

# Constitutional Provisions for Elections in India

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## ABSTRACT

*Our country India is a democratic country. This democracy is governed by a government which is of the people, by the people and for the people. The phrase “a government of the people, by the people and for the people” basically means a government which is run by the people of the country. India is a country which is run indirectly by the people of the country, that is through their representatives. These representatives are elected by the people and here comes the concept of election which involves the election of these representatives. The following paper deals with the provisions regarding elections enshrined in the Constitution of India and analyses the same. The paper also discusses about a fallacy which is there in the constitutional provisions for elections in India or rather we can say it also discusses a very important factor which is missing in the constitutional provisions for elections in India. This important factor is the basic minimum qualifications which should be there in people to become the representatives of people and run the government. The paper does not go into the details of the provisions but gives an insight or an understanding as to what are the provisions regarding elections given under the Constitution of India. The discussion does not contain any complex legal terms but gives a simplified explanation of the provisions so that not only a person from a legal background but also a person from any other background can have a clear understanding of the constitutional provisions for elections in India.*

**Keywords:** Democracy, government, representatives, election, fallacy, qualifications.

## I. INTRODUCTION

From India being a democratic country, the individuals of the country are unrestricted to form political parties. To form the government of the country the inhabitants must choose their representatives and they must do so from the available amount of political parties in the country. An election is an official cluster decision-making process by which the people select an individual to hold public office. Elections have been the usual instrument by which modern representative democracy has functioned since the 17th century. Elections may fill place of effort in the legislature, occasionally in the executive and judiciary, and for regional and local government. This procedure is also used in many other private and business official doms, from clubs to charitable associations and corporations. Our discussion is restricted to part XV of the Constitution of India which deals with Articles

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324 to 329. These articles are the requirements related to elections which are cherished in the Constitution. Electoral improvement describes the process of introducing fair electoral schemes where they are not in place or improving the fairness or efficacy of existing systems. Psephology is the study of results and other figures relating to elections (especially with a view to predicting future results). To elect means "to choose or make a decision", and so occasionally other forms of ballot such as referendums are denoted to as elections, especially in the United States.

## **II. SUPERINTENDENCE, DIRECTION AND CONTROL**

Functionaries in any style concerned with guiding the conduct, supervision, and control of free, fair and peaceful elections to the House of the People and the legislative assemblies of the States need to adopt a realistic, practical and flexible approach to ensure that the country shall be governed in its true, secular, socialist, democratic perspective. This is the sole principal behind the fact that the superintendence, direction and control of election is vested in an Election commission under Article 324 of the Constitution of India. This Article looks after the elections to the Parliament, the legislatures of every State, to the offices of the President and the Vice President. In the case of A.C. Jose v. Sivan Pillai<sup>2</sup>, it was held that the powers of the Election Commission under Article 324 are meant to supplement rather than supplant the law in the matter of superintendence, direction and control as provided therein and therefore, that power does not prevail over the acts passed by the Parliament or Rules framed there under. Article 324 must be read in harmony with and not in isolation of Articles 326 – 329. It was also held in this case that the Commission in the garb of passing orders for regulating the conduct of elections cannot take upon itself a purely legislative activity which has been reserved only to Parliament and the State Legislatures.

Article 324 of the Constitution of India also prescribes the members who shall constitute the Election Commission. According to this article, it shall consist of the Chief Election Commissioner and such number of other Election Commissioners as fixed by the President from time to time. The appointment of the Chief Election Commissioner and other Election Commissioners shall be made in accordance to the provisions of law made in this behalf by the Parliament and they shall be appointed by the President. In the case of Mohinder Singh Gill v. Chief Election Commissioner<sup>3</sup>, it was held that Article 324 operates in areas left unoccupied by legislation and the words 'superintendence, direction and control', as well as 'conduct of all elections', are the broadest terms.

According to the case of Union of India v. Association for Democratic Reforms<sup>4</sup>, the phrase 'conduct of

<sup>2</sup> (1984) 2 SCC 656: AIR 1984 SC 921

<sup>3</sup> (1978) 1 SCC 405

<sup>4</sup> (2002) 5 SCC 294

elections' is held to be of wide amplitude which would include power to make all necessary provisions for conducting free and fair elections. Therefore, the Election Commission, under Article 324 of the Constitution of India has been given the power to make all the necessary arrangements to make sure that the elections are being conducted in a fair and free manner. Superintendence and control over the conduct of elections by the Election Commission include the scrutiny of all expenses incurred by a political party, a candidate or any other association or body of persons or by any individual in the course of the election. The expression 'conduct of elections' is wide enough to include in its sweep, the power to issue directions – in the process of the conduct of the election – to the effect that the political parties shall submit to the election commission, for its scrutiny, the details of the expenditure incurred or authorised by the parties in connection with the election of their representative candidates.<sup>5</sup> A political party cannot utilise an amount of money which is beyond reasonable thinking. It is a very important duty of the Election Commissioner to make sure that the funds utilised by the political parties shall be subject to a limitation and hence it has been given the power to scrutinize the same.

Another important aspect which is to be considered is the status of the Chief Election Commissioner and the Elections Commissioners. The provisions that the Chief Election Commissioner can be removed from the office in like any manner and on like grounds as a Judge of the Supreme Court and his conditions of service shall not be varied to his disadvantage after appointment, do not confer the status of a Supreme Court Judge on the Chief Election Commissioner. Though it is only in the case of Chief Election Commissioner that the first proviso to clause (5) of Article 324 lays down that the conditions of the service cannot be varied to the disadvantage of the incumbent, the Chief Election Commissioner and the Election Commissioners are placed at par with regard to salary, etc. The absence of the aforesaid protections to the Election Commissioners does not make the Chief Election Commissioner superior to them. Similarly, the difference in the matter of their removal from service, is not an indicium for conferring a higher status on the Chief Election Commissioner.<sup>6</sup>

The words "superintendence, direction and control" in Article 324 of the Constitution of India have a wide connotation so as to include therein such powers which though not specifically provided but are necessary to be exercised for effectively accomplishing the task of holding the elections to their completion.<sup>7</sup> In *R.M. Seshadri v. G. Vasantha Pai*<sup>8</sup>, it has been held that:

*".....The policy of election law seems to be that for the establishment of purity of elections, investigation into all allegations of malpractices including corrupt practices at elections should be thoroughly investigated....."*

<sup>5</sup> Common Cause v. Union of India (1996) 2 SCC 752

<sup>6</sup> T.N. Seshan, CEC of India v. Union of India (1995) 4 SCC 611

<sup>7</sup> Election Commission of India v. Ashok Kumar (2000) 8 SCC 216

<sup>8</sup> AIR 1969 SC 692

### **III. RIGHT TO STAND FOR ELECTION**

In People's Union for Civil Liberties (PUCL) v. Union of India, the Supreme Court treated the right to vote to be carrying within it the constitutional right of freedom of expression. But the same cannot be said about the right to stand for election, since that is a right regulated by the statute.<sup>9</sup> Even without going into the argument as to whether the right to vote is a statutory or constitutional right, the right to be elected is unquestionably a statutory right i.e. the right to stand for elections can be controlled by law made by Parliament. It is pure and simply a statutory right that can be taken away and created by Parliament and, therefore, must always be subject to statutory boundaries.

In N.P. Ponnuswami v. Returning Officer, Namakkal Constituency<sup>10</sup>, the court noticed approving the decision of the Privy Council in Joseph Theberge v. Phillippe Laundry<sup>11</sup> and held that the right to stand as a candidate for election is not a civil right, but is a creation of statute or special law and must be subject to the limitations imposed by it. It was observed as under:

“The points which emerge from this decision may be stated as follows:

- 1) The right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it.
- 2) Strictly speaking, it is the sole right of the legislature to examine and determine all matters relating to the election of its own members, and if the legislature takes it out of its own hands and vests in a special tribunal an entirely new and unknown jurisdiction, that special jurisdiction should be exercised in accordance with the law which creates it.”

### **IV. FREE AND FAIR ELECTION**

Many progressive countries use “none of the above button”. The Hon’ble Supreme Court in People’s Union for Civil Liberties v. Union of India<sup>12</sup> has endorsed and directed for using the same system in India and in the opinion of the apex court, this procedure will not only help free and fair election but also give the voters to open their minds. In this context the apex court observed as follows:

*“Democracy being the basic feature of our constitutional set-up, there can be no two opinions that free and fair election would also guarantee the growth of a healthy democracy in the country. The “fair” denotes equal opportunity to all people. Universal adult suffrage conferred on the citizens of India by the Constitution has made it possible for these millions of individual voters to go to the polls and thus participate in the governance*

<sup>9</sup> (2003) 4 SCC 399

<sup>10</sup> 1952 SCR 218: AIR 1952 SC 64

<sup>11</sup> (1876) 2 AC 102: 46 LJ PC 1: 35 LT 640 (PC)

<sup>12</sup> (2013) 1 SCC 1

of the country. For democracy to survive, it is essential that the best available men should be chosen as people's representatives for proper governance of the country. This can be best achieved through men of high moral and ethical values, who win the elections on a positive vote. Thus, in a vibrant democracy, the voter must be given an opportunity to choose none of the above (NOTA) button, which will indeed compel the political parties to nominate a sound candidate. This situation palpable tells us the dire need of negative voting. No doubt, the right to vote is a statutory right but it is equally vital to recollect that this statutory right is the essence of the democracy. Without this, democracy will fail to thrive. Therefore, even if the right to vote is statutory, the significance attached with the right is massive. Thus, it is necessary to keep in mind these facets while deciding the issue at hand. Democracy is all about choice. This choice can be better expressed by giving the voters an opportunity to verbalise themselves unreservedly and by imposing least restrictions on them to ability to make such a choice. By providing NOTA button in the EVMs, it will accelerate the effective political participation in the present state of democratic system and the voters in fact will be empowered. We are of the considered view that in bringing out this right to cast negative vote at a time when electioneering is in full swing, it will foster the purity of the electoral process and fulfil one of its objectives, namely, wide participation of people. Free and fair election is a basic structure of the Constitution and necessarily includes within its ambit the right of an elector to cast his vote without fear of reprisal, duress or coercion. Protection of elector's identity and affording secrecy is therefore integral to free and fair elections and an arbitrary distinction between the voter who casts his vote and the voter who does not cast his vote is violative of Article 14. Thus, secrecy is required to be maintained for both categories of persons. Giving right to a voter not to vote for any candidate while protecting right of secrecy is extremely important in a democracy. Such an option gives the voter the right to express his disapproval with the kind of candidates that are being put up by the political parties. When the political parties will realise that a large number of people are expressing their disapproval with the candidates being put up by them, gradually there will be a systematic change and the political parties will be forced to accept the will of the people and field candidates who are known for their integrity."

In a country like India where there exists so many political parties and the population is also very huge, free and fair election is a must. A voter cannot be forced to cast his vote for any candidate. He must be given full liberty to choose his own representative from the given options at hand. If a voter is not happy or satisfied with the candidates on offer, then elections also offer an option of that of the "None of the above" option. This option plays a very significant role in letting the political parties know that the candidates they have offered to the public to be chosen as the representatives of the public are not up to the mark and they need to offer something much better. Democracy prevails only when the elections are conducted in a free and a fair manner. As given in the beginning of this paper, Democracy is a government of the people, by the people and for the people. For a government to be of the people, by the people and for the people, it is extremely necessary that the elections for

choosing the representative shall be conducted in a free and a fair manner, who will then form the government. It is very important for the voters to have the right of expressing their disapproval towards the candidates who are put up by the political parties.

## **V.NATURE OF POWER AND JURISDICTION OF ELECTION COMMISSION**

By article 324, an authority in the status of the Election Commission is created in order to administer and control the elections. It must be stated that such a specialist who is in ultimate control in the matter of holding of the elections should be held to be invested with the widest power of its kind specified in the Act. Therefore, when it comes to the question of explanation of the extent of such power to be exercised by the said authority, the court should have a very liberal approach in interpreting the nature of power and jurisdiction vested with the said authority, namely, the Election Commission. This view is more so apt in the present-day context, wherein money power practically controls the whole field of election and that people are taken for a ride by such unprincipled elements who want to gain the status of a Member of Parliament or the State Legislature by hook or crook.<sup>13</sup>

## **ARTICLE 325**

According to Article 324 of the Constitution of India, there shall be one universal electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be unqualified for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them.<sup>14</sup> Article 325 is of critical significance for maintaining the secular character of the Constitution. Any breach of the said provision cannot but have an adverse impact on the secular character of the Republic which is one of the basic features of the Constitution. The same is correct regarding the provisions of clause (i) of Article 15 which prohibits reservation of seats in the legislatures on the ground only of religion.<sup>15</sup>

## **VI. POWER OF PARLIAMENT**

According to Article 327 of the Constitution of India, subject to the supplies of this Constitution, Parliament may from time to time by law make provisions with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State counting the preparation of the electoral rolls, the demarcation of constituencies and all other matters essential for

<sup>13</sup> Ashok Shankarrao Chavan v. Madhavrao Kinhalcar 2014 AIR SCW 4127

<sup>14</sup> Justice Pranab Kumar Chattopadhyay, Justice Subhro Kamal Mukherjee, et.al. (eds.), *Indian Constitutional Law* 1797 (Kamal Law House, Kolkata, 2015).

<sup>15</sup> R.C. Pandyal v. U.O.I. 1994 Supp (1) SCC 324

securing the due constitution of such House or Houses.<sup>16</sup>

The distinguishing feature between “constituency – based representation” and “proportional representation” in a representative democracy is that in the case of the list system of proportional depiction, members are elected on party lines. They are subject to party castigation. They are accountable to be disqualified for breach of discipline. Therefore, to give outcome to the notion of proportional representation, Parliament can suggest “open ballot”. In such a case, it cannot be said that “free and fair elections” would stand overpowered by “open ballot”.<sup>17</sup>

In **R.C. Pondyal v. Union of India**<sup>18</sup> it was held as follows:

“It is true that the right to vote is central to the right of participation in the democratic process. However, there is less consensus amongst theorists on the propriety of judicial activism in the voting area. In India, the delimitation laws made under Article 327 of the Constitution of India, are immune from the judicial test of their validity and the process of allotment of seats and constituencies is not liable to be called in question in any court by virtue of Article 329(a) of the Constitution of India.”

In the regard of the subject of ‘extent of reservation’, the State concerned will have to display in each case the presence of the enthralling reasons, namely, backwardness, inadequacy of representation and overall administrative competence before making provision for reservation. The State is not destined to make reservation for SCs/STs in matters of promotions. However, if they wish to work out their decision and make such provision, the State must collect foreseeable data showing backwardness of the class and insufficiency of depiction of that class in public employment in addition to agreement with Article 335. If the State has compelling reasons it will have to see that its reservation provision does not lead to extremeness to break the ceiling limit of 50 % or obliterate the velvety layer or extend the reservation indeterminately.

The Constitution of India recognised the need for alterations in the law regarding to elections from time to time and assigned Parliament with the duty, as also the necessary power, to bring in legislative actions as and when required in such regard, which would take in the power to amend the usual measures. In the case of *Hari Prasad Mulshanker Trivedi v. V.B. Raju*<sup>19</sup> it was held that, Article 327 gives full power to Parliament subject to the provisions of the Constitution to make laws with respect to all matters relating to or in construction with elections including the preparation of electoral rolls. In the case of *Mohinder Singh Gill v. Chief Election*

<sup>16</sup> Justice Pranab Kumar Chattopadhyay, Justice Subhro Kamal Mukherjee, et.al. (eds.), Indian Constitutional Law 1797 (Kamal Law House, Kolkata, 2015).

<sup>17</sup> *Kuldip Nayar v. U.O.I.* (2006) 7 SCC 1

<sup>18</sup> *Supra.* 14

<sup>19</sup> (1974) 3 SCC 415

Commissioner<sup>20</sup> it was held that, the power to make law under Article 327 vests in the Parliament, which is supreme and so, not bound by such guidance. The limitations on the exercise of “plenary character” of the Election Commission include one to the result that “when Parliament or any State Legislature has made valid law relating to or in connection with elections, the Commission, shall act in conformity with, not in violation of, such provisions.

## VII. POWER OF THE LEGISLATURE

According to Article 328 of the Constitution of India, subject to the provisions laid down in the Constitution and in so far as provision in that behalf is not made by Parliament, the Legislature of a State may from time to time by law make provision with respect to all materials relating to, or in connection with, the elections to the House or either House of the Legislature of the State including the grounding of electoral rolls and all other matters necessary for securing the due constitution of such House or Houses.<sup>21</sup> This Article basically gives or confers the powers to the Legislature of a State, which are given to the Parliament under Article 327, to make laws concerning elections to the House or any House of the Legislature of a State. This Article does not need a clarification, but two things shall be kept in mind from this Article. The first and primary thing is that for the Legislature of a State to make any laws regarding election under this Article, it must see whether the Parliament has already made any law regarding that matter or not. The second thing is that this control is granted to the Legislature of the State subject to the other provisions of the Constitution.

## BAR TO INTERFERENCE BY COURTS IN ELECTORAL MATTERS

Article 329 of the Constitution of India basically safeguards the laws made by the Parliament and the Legislature exercising their respective powers under Articles 327 and 328 respectively. It basically ensures the fact that the validity of a law made by a Parliament and the Legislature of the State with respect to delimitation of constituencies or the allotment of seats to such constituencies, cannot be questioned in any court. It also safeguards election to either House of Parliament or to the House or either House of the Legislature of a State from being questioned except when an election petition is presented to such authority and in a manner provided by any law made by the appropriate legislature.

The term “election” as occurring in Article 329 has been held to mean and include the entire process from the issue of the notification under section 14 of the Representation of the People Act, 1951 to the declaration of the

<sup>20</sup>Supra. 2

<sup>21</sup> Justice Pranab Kumar Chattopadhyay, Justice Subhro Kamal Mukherjee, et.al. (eds.), Indian Constitutional Law 1797 (Kamal Law House, Kolkata, 2015).

result under section 66 of the same act.<sup>22</sup> The words “no election can be called in question” provide the determinative test for attracting Article 329(b). If the petition presented to the court “calls in question an election” the bar of Article 329(b) is attracted. Else it is not.<sup>23</sup> One of the principles underlying the plenary bar on judicial proceedings in election matters created by Article 329(b) is the pre-emptory urgency of prompt engineering of the whole election process without intermediate interruptions by way of legal proceedings challenging the steps ad the stages in between the commencement and the conclusion.<sup>24</sup>

The expression ‘authority’ is not defined either in Article 366 of the Constitution or in the General Clauses Act, 1897. Having regard to the context and the purpose underlying Article 329(b) the Supreme Court held that it was permissible for Parliament to designate a court to try election petitions.<sup>25</sup> Article 226 is couched in the wildest possible terms and unless there is a clear bar to jurisdiction of the High Court its powers under Article 226 can be exercised when there is any act which is against any provision or law or violative of constitutional provisions and when recourse cannot be had to the provisions of the Act for the appropriate relief. In circumstances like the present one the bar of Article 329(b) will not come into play when the case falls under Article 191 and 193 and the whole of the election process is over. It may be that action under Article 192 could not be taken as the disqualification which the appellant incurred was prior to his election.<sup>26</sup>

### VIII. CONCLUSION

These provisions laid down in the Constitution of India regarding elections miss out on a very important aspect which the Constitution makers had failed to think of. The very need of certain basic educational qualifications for person to be a candidate for any election was ignored and it was left free open for anyone to contest elections. This is one of the most important factors why India has not been able to grow to its full potential. Education determines a person’s prudent and reasonable thinking or to put it in another way it determines how reasonable the person is from an illiterate man. To accelerate the growth of the country it is much important that the person leading the country, or the people elected as people’s representative are educated. Another important aspect to investigate this is that even today a person who is behind the bars can contest elections. This is another great flaw persisting even today in the Indian Political Scenario. As a person from a legal background I feel this also hampers the growth of our country.

Another aspect to investigate the fact that the number of deserving candidates contesting the elections are very minimal or negligent. The educated youth of the country is not at all interested in the politics of the country due

<sup>22</sup>Supra. 6

<sup>23</sup>Supra. 6,21

<sup>24</sup> Shyamdeo v. Nawal Kishore (2000) 8 SCC 46

<sup>25</sup> T. Deen Dayal v. High Court of A.P. (1997) 7 SCC 535

<sup>26</sup> K. Venkatachalam v. A. Swamickan (1994) 4 SCC 526; Election Commission, India v. Saka Venkata S. Rao AIR 1953 SC 210, explained and relied on.

to the existing representatives. This forces the people to go for the ‘None of the Above Option’ during an election. It is very important for people, who are deserving, to contest elections so that the voters vote and get their suitable representatives. Though the election commission is given many powers under Article 324 of the Constitution of India to ensure that no unfair means are utilised by any political party or any candidate to win an election still in today’s scenario we can see, and experience unfair means being used. After going through the Constitution provisions for elections one can understand that necessary changes are required in the provisions so that people get the appropriate representative and the democracy of the country, which is of the people, by the people and for the people is maintained.