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ELECTION LAW IN INDIA : ANALYSIS

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History of Elections in Vedic Period –

It would not be wrong to say that the principle of elections originated from the Vedas. Both Rigveda and Atharvaveda mention the House and the Committee. In the Mahabharata, there was a gathering of common people called Sansad, also known as Jan Sadan, at the Shanti Parva. Democracy was also prevalent in the Buddhist period, Licchavi, Vaishali, Malak, Madak, Kamboj, etc. are instances of the democratic system of Vedic era. Vishal, the first king of Vaishali, was elected through elections.

History of Elections in Ancient Period –

Dating back to the Vedic era our ancient scriptures are full of references to republics and democracies prevalent in different parts of ancient India. We get many references to elections, referendums, voting, ballots, etc. in history. A vote known as '*Chanda*', which literally means '*desire*'. The word meaningful was used to express the view that by voting a member was expressing his free will and choice. We also get details of the methods of collecting votes of citizens who could not attend the assembly meeting. For voting purposes in the Assembly, there used to be multi-colored voting tickets, called '*shalaks*' (Pins). These were distributed to the members when a division was called and collected by a special officer of the Assembly, known

as 'Shalika Grahak' (Collector of Pins). This officer was fully appointed by the Assembly. It was their duty to take votes, which could be either secret or open.

History of Elections in British-India Period –

In modern form, where electors registered in the electoral rolls of well-demarcated regional constituencies expressed their choice through ballot papers and ballot boxes, in favor of those who want to be represented in decision-making institutions like Parliament. Many acts fail to satisfy Indians.

The British Council of India Act, 1901 is also known as the Morley - Minto Reforms of 1909, prepared by Lord Minto, the Governor General of India and Lord Morley, the Foreign Minister of India, in the British Cabinet in 1906. The Act provided for setting up of Legislative Councils at the Centre under the Governor General and provinces¹. He also indirectly introduced the method of election as a means of forming a part of private members for the first time. Each Legislative Council consisted of three sections of members:

- The official

- Elected

- The nominated non-officials

In the case of Imperial Legislative Council, the average number of voters in general constituency was 21, and in one case the number of voters was 9. The total number of votes can hardly exceed 4,000. Which gives less than 150 to the average for each member. Similarly, members of the Legislative Council of the United Provinces are elected by about 3,000 votes or for each elected member on an average of about 143.

Accordingly, the voters were grouped under three categories, as follows:

1. The General electorate includes non-official members of provincial legislative councils or municipal corporations and district boards.
2. Class electorate belonging to the constituencies of the land holder and Mohammedan voters.

¹ See resolution no. 4213 of the Government of India dated 15th Nov. 1909

3. Special electorate involving universities, chambers of commerce, port trusts, presidency corporations, planting and business interests etc.

Introduction to communal disharmony is generally held as an ugly piece of state art and an excellent example of mischievous British-Machiavellianism in India. Although the Morley-Minto Reforms act of 1882 was reformed, it failed to fulfil the aspirations of the people.

Mr. Montagu then visited India in 1917-18 and then published a report on Indian constitutional reforms known as the Montagu-Chelmsford Report. According to the statement and report:

‘The Government of India Act of 1919 was enacted on the British Parliament’.

The 1919 Act is also much lower than the demands and expectations of the Indian people, it is inadequate, unsatisfactory and disappointing. In May 1928, an all-party conference was held in Bombay and a Committee was constituted under the Chairmanship of Shri Motilal Nehru to determine the principles of the Constitution of independent India.

On 2 August, 1935 the British Parliament passed, The Government of India Act, 1935. It proposed to set up a bicameral, federal, legislature. It was to include an Upper House, called the State Council and a Lower House, called the House of Assembly or the Federal Assembly.²

Election: Meaning & Definition –

Elections are an essential and inseparable part of the democracy. Without election the will of the people cannot be determined. So, there are some definitions of “ELECTION” as:

- According to Black, ‘election is the process of selecting a person to occupy a position or office, usually a public office’.
- According to Webster’s Dictionary, ‘election means the act or process of choosing a person for an office position or membership by voting’.
- Legal Glossary of the Government of India says that election in law is when a man is left to his own free will to take or do one thing or another, which he pleases; it is more frequently applied to the choosing between two rights by a person who drives one of them under an instrument in which an intention appears that he should not enjoy both.

² Section 18 of the 1935 Act (1)

- The word 'election' is also commonly applied to the choosing of representatives.
- The word 'election' implies persons who are to elect, (called the electors), the office to which election is to be made, and the person who is to be elected (called the candidate).
- Election is thus defined as the choice of persons to fill public office, means the expression by vote, of the will of the people or of a numerous body of electors.
- Election has also been defined to mean the act or process of choosing a person or persons for an office, position or membership as by ballot.
- In the Representation of the People Act, 1951 the word election is defined as, "election means an election to fill a seat or seats in either House of Parliament or in the House or either, House of the Legislature of a State³".
- The word election as used in the Representation of the People Act, 1951 includes every stage from the time the notification calling for election is issued till the declaration of the result.
- The expression election means selection of a person by vote or even otherwise.
- In the Constitution of India, the word 'election' has been used in wide sense as including the entire process of Election commencing with the issued of a notification and terminating with the declaration of election of a candidate.
- In **N.P. Ponnuswami v. Returning Officer, Namakkal Constituency**⁴. The Supreme Court held that, "the word 'election' has been used in Part XV of the Constitution in the wide sense, that is to say, to connote the entire procedure to be gone through to return a candidate to the Legislature".
- The Supreme Court approved the opinion expressed by the learned judges of the Madras High Court in **Srinivasalu V. Kuppuswami**⁵ that the word 'election' can be taken to adopt the entire process under which an elected member is returned to see if it is necessary to take the election. The Supreme Court said: "The term election has been used in the broad sense XV part of the Constitution, that the whole process has gone through connote is for the legislature to say back a candidate"
- This case is regarded as a Landmark Case in Election Laws. Its ratio has been consistently followed by the same court in several rulings. In **Mohinder Singh Gill v. Chief Election Commissioner**⁶, Krishna Iyer J. giving the majority decision observed:

³ Section 2 (d) of the RP Act

⁴ AIR 1952, SC 64

⁵ AIR 1928, Mad 253

⁶ AIR 1978, SC 851

"The rainbow of operations covered by binding expression election thus begins with the initial notification and ends in the announcement of the return of a candidate"

- The Supreme Court in **V.S. Achuthanandan v. P.J. Francis**⁷, it is believed that free, fearless, and fair elections are guarantees of a democratic system. Effective mechanism is the basic requirement for such elections to be held. A possible law based on the needs of the society is of paramount importance for conducting, organizing and fulfilling the democratic process. A balanced judicial approach is the mandate of this court in the enforcement of laws relating to voting rights.
- In **Jyoti Basu v. Devi Ghoshal**⁸, the Supreme Court said that the right to elections is fundamental, although it is for democracy, disproportionately, neither a fundamental right nor a right to a uniform law. It is pure and simple, a statutory right. Therefore, there is a right to be elected. So, there is a right to dispute the election.

Structure of the Indian Government –

Our government is based on the British Westminster system of parliament which is structured as follows:

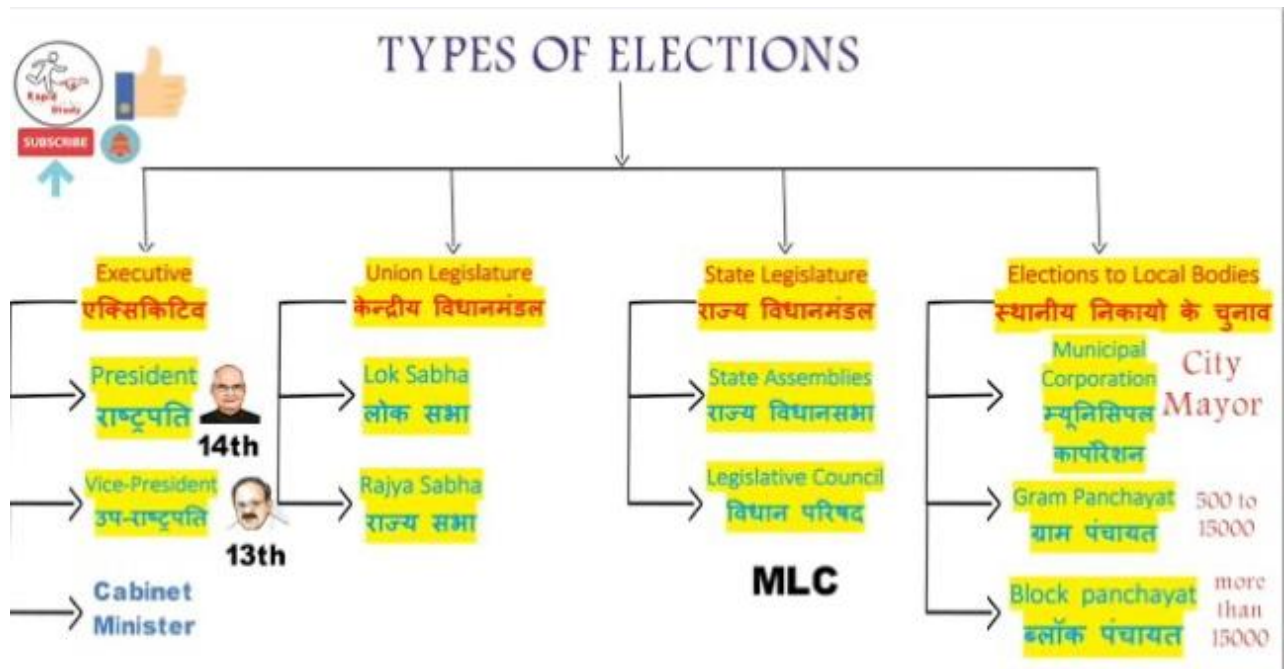
- An elected president
- An elected vice-president
- Elected parliament
- Elected state legislature

Customized for the Indian small towns and rural areas, the Indian Government also has,

- Elected municipalities
- Panchayats
- Other local bodies

⁷ AIR 1999

⁸ AIR 1982



Types of Elections in India –

There are three major types of elections in India are as:

- a) **General Election** – It is held to constitute the Lok Sabha, electing members of Parliament to all the 543 Indian Parliamentary constituencies.
- b) **Assembly Elections** – Elections to the Legislative Assembly (State Elections) are held in India every 5 years during which the Indian electorate elects the members of the Assembly who, in turn, elect the Chief Minister of a State (or Legislative / State Assembly).
- c) **By – Election** – It is also called by-polls are used to fill elected offices which have become vacant between General Elections.

Acts and Rules relating to the Election Laws –

To regulate elections in India certain laws in India have been passed. They are the following:

- **Presidential and Vice-Presidential Elections Act, 1952**

An Act to regulate certain matters relating to or connected with elections to the offices of President and Vice-President of India. This act was enacted by the Indian Parliament.

- **Presidential and Vice-Presidential Elections Rules, 1974**

This is a supplementary set of rules to the Presidential and Vice-Presidential Elections Act, 1952.

- **Representation of People Act, 1950**

Allocation of seats and borderline of constituencies for the aim of elections to the individuals and assemblies of the States, eligibility of voters in such elections, preparation of electoral rolls, manner of filling of seats within the Council of States to be crammed by the representatives of Union Territories and connected matters.

- **The Registrations of Electors Rules, 1960**

Under Section 28 of the Act, these rules were made by the Central Government with the Election Commission and supplement the provisions of the Act with detailed rules. All rules relating to preparation, periodic updating and revision of election rules are covered under this provision. It provides for registration of eligible electors and voter ID cards along with voter's photo. It also covers the rules for inclusion of eligible voters and any reforms required. With these rules, the Election Commission has the power to prepare photo electoral rolls which will contain the names, photographs, and other details of the electors.

- **Representation of People Act, 1951**

An Act to provide for the election of houses of Parliament and houses or houses of each state legislature, qualifications, and disqualification for membership of those Houses, corrupt practices, and other crimes in respect or in respect of such elections and the decision of doubts and disputes arising out of such elections.

- **Conduct of Elections Rules, 1961**

These rules were framed by the Central Government along with the Election Commission under **Section 169** of the Act. It deals with detailed rules for every stage

of conducting elections. This includes issuing writ notification for conducting elections, filing of nominations and scrutiny of nomination papers. It is also related to the return of candidates. The votes for election and counting are also governed by the same rules. Finally, based on the results, the Constitution of the Houses is also classified under these rules.

- **Election Symbols (Reservation and Allotment) Order, 1968**

An Act to provide for specification, reservation, choice, and allotment of symbols at elections in Parliamentary and Assembly Constituencies, for the recognition of political parties in relation thereto and for the matters connected therewith.

It is necessary and expedient to provide in the interest of purity of elections to the house of the People and the Legislative Assembly of every State and in the interest of the conduct of such elections in a fair and efficient manner, for the specification, reservation, choice, and allotment of the symbols for the recognition of political parties.

- **Anti – Defection Law, 1985**

The law was enacted by the **52nd Constitutional Amendment** during the reign of Rajiv Gandhi and is found in the **10th Schedule** of the **Constitution**, came into effect on 1st March 1985, also known as the Anti-Defection Act. When a member of the House belonging to a particular party voluntarily subscribes to his political party, or votes or stops voting, contrary to the course of his political party, or if an independent member joins a political party after the election, he will be responsible for blaming that member.

Framework of the Electoral System –

Before we deal with electoral laws, we must understand the legal and administrative framework of elections which rests on the provisions of the Constitution, the Representation of the People Act 1950, the Representation of the People Act 1951, the Indian Penal Code 1860 and the Delimitation Act 1972.

There are also some other laws like the **Government of Union Territories Act**, the **Delhi Administration Act 1966**, and the **Jammu & Kashmir Representation of the People**

(supplementary) Act, 1968 which are special laws meant for specific areas and do not concern us here.

1. Constitution of India –

The Constitution of India ushered in a democratic republic for the free people of the country. The founding fathers of the Constitution took care to devote a special chapter to ‘ELECTION’ niched safely in Part XV of the Constitution. The draft of **Article 289** of the Constitution of India was introduced in the Constituent Assembly on 15 June 1949 by Dr. B.R. Ambedkar, Chairman of the Drafting Committee of the Constituent Assembly and one of the chief architects of the Indian Constitution.

The more important provision in the Constitution relating to election are:

- **Articles 80** and **83** laying down the composition and term of the Council of States (Rajya Sabha) and the House of the People (Lok Sabha) and their terms.
- **Article 84** prescribes the minimum qualification for an M.P. i.e.,
 1. being a citizen of India
 2. an age of at least 25 years in the case of Lok Sabha and 35 years in the case of the Rajya Sabha
- **Article 101** lays down that no person can be a member of both the Houses of Parliament or of the Parliament and a State Legislature.
- **Article 102** prescribes disqualification for membership of Parliament i.e.,
 1. Holding an office of profit under Government.
 2. Being an undischarged insolvent.
 3. Being declared to be of unsound mind by a competent court.
 4. Voluntarily acquiring the citizenship of foreign state.
- **Articles 168 – 173** and **190 – 192** contain similar provisions about composition, qualification, disqualification etc., for State Legislatures.
- **Article 324** is about the appointment and powers of the Election Commission and has acquired considerable importance and attracted attention at present. It provides that the Commission shall consist of a Chief Election Commissioner and such number of other Commissioner as the President may appoint.

- **Article 326** lays down those elections to the Lok Sabha and the State Assemblies shall be held based on Adult Suffrage. The minimum age for being considered an adult was reduced from 21 years to 18 years in 1988.
- **Article 329** lays down a bar to interference by courts in electoral matters.
- **Articles 330 – 334** provide for reservation of seats for Schedule Caste and Schedule Tribes in Parliament and the State Legislatures.
- The **Tenth Schedule** of the Constitution is an important addition made in 1958 to check defections.

2. The Representation of the People Act, 1950 and the Delimitation Commission Act, 1972

The main objectives of these two laws are delimitation of constituencies, prescribing additional qualifications for voters, preparation of electoral rolls etc. A separate law for the Constitution of a Delimitation Commission was enacted in 1972. Till then, Delimitation of constituencies was done by the Election Commission. The more important provisions of this Act are:

- The seats in the Lok Sabha are distributed state – wise. A constituency of the Lok Sabha cannot be spread over two or more states.
- Every constituency of the Lok Sabha is a single member constituency.
- The constituencies of the Legislative Councils of States are determined by the President.
- Any person who is not below 18 years of age on a qualifying date and who is generally resident in a constituency and otherwise not disqualified (for example due to bankrupt or unhealthy mind) is entitled to register as a voter in the constituency. These electoral rolls are revised and updated from time to time by electoral registration officers either by a person or by suo-moto on application. A thorough amendment to this role is made before, or before every General Election of the Lok Sabha or the State Legislature, unless the Election Commission otherwise directs.

As for the **Delimitation Act, 1972** a Delimitation Commission was appointed under the Act in 1973.

3. The Representation of the People Act, 1951 –

It is the most important legislation which lays down the nut – and – bolt aspects of an election: detailed provisions regarding qualifications and disqualification for candidate's time schedule for election's: administrative machinery for conducting election; power to requisition premises, vehicle etc., by a government for the elections; role and function of candidates and their agents; manner of voting counting or votes and declaration of results; disposal of election offences; suspension of poll or countermanding of election registration of political parties; deposits for contesting elections prevention of impersonation and limits on election expenditure, etc.,

4. The Indian Penal Code, 1860 –

Some of the actions in respect of elections have been criminalized under the Indian Penal Code (IPC), 1860.

1. They are promoting enmity between different groups based on religion, race, place of birth, residence, language etc.
2. Adverse allegations and claims of national unity; **Section 153-B**
3. **Bribery; Section 171-B**
4. Use of unfair influence to interfere in the free practice of any electoral right; **Section 171-C**
5. **Personality in an election; Section 171-D**
6. Making false statements; **Section 171-G**
7. **Illegal payment; Section 171-H**
8. Failure to hold election accounts; **Section 171**
9. To make or disseminate statements in harmony with public mischief, enmity or hatred etc. among different sections.

It should be noted that some of these offences such as bribery, undue influence, and promotion of enmity etc., have also been declared as corrupt practices under the **Representation of the People Act, 1951 (Section 123)** based on religion, race, etc., which also prescribes several other electoral offences such as holding public meetings during 48 hours before the commencement of voting (**Section 126**). Creating disturbances in election meetings (**Section 127**) etc.

The main difference between an electoral offence and a corrupt practice is that an electoral offence attracts punishment in a criminal court while a corrupt practice disqualifies a candidate whose election can be set aside.

In conclusion, an examination of India's election laws illustrates the complex web that oversees democracy in the biggest democracy in the world. Election rules have evolved because of a dedication to maintaining the values of inclusivity, openness, and fairness—all essential to a strong democratic system. The electoral process's integrity is maintained by the careful balancing act between the Election Commission's regulatory authority and the requirements of the constitution.

This investigation makes it clear that election law is a dynamic framework that adapts to the changing needs of a diverse and dynamic society rather than just a set of rules. Election rules must be continuously reviewed and adjusted due to the difficulties presented by campaign finance, technology, and the convergence of electoral procedures with socio-political reality.

Election law analysis is a vital tool for influencing future reforms and strengthening the fundamentals of a vibrant democracy as India's political scene changes. The study of Indian election law is essential to legal academia, the nation's democratic values, and the recognition of the country's accomplishments as well as places for improvement. It emphasises the ongoing necessity of scholarly investigation, public participation, and legal discourse to guarantee that election rules continue to be useful tools in preserving the nation's democratic culture.