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Election Commission Of India And Its Independence—A Critical Study

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Indian polity is represented by Parliamentary democracy. India adopts a dual polity system *i.e.* federal form of government[1], The Indian federation is consisting of Union government at centre and State government at the periphery. India has been recognized by the international society as one of the major stable democracies in the world. The election commission of India played a considerable role in shaping the Indian democracy. Above all the constitutional bodies, the Supreme Court as an apex judicial body by its several landmark judgements strengthened the independence of election commission. A growing need was being felt to keep this democratic institution out of the executive control. The world well-developed Nations following 5 well-recognized electoral models, Countries like India, U.K, Australia, Canada, Srilanka, South Africa adopt the first one i.e. the Independent electoral model. In some of these countries the independence of the election commission has been constitutionally guaranteed.[2] Some countries following second one i.e. the Branch model which is usually recognised as a separate electoral branch of the government, This system is vogue in Venezuela, Nicaragua, Bolivia, Costa Rica, Panama. The third one is the mixed model in this system the independent board can lay down the policy which can be usually implemented by the executive wing of the government under the supervision of the Independent board, this model is accepted in France, Germany, Japan, Spain and Senegal.

The fourth model is executive model in this model the election commission is directed by a cabinet Minister purely as an executive part of the government, this is followed by Sweden, Switzerland, Tunisia, Denmark, Singapore. the fifth Model is known as Judicial Model, the electoral body is closely under the supervision and guidance of special Judicial body called" *electoral Court*", the electoral Body is ultimately responsible to the" *Electoral Court*", this system is followed by Argentina, Brazil and Mexico.**[3]** The constitution of India describes India as a democratic Republic, democracy, apart from being a set of ideals, is a political system.

[1] Ganga Ram Moolchandani vs.State of Rajasthan and Ors., (ACE aceproject.org), https://www.lawctopus.com regarding federal characteristics of the Indian Constitution

[2] S.190 of the Constitution of South Africa, deals with the Functions of election commission: S.190 cl (1)(a) states that the electoral commission must- manage elections of national, provincial and municipal legislative bodies in accordance with national legislation;(1)(b) ensure that those elections are free and fair; and(1) (c) declare the results of those elections within a period that must be prescribed by national legislation and that is as short as reasonably possible. Cl (2) The Election Commission has the additional powers and functions prescribed by the national legislation. en.m.wikipedia.org/wiki/

[3] en.m.wikipedia.org/wiki/ election Commission.

The accepted basic features of this system are:[4]

a) The principle of free and fair elections,

b) Equal right to all individuals to participate in the governance,

c) Rule of majority and minority protection,

d) Freedom and dignity of the Individual,

e) Parliamentary form of government,

f) The Sovereign, Democratic, Republic structure.

g) Supremacy of the Constitution

h) Separation of Powers.

a. Rule of Law.

b. Federal form of Government.

Democratic Government is the Government by consent and consent is not assumed one but real one expressed freely by democratic process periodically. The Supreme Court has ruled in its number of landmark cases[5]-- *Kesavananda Bharati v. State of Kerala, Indira Nehru Gandhi v. Raj Narain, Minerva Mills v. Union of India*-- that democracy is one of the inalienable basic features of the Indian Constitution.

Powers of E C I

It is learnt that Election Commission of India is built on Canadian model, following the Dominions Act of 1920.[6] The Election Commission of India (ECI) is an autonomous constitutional body with a power to administer the Union and State elections. Our Constitution confers three basic powers on the E C I i.e., 1) Advisory Powers,2) Administrative powers, 3) Quasi-Judicial Powers, under the first type it advises the President and the Governor regarding disqualification of Members of Parliament and State Assemblies In the Second type of powers it exercises Powers to mark areas of elections where requires, to prepare election rolls, to Control and superintendent elections etc., Under the quasi-judicial powers, the Commission also acts as a Court for settling disputes regarding recognition of political parties and their symbols**.**[7]

[4] Basic structure doctrine- en.m.wikipedia.org

[5] Kesavananda Bharati v. State of Kerala AIR 1973 SC 1461,Indira Nehru Gandhi v. Raj NarainAIR 1975SC2299,Minerva Mills v. Union of India AIR 1980SC1789

[6] m.economictimes.com, Appointment of election commissioners what is Canada's contribution - Dominion Elections Act,1920 in the Constituent Assembly of India on june 16th 1949 a specific reference was made to this Canadian Act as the model for India. The same was also referred in a petition filed by Anoop Baranwal and argued by Advocate, Prashant Bhushan before the apex Court.

[7] prsindia.org

It can disqualify a candidate who has not filed the accounts of election expenses within the time as per the Representation of People Act and other Prescribed Laws. It has the power to remove or reduce the period of such disqualification and also other disqualification under law.[8] While dealing with the impugned delimitation Order 1976, passed under the Delimitation Act, 1972 and considering the third proviso to Art. 82 of the Constitution the apex Court has got an opportunity to pronounce in one of its landmark case--*Election Commission of India vs. Mohd.Abdul Ghani*.[9]-- that the ECI has no power to alter the boundaries or area or extent of any constituency as shown in the Delimitation order.

The process of election:

The elections in the Republic of India includes President, Vice President, Members of the both the houses of Parliament, Members of the State legislative Assemblies , State legislative Councils, representatives in local bodies like Municipal Councils and Zilla Parishads, Panchayats, cooperative societies, Unions, associations and various other bodies. In case of death, resignations or disqualification of elected candidates of particular constituency by-elections can be held**.**[10] Elections are the soul of democracy: It has both constitutionally established system of direct and indirect elections to the Parliament and State legislature.

1. **Direct elections:**

Of the two houses of Parliament, Loksabha is directly elected from defined single member territorial constituencies under universal adult suffrage (above 18 years of age) and on the basis of first past the post system(FPTP)

In the same manner adult voters directly elect all State Legislative Assembles from the territorial constituencies within their respective States.

2. **Indirect Elections:**

The Constitutional head of the Indian Union, the President of India is indirectly elected by an electoral College. In the same way elections to the Vice-President, Members of Rajya Sabha and Legislative Councils at State level are indirectly elected

3. **Elections to Local bodies**:

Elections to the Panchayat Raj Institutions and Municipalities that have been made mandatory by the 73rd and 74th Amendment to the Constitution are governed by the Par-I X and IXA of the constitutional provisions[11] and

[8] https://eci.gov.in
[9] 1995-SCC 1-721,1995-JT-7-590
[10] https://en.m.wikipedia.org
[11] Articles 243 to Article 243ZG

the respective State Laws on Panchayati Raj Institutions and Municipalities. All elections except local body polls are conducted under the supervision, direction and control of an independent constitutional body called the Election Commission of India(Art.324) Elations to local bodies are under the supervision and control of the State election Commission.[12] In *Krishan Singh Tomar v. Municipal Corporation of the City of Ahmedabad.*[13] the Supreme Court held "in the domain of elections to Panchayats and municipalities, The State Election Commission(SEC) enjoys same status as Election commission of India. In terms of Art 243K and 243ZA the same powers are vested in SEC as in the election Commission of India under Article 324 and powers of SEC in respect of Conduct of elections are no less than that of election Commission of India". In *Indira Nehru Gandhi v. Raj Narain*[14] the apex Court has opined that one of the essential features of our democracy is the free exercise of franchise.

As Justice Hans Raj Khanna expressly held that "the principle of free and fair election is an essential postulate of democracy which in turn is part of the basic structure of the Constitution of India." *In P.R Balagali v. B.D.Jatti,*[15] the highest court viewed that the entire election law is to safeguard the purity of elections and to see that the people do not get elected by flagrant breaches of election law. The right to elect and the right to be elected are statutorily protected.In *N.P Punnuswami v. Returning Officer*[16]**,** *Ramkumar Pandey v. Union of India*[17] *Mohinder Singh Gill v. Cheif Election Commissioner*[18]*Election Commission v. Shivaji* [19] The Supreme Court said that a right to elect, fundamental, though it is essential to democracy and is anomalously enough, still it is neither a fundamental right nor a common law right, It is purely and simply, a statutory right. So is the right to be elected and the right to dispute an election. Outside the Statute, (i.e., The statutory Provisions of the Representation of People Act,1951,) there is no fundamental or Common Law right in these matters. The election process culminates as a candidate declared elected is one from the date of issuance of notification. Any doubt or dispute arising out of or in connection with any of the issues of election have to be inquired into by the Superior Courts and, therefore, judicial process must necessarily be a part of the election process and covered within the terms of election. The law confers wider powers on judiciary both in matters of interpretation of the relevant statutory provisions and taking necessary measures to detect corrupt practices in election. In the matter of judicial pronouncements the finality clause of the decisions of Election Tribunals *(Forum for hearing an election petition was an Election Tribunal)* is void. Under the Representation of Peoples Act, 1951, as it stood prior to 1966, the

[12] Art.243K&243ZA of the Constitution
[13] (2006)8 SCC,352, A decision rendered by 5 judge Bench
[14] AIR 1975 SC 2299)
[15] AIR 1971 SC1348
[16] AIR 1952 SC64
[17] (1993)2 SCC 438 at pp 441-42
[18] A I R 1978 SC 851,
[19] (1998)1 SCC 277.

special leave to appeal by Supreme Court under Article 136 bars the finality clause of decision of Election Tribunal.

After 1966 amendment to the Representation of Peoples Act, the jurisdiction was transferred to the High Court, *(sitting as a statutory tribunal-under sec.80 A)* with appeal to the Supreme Court under section 116A of the Act. No appeal lies from single judge to division Bench. Writ jurisdiction of High Court in its territorial Jurisdiction under Article 226 cannot be taken away by any ordinary law such as the Representation of Peoples Act, 1951 as held *in Sangram Singh v. Election Tribunal.*[20] The constitution (19th Amendment) Act 1966 took away the power of the election Commission under Art 324 to appoint Tribunals and abolish Election Tribunals and the power was vested to decide disputes in the High Courts. The Constitution (39th Amendment) Act 1975 amended Article 71 and abolished the Jurisdiction of the Supreme Court and High Courts and to

decide disputes in connection with the election of President and Vice-President ,Prime Minister and Speaker and empowered the Parliament to pass a Law to set up a special forum for that purpose under Article 329-A. In *Indira Nehru Gandhi v Shri Raj Narain & Anr*[21] the 39th Amendment was declared as irrational and violative of Art.14 of the Constitution. The said amendment destroys the basic structure of Constitution.*In P.A Sangma v. Pranab Mukherjee*[22] the supreme Court dismisses P.A Sangma's petition challenging the election of Pranab Mukherjee on the ground that it did not disclose material to pass the stage of early scrutiny. The Constitution (44th amendment) Act omitted Art329-A and restored Art. 71 again giving the power in this matter to Supreme Court.The orders of the Election Commission are subject to Judicial review if they are arbitrary, mala fide ,unfair ,in excess of Jurisdiction and contrary to law enacted by the Parliament under Art.327,but these matters to be decided by the apex court through an election petition.

It was held in *V.S Achuthanadan v. P.J francis and another*[23] that under Article 329(b) Election means the entire process that is from publication of election Notification to till the final results are declared, In *Kesavananda Bharati vs. State of Kerala*[24] the Supreme Court said "Democracy is one of the basic inalienable features of the Constitution of India and forms part of its basic structure"

Supreme Court as a part of election process:

" Free, fair, fearless and impartial elections are the guarantee of a democratic polity. Effective mechanism is the basic requirement for having such elections. For conducting, holding and completing the democratic process, a potential law based upon requirements of the society tested on the touchstone of the experience of times is

[20] (AIR 1955 SC 425)
[21] AIR 1975 SC 2299,
[22] P.A Sangama vs Pranabmukhargee, dated 05-12- 12, https://m.timesofindia.com
[23] (1999)2 LRJ200)
[24] AIR 1973 SC 1461

concededly of paramount importance. A balanced judicial approach of implementing the laws relating to franchise is the mandate of Supreme Court" as observed in *Indira Nehru Gandhi vs. Raj Narain*[25]

Judicial functions cannot be delegated:

"The judicial functions are to be discharged essentially by the judges and cannot be delegated. But the Administrative functions can be delegated or entrusted to subordinate bodies unless there is some rule of law restricting such delegation or authorization. Judicial function consists in the interpretation of law and its application by rule of discretion to the facts of particular cases" *Jamal Uddin Ahmad vs. Abu Saleh Najmuddin*[26]

Judicial Interepretation: "it can be said that Indian Constitution is what the Judges say it is", Part XV of the Constitution deals with' elections', It has six Articles viz., 324,325,326,327,328 and 329. Article 324 provides for the appointment of Election Commission and its functions, Powers of the election Commission.

The Powers of the election Commission under Art.324 are meant to supplement rather than supplant the law in the matter of superintendence, direction and control as provide therein and therefore, that power does not prevail over the Acts passed by the Parliament or rules framed there under. The important factor is that Art. 324 must be read in harmony with and not in subordination of Articles 326 to 329. The Commission under protection of passing orders for regulating the conduct of elections can not take upon itself a purely legislative function which is vested only in Parliament and State Legislature as ruled by the highest Court in *A.C Jose vs. Sivan Pillai*[27] So far as the framing of the schedule or calendar for election of the legislative Assembly is concerned, the same is as the exclusive domain of the Election Commission which is not subject to any law framed by Parliament. Parliament is empowered to frame a law as regards conduct of elections. But conducting elections is the sole responsibility of the Election Commission as opined by the apex Court in *Special Reference No 1.*[28]

Article 324 operates in areas unoccupied by legislature. The words Superintendence, direction and Control are the broadest terms as viewed in *Mohinder Singh Gill vs. Chief Election Commissioner*[29]

Conduct of Elections-Superintendence and Control:-

The phrase 'Conduct of election' has been accepted to be of wide amplitude it includes power to make all necessary provisions for conducting free and fair elections the same view was laid in *Union of India vs Association for Democratic Reforms*[30] Superintendence and Control over conduct of elections by the election commission include (i) The scrutiny of all expenses incurred by a political party,(ii) a candidate or any other

[25] AIR 1975 SC 2299
[26] AIR 2003 SC 1917
[27] (1984)2 SCC 656, A I R 1984 SC 921).
[28] 2002 (2002)8 SCC 237 Para 80
[29] (1978)S CC.405, para 39 at page 431, also para 113 pages 459-60
[30] (2002)5.SCC 249

person or body of persons or by any individual in course of the election. The expression "conduct of election' is wider enough to include in its purview the power to issue directions-in the process of conduct of an election- to that effect that the political parties shall submit to the election Commission, for its scrutiny, the details of expenditure incurred or authorised by the parties in connection with the election of their representative candidates as it was held in *Common cause Vs. Union of India.*[31]

Democracy is a part of the basic structure of the constitution, free and fair election is substratum of democracy. If there is no free and fair election, it is the end of democracy, as it was observed by the Court in *In Re Special Reference No.1*[32] *relies on M.S Gill vs Chief Election Commission*[33]

Election: The word election in Art.324 is used in a wider sense so as to include the entire process of election which consists of several stages and it embraces many steps, so of which may have an important bearing on the result of the process.

India is a country which consists of millions of voters .Although they are quite conscious of their duties politically, a large percentage of them are still illiterate as observed by the apex Court in *Kanhiya Lal Omar vs. R.K Trivedi*[34]

The Chief Election Commission:- The provisions (i) that the CEC can be removed from office in the like manner and on the like grounds as a judge of the Supreme Court and (ii) his conditions of service shall not be varied to his disadvantage after appointment which are similar to Articles 124(4) and 125(2) respectively, but do not confer the status of Supreme Court Judge on CEC. The court ruled in *T.N Seshan Chief Election of India vs Union of India.*[35]

Chief election Commission Versus Election Commission & Elections Commissions:- Though it is only a case of the chief Election commission that the first proviso the clause (5) of Article 324 lays down that conditions of the services cannot be varied to the disadvantage of the incumbent, they (CEC &EC) are placed on a par with the Judge of the Supreme Court in the matter of salary etc. The absence of afore said protection to the election Commission or Commissions does not make the CEC superior to them. Similarly, the difference in the matter of removal from service, is not an indication for conferring higher status on the C E C. As observed in *T.N.Seshan,C E C of India vs. Union of India*[36]

[31] (1962)2 SCC 752(para 26, p767)
[32] 2002)8 SCC237(para 77)
[33] (1978) SCC (para 12); AIR 1978 S C 85
[34] (1995)4 SCC 61
[35] (1995)4 SCC 61
[36] (1995)4 SCC 61.

The Election Commission of India form part of the election Commission and have a say in decision making .If the Chief Election Commission is considered to be superior in the sense that his word is final, he would render the Election Commission non-functional or ornamental. Such an intention is difficult to call out from Art.324 nor can it be attributed to the Constitution-makers. The Court accordingly rejected the argument that the Election Commissions function is only to tender an advice to Chief Election Commission.

As viewed inT.N.Seshan,C E C of India vs. Union of India[37]

(1) Powers of the Election Commission are not subject to Art.174, they operate on different fields. Art. 174(1) as interpreted by the Supreme Court that "the Governor shall from time to time summon the Legislative houses or each house of the legislature of the State to meet at the place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in next session.

(2) The Governor may from time to time (a)Prorogue the Legislative House or either houses ,(b) dissolve the Legislative Assembly,- *Gujarat Assembly Elections* Matter[38]-The expressions "the houses", or "either houses" are synonymous with legislative Assembly and Council. They do not refer to other bodies other than these. Art 174 contemplates a session of an existing Assembly and not a new Assembly after dissolution.

Per Majority:

" Article 174(1) of the Constitution relates to an existing , live and functional legislative Assembly and not to a dissolved Assembly"- *Legislative Assembly*

Gujarat Assembly Elections Matter[39]." A plain reading of Art 174 shows that Six months shall not intervene

between the last sitting in one session and the date appointed for its first sitting in the next session. It does not provide for any period of limitation for holding fresh elections in the event of a legislative Assembly is prematurely dissolved. This time that after commencement of the Constitution the practice has been that whenever either *Loksabha* or Legislative Assembly were prematurely dissolved the election for constituting fresh Assembly or Parliament , as the case may be, were held within six months from the date of last sitting of the dissolved Loksabha or Assembly (para 14) The Gujarat Assembly was prematurely dissolved by the Governor on 19.7.2002 in exercise of the powers conferred on him under Article 174(2) (b) of the Constitution i.e.8 months before its term was due to expire. After the dissolution of the Assembly the ruling party in the State of Gujarat requested the Election Commission to conduct fresh general elections urgently so that the new Legislative Assembly would be able to have its first session on or before 3-10-2002.The ruling party made this demand on the basis of the premise that under Article 174(1) there shall not be more than Six months period between the last session of the

[37] (1995)4 SCC 611(para 20)
[38] (2002)8 SCC 237,Special reference No.1 of 2002)
[39] (2002)8 SCC 237,Special reference No.1 of 2002) (Para 84(b)

dissolved assembly and the First meeting of the next session of the Assembly to be newly constituted. In its 40 page order released on August 16 the Election Commission gave out in detail its reasons for not conducting early elections in Gujarat. It ruled that conditions are not conducive and the "administrative following the rules were woefully inadequate to enable the election Commission to hold a free and fair poll". While spelling out its reasons in the report, the Election Commission has also referred to Art.174(1) of the Constitution.

1. The Commission's viewed "Article 174(1) of the Constitution cannot be read in isolation and has to be read along with other provisions of the constitution, particularly Article 324"Thus this article which gives the election Commission the sole authority in superintendence, direction, control and conduct of elections to the Loksabha and State Legislatures. Strengthening its argument, The election Commission cited three Supreme Court Judgements and the Inter-Parliamentary Council declarations to conclude that polls were not a ritual to be gone through periodically and the election Commission alone was the arbiter on their timing" It believes Art.174 must yield to Art.324 in the interest of genuine democracy.

2. Can the Election Commission under Art.324 frame a poll Schedule on the premise that if the time-frame provided under Art.174 is not complied with then the President will step in under Art.324.

3. Is the election Commission bound by Art.174 to conduct elections in Gujarat before Six months have passed after the last assembly session (in the case of premature dissolution) Neither under the Constitution nor under the Representation of the People Act any period of limitation has been presumed for holding election for constituting legislative Assembly after premature dissolution of existing one. Since the entire process relating to the elections was entrusted to the election Commission. it was found to be matter of consequence to provide any period of Article 174 seeks to safeguard the rights of the people's elected representatives Art.324 seeks to safeguard the rights of the people themselves. Thus the people and not the elected representatives who are the source of both power and legitimacy in the Indian Constitution. Instead of moving the Supreme Court directly, the government referred the question of holding early election to the apex court through Presidential reference.

The three-point Presidential Reference to Apex Court raised the following questions. (1) Does art.174 yield to Art.324 meaning in the time-frame provided by art. 174 subject to the election Commission's order under 324 and purity of election. Further more the election Commission concluded that its decision of not holding an election would create a Constitutional anomaly, the State Government " cannot be carried on in accordance with provisions of the constitution within the meaning of Art. 356 and the President would then step in." Ignoring the suggestion of State Government for early poll, within six month from the date of its dissolution, the Election Commission suggest an 'option' if imposition of six month's period is mandated , Conflicting versions now there arose between Art.174 and Art.324 of Constitution. The Election Commission gave Primacy to Art.324 over Art174 and said Art.174 can not be read in isolation, limitation for holding fresh elections and constituting new

legislative Assembly in the event of premature dissolution. This was a deliberate and conscious decision.*(Paras 84(e) &76 and &77, Legislative Assembly Gujarat Assembly Elections Matter[40]or Special reference No.1 of2002)* It is submitted that Art. 174(1) of the Constitution relates to existing ,live and functional legislative Assembly and not a dissolved Assembly.

In *Mohinder Sing Gill's case*[41] the Supreme Court made two important observations. Firstly, it observed that "functions are referred to in Article 324(6) include powers as well as duties."It is incomprehensible that a person or body can discharge any function without exercising powers. Powers and duties are integrated with function. The Chief Election Commissioner has to pass appropriate orders on receipt of reports from the returning officer with regard to any situation arising in the course of an election and powers cannot be denied to him to pass appropriate order."

Therefore, the source of powers enjoyed by the Election Commission is the duties cast on it. Different situations may arise requiring direction from the Election Commission and the Election Commission is presumed to have all powers to give such directions for proper conduct of the elections, subject to the limitations as pointed out by the Supreme Court in *Mohinder Singh Gill's case*[42]

The supreme Court held that Election Commission, as any other Tribunal, is required to give reasons while making any order and those reasons alone will determine the validity of that order made. It is also required to give hearing to the effected parties so far as practicable.

Multi-member Commission and democratization of election commission:

The composition and powers of the Chief Election Commission and other Election Commissions are analysed by the Supreme court in the *Chief Election Commission S.S.Dhanoa vs Union of india*[43],The Supreme Court held that it is desirable to have Multi-Member Election Commission. If it is held by one man, he may become dictatorial, but the Election Commission can not be equated with Chief Election Commissioner and do not enjoy the same Constitutional protection provided to the Chief Election Commission. In 1993 the Government passed an Ordinance and later made an Act appointing two other commissioners in addition to the Chief election Commission and changed the powers of the Election Commissioners equating with the Chief election commissioner with respect to powers and functions including terms of office and salary. The Commission is to take decision, by majority of opinion of members, if difference of opinion crops up and unanimity is not possible.

[40] (2002)8 SCC 237 Legislative Assembly Gujarat Assembly Elections Matter[37]or Special reference No.1 of 2002)
[41] AIR 1984 SC 921
[42] AIR 1984 SC 921
[43] AIR 1991 SC 1745

The Act was challenged by the single member Commission- Chief Election Commissioner T.N.Sheshan *in T.N.Sheshan vs Union of India*[44] in the supreme Court. The Court upheld the Act giving equal status to other two Election Commissions. But the Chief Election Commissioner enjoys greater security of tenure like the judges of the Supreme Court , under the Article 324.

Reforms in the process of selection of Chief Election Commissioner and Election Commissioners.

There is a great demand to make the Election Commission more transparent, impartial and independent**.**

Regarding the powers and duties of the E C I, Chief Election Commissioner- Mr.B.B Tandon- made some suggestions in the year 2001. In a letter to the President, Mr. Tandon appears to have suggested that the selection of persons to man the posts of the Chief Election Commissioner and Election Commissioners should be done by a broad-based Committee. This is not first time that someone has suggested that a credible transparent procedure be instituted to select the Chief Election Commissioner and the Election in Commissioners. This was first proposed by Mr.V.M Tarkunde over four decades ago and firmly reiterated by the Dinesh Goswami Committee that examined electoral reforms in1990. But it has not been worked out. Mr. Tandon proposed that a Committee would select the Chief election Commissioner and the election Commissioners to be headed by the Prime Minister. The Committee should Comprise of Lok Sabha Speaker,The Law Minister, the Leader of opposition in the Lok Sabha, the Rajya Sabha Deputy Chairperson and a Judge of the Supreme Court nominated by the Chief Justice of India. Mr Tandon has said that the selection process should be akin to the manner in which the Central Vigilance Commissioner or the Chairman of the National Human Rights Commission is Chosen. The former Chief Election Commissioner has said that much changes in the process of selection and appointment of Election Commissioners would further enhance the image of Commission as a free and independent Commission. Mr. Tandon is of the opinion "a broad-based selection Committee will further strengthen the faith and confidence in the public mind.The Election Commission of India submitted its" views and proposals for Consideration on Electoral reforms" are as under(*In Item No.21 on "mode of appointment of Chief Election Commissioner and other Election Commissioners)*"The commission feels that Article 324 of the Constitution should be amended to provide as under(a) There should be a maximum of 2 Election Commissioners along with Chief Election Commissioner; (b) The method of appointment and Constitutional Protection, after appointment should be the same for the Chief Election Commission and other Election Commissioners. In *item No 22* on "The Chief Election Commissioner and other Election Commissioners to be made ineligible for further appointment under the government."

[44] (1995)4 SCC611)

Heading a Committee on Electoral Reforms appointed by Jayaprakash Narayan- a former Indian Public Administrator, prior to the emergency in 1975, the noted Jurist Mr. V.M. Tarkunde had made a number of suggestions to free the Electoral process from governmental influence. The Committee felt that the Election Commission should be seen as a fair and impartial body and therefore the Chief Election Commissioner and Election Commissioner should be chosen by a Committee Consisting of the Prime Minister, the leader of opposition in the Loksabha and the Chief Justice of India. The government of the day brushed aside the suggestion. The issue remained dormant for fifteen years until Mr. Dinesh Goswami became the Law Minister in the V.P Singh-led Coalition Government in 1989-90.The Prime Minister asked him to head an electoral reforms Committee. The Committee said that the election commission should be a three-member body. The appointment of the Chief Election Commissioner should be done in consultation with the Chief Justice of India and the leader of the opposition and the Chief Election Commissioner" should be consulted "While appointing the other members the Goswami Committee opined that the Committee should be broad-based. They shall not only choose the Chief election Commissioner and the other Election Commissioners, but also persons holding other Constitutional offices. The involvement of the presiding officers of the two houses of Parliament and the leaders of opposition and a judge of the Supreme Court is certain to put the stamp of impartiality on the selection process and on the persons selected. If this proposal for constitution of a broad-based Committee is accepted then some of the other proposals in regard to Constitutional status of election Commissioner can be considered.

The Election commission in item No.21 of proposed Electoral Reforms, has drawn the attention of the Government to the fact that the conditions of services of the Chief Election Commission and the Election Commissioner are not the same. They do not enjoy the same constitutional status and safeguards under Article 324(5) the Chief Election Commissioner cannot be removed from his office except in the like manner and on the like grounds as a judge of the Supreme Court. However this provision does not provide the same protection to election Commissioners. The Commission wants the election Commissioners too have the same protection and safeguard. It would not be proper to give Election Commissioners much Constitutional protection so long as their appointment is determined by a political process such as by the government of the day.

***Mr.NAVIN CHAWLA'S CASE*:**[45] Though the Shah Commission(Emergency Excess Commission) of inquiry has declared that he(Mr Navi chawla a retired Indian Civil Servant) was unfit for any public office and the evidence before the Commission *proved* him to be a person completely devoid of democratic credentials, the Government appointed him as an election Commissioner. Ever since his appointment, there are doubts in public mind about the impartiality of this Constitutional body that has to supervise elections in the Country. If the selection of Election Commissioners were to be done by the committee as suggested by the *TARKUNDE* and

[45] https://m.economictimes.com

GOSWAMI COMMITTEES and reiterated by the former Chief Election Commissioner *Mr.TANDON*, that perhaps *Mr. NAVIN CHAWALA'S* name would not have been put in the Parliamentary seniority list of names. In spite of the recommendations of Mr. N.Gopalaswamy the then Chief Election Commissioner for removal of Mr Navin Chawala from his office as Election Commissioner he holds the office until, he was removed by next Political Government[46] While the Election Commission needs greater constitutional insulation that all have to wait until an impartial process is in place to select them. The Government will have to take a holistic view of the process of selection of Election Commissioners and their powers.

" Democracy is the basic feature of the Constitution. Elections conducted at regular, prescribed intervals is essential to the democratic set up as envisaged in the Constitution. So it is the basic need to protect and sustain the purity of electoral process that may take the quality, efficacy and adequacy of the machinery for resolving electoral disputes."*kihoto hollohan vs. Zachillhu and others*[47]

The Constitution of India was framed with the participation of millions of public .the true spirit of the freedom struggle is reflected in every part of the Constitution that culminated the dialogue between the members of the Drafting Committee and millions of Indian people. As far back as in 1952 Justice Vivian Bose while dealing with Art.14 opined " whether the collective conscience of a sovereign democratic republic can regard(a disputed law)... as the sort of substantially equal treatment which men of resolute minds and unbiased views can regard as right and proper in a democracy of the kind we have proclaimed ourselves to be "[48]

At the concluding session of the Constituent Assembly both Dr.B.R. Ambedkar one of the chief Architect of the Indian Republic Constitution and Dr.Babu Rajendra Prasad the Chairman of Constituent Assembly and First President of Republic of India struck a note of caution" I feel however good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a Constitution may be, it may turn out to be good if those who are called upon to work it, happen to a good lot" Dr. Rajendra Prasad in his concluding address expressed satisfaction at the drafting of a good Constitution to serve the Country well, but he added:" whatever the Constitution may or may not provide, the welfare of the country will depend upon the way in which the Country administered. That will depend upon the men who administer it. If the people who are capable and men of character and integrity, they would be able to make the best even of a defective Constitution. If they are lacking in these, the Constitution cannot help the Country. The word "these" signifies" capable and men of Character and integrity" In his concluding remarks Dr Babasaheb Ambedkar a great liberator of India opined that "on the 26th January,1950 India would be democratic Country in the sense that India, from that date,

[46] https;// en.m.wikipedia.org, (National Front Government**)**
[47] (AIR 1993,SC412 P 432)
[48] The Hindu, page 8,dated 1-1-2020,Visakhapatnam

would have a Government of the people, by the people and for the people" It is a Government" Of the people" because citizens are both the subjects and rulers and they are equally subject to Laws.

It is "for the People" as it aims at establishing a welfare State where in, maximum good to maximum number of people is sought to be secured. More importantly, it is government "By the People" in as much as every adult citizen participates in the process of government through elected representatives. In other words, the people would have the power to make or unmake the Government, irrespective of any distinction based on caste, creed, race, sex, religion etc.

Polity becomes Criminalized -nee to reform:

In the last Six decades we are with the system of representative Government, with innovations or reforms, we find innovations in all aspects of human activities but not in the form of governance,. As a result the system has been revolving around elections and electoral politics. In short India's Polity has not moved beyond elections .This tendency provides opportunity to keep a particular person as leader for years in party structure in federal mode. This enables them to act as rulers and not as leaders. The existing electoral politics look at the people as voters or beneficiaries. Democracy in India has to move from elections to development. As it was held by the Supreme Court in a bunch of land mark decisions in the context of weeding out the criminals from Politics[44]. *In Union of India vs. Association for Democratic Reforms[49] and in Peoples Union for Civil Liberties (PUCL) and another vs Union of India*The highest Court held that candidates who conceal their criminal antecedents while filing nomination papers run the risk of being disqualified....." the apex highlighted the criminalization of politics, calling it an "anathema" to the sanctity of democracy. The Court defined the essentials of a democracy. The electoral process is sacrosanct to a nation's democratic fabric and the voter's right to know is paramount: as free and fair election stabilizes the democratic process which leads to good governance"

E.C Suffering from credibility Crisis: Nearly 66 former bureaucrats in a letter addressed to the President Shri Ram Nath Kovind, expressed their concern over the working of the election commission which they felt is suffering from credibility crisis, citing various violations of the model code of conduct for 2019 Loksabha Elections. Their concern was that" The E C I's independence, fairness, impartiality and efficiency are perceived to be compromised today, thereby endangering the integrity of the electoral process which is the very foundation of Indian democracy. We are distressed to note the misuse, abuse and blatant disregard of the Model Code of Conduct by the ruling party at the Centre."[50]

[49] *In Union of India vs. Association for Democratic Reforms date of judgment 02-05-2002 and in Peoples Union for Civil Liberties (PUCL) and another vs Union of India, date of judgment 23rd Feb.2009, per Justice B.N Agrawal,G.S Singhvi Bench, https;//www.right2info.org,www.legalservicesindia.com*

[50] *www.indiatoday.in ps://www.counterview.net*

Election Commission's proposal to Government of India: After striking down the Section 33 B of the Representation of People Act,1951 by the Hon,ble Supreme Court in its land mark judgment in *Peoples Union for Civil Liberties & Another vs Union of India,*[51] the directions given by the apex Court has become law of the Land under Art.141 of the Constitution. As per the direction of the Court the candidate has to give information relating to pending cases in which cognizance has been taken by a Court, his assets and liabilities, and educational qualifications.The person who is accused of serious Criminal offences and to whom the Court *prima facie* satisfied about his involvement should be kept away from electoral arena. The Parliamentary Standing committee on Election Reforms in its 18th report rejected the Election Commission's proposal on the ground that there was lurking fear of the course of prosecution being influenced by the political power. Merely looking into the charge-sheet with supporting evidence and other materials furnished by the prosecution without giving sufficient opportunity to the accused to defend himself and plead his case against the charges so framed, the Court can frame charges against the accused. The Committee opined that If the proposed amendment in the law to bar a charge-sheeted person from contesting an election once the framed charges was accepted, the person would be deprived of his/her statutory right which was fundamental nature in a democracy.

It pointed out that in certain cases the court may discharge the accused, if it is so convinced after recording reasons for the same in writing. The Committee felt that there was every likelihood of false and *mala fide* charges being framed at the behest of political opponents, who will naturally benefit if the person concerned is unable to contest an election. At the same time the Committee was deeply conscious of the criminalisation of our polity and the fast erosion of confidence of the people at large in the political process of the day. This would certainly weaken our democracy and render the democratic institutions sterile.

The committee therefore felt that politics should be cleansed of persons with established criminal background. However, the Election Commission proposal cannot be accepted in its present form as the country had witnessed in the past misuse of such laws as Maintenance of Internal Security Act of 1971, , National Security Act of 1980,Unlawful Activities (Prevention) Act,1967, The Prevention of Terrorism Act,2002 etc.,The Committee had enough faith in the sense of the people who by no means would serve their own interest by returning bad character to Parliament and Legislature.[52]Apart from that there is another reason for the Parliamentary Standing Committee to view in a different way that such course of action may violate the Principles of Natural Justice as enshrined in the Art.14,19,21 which constitute golden triangle and forms part of the basic Structure of the Constitution. The Supreme Court has observed in many of its historic judgments that democracy is one of the inviolable part of the basic structure of the Indian Constitution. Parliamentary form of Government is one of the essential features of

[51] dated 13-3-2003, Civil Appeal No 490 of 2002prsindia.org
[52] Hindu; March 28th 2007(Orissa Edition) P.1

our democratic system. Free and fair election is heart of our Indian democracy as observed in- *Keshavananda Bharathi, Indira Nehru Gandhi, Minerva mills and PUCL- o*ur Constitution ensures that Election Commission shall be an independent body and not under the control of any changing political power at the centre.

The Constitution assures their tenure of service and it is very difficult to remove them from office. They have fixed service tenure of 65 years or 6 years whichever is earlier. The Chief Election Commissioner can be removed from office through impeachment by Parliament. In spite of the above said Constitutional Protection still there are some instances of political interference with election process which posed a threat to the free and fair elections.

Suggestions and conclusions: the time has been ripen to revamp and reform the Election Commission, The highest Constitutional body stands for integrity and excellence its vision is to ensure the full and fair participation of all Indian electors in the election process, . It should uphold the constitutional values i.e. equality, fairness, justice and rule of law, Constitutional morality. it should adopt new technologies for conducting fair elections, in order to improve the election process, now a days most of the electoral Management bodies adopting and applying latest technologies to compile voter lists, for drawing electoral boundaries, to manage and train staff, to print ballots, to conduct voter education campaign, to record cast votes, to count and consolidate voter list results and to publish election results. The use of technology in election process can improve the administrative efficacy and reduce the long term costs and increase political transparency.[53] it should develop sufficient human skills, and infrastructure for smooth conducting of elections. To uphold the true spirit of the India democracy, it is needed to ensure inclusive and ethical elections it is suggested that the Chief election commissioner and other election commissioners shall be appointed by an independent body as in the case of appointment judge of the Supreme Court and High Court by the collegium, it can secure more independence to the Election body for conducting free and fair elections. It is further suggested that it shall be free from executive branch of the Government. There shall be a normative independence in decisions making and actions so that it should not be lenient to governmental, political or other partisan influence on its decisions.

[53] (https://aceproject.org/ace-en/top /ero-en africa) 52. .(https://aceproject.org/ace-en/top ero-en africa)