During the 1999 general election, EVMs were used in 45 parliamentary constituencies. In the state elections of 2001, only EVMs were used and there was no problem. In this way, in the 2004 general elections, EVMs were put in use throughout the country. Almost 1.075 million EVMs in 2004 general elections prevented booth capturing on a large scale. It is observed that “EVMs seek to make election less expensive than in the past throughout the conservation of paper the polls are more environment friendly.”⁹⁰

As commonly observed, election process is a massive mobilization exercise with approximately four million polling staff and the participation of one million security personnel. The training of five million people in the procedures, contingencies and nuances of election process is a formidable task. According to the Election Commission in 2004 election 670,153,348 persons were trained and made aware of use of the EVMs.⁹¹

The Commission has made a policy decision to spread the voting over a number of days. This helped in moving security forces from one part of the country to another and in strengthening policing arrangements at sensitive polling booth. Furthermore the Commission has also begun deputing officers from one state to another in order to

⁹⁰ Verma Arvind, Ibid, p.370

⁹¹ Ahuja M.L, Ibid, p.44

maintain their autonomy and impartiality. Owing to the political interference in the operation of local police forces, the Election Commission is deputing large numbers of parliamentary forces in sensitive areas to ensure independence of action. Moreover, once the elections are called, all officers, requisitioned from any government, quasi-government or other organization function under the exclusive control of the Commission. This enables greater control and supervision over the personnel and helps shield them from political influences. As a preventive measure, district police authorities also collect firearms from the citizens and keep a strict watch over illegal sale of bullets and cartridges from licensed shops. Many suspected criminal, as well as those with existing criminal records, are detained under preventive detention laws for the duration of the elections. The police also serve notices under section 107 and 109 of the Criminal Penal Code to those suspected of causing possible disruptions during this period. Since candidates hire criminal to intimidate their opponents and cast forcible ballots in their favour, the police also proactively check road crossing, borders and known establishment to deal with such individuals. The combination of these factors and experience gained from previous elections were helpful in reducing election-related violence and malpractice. Even in the violence-prone state of Bihar, problems associated with conducting elections appeared to have been reduced in recent elections. The then Election Commissioner, T.S Krishna Murthy had claimed, “as compared to the last parliamentary elections, the extent of violence was less”.⁹²

⁹² Verma Arvind, Ibid, p 371

TABLE 3.1
2002 AND 2003 ASSEMBLY ELECTIONS
SELECTED DATA FROM FIVE STATES PERTAINING TO CRIMINAL OFFENSES

Source: Affidavits filed by Candidates themselves as per Supreme Court Directives.

Reports of The 2004 Elections in India (ADR)

		BJP	Congress	BSP^s	NCP^s	SJP^s	Others
Gujarat 2002 (181 Assembly Constituencies)	No. with criminal offenses	34	29	-	-	-	75
	Percentage of candidates	19%	16%	-	-	-	-
Delhi 2003 (70 Assembly Constituencies)	No. with criminal offenses	18	12	5	4		32
	Percentage of candidates	26%	17%	7%	6%	-	
Rajasthan 2003 (200 Assembly Constituencies)	No. with criminal offenses	40	15	-	1		50
	Percentage of candidates	20%	7.5%	-	0.5%	-	-

Madhya Pradesh 2003 (Data from 134 out of 320 Assembly Election)	No. with criminal offenses	45	10	15	7	14	62
	Percentage of candidates	34%	7.5%	11%	5%	10%	-
Chattisgarh 2003 (90 Assembly Constituencies)	No. with criminal offenses	21	1	5	10	-	35
	Percentage of candidates	23%	1%	6%	11%	-	-
Overall	No. with criminal offenses	158	67	25	22	14	254
	Percentage of candidates	23%	10%	\$	\$	\$	-

* Percent of candidates in the party criminal offense with respect to total seats for which data was available

\$ Did not contest all seats

TABLE -3.2

ELECTION WATCH: STATE-WISE SUMMARY FOR 2004 LOK SABHA ELECTIONS

Si. No.	Name of states	Constituencies			No. of candidates			Candidates with pending criminal offences		Candidates with assets more than Rs. 1 Crore		Candidates with NIL assets		Candidates with liabilities more than 5 lakh		Candidates with no PAN	
		Total	Covered	%	Total	Covered	%	No	%*	No	%*	No	%*	No	%*	No	%*
1.	Gujarat	26	26	100	162	162	100	26	16	13	8	11	6.7	18	11.1	86	53
2.	Maharashtra	48	48	100	412	412	100	72	17.4	57	13.8	43	10.4	58	14	20	4.8
3.	Karnataka	28	28	100	172	172	100	17	9.8	28	16.2	37	21.5	0	0	120	69.7
4.	Kerala	20	20	100	177	177	100	25	14.1	9	5	10	5.6	1	0.5	124	70
5.	Andhra Pradesh	42	42	100	279	79	28.3	4	5	0	0	0	0	2	2.5	-	-
6.	Union Territories	6	6	100	67	41	61	7	17	6	14.6	0	0	2	4.8	22	53.6
7.	Orissa	21	21	100	100	100	100	9	9	9	9	10	10	14	14	63	63
8.	Jharkhand	14	14	100	182	103	56.5	33	32	0	0	5	4.8	7	6.7	56	54.3
9.	West Bengal	42	42	100	355	347	97.7	81	23.3	9	2.5	1.8	5.18	19	5.4	190	54.7
10.	Mizoram	1	1	100	3	3	100	0	0	0	0	0	0	1	33.3	3	100

11.	Manipur	2	1	50	12	5	41.6	0	0	0	0	-	-	0	0	4	80
12.	Nagaland	1	1	100	5	5	100	0	0	2	40	0	0	0	0	5	100
13.	Arunachal Pradesh	2	2	100	13	10	76.9	0	0	2	20	0	0	0	0	10	100
14.	Assam	14	8	57	116	68	58.6	1	1.4	2	2.9	0	0	0	0	49	72
15.	Bihar	40	40	100	462	462	100	93	20.1	31	6.7	28	6	34	7.3	-	-
16.	Chattisgarh	11	11	100	102	102	100	12	11.7	5	4.9	7	6.8	4	3.9	82	80.3
17.	Madhya Pradesh	29	29	100	294	294	100	37	12.5	15	5.1	12	4	0	0	10	3.4
18.	Uttar Pradesh	80	80	100	1138	362	31.8	71	19.6	83	22.9	6	1.6	54	14.9	196	54.1
19.	Rajasthan	25	25	100	185	185	100	23	12.4	24	12.9	4	2.1	22	11.8	-	-
20.	Delhi	7	7	100	129	100	77.5	7	7	9	9	2	2	9	9	65	65
	Total	459	452	98	4365	3189	73	518	16	304	9.5	292	9.1	245	7.6	1105	34.6

States not included in the Election Watch

1	Goa	2	-	-	16	-	-	-	-	-	-	-	-	-	-	-	-
2	Haryana	10	-	-	160	-	-	-	-	-	-	-	-	-	-	-	-
3	Himachal Pradesh	4	-	-	23	-	-	-	-	-	-	-	-	-	-	-	-
4	Jammu Kashmir	6	-	-	83	-	-	-	-	-	-	-	-	-	-	-	-

5	Meghalaya	2-	-	-	5	-	-	-	-	-	-	-	-	-	-	-	-
6	Punjab	13	-	-	142	-	-	-	-	-	-	-	-	-	-	-	-
7	Sikkim	1	-	-	4	-	-	-	-	-	-	-	-	-	-	-	-
8	Tamil Nadu	39	-	-	571	-	-	-	-	-	-	-	-	-	-	-	-
9	Tripura	2	-	-	12	-	-	-	-	-	-	-	-	-	-	-	-
10	Uttranchal	5	-	-	54	-	-	-	-	-	-	-	-	-	-	-	-
	Total	84	-	-	1070												
	Grant Total	543			5435												

* Percentage calculated with 'No. of Candidates Covered' as the denominator.

Source: SEMINAR 551 – July 2005

ROLE OF CIVIL INSTITUTIONS

A notable feature of policing the elections has been the involvement of non-governmental organizations or (NGOs) taking an active step in the electoral reforms. Starting from Gujarat elections in 2002 to the recently concluded Bihar elections 2005, the NGOs have played an active role. The NGOs have started keeping surveillance over the conduct of individual candidates and political parties to ensure that they follow elections rules. Citizens groups have become active in bringing about a cleaner electoral process like the Association for Democratic Reforms (ADR), Lok Satta in Andhra Pradesh, Nav Bharat Jagriti Kendra in Bihar, Lok Chetna Manch in UP etc. The role of these civil institutions in monitoring the elections and involving people in the democratic process is gaining ground in India.

It was the initiative of the Association for Democratic Reforms that after a great deal of protracted legal battle, all candidates at the time of filing their nominations are required to disclose their antecedents including the criminal past and cases pending against them, assets and liabilities along with educational qualifications. This was essentially done for the benefit of electors to enable them to make their informed choice. Statistics compiled by ADR reveal that in the general elections to Lok Sabha 2004, out of 3182 candidates surveyed, 518 i.e. 16.28 per cent cutting across all major political parties has criminal antecedents. Out of this, the study revealed that nearly 115 made it to the Lok Sabha.⁹³ Strictly, as per law, disqualification to contest an election arises only after conviction. But due to lengthy legal procedures, persons who have been charged with grave and heinous offences, remain free to contest till they are convicted and their appeals are finally disposed of. The existing legal provisions have been found inadequate to meet this menace.

The Election Commission in its various proposals for electoral reforms has suggested that any person, who is accused of serious criminal offences and where the Court is, *prima facie*, satisfied about his involvement in the crime and consequently framed charges against him, should not be allowed to contest an election till he is cleared of such charges by the Court. In order to safeguard the candidates against the motivated cases, it was felt that cases which were filed prior to six months before any election alone

⁹³ Third National Conference on Electoral Reforms Organized by ADR and Lok Samvad Valedictory address by B.B Tandon, Patna, 12.02.2006, p.5

should lead, to such disqualification. This view was reiterated that the political parties should follow a self-evolved code to deny ticket for contesting elections to the people with criminal background.

The National Commission to Review the Working of Constitution (NCRWC) came out with a consultation paper in 2002 on *Review of the Working of the Political Parties* specially in relations to elections and reform options that are enlisted below:

The suggestion for reform was placed in three broad categories. The first category attempt to tackle the problems within the boundaries of the current electoral system. The second category took a stand that the present electoral system itself needed to be modified. The third approach struck at the root of the problem of the terrible high costs of elections and the question of funding legitimate funds for the purpose.

According to the report, the elected representative was too far removed from the people as there was an average of one million voters for each Lok Sabha constituencies spread over a large geographical area. To influence the choice of such a large and geographically dispersed number of votes, social action on the part of the candidate is totally inadequate. This created scope for using both money and muscle power. These huge election expenses bred corruption. This also meant that the electors were in no position to hold the candidate accountable nor does the candidate consider himself accountable to the people.

Hence the report strongly favoured the Gandhian model where direct elections should be held on the basis of adult franchise at the level of Panchyats and other local bodies. Panchayats and other local bodies elect the Zila Parishads and they could together elect the state legislature. These three could elect the Parliament and in the last analysis the four of these could elect the President. The President, the Prime Minister and the Chief Ministers in order to be elected should each necessarily secure no less than 50% +1 of the votes cast.

Another issue was the Electoral Rolls and voter ID. The report pointed out errors in urban electoral rolls. Through these defects, political parties and influential persons managed large-scale registration of bogus voters, or large scale deletion of names of “unfriendly” voters. It was suggested that if this was checked out, at least some of the other problems would thin out. Goswami Committee had suggested that more stringent punishment should be provided for breach of official duty in this regard. The report suggested that while commending the 1996 Amendment to the Prevention of People Act, one needs to recognize that punishment was not a substitute for systematic corrections.

The ID card apart from all necessary personal details should list one visible identification mark. The impact of proper electoral rolls and voter ID, together with Electronic Voting Machines will be first felt at the local level and will help create a level playing ground for state and national elections. It will send a message through the system that the country takes all electoral exercise seriously, which is by definition designated to give people voice.

The report suggested that as a matter of policy, the use of Electronic Voting Machine should be increased at as rapid a rate as possible. Any doubts about this technology were amply removed during the deliberations of the Goswami Committee. The Machine was testified to be used without any misgivings. EVMs help in preventing large scale riggings as the machine locks up and will permit only, one hit every so many seconds. To deal with the issues like booth capturing and rigging other proposals included:

- (i) Under Section 58-A of the Representation of People Act, the Election Commission should not only be empowered to countermand the election and order a fresh election, but also should be empowered to declare the earlier poll to be void and order only a re-poll in the entire constituency, instead of a re-election there depending on the nature and seriousness of each case.
- (ii) Election Commission may also be empowered to investigations of booth capturing and other violations of the electoral law through the central or state police investigating agency.

To further discourage booth capturing the Election Commission might consider having some form of tamper-proof video cameras or surveillance equipment as a deterrent in sensitive areas. The punishment to offenders should be swift and heavy.

The then Chief Election Commissioner M.S Gill, had suggested that in order to free the electoral process from the partisan influences of political parties in power and the misuse by them official machinery in the states, President's rule should be promulgated all over the states for the duration of election. He had the Bangladesh experiences in view. The report of the National Commission on the Constitution Review suggested that the primacy of the powers of the Chief Election Commissioner, though technically confined to election processes during President's rule might tend towards its own ascendancy in the governing process.

Campaigns which are crafted to create or exacerbate tensions between communities and /or to incite feelings of hatred on the basis of caste, community etc. attracts disqualification at present but effective implementation of laws is lacking. This

deserves the highest degree of attention and in addition these offences should be punishable with mandatory imprisonment for three years instead of being discretionary as currently provided under Section 125 of Representation of the People Act, 1951. However, if the basis of 50%+1 vote for the winning candidates is applied then the candidates and political parties would have to broaden their appeal and in their own self interest their agenda and rhetoric will change.

The NCRWC also suggested for the Election Commission to increase the number of Observers in sensitive constituencies and take rapid action on their request under Section 20B of the RPA as amended in 1996. As stated “a candidate contesting in Bihar had 174 criminal cases against him and he was on the most wanted list not only in Bihar but in Delhi, UP and other states. Yet following all rules and regulations he is openly campaigning”.⁹⁴ This visible pressure of many criminals is in fact a very large factor in the loss of legitimacy of politicians as a whole. This is extremely dangerous for the country because apart from distorting the political culture of the country, criminal elements progressively get to influence leadership governance.

The report mentioned that, ‘currently if a member of any House is convicted, there is no action for three months and if the case goes for an appeal within this time, then no action is taken till the appeal is disposed off. This may not be very justified. If an elected representative gets convicted on charges related to specific crimes, he should be required to withdraw until he is cleared. It is also worth considering that when political parties are seen to abet criminalization by fielding criminals, there should be some provision to enable action against them including their derecognition.’

The Commission suggested that the costs of elections can only come down if the people so elected are unable to make money out of their position. This would require reform in other and more critical areas. The report was critical of the view that states funding in a national election should be created out of the consolidated fund of India, because the necessary control mechanisms simply do not exist. The Commission felt that there was a need to create more and more transparency in the receipt and spending of election expenses. If the politicians were made to list the sources of their revenue, each contribution that they show could be checked back by the income tax or authorities.

As for the disqualification on the ground of corrupt practices and election petitions, the Commissioner’s report suggested resorting to the position before the 1975 amendment

⁹⁴ http://lawmin.nic.in/ncrwc/finalreport/v2b1_9.htm

to RPA, 1951. The Representation of the People's Act 1951, Section 8-A, provides for disqualification on ground of corrupt practices. The current practice was that once the High Court hands out the judgment on an election petition holding the candidate guilty of corrupt practices, the case goes to the secretary of the concerned state legislature or the Secretary General Lok Sabha or Rajya Sabha, as the case may be. It is then forwarded to the President who in turn forwards it to the Election Commission. Only then does the Election Commission get jurisdiction to tender its opinion to the President based on which the disqualification order is issued. The Election Commission had suggested that the President should determine the period of disqualification on the direct opinion of the Election Commission and avoid the delay experienced.

Election petitions remain pending for years together. There are many cases where the petitions are not decided within the term of House after which it loses most of its significance apart from having subverted the rules and law in this regard. For example, there were 52 petitions relating to 1996 Lok Sabha of these 13(27%) are pending.

As regards defections and the Tenth Schedule the National Commission to Review the working of Constitution supported the view point of the Law Commission. It had also felt that the rule to define defection should be clear and unambiguous. If a candidate has an insurmountable problem with his party, he should resign and go back to the people for a fresh mandate. He cannot be permitted to use the old mandate to live in with new partners on whose ticket he might even have forfeited his deposit. This is a negative power. There should be no debate and no discretion for the Speaker or anyone else to interpret it. The disqualification for a defector should be automatic and immediate and his vote should be annulled.

In the same vein, just to ensure that the party machinery does not misuse this power either, what constitutes defection should be redefined. The whip should only be applicable for any matter where the life of the government is in danger and not to all voting as at present under the Tenth Schedule. The question of defection should arise when a legislator actually changes allegiance or defies party directives or critical issues of affecting its life. The report also endorsed the view of the Law Commission that, when a person becomes a member of a political party, accepts its ticket and contests and succeeds on that ticket, he renders himself subject to the discipline of his party. Therefore the concept of "splits" as provided in the Tenth Schedule should be done away with.

For the delimitation of constituencies, the report suggested that the delimitation exercise was not only important for Lok Sabha constituencies but equally so for assembly

constituencies. Since 1971, the number of seats in the Lok Sabha allocated to different states was frozen upto the year 2000. No fresh delimitation Commission has been formed. A fresh delimitation exercise of Lok Sabha would place those states, particularly the Southern States, which had carried on a successful family planning programme at a considerable disadvantage compared to the others. It would reward the states with poor population control by granting them a bigger representation in the Parliament. The delimitation exercise could be done by the Election Commission in coordination with the State Election Commission, the National Commission on the Review of the Working of Constitution suggested in its report further.

The report also talked of the problems of instability, hung Parliament and Assembly and their relation to the electoral laws and process. The last few decades have seen a great deal of political instability in India. During the last ten years, there have been seven governments at the Union level. Being minority government, they bring negative repercussions on the quality of governance because to cobble up a workable majority to form government, compromises had to be made and ideology or notions of quality of governance may some times take a back seat. In the end, it is the citizen who is the victim of all the misgovernance.

The argument about independent candidates to be discouraged if not altogether barred from elections was based on the fact that out of 1900 independent candidates who contested the general elections in 1998, only 6(0.65%) succeeded. 885 (47%) lost their deposits. Likewise out of the 10635 candidates, who contested the 1996 Lok Sabha elections, only 9 (0.08%) won and 10,603 (99.7%), lost their deposits.⁹⁵ It was also known that most of these so-called independent candidates were in fact dummy candidates or defectors from their parties on being denied party tickets. These candidates only vitiate the sanctity of the electoral process. Some suggestions were centered on reducing the number of recognized national parties or pre-poll alliances by changing the present-criteria for their recognition. It had also been suggested in a situation of 'hung' house the best course would be to have the house elect its leader as it elects the Speaker. The leader so elected may be appointed the Prime or Chief Minister and his government should be removable only on a constructive vote of no-confidence. This really meant that at the time of introducing the vote of no-confidence, a simultaneous vote of confidence had to be passed in favour of an alternative leadership, which would be sworn if the vote goes through. The

⁹⁵ http://lawmin.nic.in/ncrwc/finalreport/v2b1_9.htm

period of office for Lok Sabha and Assemblies should be reduced to 4 years. If India can have only one election every four years this would be a huge national saving apart from creating stability that at least gives a chance for better and development oriented governance.

Last to mention in the report was the issue of decay in political morality. To keep a tab on issues of public morality and ensure that transgressions were widely debated and the culprits brought to book, a beginning should be made to include some secular constitutional values and citizenship obligations in curriculum of schools and colleges. They would make the generations to grow up with information and perhaps wisdom to form a formidable social force against the kind of decaying political morality.

The Election Commission in 2004 under the Chief Election Commissioner, T.S Krishna Murthy came forward with several proposal on electoral reforms. These are enumerated below:⁹⁶

1. Affidavits to be filed by candidates on criminal antecedents and assets etc. In terms of Section 33A of the Representation of the People Act, 1951, read with Rule 4A of Conduct of Election Rules, 1961, each candidate has to file an affidavit in form 26 appended to the conduct of Election Rules, 1961 giving information on the following:
 - (a) Cases, if any, in which the candidate has been accused of any offence punishable with imprisonment for two years or more in a pending case in which charges have been framed by the court.
 - (b) Cases of conviction for an offence other than any of the offences mentioned in Section 8 of the Representation of the People Act, 1951 and sentenced to imprisonment for one year or more.

The Commission therefore, recommended that Form 26 may be amended so as to include in it all the items mentioned in the format of affidavit prescribed by the Commission's order dated 27.3.2003. While doing this, it was also further suggested that a column may be added in the format about the annual declared income of the candidate for tax purpose and his profession. The Commission was of the view that to protect the right to information of electors as per the spirit of the judgment dated 13.3.2003 of the Supreme Court, the punishment should be made more stringent by providing for imprisonment of a minimum term of two years and doing away with five conviction for offences under

⁹⁶ Election Commission's Letter no.3/ER/2004, dated July 5, 2004, Addressed to the Prime Minister, <http://www.eci.gov.in>

Section 125A should further be made part of Section 8(1) (i) for certain offences. Such a provision would reduce instances of candidates willfully concealing information or furnishing wrong information.

2. The Commission made a proposal for increasing the security deposit to Rs. 20,000 in the case of election to the House of People and Rs. 10,000 for legislative assembly elections. The Commission was also of the view that aforesaid Section 34 should be amended so as to empower the Commission to prescribe the security deposit.
3. The Commission was of the view that keeping a person who is accused for serious criminal charges and where the court is prime facie satisfied about his involvement in the crime, out of electoral arena would be a reasonable restriction in greater public interests.
4. The Commission was of the view that the law should be amended to provide that no person contest from more than one constituency at a time.
5. The Commission reiterated its view that there should be some restriction of publishing the results of opinion polls and exit poll. Such a restriction would only be in the wider interests of free and fair elections. Regarding the argument about the right to information sought to be linked to the dissemination of results of opinion and exit polls, it had to be noted that the past-experience showed that the results of election had been vastly different from the results predicted on the basis of exit polls. This information turned out to be disinformation in many cases. The Commission recommended that there should be a restriction on publishing the results of such poll surveys for a specified period during the election process.
6. The Commission was of the view that there should be clear provision to deal with cases of surrogate advertisement in print media. Section 127A of the Representation of the People Act, 1951 may be suitably amended.
7. The Commission recommended that the law should be amended to specifically provide for negative/neutral voting. Rules 22 and 49B of the Conduct of Election Rules, 1961 may be suitably amended adding a proviso that in the ballot paper, in the column relating to the name of the candidates, after the entry relating to the last candidate, there shall be a column "*none of the above*" to enable a voter to reject all the candidates, if he chooses so. Such a proposal was earlier made by the Commission in 2001 (vide letter dated 10.12.2001)

8. The Commission had recommended in 1998 that Section 24 of the Representation of the People Act, 1950 should be amended to provide for an appeal against the order of the Electoral registration officer to the District Election officer in the district itself.
9. The Commission recommended the compulsory maintenance of accounts by the political parties and audit thereof by agencies specified by the Election Commission. The audited accounts shall be available for information of the public.
10. The Commission proposed that where any general election was due on the expiration of the term of the House, advertisement of achievements of the governments should be prohibited for a period of six months prior to the date of expiry of the term of House.
11. The Government may consider amending the relevant provisions Cable Television Network (Regulating) Rules, 1994 to provide for suitable advertisement code and monitoring mechanism.

Some proposals made by the Election Commission are still pending like the Anti Defection Law, use of common electoral rolls at the elections conducted by the Election Commission and the State Election Commissions. There was also the need urged for the simplification of procedure for disqualification of a person held guilty of corrupt practices. Amendment to the Representation of the People Act, 1951 Section 33 was suggested, that ensured same member of proposers for all contesting candidates.

The Commission had suggested making of false declaration in connection with election to be an offence. It brought forward the idea that the rule making authority should be vested in Election Commission. The Commission lastly endorsed that under the existing Section 29A of the Representation of the People Act 1951, another clause may be introduced authorizing the Election Commission to issue necessary orders regulating registration and de-registration of political parties.

Thus we see that the Election Commission had suggested various electoral reforms from time to time. It had given 22 electoral reform proposals that are pending consideration of the government. The whole decade of the 1990s extending up to the period of 2004 and most extensively 2006 assembly elections cover a whole hoard of issues relating to the democracy in India. All the civil and state institutions came forward with comprehensive reforms proposals and the decade of 1990s saw a more deepening of impact of the reform. At the root of all variants of democratic polity is the concept of

impact of sovereignty vesting in the hands of the people, hence, it is the people's power or the electoral power that rules the roost.

If T.N Seshan, during his term (1990-96) as the Chief Election Commissioner had projected an independent role of activism for the Election Commission, his successor, M.S. Gill (1996-2000) sought to root this new found role in consensus and democratic decision-making. Both Seshan and Gill had a penchant for the public eye. After Krishnamurthy retired in 1998, Gill as the Chief Election Commissioner acted as the Commission's sole voice to defend its omissions and commissions. Other two Chief Commissioners, J. M Lyngdoh and T.S Krishnamurthy opted to keep a low profile.

Due to frequent elections and increasing political fragmentation, the Election Commission had emerged as the unquestionable authority over pre-election conduct of parties and government. This is typical of the decade of the 1990s, that is, "dictator by default or watch dog by design".⁹⁷ Depending upon one's political leaning, one would describe the Election Commission as either of the two. As observed during the 13th Lok Sabha elections, the Election Commission's dictates and directives against the New Telecom policy to the tirade against the advertisement on electronic media, all this set a precedent of a proactive role of the Election Commission as a tool of parliamentary democracy, very well carrying forward the legacy of the era T.N Seshan. As the then Chief Election Commissioner M.S Gill observed, "The Commission has to be firm because regional religious and caste issues have become for more complex and pronounced than ever before".⁹⁸

The Election Commission's most visible success had been getting India's parties and candidates in the eleventh (1996) twelfth (1998) and thirteenth (1999) national elections to comply with its code of conduct. One rule that dramatically changed the feel and spirit of Indian elections and benefited the urban landscape was the ban on pasting posters and notices on walls and buildings and ban on vehicles with loudspeakers.

Enforcement of rules for polling days and polling places against booth capturing, ballot snatching, intimidation and violence is partly in the hands of local officials deputed to serve the Election Commission, partly in the hands of security forces, a legacy of the Seshan years and partly in the hands of 1,500 observers teams quipped with video cameras. It should be said to the Commission's credit that the use of photo identity cards, a scheme launched during Seshan's tenure and electronic voting machines have gained

⁹⁷ Saran Rohit, *Policing the polls*, India Today, September 6, 1999

⁹⁸ Saran Rohit, *Ibid*, p.41

widespread popularity in recent years, with people accepting the two concepts as being necessary for reforms.

The Election Commission continues to have an uphill battle. In the face of what Chief Election Commissioner Gill called a “democratic upsurge”, a rising tide of democratization brings with it “social unrest and political instability”.⁹⁹ The Commission must assert its constitutionally guaranteed independence more resolutely if elections to the Parliament and state assemblies have to be free from anomalies.

⁹⁹ Lloyd I. Rudolph and Susanne Hoeber Rudolph, *Redoing the Constitutional Design: From an Interventionist to Regulatory State* in Atul Kohli (ed.), *The Success of India's Democracy*, (Cambridge, Cambridge University Press, 2001) p.159

CHAPTER FOUR

JUDICIARY AND THE ELECTORAL REFORMS IN THE 1990-2000.

To understand the proactive role that judiciary has played in furthering the agenda of electoral reforms in the decade of 1990s, it is important to see the role of judiciary in the electoral process. As has been stated in the preceding chapters that free and fair elections are the foundation stone of a democratic system, so any extraneous influence, governmental or otherwise, affecting the verdict of poll by means of corrupt practice or the abuse of government office, vitiates the electoral process and destrengthens democracy. Any election, where the electoral process is perverted either by the prevalence of corrupt practice in any form or the disqualification of a candidate is likely to be questioned either by a defeated candidate or any elector. To inspire public confidence in the electoral process, it is necessary to have a speedy, fair and inexpensive adjudication of election disputes. This is the judiciary which is responsible for adjudicating on matters relating to the proper conduct of elections under specific conditions prescribed by the election law. The judiciary plays a very significant role in the electoral process. It goes without saying that one of the prerequisites for free and fair elections is that there must be an independent judiciary free from political influence or control which can adjudicate election disputes by interpreting the electoral laws fairly and impartially. The Supreme Court of India has consistently emphasized the need of impartial tribunal to adjudicate upon the election cases.

The words “superintendence, direction and control” that the Article 324 of the Constitution prescribes has a wide connotation so as to include therein such powers which though not specifically provided but are necessary to be exercised for effectively accomplishing the task of holding the elections to their completion. Article 329 of the Constitution provides that, “bar to interference by Courts in electoral matters- Notwithstanding anything in the Constitution(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 327 or article 328, shall not be in question in any Court; (b) no election to either house of Parliament or either House of the legislature of a state shall be called in question except by an election petition presented by such authority

and in such manner as may be provided for by or and law by the appropriate legislature.” The term ‘election’ as occurring in Article 329 has been held to mean and include the entire process from the issue of the Notification under Section 14 of the Representation of the People Act, 1951, to the declaration of the result under Section 66 of the Act.

The founding fathers of the Constitution have consciously employed use of the words “no election shall be called in question in the body of section 329 (b) and these words provide the determinative test for attracting applicability of Article 329 (b). If the petition presented to the Courts calls in question an election the bar of Article 329 (b) is attracted.”¹⁰⁰ Here a few cases are cited that would unfold the relationship between the Judiciary and the Election Commission. These cases are necessary to understand the interface between the two state institutions. The judiciary has time and again restored the independence of the Election Commission in the process of conduct of elections to state assembly and parliamentary seats. Through other pronouncements, the Supreme Court has also furthered the cause of electoral reforms. The cases are cited in point below.

In a case of Election Commission of India through Secretary vs. Ashok Kumar at the time of the general election to the House of the People held in September-October 1999, the Election Commission directed under rule 59A of the conduct of Election Rules, 1961, that the votes in all the parliamentary constituencies in the state of Kerela, except 12- Ernakulam and 20 Trivandrum parliamentary constituencies where electronic voting machines were used , would be counted by mixing the ballot papers of the assembly segments of those parliamentary constituencies. Two writ petitions were filed before the Kerela High Court calling in question the above direction of the Election Commission. The Kerala High Court by an order Jated 4.10. 1999, directed the Commission to count the votes of the said parliamentary constituency polling station wise. In view of this order, the Election Commission filed a special leave petition before the Supreme Court on 5.10. 1999 on the ground that the High Court could not interfere in the matter because of the bar contained in Article 329 (b) of the Constitution against the interference by the Court in electoral matters when the election process is on. The Supreme Court, by an interim order, dated 5.10.1999 stayed the operation of the High Court’s order. Thereafter, the Supreme Court has, by its final order dated 30.8.2000 set aside the order of the Kerela High Court.

Some of the observations made by the Supreme Court of India regarding Article 329 (b) vis- avis Article 226 of the constitutions are as follows:-

¹⁰⁰ Landmark judgement on Election Law, Vol-III, Published by Election Commission of India, New Delhi-2000.

1. "If an election is to be called in question, and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.
2. Any decision sought and rendered will not amount to "calling in question an election" if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.
3. Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of malafide or arbitrary excessive of power being made out or the statutory body being shown to have acted in breach of law.
4. Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the Court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the Court.
5. The Court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329 (b) but brought to it during the pendency of election proceedings. The Court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilize the Court's indulgence by filling a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end."¹⁰¹

To understand the scope of Article 329, *N.P. Ponnuswami V. Returning Officer, Namakkal constituency*¹⁰² was the ideal case. Here the appellant's nomination paper had been rejected by the returning officer. He moved the High Court of Madras under Article

¹⁰¹ Ibid, p. 31.

¹⁰² A.I.R. 1952 S.C. 64.

226 of the Constitution for the issue of a writ of certiorari to quash the order of the returning officer. The High Court dismissed the petition on the ground of lack of jurisdiction to interfere with the order of the returning officer by reason of Article 329 (b) of the Constitution. On appeal, the Supreme Court held that “election” in Article 329 (b) has been used in a wide sense denoting “the entire procedure to be gone through to return a candidate to the legislature.” The words used in Article 329 (b) “are quite apt to exclude the jurisdiction of the High Court to deal with a matter which may arise while elections are in progress.” Therefore the High Court has no jurisdiction over the returning officer rejecting or accepting a nomination paper. The only way in which the decision of the returning officer rejecting or accepting a nomination paper can be challenged is by filing an election petition after the entire election is over and the successful candidates have been declared elected. In view of this, it is a recognized principle that all disputes arising out of the elections should be postponed till the elections are over so as not to dislocate the time schedule for the elections. It may be pointed out that the Constitution has purposely postponed all legal remedies in relation to any electoral step taken during the election process until the completion of the election. Article 329 of the Constitution ensures that elections are held at proper time and are not required to be postponed. This article reflects the sound public policy that having regard to the important functions which the legislatures have to perform in democratic countries, the elections should be concluded as early as possible according to the time schedule.

The Ponnuswami’s case was a landmark case in the point. It dealt with the scope, amplitude, rationale and limitations of Article 329. Its rationale had been consistently followed by the Supreme Court in its subsequent rulings attaching finality on the point. However, the scope of Article 329 of the Constitution was again considered by the Supreme Court in *Mohinder Singh Gill v. Chief Election Commissioner*.¹⁰³ In this case a notification issued by the Election Commission cancelling the poll already taken due to violent disturbance at some segments of the constituency and directing the repoll in the entire 13 Ferozpur Parliamentary Constituency in the state of Punjab at the general election to the House of the People held in 1977 was challenged. The moot question in this case before the Supreme Court was whether the cancellation of the poll and the reordering of fresh poll was “part of election” and challenging it was “calling it in question” or is writ petition challenging cancellation integrated with repoll barred under

¹⁰³ A.I.R. 1978 S.C. 851.

Article 329 (b) of the Constitution? The Supreme Court took the view that High Court under Article 226 of the Constitution could not consider the correctness, legality or otherwise of the direction for cancellation integrated with re poll because the prima-facie purpose of such repoll was to restore a detailed poll process and to complete it through salvatory effort of a repoll. The Court held that the writ petition challenging the cancellation coupled with re-poll amounted to, "calling in question" a step in election and was therefore barred by Article 329 (b) of the Constitution.

To cite another case of *Ram Deo Bhandari Vs. Election Commission of India*,¹⁰⁴ rules 28 of the Registration of the Electors rules, 1960, provides that the Election Commission may, with a view to preventing impersonation of electors and facilitating their identification at the time of poll, direct the issue of photo identity cards to electors in any constituency or part thereof. Further, rules 35 (3) and 37(2) (b) of the Conduct of Elections rules, 1961 provide for the compulsory production of these identity cards by the electors at the time of poll in the constituencies where these cards have been issued.

The proposal to issue photo identity cards to electors had engaged the attention of the Election Commission. The Election Commission issued a notification in terms of the aforesaid Rule 28 of the Registration of Government of India. It said that photo identity cards shall be issued to electors in all parliamentary and assembly constituencies in India on August 28, 1993. The Election Commission set the deadline of December 31, 1994 for the completion of the work in all the aforesaid constituencies and further indicated that no elections would be held in the states in which the work of issue of identity cards was not completed by the stipulated date. The above decision of the Election Commission and the modalities prescribed by the Commission in regard to the completion of the work were challenged before the Calcutta High Court.

Thereupon, the Election Commission moved the Supreme Court seeking a vacation of the stay order of the Calcutta High Court and also the transfer of the writ petition, and the transfer of the appeal pending before the Kerala High Court against the High Court's orders dismissing the writ petition. The Supreme Court further directed by an order dated 1.8.1994, that if any other writ petition was filed relating to the issue of identity cards in any other High Courts, the same shall also be transferred to the Supreme Court for disposal. While the matters continued to pend before the Supreme Court, the Election Commission issued a Press Note on 8th December, 1994, making the issue of identity cards

¹⁰⁴ Landmark judgements on Election law, Vol-II, Published by the Election Commission of India 1995.

to all eligible electors in the states of Bihar and Orissa, a precondition for the holding of polls in those states, where assembly elections were due in early 1995. There upon, the writ petitions were filed before the Supreme Court by the state of Orissa and some political parties of Bihar questioning the validity of the Commission's decision not to hold elections in those states if the identity cards were not issued. The Supreme Court heard the matter on the January 17, 1995 and made a detailed order. The Commission stated before the Supreme Court on the aforesaid date that it would not withhold the election to the state assemblies on the ground that identity cards have not been supplied to the electors. The outstanding differences between the Commission and the Government had been settled by mutual discussion and consultation. All the States and Union Territories have realized the imperative need for identity cards, and had been extending their cooperation in the matter to the satisfaction of the Commission.

Another case involving the *Election Commission of India Vs. Union of India*¹⁰⁵ is given as under:-

Section 13CC of the Representation of the People Act, 1950 and Section 28 A of the Representation of the People Act 1951, as inserted by the Representation of the People (Amendment) Act, 1988 (of 1989) provide that all election officers and staff employed in connection with preparation, revision and correction of electoral rolls for, and the conduct of, all elections to Parliament and state legislatures shall be deemed to be on deputation to the Election Commission. It is for the period during which they are so employed and such officers and staff shall, during that period, be subject to the control, superintendence and discipline of the Election Commission. These provisions are also applicable to the police personnel designated for the time being by the state governments for the conduct of any election. There has been some controversy between the Election Commission and the Government of India and the state government as to the meaning of the word 'discipline' as used in the above mentioned two sections. Whereas the Election Commission was of the view that it could take disciplinary action against all election officers and staff performing election duties for any dereliction of duties on their part, the central government took the stand in 1993 that the Election Commission could only recommend disciplinary action against erring election officers. The state government also took the same stand, taking the cue from the decision of the central government. Things came to

¹⁰⁵ Landmark Judgements on Election law, published by the Election Commission of India, Vol- I, 1993 New Delhi.

such an impasse that the Election Commission had to approach the Supreme Court for determination of this vital legal issue. The Commission, therefore, filed the present writ petition before the Supreme Court. The writ petition also sought some other relief like the Election Commission to have the power to decide how much such staff is required and who is required for conducting elections, the Commission to have the power to direct central and state government to deploy such central and state police forces as considered necessary for proper maintenance of law and order for conduct of peaceful, free and fair elections and the Commission to have the services of the Chief Electoral Officers of the states on whole time basis.

When the writ petition came for preliminary hearing before the Supreme Court on 10th August, 1993, the Apex Court, appreciating the importance and significance of the issues involved, issued notice to the Advocates General of all states, besides the Union of India and other named respondents. By its further interim orders dated 10th October, 1993 and 14th October, 1993, the Supreme Court directed the Union of India that the Home Ministry officers and state government authorities and Director Generals of BSF, CRPF etc., should sit with the Election Commission and take a collective decision with regard to-

(i) the requirement of Observers by the Commission.

(ii) its deployment of central police forces in the states which were then going to the polls. Thereafter, at every subsequent general election, the Home Ministry has been invariably deciding the matters relating to the deployment of central police forces in consultation with the Election Commission. The Government is also making available the services of as many senior government officers as are required by the Commission for appointment as Observers. The state government has also accepted the arrangement to make the services of the Chief Electoral Officers, selected by the Commission, available to it on the full time basis. In view of the above, all reliefs claimed in the writ petition, except the contentious issue relating to disciplinary control of the Election Commission over Election Officers and staff, were achieved by the Commission.

As regards the last remaining issue of disciplinary control, the Chief Election Commissioner took up the matter with successive Prime Ministers of India in the years 1998, 1999 and 2000 for an amicable settlement of the issue by mutual dialogue and discussion. As a result of these efforts, a settlement was reached between the Election Commission and the Union of India in the following terms:-

“That the disciplinary functions of the Election Commission of India over officers, staff and police deputed to perform election duty during election period shall extend to-

- (a) Substituting any officer / official / police personnel for insubordination or dereliction of duty;
- (b) Substituting any officer/official/police personal by another such person, and returning the substituted individual to the cadre to which he belongs with appropriate report on his conduct;
- (c) Making recommendation to the competent authority for taking disciplinary action for any act of insubordination or dereliction of duty while on election duty. Such recommendation shall be promptly acted upon by the disciplinary authority, and action taken will be communicated to the Election Commission, within a period of six months from the date of Election Commission’s recommendation.
- (d) The Government of India will advise the state government that they too should follow the above principles and decisions since a large number of election officials are under their administrative control.”¹⁰⁶

In lieu of the above cases one thing can be stated beyond doubt that through the various landmark judgments especially in the decade of 1990s, the Supreme Court has reiterated the importance of an independent Election Commission with a vast repository of power vested into it through the constitution. A number of institutional reforms have been brought into the body of the Election Commission. A new meaning to superintendence, direction and control has been invigorated into the body of the Election Commission. These institutional reforms have made the conduct of elections to Parliament and state Assemblies a major success. The security mechanisms have improved and states like Bihar and Uttar Pradesh that were marred by election deaths and violence have considerably dropped in such notorious incidence.

Another case before the Supreme Court that interpreted the provisions of Article 324 was T.N. Seshan Vs. Union of India and others.¹⁰⁷ On 1st October, 1993, the President of India, in exercise of powers conferred by clause (2) of Article 324 of the Constitution fixed until further orders, the number of Election Commissioner (other than the Chief Election Commissioner) at two. M.S. Gill and G.V.G. Krishnamurthy were appointed as Election Commissioners with effect from 1st October, 1993. Simultaneously, the President

¹⁰⁶ Landmark Judgements on Election law, published by the Election Commission of India, Vol- III, 2000. New Delhi.

¹⁰⁷ Landmark Judgements on Election Law, published by Election Commissioner of India, Vol. II, 1995, New Delhi.

also promulgated an Ordinance entitled the Chief Election Commissioner and other Election Commissioner (Conditions of Service) Amendment Ordinance, 1993 (32 of 1993) to amend the “Chief Election Commissioner and other Election Commissioners (Conditions of Service) Act 1991.” By this amending Ordinance, the Chief Election Commissioner and other Election Commissioners were, inter alia, placed as par in the matter of their salary and allowances (which were to be the same as admissible to a judge of the Supreme Court of India). The terms of the Chief Election Commissioner and other Election Commissioners was fixed at 6 years from the date of their appointments, subject to the maximum age limit of 65 years. The Ordinance further made provision for transaction of business of the multi –member Election Commission and provided, inter alia, that the Chief Election Commissioner and other Election Commissioners shall have equal powers in the matter of decision making and in the case of any difference of opinion against them, the matter would be decided by the opinion of the majority. The Ordinance also renamed the principal Act of 1991 (Chief Election Commissioner and other Election Commissioner Conditions of Service Act, 1991) as Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991. This Ordinance was later on replaced by a Parliamentary Act (4 of 1994) on 4th January, 1994 without any change.

The aforesaid amendments made by the above mentioned Ordinance were challenged by T.N. Seshan, the then Chief Election Commissioner, as being unconstitutional before the Supreme Court. He also challenged the appointment of M.S. Gill and G.V.G. Krishnamurthy alleging malafides against the Government.

A Constitution Bench of the Supreme Court, by its landmark judgement dated 14th July, 1995, dismissed the writ petition of T.N. Seshan fully upholding the constitutional validity of the impugned Ordinance and the Act, and also upholding the appointment of M.S. Gill and G.V.G. Krishnamurthy as Election Commissioners.

For a multi–member Election Commission, the Supreme Court held that the scheme of Article 324 is that there shall be permanent body to be called the Election Commission with a permanent incumbent to be called the Chief Election Commissioner. The Election Commission can therefore be a single member body or a multimember body if the President considers it necessary to appoint one or more Election Commissioners. The argument that a multi-member Election Commission would be unworkable should be rejected, as acceptance of such argument would be tantamount to destroying or nullifying clauses (2) and (3) of Article 324.

Regarding the status of the Chief Election Commissioner, the Supreme Court held that the Chief Election Commissioner does not enjoy a status superior to the Election Commissioners. Clause (5) of Article 324 lays down that Conditions of Service cannot be varied to the disadvantage of the Chief Election Commissioner after his appointment. Such a protection is not extended to the Election Commissioner. The absence of such provision does not make the Chief Election Commissioner superior to Election Commissioners. Similarly, in the case of the Chief Election Commissioner, he can be removed from office in the like manner and on the like ground as a judge of Supreme Court, whereas the Election Commissioners can be removed on the recommendation of the Chief Election Commissioner. But this is not an indication for conferring a higher status on the Chief Election Commissioner. Article 324 envisages a permanent body to be headed by a permanent incumbent namely the Chief Election Commissioner. That is not the case with the other Election Commissioners. They are not intended to be permanent incumbents. Since the Election Commission would have a staff of its own dealing with matters concerning the superintendence, direction and control of the preparation of electoral rolls, etc., that staff would have to function under the direction and guidance of the Chief Election Commissioner and hence it was in the fitness of things for the Constitutions-makers to provide that where the Election Commissioner is a multi-member body, the Chief Election Commissioner shall act as its Chairman. That would also ensure continuity and smooth functioning of the Election Commission. The Supreme Court stated in the judgement further that the Chief Election Commissioner is merely the creature of the institution, he can exist only if the institution exists. To project the individual as mightier than the institution would be a grave mistake.

The functions of the Election Commission are essentially administrative but there are certain adjudicative and legislative functions as well. The Election Commission has to lay down certain policies, decide on certain administrative and also adjudicate certain disputes, relating to allotment of symbols etc. Therefore, besides administrative functions it may be called upon to perform quasi-judicial duties and undertake subordinate legislation making functions as well.

The Supreme Court through these judgements defined the scope and nature of Article 324 and resolved all the issues pertaining to the body of Election Commission. Subject to these provisions, the Election Commission has to work within the framework of Article 324 of the Constitution and subject to the mandatory provision of constitutional law and statutory rules, Supreme Court can interfere if those provisions were violated. If the

Election Commission acted within these limits, no court could interfere with its orders. Election Commission is a constitutional institution that was devised to foster democracy. Hence Election Commission of India had been an independent body authorized to discharge its constitutional and statutory functions. The Court can interfere in a decision of the Election Commission only if (i) any provision of constitutional or statutory law was violated, (ii) the principle of natural justice was not observed or (iii) the decision or order was arbitrary or without jurisdiction.¹⁰⁸

Here a few cases are enlisted where the Supreme Court intervened to further the electoral reform agenda of the past one decade till the present time.

Two important developments took place in 1996. The first was the Supreme Court notices to political parties in January to file returns required by the Income tax and Wealth tax Act by 20 February, in response to a Public Interest petition filed by a private citizen's group, after the parties did not respond to notices issued by the Income Tax department. This forced parties, none of which had filed for all the years since 1979 as required to do so.

The second important development was the Supreme Court's order of April 4, 1996 shortly before the general elections, interpreting explanation of Section 77 (1) of the Representation of Peoples' Act such that election expenditure by a political party would not be clubbed with that of a candidate for the purposes of the spending ceiling only if the party had submitted audited accounts of its income and expenditures. This constrained conspicuous party spending on behalf of a candidate during the 1996 campaign.¹⁰⁹

As has already been stated that the most disturbing and deterrent factor that discourages and dissuades people to contest an election is the disproportionately high cost involved in the election. The splurge in election expense amounts to the denial of level playing field in the electoral arena. Majority of the citizens find themselves practically disabled and disqualified for contesting an election. India has reached the nadir of political corruption and electoral degradation in recent times. By giving a purposive interpretation of Section 77 of the Representation of People Act, and particularly its explanation, the Supreme Court had given a meaningful content to it. This makes it difficult for candidates nominated by different political parties to circumvent the spirit of the law. It helped contain the profligacy of political actors in the electoral battle. What really amounts to judicial innovation and novelty was the assertion that failure on the part of the political

¹⁰⁸ The Hindustan Times, New Delhi, September 7, 1993.

¹⁰⁹ Sridharan E., *Reforming Political Finance*, Seminar October 2001, p. 32.

parties to file their income tax returns and account for all the donations in excess of the prescribed ceilings would amount to disqualification.¹¹⁰ Section 77 of Representation of People Act was the most flagrantly abused section of any Indian statute, particularly after the insertion of an explanation in 1974. The explanation to Section 77 envisaged that the individual candidate could declare the surplus expense in an election as having been funded by their parties.

To mention another case, it was the issue of Opinion and Exit polls-

After taking into account all the relevant factors and circumstances into consideration, the Election Commission issued, on 20th January, 1998, a set of guidelines for observance by print and electronic media in connection with the conduct of opinion polls. The Commission also made it clear that the guidelines would apply at all future elections to Parliament and state legislatures. The key provisions were “(i) The organizations or agencies conducting opinion polls shall be free to conduct such polls, and publish results thereof in or by any print or electronic media at anytime, except the period mentioned in clause (2), during the run up to polls for the aforesaid general elections to the House of the people and state legislative assemblies mentioned above.

(ii) No result of any opinion poll conducted at any time shall be published, publicized or disseminated in any manner whatsoever in or by any print or electronic media, after 1700 hours on the 14th February, 1998 until half an hour after the closing of poll in all states and Union Territories.

(iii) The above organizations and agencies shall also be free to conduct Exit Polls.

(iv) Any organization or agencies conducting any Opinion Poll or Exit Poll, while publishing, or disseminating the result of any such poll must indicate the sample size of the electorate covered by such polls and geographic spread of survey so conducted. They must invariably give details of methodology followed, likely percentage of errors, the professional background and experience of the organization or organization and the key professionals involved in the conduct and analysis of the poll.”¹¹¹

One of the important stipulations of these guidelines was that the result of any opinion polls conducted at anytime should not be published or disseminated in any manner in print or electronic media. These guidelines were challenged in petitions before the Delhi High Court (writ petition no. 335 of 1998, filed by S.N. Tiwari). Another petition was filed

¹¹⁰ Kumar Vijay, *A judgement of far reaching implications*, Mainstream, April 13, 1996.

¹¹¹ ‘Elections in India-Major Events and Initiatives 1996-2000’, Published by The Election Commission of India. New Delhi p 302.

before the Supreme Court of India by R. Rajgopal (writ petition No. 80 of 1998). The contention in all the petitions were that the Commission had no authority to issue the guidelines and that these guidelines violated the fundamental right to free speech and expression guaranteed by Article 19 (1) (a) of the Constitution of India.

The Supreme Court had some reservations about the powers of the Commission to issue the impugned guidelines affecting the fundamental right of the petitioners and without provision in the law to penalize those who violated the Commission's guidelines. Consequently, all the petitions were disposed of, as they did not survive for consideration. The Commission withdrew the guidelines on September 14, 1999.

The provision of law indicated in the earlier paragraphs provided clear restrictions on dissemination of such information within the restricted period of 48 hours before close of polls. The moot point in devising any scheme for regulating opinion and exit polls was the difficulty faced by the Commission in holding elections nationally for Lok Sabha sometimes combined with Assembly elections on a single day.

The Constitution of India recognizes the principle of reasonable restriction on right of individuals, even the fundamental rights. The Supreme Court of India has also upheld the doctrine of reasonable restriction on the exercise of individual rights by the citizen of India. In the Election Commission's considered opinion, a person who was facing trial in a serious offence, if kept out of the electoral fray till news exonerated of the charge should not have a legitimate grievance.

Under Section 8 A, clause (3) of the Representation of the People Act, 1951, a person held guilty of any offence and sentenced to imprisonment for more than two years gets disqualified from contesting any election to a legislature from the date of such conviction till the completion of six years. Jayalalitha stood disqualified by virtue of this provision. Her nomination papers for election were rejected by the Election Commission. However she was appointed as Chief Minister by the Governor of Tamil Nadu, J. Jayalalitha. Nevertheless the Supreme Court of India turned out a momentous decision on September 21, 2001 in which it declared that the appointment of Jayalalitha as Chief Minister of Tamil Nadu which took place on May 14 was unconstitutional and void. The decision was momentous not because it displayed a revolutionary activism or laid down any seminal principle of jurisprudence but because the Court very subtly displayed its capacity for crisis management.¹¹²

¹¹² Sathie S.P., *Supreme Court, Jayalalitha and Crisis Management*, EPW, September 29, 2001 p. 3659.

The Supreme Court had an opportunity to examine the legality of the model code in 1997 when the Punjab and Haryana High Court dismissed a petition challenging the Election Commission's powers. The Election Commission drew its power under Section 16 A of the Election Symbol Reservation and Allotment Order 1968, by which it could suspend or withdraw recognition of a political party for its failure to observe the Model Code to follow lawful directions and instructions issued by the Election Commission. The High Court held that the Election Commission's action in directing the government to follow the model code was legal. The Union Government which challenged this decision in the Supreme Court however reached a compromise with the Election Commission. As per the compromise the Election Commission would now announce the poll schedule two weeks prior to the notification of the election and the code would come into force from the date the Election Commission announces the schedule.

Taking the agenda on electoral reforms further, it was not long ago that the Supreme Court laid down that the candidates for election should declare their assets, educational qualifications and also whether they had been convicted of any crimes. The Election Commission was set to implement these directives, but all political parties were unanimously opposed to such measures and the Parliament took steps to water down these provisions. The formula was roughly that the candidates should declare details about themselves not to the electorate before election, but to the Speaker after they were elected, and appropriate steps can be taken thereafter. The legislators gave different reasons to justify their stand. Civil society institutions reacted by taking the matter back to the Supreme Court which reiterated its earlier directions.

Association for Democratic Reforms (ADR), comprising a few faculty members of the Indian Institute of Management at Ahmedabad and others in *writ petitions number 7257 of 1999* filed before the High Court, wanted direction to be given to the Election Commission in this regard. The Delhi High Court agreed with the petitioners and passed an order accordingly on November 2000.

The Government of India challenged the Delhi High Court judgement in the Supreme Court in *Civil Appeal No. 7178 of 2001* contending that the High Court ought to have directed the writ petitioners to approach Parliament for appropriate amendment to law instead of directing the Election Commission of India to implement the same. Further, *People's Union for Civil Liberties (PUCL)* also filed *writ petition No. 294 of 2001* under Article 32 of the Constitution pleading for direction to bring in measures which provide

for declaration of assets by the candidate and for annual mandatory disclosure upon being elected.

This petition was clubbed by the Supreme Court with the appeal on Delhi High Court judgement on disclosures. In a landmark judgement on May 2, 2002, the Supreme Court directed the Election Commission of India to call for information on sworn affidavit by issuing necessary order in exercise of its powers under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a state legislature. It was a necessary part of the candidate's nomination paper. He had to furnish therein information regarding conviction / pending case of any offence punishable with imprisonment for two years or more in which charge was framed by the Court furnishing details of movable property/ financial liabilities and educational qualification.¹¹³

The Supreme Court gave the Election Commission two months to implement the judgment. Considering that the most efficacious manner of implementing the judgement and the order of the Supreme Court was through the amendment of the nomination forms Election Commission wrote to the government for amending the nomination forms. The government responded saying that the amendment of forms could be done only after developing consensus amongst political parties. The government also requested the Election Commission to approach the Supreme Court to seek further two months time for implementation of the judgment. Since there was no extension of time by the Supreme Court, the Election Commission issued an order on June 28, 2002 implementing the Supreme Court judgment.

This seemed to create a flutter in the entire political establishment. Unfortunately the entire political class went up in arms. Legislation was enacted to replace the Ordinance of 24 August 2002 and to upset and dilute the Supreme Court's order with a specific provision (Section 33B) mandating the order to be ignored. But this was challenged again in the Supreme Court by Lok Satta, a leading civil society organization of Andhra Pradesh. The Supreme Court delivered the long awaited judgement upholding Lok Satta's contention that Section 33 B was inserted in haste by an Act of Parliament in the Representation of People Act 1951. This violated the people's Fundamental Right to know. In its March 13, 2003 judgement (in writ Petitions No. 490, 509, 515 of 2002) the Supreme Court declared "..... The Amended Act is held to be illegal, null and void."¹¹⁴

¹¹³ Apex Court Expressions, Orient Law House, 2002 AIR 2002 SC 2112.

¹¹⁴ Election Watch 2004, A Compendium of State Election Watch Reports of 2004 Elections in India, Association for Democratic Reforms. AIR 2003 SC 2363.

It restored the earlier judgement of May 2, 2002 and declared that the judgement has attained finality.

The Supreme Court's decision breathed life back into the Election Commission order of 28 June 2002. The Supreme Court's decision on voter's right was not an ordinary decision. It interpreted Article 19 (1) which guarantees free speech to all citizens to include the voter's right to know about the candidates. The Supreme Court had categorically observed that, "the right to get information in democracy is recognized by all throughout the world and it is a natural right flowing from the concept of democracy."¹¹⁵ In the process of emphasizing this, the Supreme Court also widened the scope of the Election Commission's constitutional powers to superintend and conduct elections. By binding the Election Commission to the duty of ensuring that the voters are informed of the antecedents of their candidates and the possibilities of their disqualification after they have been elected, the Supreme Court has made it necessary for the Election Commission to publicize the details of the candidates among the people. The widening of the scope of the Election Commission's power under Article 324 of the Constitution has also meant that the Election Commission has the power to make rules in this area rather than wait for the Parliament to legislate. Delivering the verdict, the judges reaffirmed the judgement of the Constitution bench which in 1978 had expanded the scope of Article 324 as not merely "vesting all residuary powers in the Election Commission, but also envisaging it as a reservoir of powers where law was silent."¹¹⁶

Keeping this in view, the Election Commission of India issued a notification on 27th March 2003 detailing the procedures candidate have to follow in filing the criminal and financial disclosure statements and affidavits along with their nomination papers containing information on the following five points

1. Whether the candidate is convicted / acquitted / discharged of any criminal offence in the past –if any, whether is punished with imprisonment or fine?
2. Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the Court of law. If so, the details thereof.
3. The assets (immovable, movable, bank balances etc) of a candidate and of his/her spouse and that of dependants.

¹¹⁵ Sachar Rajindar, *Denying the Right to know*, Mainstream September 21, 2002, p. 17.

¹¹⁶ Singh, Ujjwal, Kumar, *Ibid.* p.89

4. Liabilities, if any, particularly whether there are any over dues of any public financial institution or government dues.
5. The educational qualifications of the candidate.

However all these efforts of Election Commission and the Judiciary might seem impressive but there are serious shortcomings and lacunae in these developments towards better electoral process. The most important are the lack of any specified penalty for false disclosure, continued use of money and muscle power in the election to Parliament and state assembly seats. Over 115 MPs with criminal records were elected to the 2004 Lok Sabha.¹¹⁷ For the movement to be widened and the reforms to the electoral process to be more deepened, efforts have to be made on the part of the people at large. What judiciary can best do is to respond to the petitions and issues that come before the Courts. In the above notification of the Election Commission only assets and liabilities were put into question. The source of income need to be declared. These are the gaps on the part of petitioners who specifically did not ask for this in their PILs. A similar gap exists in the declaration of electoral expenses. There is no way a voter can find out how a candidate's campaign was funded. Serious gaps exist in disclosure norms, in enforcing existing rules and regulations.

It has been well evident till now that the role of both the Election Commission and the Supreme Court had been important to check the fanning of parochial feeling derailing the process of election. The Supreme Court through its various pronouncements had tried to establish the independence and autonomy of the Election Commission. In a path making verdict delivered on October 28, 2002, the Supreme Court of India said that the finalization of poll dates falls "exclusively" within the domain of the Election Commission and even Parliament cannot interfere in the domain. Giving a unanimous opinion on the Presidential reference made in the wake of the Election Commission not holding elections in Gujarat before October 2000, a five judge Bench rejected view of the Centre and the Gujarat government that under the mandate of Article 174, six months should not lapse between two sittings of an Assembly and that the Election Commission should hold early polls in Gujarat. The Bench said that "under the Constitution, the power to frame the calendar or schedule for elections for constituting legislative assembly is within the

¹¹⁷ Sastry Trilochan, *Disclosure Norms*, Seminar, July 2005 p 26.

exclusive domain of the Election Commission and such a power is not subject to any law made by either Parliament or State Legislature.”¹¹⁸

Having asked the Election Commission to monitor all political advertising on television channels and cable network, the Supreme Court had through its April 2, 2004 interim order settled a detailed scheme for vetting such advertisements. Under this the Election Commission had been pitch forked into the extraordinary role of a censor, one that neither the Constitution nor the relevant statute envisaged. The Supreme Court, using its extensive discretionary authority under Article 142 of the Constitution-which empowers the apex body to pass any order necessary for “doing complete justice in any cause or matter pending before it had vested the Commission with two board responsibilities.”¹¹⁹ First, it will be the sole authority to decide whether any political advertisement is fit to be aired on television or rejected on the grounds that it offends morality, decency and religious susceptibility. Secondly, in the event of such advertisements being telecast without prior clearance, the Commission is empowered to take a number of punitive steps including seizing the equipment of the offending television channel or cable network. However it was an interim arrangement and the basic question revolving the constitutional validity of rule 7 (3) and a framework for dealing with offensive advertisements on television wait for a final determination by the Apex Court. The Supreme Court’s intervention was in the form of a stop gap measure. It aimed at checking the abuse of political advertising during election time. Interim though the Court’s order was, it had several implications of giving the Commission, a constitutionally responsible body for the conduct of free and fair elections, extraordinary powers.

The Supreme Court in its various landmark judgement laid down the laws of electoral democratic process. The Court constructed constitutional provisions, under Articles 32, 141, 142 and Article 324, interpreted sections 33 A and 33 B of the Representation of People’s Act, scrutinized executive orders and action of Union Government and Election Commission’s order. The Supreme Court enunciated its own inherent, incidental and contextual powers and determined the scope and limitations on jurisdiction and powers all the constitutional institutions.

By upholding (section 33B) of the Representation of the People Act as unconstitutional, the Supreme Court thwarted a concerted attempt by the legislature to

¹¹⁸Panda Rajaram, *Lyngdoh takes the Bull by the Horn*, Mainstream, September, October 28, 2002

p. 23

¹¹⁹. *Election Commission as Censor*, The Hindu, April 15, 2004.

curtail the right of citizens to know more about the candidate they elect. Rather than seeing this as an example of judiciary usurping the role of legislature, the political parties should respect the Court's ruling. The political parties should not indulge in tactic or manoeuvre aimed at denying the enforcement of any fundamental right.

All efforts at reform to the electoral process generally get stymied by the political class for parliamentary action. The Supreme Court alone cannot be a panacea to this. All political parties and serious contenders to political seats have a single point agenda to win and remain in power. Reforming the electoral system for general good takes a back seat. Despite all this, the Supreme Court and the Election Commission have together played a catalytic role in the process of electoral reform and have enhanced their credibility over the years through the fearless and impartial exercise of their authority.

To conclude, it can be said that the judiciary in the decade of 1990s especially has done yeomen service to the nation. It has definitely helped other state and civil institutions to cleanse the electoral process and salvage democracy. However the Apex Court has also earned the odium of overstepping its constitutional role by judicial super activism.

CONCLUSION

It is a commonplace to assert that the development of democracy in India is a little over half a century is a testament to the hopes of the architects of the Constitution of India. Democracy in India has struck deep roots. This is attested by the growing levels of participation of the electorate in the electoral process, who see the process as free and fair. The general elections of 1952 were at that time the largest ever multi-party elections the world had ever seen. Election to Parliament and state assembly is central to the whole debate on electoral reforms in India. India in the decade of the 1990s was in the throes of political transformation. It is the exercise of the electoral power that barely a single party had won a majority of 51 per cent of seats in the general elections of the last one decade. This is undoubtedly the proof of the volatility of the voters and flexibility of the system to incorporate all groups, elements and ideologies into one whole. No government had so far attempted to challenge or overturn the results of a popular verdict in India.

Unlike most western democracies, India has combined universal franchise and representative government with the process of industrialization. This is contrary to the normal course of events in much of the developed world. This is both a sense of pride as well as root of many problems and pitfalls faced by the country and its people. The will to remain democratic has grown deeper but the challenges have also multiplied with it. The political landscape in the decade of the 1990s and early years of the new century have changed to almost unrecognizable degree. The five general elections in the last decade with hung Parliaments, where India has had the largest coalition governments has unfolded issues that require deeper analysis. The elected representatives are yet far away to meet the gap between promise and performance and from standards of ethical conduct.

Despite several election laws and electoral reforms, there are serious problems that exist even today. Excessive, illegal and illegitimate expenditure in elections is the root cause of corruption. In India, the behaviour of the electorate is increasingly plebiscitary in nature. As people's mandate and power are easily divorced, the rulers are increasingly obsessed with survival in power at any cost. In this milieu, the vote instead of being an unifying, cleansing and emerging tool has become a divisible force. The electoral behaviour in most parts in the past decade shows that dominant mood of the electorate is to reject the party in power. In a very recent development, the Supreme Court decided to examine a petition seeking a right for the voter to cast a negative vote in an election to Lok

Sabha or state assembly by pressing the “none of the candidates” option in the Electronic Voting Machine. The Election commission also upheld this view about negative voting. Providing such an option, according to the Election commission, would be in the interest of promoting democracy as that would be a signal to the political parties and their candidates as to what “the electorate thinks about them”.

The debate on electoral reforms is thus linked to a set of issues. Apart from the role of the Election Commission that seeks to improve efficiency into the process of election, there is the role of the legislature as well. Electoral reforms as an elaborate mechanism have the history dating back to the early 1970s. It was then only corruption and criminalization become a bane of Indian politics. All throughout efforts were made through various government committees and reports to fight the scourge of corruption and criminalization. The Election Commission as a constitutionally mandated authority came up from time to time with several reform proposals to make elections free and fair. The Election commission had played its role as envisaged in the Constitution by strengthening the process of election, the necessary condition for representative democracy. Especially in the decade of the 1990s, under the leadership of T.N Seshan as Chief Election Commissioner, this institution was the most trusted and revered of all institutions. Owing to this the electoral reforms that took place during his tenure reinvigorated the entire mechanism of conduct of elections. Election Commission became a proactive tool of strengthening democracy. Needless to say, T.N Seshan set a precedent for all Election Commissioners as a fearless and autonomous officer bearer. One of his successors J.M Lyngdoh also had once mentioned that the Election Commission had to be in a state of perpetual power struggle with the political executive who makes things very difficult to conduct free and fair elections in India.

Though politically independent, the Election Commission does not have its own staff for the administration of elections. This acts as a serious shortcoming into its effectiveness. In every election, a large number of personnel have to be trained to handle task of ballot preparation, voter registration and identification. They also have to be educated about election laws. Due to India’s size and diversity, officers, who are on deputation from other states are often unfamiliar with local conditions that effect the electoral process. At times their competence and integrity is open to question. Since few voters have personal identification cards, the discretionary powers of the officers on deputation to permit or deny the citizen the opportunity to vote is considerable.

All these above discussed issues fall within the ambit of good electoral management and the electoral process administered under the guidance and supervision of the Election Commission. It has serious bearing on the electoral reforms as well, as these relate to the administrative reforms within the body of Election Commission. Added with this, the location of election booths is also determined by the office of the District Magistrate. Here politicization of bureaucracy would imply considerable malpractice in location selection. This would undoubtedly affect the election results. In certain regions, issues like caste and religion are the determining factors for voters' loyalty to a party and these social categories may defeat the whole purpose of fairness in the electoral process.

Election Commission had been a bulwark for free and fair elections in India. But in the 1990s the electoral process was threatened by increasing levels of violence, bribery, criminalization etc. The Election Commission gained national prominence as a prime force in restoring and maintaining elections in India. Like the Supreme Court, the Election Commission attracted support from urban middle class who welcomed its ability to expose and limit the lawlessness and corruption of politicians, state officials and police. Together with the Supreme Court, the Election Commission became an institution where people reposed and redeemed great trust. These two institutions have helped Indian democracy to gain salient character and strike deeper roots. In fact, the whole process of electoral reforms has deepened its impact and this is visible through the active role played by the Civil Society institutions like People's Union for Civil Liberties, Lok Satta, Association for Democratic Reforms, Lok Chetna, Nav Bharat Jagriti Kendra etc. These organizations along with the Election Commission of India had filed several writ petitions into the Supreme Court towards reforming the electoral process in the last decade of 1990s. Their role in monitoring the elections with people's effort is a welcome step that is gaining ground in India.

The major road blocks in reforming the electoral process are the politicians or the political class who have learnt to use the existing electoral system to their advantage. They do not want to make any change into the electoral process. This practice is almost fatal because it is the political class themselves who are responsible for changing the laws in the country including those that govern the electoral process. This instance of the behaviour of the political class was evident when twenty one national and regional parties of diverse ideology and hue, joined hands to reject the Election Commission directive seeking information of a candidate's possible involvement in any criminal case. Even more shocking was the further dilution of the draft bill to amend the Representation of the

People Act seeking to undo the Election Commission's order on wealth and criminal antecedents of election candidates.

One of the main arguments put forth by politicians against implementation of the Supreme Court judgment of 2 May 2002, was that the Supreme Court and the Election Commission have transgressed into the legislative arena. In this context, it is important to remember that for a democracy to function effectively, each organ of the State has to perform its assigned role properly. Since it is impractical to expect all the constituents of a multiple component system to function optimally all the time, it is necessary to provide checks and balances so that some components compensate for other to ensure that the democratic system continues to perform at acceptable and progressively enhanced levels.

Using this principle of checks and balances, diverse approaches to electoral reform have been followed. These include the judicial intervention through public interest litigation, using media to create awareness of the importance of the electoral processes to democratic functioning in the country, statutory organs of the state such as the Election Commission and Law Commission. These approaches have often been used together. It has resulted in more effective outcome of the reform process due to synergy that this mechanism or rather approach entails.

In the making of small and incremental changes in the electoral system, it requires long and sustained effort on the part of all state and non-governmental organizations. It is often obstructed by the entire political spectrum. The role of ordinary citizen who compromise the electorate is very important in the furthering of the agenda on electoral reforms. To make democracy vibrant and the electoral system free from anomalies it is for the electorate to choose the right representatives who are seated in power on their behalf. The political system has little or no interest in electoral reforms particularly with the reforms that empower voters. The track record of legislation since independence speaks for itself. The institution that is mandated with the task of improving the electoral process is the Election Commission. But the Election Commission cannot hold the politicians accountable to the people or improve overall governance.

The Election Commission in the decade of 1990 and the beginning of this new century came up with upstem measures towards improving the electoral management. It has supported 'Election Watches' in different states. It has decided to put up all candidates information on the websites before the date of polling. It has taken several steps towards monitoring of election expenses, insisting on parties following code of conduct, ensuring

enough security during polling, strengthening the observers and ensuring impartiality of officers on duty.

For democracy to be institutionalized, election should express the will of the people. Every citizen should exercise the right to express his verdict through the vote in free and fair manner. Indian elections do reflect the choice of the people as indicated by frequent change in governments.

It is true that the electoral system is not a simple or small system but a large and complex one. It is intervened with the larger social systems of the country as a whole. In a way, it is the microcosm of the broader society of the country. It may be rational to think that it is not possible to change the electoral system unless the society as a whole is changed. But what is most important to urge at this point is that all enduring efforts towards electoral reforms made by different institutions of state and non-governmental organizations is unthinkable and highly commendable. A beginning has to be made somewhere and it was a positive step indeed on their part towards strengthening of democracy by enthusing the continuing process of electoral reforms. It is not to say that the reforms that took place into the election process before the decade of 1990 did not hold any credence. But the decade of 1990 distinctively witnessed an activism and deepening of the continuous evolving process of electoral reforms, as was evident through the era of T.N Seshan and beyond.

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