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Study of Institution of Election Process of Canada and its Equivalent in India

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ABSTRACT

When people of a country give Constitution to themselves and have the power to elect their representative, then a country is called Republic Democratic country. Though Canada was given its basic document of Constitution and upper and lower houses were composed by the Britishers in mid-18th century itself, they weren't republic as Queen, and her representative was the head of the State. She made even appointment with executive members. In 1982, with Fundamental Rights in the Constitution Act, 1982 of Canada, Canadians got freedom in the true sense. Whereas the Constitution of India was constituted in 1950 and the people of India gave themselves the lengthiest Constitution in the world, and the people also elected its first Prime Minister in 1952.

As India and Canada, both were colonies of Britain, electoral systems, or voting systems, which are chosen political representatives are almost the same. Provincial election systems, governed by provincial election Acts, are similar to the federal system but differ slightly from each other in essential details. Therefore, federal electoral practices are not an appropriate guide for provincial elections. The Canadian federal election system is governed by the Canada Election Act, as amended from time to time. In India, while India's Election Commission is an independent constitutional authority responsible for conducting the elections of the Union and the states in India.

In this paper, however, we shall specifically and mainly focus upon the above topic, i.e. Election Process of Canada concerning The Election Commission of India.

Canada is a federal nation like India; there are many similarities in Election in both countries. Also, it has to be kept in mind that any constitution mirrors its people's history, evolution, culture and more, as the history is different, so it's presumed to have some differences in there procedure. Therefore, in this paper, we shall study and analyse these procedures and compare the same in utmost detail.

I. OVERVIEW

The whole world is divided into two systems. One system evolved from British tradition known as the Common law system, and customs of Roman law develop another system called the

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Civil Law system. Canada and India both were colonies of the UK, so their political system has their bases from the Common law system. Following UK's Common law model, Canada and India both have a Parliamentary form of government where the President is head of the State, and Prime Minister is the head of the government. The Parliament has residuary power. Therefore we can say that the form of government and bases are the same as Canada and India, i.e. parliamentary form and Common law system, but the distribution of power is different.

Now the distribution of power depends on the history of the country. Canada has a coming-together federation as provinces were strong while making the constitution, but the centre was strong in India, so it has a holding-together federation.

There are three bodies in every country, i.e. Legislative, Executive and Judiciary. Legislative makes the law; Executive administers the law, and Judiciary interprets the law. The Parliament makes the law, i.e. head of government (Prime Minister), and President is known as the head of the State does the administration of a country. When Canada got independence on 1st July 1867, their economy was weak, and Britishers did the administration. Even today, the Queen of England is the head of State in Canada. It is a Constitutional Monarchy composed of the Queen of Canada; she is the head of the State and officially represented by the Governor-General (or by a lieutenant governor at the provincial level). Thus there is no election for the post of Governor-General in Canada. There is appointed of Governor-General by the Queen.

India got independence on 15th August 1947, almost a century later than Canada, but India got complete freedom, unlike Canada. India has the Constitutional Republic; the President of India is elected indirectly by Electoral College.

Moreover, Canada has a parliamentary form of government, so they also have bi-cameral (two chambers) legislation. Two houses are the House of Commons (Lower House) and the Senate (Upper House). Citizens of Canada elect the Members of Parliament (House of Commons) through an election, so Canada does have Parliamentary Democracy.

Unlike the House of Commons, the Governor-General appoints 105 Senators on the Prime Minister's advice rather than electing them. There is no election of the Senators of House of Common; they will serve in their positions until attaining 75, as stipulated by the British North American Act. Whereas, in India, there is a general election for Lok Sabha (Lower House), and there is also an election for Rajya Sabha (Upper House) by Vidhan Sabha (State Legislative Assembly). Members in Rajya Sabha hold the seat for six years and Lok Sabha for five years. Thus, there is an election at every level in India and every post, say, President, Prime Minister, Lok Sabha, Rajya Sabha, State level, Panchayat level. Whereas, in Canada, as it is a

Constitutional Monarchy, there is no election at the President level and for Senators (Upper House), but there is Parliamentary Democracy, so there is an election for government at all levels.

Canada also does have Federal Government, so power is shared between the centre and state government. Canada does have three tiers of government, Federal government (centre), Provincial government (state), Municipal level (local). There is the election for appointing members at all three levels, and even the governing laws are different at all the levels.

At the Federal level - The Canadian Election Act, at the Provincial and Municipal levels – Each province has its election laws. Whereas in India, the Constitution of India provides the power under Articles 324 to 329 in Part VX.

II. INTRODUCTION

Democracy is defined by the people as government, a form of government. The people hold the supreme power and are exercised directly under a free electoral system by them or their elected agents.

Federal elections are a system where the people of Canada share their interests as to who will serve and rule them. Both priorities are combined to determine which candidates will become parliamentary representatives. Elections are essential to the functioning of democracy in Canada because they are the central means by which citizens give authority to those who govern them. The Constitution's framers were well aware of the importance of a democracy of free and fair elections. The Constitution as such provides for the executive to have no accountability for an election commission.

The President appoints the Chief Election Commissioner and other several Election Commissioners who assisted him. Any political issues cannot remove the Chief Election Commissioner. The President can only remove him via impeachment procedure, i.e., passing a special resolution in both the houses on proven misbehaviour or incapacity. "Chief Electoral Officers assist the Commission in the preparation and revision of electoral rolls."²

The electoral legislation in Canada has become increasingly complex and is continually changing. "Since Canada's foundation in 1867, there have been cumulative changes in law and practice that have led to the current electoral system. In the years following Confederation, the election administration was chaotic and highly politicized. Only white men were allowed to

² <https://lawvaccine.in/election-process-in-india/>. Last seen May, 2021.

vote, and they had to meet specific property requirements to do so.”³ Later on after 1960 Canada had universal suffrage. Whereas in India from the independence i.e. 1947 it had universal suffrage.

Aside from the extension of the right to vote, two significant developments have shaped the evolution of the Canadian electoral process since Confederation: creating a non-partisan electoral system governed by specific procedures overseen by an independent election agency and the regulation of political party campaigning, particularly campaign financing.

In May 2000, Parliament enacted a new Canada Elections Act.⁴ This Act is first comprehensive federal electoral law in three decades. This Act update the federal election process of Canada. “The Act has been revised numerous times, most recently in 2003, when new electoral funding regulations were enacted. In 2007, new voter identification standards were established, as well as modifications to campaign funding regulations and the establishment of a fixed-date election process for federal elections.”⁵ “The office of the Chief Electoral Officer, the office of the Commissioner of Canada Elections, contacts with electors, voter identification, campaign finance, and the Act’s prohibitions and enforcement provisions, among other things, were all amended in 2014.”⁶

This paper provides an overview of the nature and operation of the Canadian electoral system,⁷ with a focus on elections for the federal Parliament and also have compare it with Indian election process. In keeping with Canada’s federal system of government, each province has its own system for elections to its legislatures. The federal and provincial electoral processes are independent of each other, whereas, in India, both are the same.

In terms of election processes in Canada and India, there are a few characteristics on which comparisons may be made. Those factors will be discussed further down. This paper mainly discusses Canada’s electoral process and compares it to that of India.

Let’s discuss the parameters one by one:

III. THE CHIEF ELECTORAL OFFICER

As noted earlier, one of the most significant achievements in the history of the Canadian political system is the gradual removal of election administration and organization from partisan political control and influence. Although politicians continue to pass legislation, the

³ <https://lop.parl.ca/sites/PublicWebsite/default>. Last seen May, 2021.

⁴ <https://laws.justice.gc.ca/eng/acts/e-2.01/index.html>. Last seen May, 2021.

⁵ <https://parl.ca/DocumentViewer/en/37-2/bill/C-24/royal-assent>. Last seen May, 2021.

⁶ https://laws-lois.justice.gc.ca/eng/annualstatutes/2007_21/page-1.html. Last seen May, 2021.

⁷ <https://www.canlii.org/en/ca/laws/astat/sc-2014-c-12/latest/sc-2014-c-12.html>. Last seen May, 2021.

electoral system is now handled by unbiased and independent election officials.

The Chief Electoral Officer serves for a non-renewable term of ten years.⁸ He / She can only be dismissed for reason and by the Governor General following a joint address of the House of Commons and Senate.⁹ Whereas, in India the tenure of Chief Electoral Officer is 6 years or 65 years of age whichever is earlier, under Article 324(1) of the Indian Constitution. In India President makes the appointments of Chief Election officer and other election commissioners.

Elections Canada, under the direction of the Chief Electoral Officer, is responsible for the general direction and supervision of the preparation, administration and reporting of federal elections and for administering the election expenses provisions of the Canada Elections Act. In addition to his or her overall responsibility for the administration of the electoral process, the Chief Electoral Officer has discretionary powers to adapt the process prescribed in the Act in the light of unusual circumstances; effectively, he or she has the authority to circumvent the requirements of the legislation “for the sole purpose of enabling electors to exercise their right to vote or enabling the counting of votes” in cases where “an emergency, an unusual or unforeseen circumstance or an error makes it necessary.”

Finally, the Commissioner of Canada Elections is the independent officer who ensures compliance with and enforcement of the Canada Elections Act and the Referendum Act.¹⁰ The Commissioner of Canada Elections used to be appointed by the Chief Electoral Officer.¹¹ The position is now appointed by the Director of Public Prosecutions for a non-renewable term of seven years (removable only for cause). The Commissioner’s position is within the Office of the Director of Public Prosecutions. The Director of Public Prosecutions cannot consult the Chief Electoral Officer when appointing the Commissioner.¹²

IV. THE RIGHT TO VOTE

Currently right to vote or the franchise is widely distributed in Canada. Canada has **a universal franchise- the right to vote for all citizens over 18 years.** (As of 1987)

The federal vote – historically

- All property-owning males of British ancestry (1867)
- Removal of property owing qualification (1885)

⁸ Before the Fair Elections Act was enacted, the Chief Electoral Officer held office until age 65

⁹ Canada Elections Act, s. 13

¹⁰ Commissioner of Canada Elections, *Enforcing the Canada Elections Act*

¹¹ The position was amended by the Fair Elections Act.

¹² Canada Elections Act, ss. 509–509.2

- Some women 1917, extended to all women in 1918
- Chinese and Indo-Canadians (1947) Japanese (1948)
- Native Canadians (1960) on reserves
- Right to vote embedded in the Constitution 1982
- Prisoners (serving less than 2 yrs.), mentally disabled (1993)
- All prisoners (2002)

The value of exercising one's right to vote cannot be emphasized. It is stated in one literature as follows:

The fundamental political right is the franchise, or the right to vote for one's representative. It results in the most direct assessment of the performance of those in power by citizens. "The keystone in the arch of our country's current system of political rights," it says. This is reflected in section 3 of the Canadian Charter of Rights and Freedoms (Charter), which states that "every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein."

The Supreme Court of Canada has construed this right, as expressed in the Charter, as the right to effective representation and the right to participate meaningfully in the electoral process. The 50 candidate threshold under the Canada Elections Act at issue in *Figuroa v. Canada* was struck down on this ground by the Court (Attorney General).¹³

The Canada Elections Act establishes the eligibility requirements and disqualifications for voting in federal elections, resulting in a nearly universal adult franchise. It's vital to remember that this is a relatively new phenomenon that has developed through time. Two significant alterations have supported this evolution:

- First, the franchise was generally defined in federal legislation by 1920, after being determined by provincial laws in federal legislation (save from 1885 to 1898).
- Second, several restrictions on the right to vote in the years following Confederation have been relaxed or eliminated. In 1918, for example, women were granted the right to vote in federal elections, and Aboriginal Canadians living on reserves were given the right to vote in 1960.

Until 1970, the voting age was set at 21 years old. When it was suggested that the voting age

¹³ *Figuroa v. Canada (Attorney General)*, [2003] 1 S.C.R. 912. See section 8, "Political Parties," in this paper for a more detailed discussion of this issue

be lowered to 18, some people were concerned about whether 18-year-olds were adequately aware or mature to vote appropriately. In India, the age was changed from 21 to 18 years old in the Constitution (61st Amendment) Act of 1988. Voting is now open to ordinarily eligible Canadians who are 18 years old on or before Election Day.¹⁴

Only Canadian citizens are eligible to vote in federal elections. British subjects could vote in Canadian elections until the mid-1970s because of the country's historical link with the United Kingdom. Except for eliminating British citizens' right to vote, Canada's trend has been to expand the franchise and remove voting restrictions. This trend was aided by the introduction of the Canadian Charter of Rights and Freedoms in 1982.

Persons who are ineligible to vote are listed in the Canada Elections Act. Certain officials, such as the Chief Electoral Officer and the Assistant Chief Electoral Officer, fall within this category. In India, there is no such provision. Judges and mentally disabled people were also excluded from voting, but the law was changed in 1993 to eliminate these restrictions after a series of successful legal challenges. Voting was previously illegal for inmates. However, this rule was lifted in 1993 for those serving terms of two years or longer. The court has since overturned the prohibition as a whole.¹⁵

People missing from their residences on Election Day are a source of concern about their right to vote. The Canada Elections Act allows for advance polling and mail-in ("special") ballots for specific groups of people. Members of the Canadian Forces operating overseas, Canadians residing abroad, and electors in Canada who are unable to vote in their usual electoral district may use the latter.¹⁶

Canadian residents living outside the country have been allowed to vote in federal elections since 1993 if they have been away for no more than five years and intend to return. This is similar to how many other countries, such as Australia, France, Germany, the United Kingdom, and the United States, operate. This allows non-resident citizens to participate in national elections. Only some non-resident nationals, such as members of the armed services and public-sector workers stationed abroad, were formerly permitted to vote in federal elections in Canada.

The five-year limit for Canadians residing abroad has been the topic of debate and attention in Canada in recent years. As a probable breach of the Charter right to vote in federal elections,

¹⁴ The age requirement of 18 years for voting in local elections in Alberta was challenged unsuccessfully under section 3 of the Canadian Charter of Rights and Freedoms. It is likely that a similar challenge to the age requirement under the Canada Elections Act would fail as well. See *Fitzgerald v. Alberta*, 2002 ABQB 1086

¹⁵ *Sauvé v. Canada (Chief Electoral Officer)*, [2002] 3 S.C.R. 519

¹⁶ See Part 11 of the Canada Elections Act, which establishes the special voting rules

the Chief Electoral Officer suggested that the five-year restriction be eliminated in 2005.¹⁷ The House of Commons Standing Committee on Procedure and House Affairs investigated the subject the following year and decided that the five-year limit should be removed.¹⁸ In response, the Canadian Government suggested that the committee conduct a more fulsome review of special voting rules in general.

Nonetheless, following the 2006 federal general election, Elections Canada changed the way it calculated the residency requirement for Canadians living abroad, indicating that a visit to Canada would not be considered a resumption of residence in Canada and that the five-year period would not be interrupted.

In a judgment rendered on 2 May 2014 in *Frank et al. v. Attorney General of Canada*, Justice Michael Penny of the Ontario Superior Court held that provisions of the Canada Elections Act that prevented Canadian citizens who were absent from Canada for more than five years from voting violated those citizens' democratic right to vote, as guaranteed by section 3 of the Charter, (which provides every person "the right to vote in an election of members of the House of Commons or of a legislative assembly"), and thus were not protected by section 1 of the Charter (which allows limitations to Charter rights so long as they are prescribed by law and demonstrably justified in a free and democratic society). He declared the provisions to be null and void.¹⁹ The decision was overturned by the Attorney General of Canada. The Ontario Court of Appeal authorized the appeal and overturned the trial decision on July 20, 2015, in a divided 2-1 judgment.²⁰ The judgement is being appealed to the Supreme Court of Canada, and leave is being sought.

The adult franchise has been a long-running issue in Canada, whereas in India, everyone has had the right to vote since the country's constitution was formed.

V. DATE OF GENERAL ELECTION

Part 5 Of the Canada Election Act – under Conduct of election the following provenience are written: On May 3rd 2007, The 39th Canadian Parliament passed Bill C-16 and amended the Canada Election Act. Under section 56.1(2) it requires that each general election to take place on the third Monday in October in fourth calendar year after the previous poll, starting with

¹⁷ Elections Canada, Recommendation 1.16, "Voting by Electors Absent from the Country for More Than Five Consecutive Years," in *Completing the Cycle of Electoral Reforms – Recommendations from the Chief Electoral Officer of Canada on the 38th General Election*, Ottawa, 2005.

¹⁸ House of Commons, Standing Committee on Procedure and House Affairs *Improving the Integrity of the Electoral Process: Recommendations for Legislative Change* (230 kB, 49 pages), Thirteenth Report, 1st Session, 39th Parliament, June 2006, p. 2

¹⁹ *Frank et al. v. AG Canada*, 2014 ONSC 907

²⁰ *Frank v. Canada (Attorney General)*, 2015 ONCA 536.

October 19, 2009.

However Prime Minister is still free to call an election before this time. The Provincial election's date as well as Municipal election is also fixed. For example, In British Columbia, the election must be held on second of Tuesday in May, every four years, whereas municipal elections must be held on third Saturday in November every three years.

VI. SIX STAGES OF FEDERAL ELECTION

(A) Dissolution

The House of Commons and other provincial legislative assemblies have a maximum term of five years per the Constitution Act of 1982. The House of Commons, on the other hand, is elected every four years or so, as is customary. (The Senate, Parliament's other house, is appointed.) Under the Constitution, only the Governor-General, who represents the Queen as head of state, has the authority to dissolve Parliament on the prime minister's advice. The procedure begins when the prime minister proposes that the Governor-General dissolve Parliament and issue a writ from the Chief Electoral Officer.

The Canada Elections Act states that the writ must be issued or dated no later than the 36th day before polling day, which means that within 36 days, a federal election must be held. Until 1997, the minimum election time was 47 days, owing to the necessity of conducting a door-to-door enumeration throughout the campaign. This interval was thought to be too protracted, especially in light of modern communications technologies, and contributed to the cost of federal elections. Although the minimum period has been shortened, it is unlikely to be reduced further. Other countries, such as the United Kingdom, have shorter election periods; nevertheless, Canada's size likely needs a more extended campaign to allow party leaders to tour various regions and seats.

It's also worth noting that in the United States, where the Constitution sets election dates but no campaign period is mandated, presidential and other central office candidates can spend a year or more campaigning. In the early 2000s, the idea of having elections at regular intervals piqued interest in Canada, particularly at the provincial level. Elections at fixed intervals or on specified dates have been argued to improve planning, assure predictability, and remove the governing party's discretion and advantage. Contrary to popular belief, such a system would be incompatible with the parliamentary system and the confidence convention, which requires a government to resign if it loses the confidence of a majority of members of the House of Commons.

Bill C-16, An Act to Amend the Canada Elections Act, received Royal Assent on May 3, 2007, imposing fixed election dates for federal elections while keeping the Governor General's right to dissolve Parliament at any time not defined by the legislation. The Canada Elections Act presently mandates that a general election be held on the third Monday in October of the fourth calendar year after the polling day of the previous general election unless Parliament is dissolved sooner. The bill does not affect the Governor General's powers, notably the discretionary ability to dissolve Parliament.²¹ The first general election was scheduled for Monday, October 19, 2009, according to the legislation. In the case of an earlier dissolution of Parliament, however, the bill's wording permitted the four years before October 19, 2009. On October 14, 2008, a general election was held. Thus, barring an early dissolution of Parliament, the next general election after the 2008 general election should have been conducted on the third Monday in October 2012. On the other hand, the prime minister elected to dissolve Parliament before the end of the mandated term. As a result, an election was held on May 2, 2011, about 17 months ahead of schedule. Following the election, the date for the next election was set for October 19, 2015, which was the third Monday in October of the fourth calendar year after the 2011 general election.

Several provinces and one territory have passed fixed-date election rules, each of which preserves the Lieutenant Governor's right to dissolve a legislature at any time.²²

(B) Nomination

The Canada Elections Act broadly outlines the requirements and disqualifications for running for office in a federal election. They are intertwined with the provisions governing the right to vote. With a few exceptions, everyone who is eligible to vote can also run for office; candidates must be at least 18 years old, a Canadian citizen, and have established residency in the country (although not necessarily in the constituency of his or her candidacy).²³

The Canada Elections Act additionally specifies the number of disqualifications that solely apply to election candidates. Persons with a contractual relationship with the Crown were previously disqualified, but that prohibition was lifted in 1993. The following are examples of current disqualifications:

- A person found guilty of an illegal or corrupt electoral practice (as defined under section 502 of the Canada Elections Act) is barred from contesting a federal election for a

²¹ Canada Elections Act, s. 56.1

²² These include British Columbia, Newfoundland and Labrador, Ontario, the Northwest Territories, New Brunswick, Saskatchewan, Prince Edward Island and Manitoba. See Barnes et al. (2012), Table 6

²³ Canada Elections Act, s. 65

period of five or seven years, and if elected, may be allowed to retire from the House of Commons. Wilfully exceeding the spending limit or disrupting the electoral process are examples of illegal conduct. Voting more than once or accepting a banned gift or other advantages are examples of corrupt behaviours.

- Candidates who failed to file an auditor's report or an account of election expenditure in a prior election lose their ability to run again.

Sheriffs, county or judicial district Crown attorneys, and members of provincial legislatures and territory councils are all disqualified. The formal process of nomination necessitates the preparation of a nomination paper containing the candidate's name and address and the agent's name and address (who is legally responsible for the receipt, disbursement and account of expenses) and the candidate's auditor. A statement of consent to the nomination must be included in the paper, signed under oath by the candidate. It must also be signed by 100 authorized electors within the electoral district (50 for more remote electoral districts), with each signature witnessed by a qualified person. On or before the 28th day before Election Day, the nomination form must be presented to the returning officer, together with a \$1,000 deposit. When the candidate files the requisite auditor's report and statement of election expenses, the deposit is repaid.²⁴

A document signed by the party's leader (or a designated person) stating that the candidate has the endorsement of a registered political party must be provided with the nomination papers if the candidate has the approval of a registered political party. In the absence of this consent, the candidate's name will appear on the ballot as "independent" or "undesigned." As a result, this practice is linked to candidate affiliation designation and is intended to ensure that only legally sanctioned candidates run under a party's name.

Although the Canada Elections Act sets some limitations on the conduct of campaigns, the selection of candidates by registered parties is governed by each party's nomination procedures. Nomination contestants are allowed to spend up to 20% of the amount set aside for electoral candidates. Unlike expenses expended by political parties and candidates, costs incurred by persons seeking a nomination are not eligible for reimbursement, nor are contributions to nomination campaigns eligible for a tax benefit.

(C) Enumeration

Since 1997, when the National Register of Electors was formed, a permanent voters' list has

²⁴ Canada Elections Act, s. 66

been affected for federal elections. Previously, within the first few days after an election was called, a door-to-door enumeration of voters was done. Although this allowed for extremely detailed voter lists, it was time-consuming, labour-intensive, and costly. On the other hand, the National Register of Electors is a continuously updated database of qualified voters that includes each voter's name, mailing address, electoral district, gender, and date of birth.

Because Canadians are so migratory, roughly 17% of the information in the National Register of Electors changes each year.²⁵ The Register is kept up to date with data from existing federal and provincial databases and information from qualified voters who file a tax return with the Canada Revenue Agency and indicate their eligibility to vote. Elections Canada also has an online voter registration system in place. Additionally, voters who have the requisite identity documents may register to vote on Election Day or at an advance poll if they have them.

The preliminary voter list for federal elections, by-elections, and referendums is generated using the National Register of Electors. These lists are made available to political parties far sooner than before. This approach also allows federal, provincial, territorial, local, and school board governments to share election lists, reduce redundancy, and improve cost savings. Elections Canada has entered into information-sharing agreements with several provincial governments.

(D) Campaigning

1. Advertising and Broadcasting During an Election Campaign

During an election campaign, the Canada Elections Act sets some restrictions on party election broadcasting, primarily in terms of the date and location of origin. Election advertising by anybody, including registered parties, is prohibited on polling day until the end of voting. Election advertising refers to any form of advertisement that promotes or opposes a registered party or candidate.

If the message were created before the limited time and had not altered, advertising on the Internet would not be forbidden. Another notable restriction is that any advertisement by a candidate or registered political party must state that the party's or candidates' official agents authorised the transmission.

It is also illegal to use broadcast media outside of Canada for political purposes. The Fair Elections Act clarified the definition of "election advertising" in the Canada Elections Act, stating that "making telephone calls to electors solely to encourage them to vote" does not

²⁵ Elections Canada, Description of the National Register of Electors

constitute “election advertising” in and of itself.

Amendments repealed the clause (section 329) that prohibited all persons, including political parties and candidates, from communicating the results of a vote in one electoral district to another electoral district before the close of polls in the latter electoral district to the Canada Elections Act made in 2014. This restriction had been challenged as a limitation on the right to freedom of expression under section 2 of the Charter (b).

The Canada Elections Act also ensures that political parties have access to the media by requiring that broadcasting time that they are entitled to be sold at standard prices. This rule applies to advertising space as well. The ability of political parties and candidates to take advantage of the advertising options available to them is influenced by their fundraising performance and the constraints on election spending.

2. Campaign Finance

Since the 1970s, when the Election Expenses Act established a comprehensive election financing structure in Canada, federal campaign finance restrictions have changed. In 2014, the most recent campaign funding reforms were enacted. Campaign finance laws have typically promoted public trust in the democratic process by ensuring a level playing field.

3. Public Opinion Polls

There are electoral discussions as well as public opinion polls.

Except for forbidding the release of opinion poll findings on Election Day, there are usually no restrictions or prohibitions on conducting or reporting opinion polls throughout an election campaign. Opinion polls are standard, and many newspapers and television networks fund many of them during election season. Specific information concerning opinion polls, such as who paid for them and what questions were asked, is required to be disclosed under the Canada Elections Act.²⁶ The Supreme Court of Canada overturned a previous ban on polling during the final weekend of an election campaign.²⁷

(E) Balloting

Election Day and Advance Polls

The Canada Elections Act has specific requirements governing the actual voting process on Election Day. The polling stations, the people in charge of voting, the procedure for receiving ballots, and the boxes in which the ballots are placed are all covered by these regulations. Until

²⁶ Canada Elections Act, ss. 326–328

²⁷ *Thompson Newspapers Co. v. Canada (Attorney General)*, [1998] 1 S.C.R. 877

1993, the Act forbade the selling of alcoholic beverages while polls were open; this was a relic from the wild early days of elections when giving voters a drink was a customary practice.

There are six time zones in Canada, and until 1996, polls were opened and closed based on local time. As a result, results for ridings in the eastern half of the nation were frequently announced well before polls in the country's western half had closed. The polls will be open for 12 hours in a row, according to amendments to the Canada Elections Act made in December 1996, though the times vary per time zone. The following are the voting hours (in local time):

- Newfoundland and Atlantic Time zones (Newfoundland and Labrador, Nova Scotia, Prince Edward Island, and New Brunswick): 8:30 a.m. to 8:30 p.m.
- Eastern time zone (Quebec and Ontario): 9:30 a.m. to 9:30 p.m. 8:30 a.m. to 8:30 p.m. in the Central time zone (Manitoba, parts of Saskatchewan, and Nunavut);
- 7:30 a.m. to 7:30 p.m. in the Mountain time zone (parts of Saskatchewan, Alberta, and the Northwest Territories); and
- 7:00 a.m. to 7:00 p.m. in the Pacific time zone (parts of British Columbia, Alberta, and the Northwest Territories) (British Columbia and the Yukon).

Employees must be granted at least three consecutive hours off work to vote, and polls are open during the day. Elections in Canada are held on Mondays (unless a statutory holiday), not weekends or holidays, as they are in many European countries. Voting is not compulsory in Canada, unlike in some other countries such as Australia. The percentage of people who vote in federal general elections has fluctuated over time. The years with the highest voter turnout were 1958, 1962, and 1963, when over 79 per cent of eligible voters cast ballots. In 2008, only 58.8% of eligible voters cast ballots, which was the lowest voter turnout on record. Despite an overall fall in voter turnout over the last two decades, 68.5 per cent of eligible voters cast ballots in the October 2015 election. A 7% rise from the 61.1 per cent of eligible voters who cast ballots in the 2011 election. This time, a maximum number of people who voted since 1993. (when turnout was 69.6 per cent).

There is a provision for advance polls. There are also specific voting processes for people who vote outside of their usual voting district.

The voters chose only one candidate. The "first past the post" or "single-member plurality" election system is used in Canada. In other terms, the winner is the candidate who receives the most votes in a particular constituency. It is not necessary for the winner to obtain an absolute majority of the votes cast or capable of being released. As a result, governments have been

elected with only a tiny percentage of the popular vote in some situations. In contrast, parties have won a large proportion of the popular vote but only a few parliamentary seats in others. Various ideas for different sorts of election systems have been made, including some proportional representation, ranking of candidates and so forth.

(F) Tabulation

1. Compilation and Reporting Of Election Results

The Canada Elections Act has numerous provisions for election results compilation and reporting. The fact that these procedures are detailed and extensive and the fact that the vote count is subject to examination and complaints from representatives of the opposing parties reduces prejudice or the impression of bias.

The deputy returning officer of each polling division must conduct repeated counts immediately after the poll closes, in the presence of the poll clerk and designated party agents or candidates, to ensure that all ballot papers received from the Chief Electoral Officer are accounted for. The deputy returning officer tally the number of votes cast for each candidate, and the visiting party representative has the option to scrutinize each ballot and keep track of provided tallies sheets.

The Act specifies the criteria for ballots to be rejected. Votes that are unmarked, double-marked, or wrongly marked and ballots that identify the voter must be discarded, as must any ballot not presented by the deputy returning officer. The Act also includes directions for difficult situations, such as ballots that the deputy returning officer forgot to sign before the vote.

If candidates or their representatives raise concerns, the deputy returning officer must record them for future reference and decide so that the count can proceed. After the count is completed, an official statement of the poll's results must be prepared. This statement must be included in the ballot box for the returning officer's use, presented to each candidate's representative, and addressed. The ballot boxes must be delivered to the returning officer, sealed and containing the ballots and other documentation.

The returning officer is in charge of the official count. The returning officer must request a district court judge for an official recount if the official count indicates that two candidates earned the same number of votes or are separated by less than one-thousandth of the total votes cast. Other people can also request a judicial recount within four days of the official results being announced. All candidates are eligible to seek reimbursement of the costs associated with a recount. As previously mentioned, provisions in the Canada Elections Act allow a voter to

challenge an election result based on procedural flaws or unlawful behaviour that may be demonstrated to have influenced the outcome.

The returning officer must formally declare the candidate with the most votes elected six days after the official count or immediately following a judicial recount. The returning officer must then send the writ of election, along with a post-election report and other documentation, to the Chief Electoral Officer, who publicizes the results, submits a report to Parliament on the election's conduct and keeps the forwarded documents in case the election is contested.

2. Challenges to Election Results

The Act allows to challenge the elections in certain circumstances.²⁸ Election results can be nullified in severe instances. However, this is extremely rare, as the Supreme Court of Canada ruled in a recent lawsuit opposing an election in the federal riding of Etobicoke Centre. An eligible voter in the riding may apply to a court to nullify an election in that riding because there were abnormalities or unlawful acts (fraud or illegal or unethical practices) that affected the results. An eligible voter in the riding may petition a court to declare an election null and void because the results were tainted by irregularities or unlawful conduct (fraud, illegal, or corrupt activities).

There was an incident in which seven voters filed a challenge in the Federal Court of Canada stating that criminal conduct (the use of automated or live telephone calls misdirecting voters on where to vote) influenced the outcome in seven ridings, rather than irregularities. Although there was evidence of widespread fraud in the use of automated calls to misdirect voters on where to vote, the Federal Court in those cases determined that there was insufficient evidence that the unlawful activities influenced the election outcomes.²⁹

Finally, as previously stated, a finding of guilt in relation to an unlawful or corrupt act, as defined by the Canada Elections Act, will result in an elected Member of Parliament losing his or her ability to sit in the House of Commons, requiring a by-election.

3. By- Election

Sometimes a Member of Parliament retires, is removed from, or cannot fulfil job functions; then, only the particular riding needs a by-election.

The same election process is followed, with the exception that Parliament will not dissolve in its whole. Candidates are not authorized to broadcast their platforms over the airwaves during

²⁸ See Sebastian Spano, "The Legal Process for Contested Elections in Canada," HillNote, Library of Parliament, Ottawa, 2 May 2012.

²⁹ *McEwing v. Canada* (Attorney General).

their free time. The party of the candidate will not compensate the campaign expense. India has a similar provision.

4. Provincial Election

Canada's ten provinces and one territory Yukon use a plurality voting system as used in the federal election.

While in territories of Nunavut and the northwest regions' elections are held using the consensus government model.

Each state has an independent election commission that oversees and organizes elections, and provinces can lawfully change their electoral system without permission from the federal government.

Even the provinces have mostly passed laws establishing fixed election dates.

5. First Pass the Poll

The candidate who receives the most votes in each riding (electoral district) is elected to the House of Commons and represents that electoral district (its constituents) as its Member of Parliament. India has the same system, but it is not perfect since if a candidate receives less than 50% of the vote but has more votes than the other candidates, he will still win. This method is not perfect and can ruin and question the democracy in a particular country as candidates who receive less than half of the votes are also elected.

In an electoral district, any number of candidates may compete for office, either independently or under the banner of a registered political party. A candidate can only run in one riding at a time. In each electoral district, each political party can only support one candidate. Candidates with the most votes in a riding win (takes all) Few candidates ever have more than 50% of vote System can be very unfair.

VII. COMPARISON WITH INDIAN ELECTION PROCESS

<u>Sr. no.</u>	<u>Canada</u>	<u>India</u>
1	Separate Act for governing the election process (Canada Elections Act for federal and for provincial, different provinces has their different Laws).	Constitution provides for the election process.

2	Fixed date of election.	No such provision.
3	General Election is held every four year.	General Election is held every five year.
4	Governing body - Chief election officer (under Canada Election Act).	Governing body - Election Commission (under the constitution).
5	Executive head is Queen, who is not elected nor the governor general (who is nominated by Queen).	Executive head is President, whose election procedure is cover under the constitution.
6	Different mechanism of vote – Balloting on Election Day, advance voting and special voting.	Balloting on Election Day.
7	Member of Senate are nominated by Governor General on advice of P.M.	Member of Rajya Sabha are elected by State Legislative Assembly.
8	Senate member held the seat for life till they reach 75 years (as per British North American Act, 1965).	Members of Rajya Sabha held the seat for 6 years with one third of member retiring every two years.
9	Chief Electoral officer is appointed by Governor General and tenure is for 10 years.	Chief Electoral Officer is appointed by President and the tenure is 6 years or 65 years of age, whichever is earlier under Article 324(1) of the Indian Constitution.

SIMILARITY BETWEEN CANADA’S ELECTION PROCESS WITH INDIA

- The election happens at three levels, federal, provincial, and municipal
- First past poll.
- The voting Age is 18.
- Provision for By-election.
- Motion of Confidence.

VIII. CONCLUSION

To sum up, the process of election in Canadian and India is almost the same as we did see earlier in the paper as firstly, both were colonies of the UK. Hence, both follow the common law system and follow the parliamentary form of government and are federal. The election happens at all three levels, i.e. at federal, provincial, and municipal. Power is derived by the state and a union from the same source in India, i.e. from The Constitution of India. In contrast, there is The Canadian Election Act for election at a federal level, and all provinces have their different laws. Moreover, Elections are monitored and organized by an independent election commission in each state, and provinces may legally change their electoral system without permission from the federal government.

Although the Canadian electoral system is very complex, it is closely regulated, and virtually every aspect of it is the subject of detailed provisions. The many interrelated features of the system have been shaped by historical precedent, administrative convenience and philosophical conviction. The Canadian electoral system is not static; it is continually evolving in response to new challenges and circumstances. These all features are the same as in India.

The Canadian electoral system is characterized as non-partisan and is administered neutrally by the Chief Electoral Officer, whereas in India, it is administered by Election Commission. The activities of political parties are closely regulated to ensure fairness. Most Canadians are entitled to vote in federal elections. Still, only two citizens, Chief Electoral Officer and the Deputy Chief Electoral Officer, cannot vote in Federal Elections, whereas there are no such provisions in India. Moreover, the No Confidence motion, By-Election, First Past the Post and other such provisions are the same.

The main difference is that there is Constitutional Monarchy in Canada, so there is the nomination of the Governor-General. In contrast, India is the Constitutional Republic, so there is no influence on one person. There is total democracy as election happens at all levels, but there is no election at President Level and for Upper House in Canada. Moreover, Election dates are fixed in Canada but not in India, and there is an advance voting provision in Canada but not in India.

Thus, we can say that as both countries were a colony of the UK, the bases of the system followed by both countries are the same.
