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CRITICAL ANALYSIS: SUPERITENDENCE, DIRECTION, AND CONTROL OF ELECTIONS UNDER ARTICLE 324 OF THE INDIAN CONSTITUTION.

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ABSTRACT

Article 324 of the Indian Constitution stands as the foundational pillar of India's democratic electoral architecture, vesting the superintendence, direction and control of all elections to Parliament, State Legislatures, and the offices of President and Vice-President in the Election Commission of India. This article examines the constitutional scope, interpretation, and expression of these three vital concepts through judicial pronouncements and the regulatory framework.

These three expressions together confer broad, "plenary" powers: superintendence signifies overall supervisory vigilance over the entire electoral process; direction covers issuing binding instructions such as the Model Code of Conduct and various guidelines to electoral officials and political actors; and control refers to hands-on operational authority, including scheduling polls, ordering re-polls, countermanding elections in cases of malpractice, and managing polling and counting processes. The SC has repeatedly held that these powers are plenary but not absolute: where Parliament has legislated under Articles 327-328 (for example, through the Representation of the People Acts), the Commission must act within that statutory framework, and may invoke Article 324 only to fill gaps where the law is silent, always subject to constitutional principles of fairness, reasonableness and non-arbitrariness. Landmark cases such as *S. Sadiq Ali*, *Association for Democratic Reforms*, *Mohinder Singh Gill* and *Anoop Baranwal* recognise both the breadth of this mandate and the need to preserve the Commission's independence-through security of tenure, collegial functioning, and insulation of appointments from exclusive executive control-while keeping its actions open to judicial review to safeguard democratic rights and electoral integrity.

KEY WORDS: Election commission of India, parliament and state legislature elections, presidential and vice-presidential election, constitutional framework, democratic electoral architecture, statutory framework, judicial review, model code of conduct, operational

authority of ECI.

INTRODUCTION

India's constitutional democracy rests upon the principle that governance derives legitimacy from the will of the people, expressed through periodic elections. Recognizing the importance of electoral neutrality and fairness, the framers of the Indian Constitution established the Election Commission of India (ECI) as an independent constitutional authority. Article 324 vests in the ECI the power of "superintendence, direction and control" over the conduct of elections.

The breadth of these expressions makes Article 324 a cornerstone of India's electoral jurisprudence. At the same time, their vagueness has raised constitutional questions regarding the scope of the Commission's authority, the relationship between constitutional and statutory powers, and the extent of judicial oversight. This paper undertakes a critical analysis of these expressions to assess whether Article 324 strikes a proper balance between independence and accountability.

RESEARCH PROBLEM

The Constitution does not explicitly define the scope or limits of the expressions "superintendence, direction and control" under Article 324. This lack of clarity creates ambiguity regarding:

Whether Article 324 grants absolute and overriding powers to the Election Commission.
Whether the Commission can act contrary to or beyond statutory law.

The permissible extent of judicial intervention in electoral matters. The potential for misuse or overreach of discretionary authority

REVIEW OF LITERATURE

The concept of electoral superintendence, direction and control under Article 324 of the Indian Constitution has attracted significant scholarly and judicial attention. Constitutional commentators, jurists, and courts have extensively debated the scope, nature, and limits of the powers conferred upon the Election Commission of India (ECI). The following review critically examines existing literature to identify dominant perspectives, contributions, and research gaps.

1. Durga Das Basu – Introduction to the Constitution of India

Durga Das Basu views Article 324 as a constitutional guarantee of electoral independence. He argues that the framers intentionally used broad terminology to ensure that elections are insulated from executive interference. According to Basu, the expressions “superintendence, direction and control” together confer comprehensive authority on the Election Commission to regulate every stage of the electoral process. However, he cautions that such powers must operate within the constitutional framework and statutory boundaries laid down by Parliament under Articles 327 and 328.

Contribution: Establishes the doctrinal foundation of Article 324.

Limitation: Does not deeply engage with contemporary challenges such as politicization or selective enforcement.

2. M.P. Jain – Indian Constitutional Law

M.P. Jain describes Article 324 as a residuary source of power, enabling the Election Commission to act where legislative provisions are absent or inadequate. He emphasizes that the power under Article 324 is neither absolute nor arbitrary and is subject to judicial review. Jain critically examines Supreme Court rulings, especially *Mohinder Singh Gill v. CEC*, and supports the view that Article 324 must be interpreted purposively to uphold democratic values.

Contribution: Balances constitutional autonomy with judicial oversight. Limitation: Limited discussion on institutional reforms.

3. Granville Austin – The Indian Constitution: Cornerstone of a Nation

Granville Austin situates Article 324 within the broader democratic vision of the Indian Constitution. He highlights the framers’ anxiety to prevent electoral manipulation and executive dominance. According to Austin, the Election Commission was designed as a neutral constitutional referee, and Article 324 was framed expansively to allow flexibility in extraordinary situations.

Contribution: Historical and constitutional context of Article 324.

Limitation: Lacks detailed doctrinal analysis of judicial interpretations.

4. V.N. Shukla – Constitution of India

Shukla interprets Article 324 as granting administrative as well as quasi-judicial powers to the Election Commission. He notes that the term “control” implies disciplinary authority over

election officials, which is essential to ensure impartial elections. However, he stresses that these powers cannot be exercised in contravention of enacted laws.

Contribution: Clarifies administrative dimensions of Article 324.

Limitation: Minimal engagement with modern electoral issues like technology and campaign finance.

5. Mohinder Singh Gill v. Chief Election Commissioner (1978) – Judicial Literature

This judgment is widely cited in legal scholarship as the cornerstone of Article 324 jurisprudence. Scholars interpret the ruling as recognizing Article 324 as a constitutional reservoir of power that allows the Election Commission to fill legislative gaps. Commentators praise the judgment for strengthening electoral integrity but also express concern over the potential for discretionary overreach.

Contribution: Judicial expansion of Article 324.

Criticism in literature: Risk of excessive discretion without codified standards.

RESEARCH OBJECTIVES

To examine the constitutional intent behind Article 324.

To analyse the meaning and scope of “superintendence, direction and control.” To study judicial interpretations of Article 324 through landmark judgments.

To critically evaluate the limitations on the powers of the Election Commission.

To assess contemporary issues and suggest reforms for strengthening electoral governance.

RESEARCH QUESTIONS

What is the constitutional meaning and scope of the expressions “superintendence, direction and control” under Article 324 of the Indian Constitution?

Do the powers confer under Article 324 grant plenary and residuary authority to the Election Commission of India, and if so, to what extent?

How has the Indian judiciary interpreted and expanded the scope of Article 324 through landmark judgments such as Mohinder Singh Gill v. CEC and T.N. Seshan v. Union of India?

What are the constitutional and statutory limitations on the exercise of powers under Article 324, particularly in light of Articles 327 and 328?

HYPOTHESIS

The powers of superintendence, direction and control under Article 324 are plenary and residuary in nature, intended to ensure free and fair elections; however, they are subject to constitutional limitations, statutory provisions, and judicial review, and cannot be exercised arbitrarily.

RESEARCH METHODOLOGY

The present study is doctrinal and analytical in nature. It focuses on the interpretation of constitutional provisions, particularly Article 324 of the Indian Constitution, and critically examines the scope and limits of the powers of “superintendence, direction and control” vested in the Election Commission of India. The research does not involve empirical data collection but relies on authoritative legal sources.

LEGISLATIVE FRAMEWORK

Article 324 of Indian Constitution

Superintendence, direction and control of elections to be vested in an Election Commission-

- 1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission).
- 2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time-to-time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.
- 3) When any other Election Commissioner is so appointed, the Chief Election Commissioner shall act as the Chairman of the Election Commission.
- 4) Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President may also appoint after consultation with the Election Commission such Regional

Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the Commission by clause (1).

- 5) Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine: Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment: Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.
- 6) The President, or the Governor of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1). Article 324 of Indian Constitution Simplified Interpretation Article 324 of Indian Constitution creates a constitutional authority known as the Election Commission of India (ECI). This body ensures the fair and independent conduct of elections across the country.

Under article 324 (1) of Indian Constitution, the Election Commission is entrusted with the superintendence, direction, and control of preparing electoral rolls and conducting elections for Parliament, State Legislatures, and the offices of the President and Vice-President.

According to article 324 (2) of Indian Constitution, the Commission consists of the Chief Election Commissioner (CEC) and any number of Election Commissioners, as determined by the President. These appointments are made by the President, and when more than one Election Commissioner is appointed, the CEC serves as the Chairman, as per article 324 (3) of Indian Constitution.

Additionally, under article 324 (4) of Indian Constitution, the President may appoint Regional Commissioners to assist the Commission during general or biennial elections, based on the Commission's recommendation.

The CEC enjoys high protection—similar to that of a Supreme Court judge—and cannot be removed except through a special impeachment-like process. Other Commissioners and

Regional Commissioners can only be removed based on the CEC's recommendation, ensuring the Commission's independence and integrity. Article 324 of Indian Constitution Developments and Amendments Over the years, Article 324 of Indian Constitution is related to interpreting many ways to make the Election Commission more effective. One key change came through the 19th Amendment in 1966. It removed Election Tribunals and gave the power to hear election petitions to High Courts. This helped speed up and simplify election related disputes.

The courts have also clearly defined the powers of the Election Commission. These rulings have made the Commission a strong, independent body that protects free and fair elections.

Even when the law does not cover something, Art 324 lets the Commission act to keep elections fair. One of its most important tools is the Model Code of Conduct. It is not a law, but it is widely followed to ensure fair play during elections.

Recently, people have raised concerns about how Election Commissioners are appointed. Right now, the process is controlled by the central government. In the Anoop Baranwal v. Union of India case, the Supreme Court suggested a new way. It said appointments should be made by a panel that includes the Prime Minister, the Leader of Opposition, and the Chief Justice of India. This idea is not law yet, but it has started important talks about keeping the Election Commission free from political pressure.

Powers of E C I

It is learnt that Election Commission of India is built on Canadian model, following the Dominions Act of 1920. The Election Commission of India (ECI) is an autonomous constitutional body with a power to administer the Union and State elections. Our Constitution confers three basic powers on the E C I i.e. 1) Advisory Powers, 2) Administrative powers, 3) Quasi-Judicial Powers, under the first type it advises the President and the Governor regarding disqualification of Members of Parliament and State Assemblies In the Second type of powers it exercises Powers to mark areas of elections where requires, to prepare election rolls, to Control and superintendent elections etc., Under the quasi-judicial powers, the Commission also acts as a Court for settling disputes regarding recognition of political parties and their symbols. It can disqualify a candidate who has not filed the accounts of election expenses within the time as per the Representation of People Act and other Prescribed Laws. It has the power to

remove or reduce the period of such disqualification and also other disqualification under law.

While dealing with the impugned delimitation Order 1976, passed under the Delimitation Act, 1972 and considering the third proviso to Art. 82 of the Constitution the apex Court has got an opportunity to pronounce in one of its landmark cases:

Election Commission of India vs. Mohd. Abdul Ghani. -- that the ECI has no power to alter the boundaries or area or extent of any constituency as shown in the Delimitation order.

The process of election:

The elections in the Republic of India includes President, Vice President, Members of the both the both the houses of Parliament, Members of the State legislative Assemblies, State legislative Councils, representatives in local bodies like Municipal Councils and Zilla Parishads, Panchayats, cooperative societies, Unions, associations and various other bodies. In case of death, resignations or disqualification of elected candidates of particular constituency by-elections can be held.

Elections are the soul of democracy: It has both constitutionally established system of direct and indirect elections to the Parliament and State legislature.

1. Direct elections:

Of the two houses of Parliament, Lok Sabha is directly elected from defined single member territorial constituencies under universal adult suffrage (above 18 years of age) and on the basis of first past the post system (FPTP) In the same manner adult voters directly elect all State Legislative Assemblies from the territorial constituencies within their respective States.

2. Indirect Elections:

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

3. Elections to Local bodies:

Elections to the Panchayat Raj Institutions and Municipalities that have been made mandatory by the 73rd and 74th Amendment to the Constitution are governed by the Part IX and IXA of the constitutional provisions and the respective State Laws on Panchayati Raj Institutions and Municipalities. All elections except local body polls are conducted under the supervision,

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

As Justice Hans Raj Khanna expressly held that “the principle of free and fair election is an essential postulate of democracy which in turn is part of the basic structure of the Constitution of India.” In *P. R. Balagali v. B. D. Jatti*, the highest court viewed that the entire election law is to safeguard the purity of elections and to see that the people do not get elected by flagrant breaches of election law. The right to elect and the right to be elected are statutorily protected. In **N.P Punnuswami v. Returning Officer, Ramkumar Pandey v. Union of India, Mohinder Singh Gill v. Chief Election Commissioner, Election Commission v. Shivaji**. The Supreme Court said that a right to elect, fundamental, though it is essential to democracy and is anomalously enough, still it is neither a fundamental right nor a common law right, it is purely and simply, a statutory right. So is the right to be elected and the right to dispute an election. Outside the Statute, (i.e., The statutory Provisions of the Representation of People Act, 1951,) there is no fundamental or Common Law right in these matters. The election process culminates as a candidate declared elected is one from the date of issuance of notification. Any doubt or dispute arising out of or in connection with any of the issues of election have to be inquired into by the Superior Courts and, therefore, judicial process must necessarily be a part of the election process and covered within the terms of election. The law confers wider powers on judiciary both in matters of interpretation of the relevant statutory provisions and taking necessary measures to detect corrupt practices in election. In the matter of judicial pronouncements, the finality clause of the decisions of Election Tribunals (Forum for hearing an election petition was an Election Tribunal) is void. Under the Representation of Peoples Act, 1951, as it stood prior to 1966, the special leave to appeal by Supreme Court under Article 136 bars the finality clause of decision of Election Tribunal.

After 1966 amendment to the Representation of Peoples Act, the jurisdiction was transferred to the High Court, (sitting as a statutory tribunal-under sec.80 A) with appeal to the Supreme Court under section 116A of the Act. No appeal lies from single judge to division Bench. Writ jurisdiction of High Court in its territorial Jurisdiction under Article 226 cannot be taken away by any ordinary law such as the Representation of Peoples Act, 1951 as held in **Sangram Singh v. Election Tribunal**. The constitution (19th Amendment) Act 1966 took away the power of the election Commission under Art 324 to appoint Tribunals and abolish Election Tribunals and the power was vested to decide disputes in the High Courts. The Constitution (39th Amendment) Act 1975 amended Article 71 and abolished the Jurisdiction of the Supreme Court and High Courts and to decide disputes in connection with the election of President and Vice-President, Prime Minister and Speaker and empowered the Parliament to pass a Law to set up a special forum for that purpose under Article 329-A. In **Indira Nehru Gandhi v Shri Raj Narain & Anr** the 39th Amendment was declared as irrational and violative of Art.14 of the Constitution. The said amendment destroys the basic structure of Constitution. In **P.A Sangma v. Pranab Mukherjee** the supreme Court dismisses P.A Sangma's petition challenging the election of Pranab Mukherjee on the ground that it did not disclose material to pass the stage of early scrutiny. The Constitution (44th amendment) Act omitted Art329-A and restored Art. 71 again giving the power in this matter to Supreme Court. The orders of the Election Commission are subject to Judicial review if they are arbitrary, mala fide, unfair, in excess of Jurisdiction and contrary to law enacted by the Parliament under Art.327, but these matters to be decided by the apex court through an election petition.

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

Supreme Court as a part of election process:

"Free, fair, fearless and impartial elections are the guarantee of a democratic polity. Effective mechanism is the basic requirement for having such elections. For conducting, holding and completing the democratic process, a potential law based upon requirements of the society tested on the touchstone of the experience of times is concededly of paramount importance. A balanced judicial approach of implementing the laws relating to franchise is the mandate of

Supreme Court” as observed in **Indira Nehru Gandhi vs. Raj Narain** Judicial functions cannot be delegated:

“The judicial functions are to be discharged essentially by the judges and cannot be delegated. But the Administrative functions can be delegated or entrusted to subordinate bodies unless there is some rule of law restricting such delegation or authorization. Judicial function consists in the interpretation of law and its application by rule of discretion to the facts of particular cases” **Jamal Uddin Ahmad vs. Abu Saleh Najmuddin Judicial Interpretation:** “it can be said that Indian Constitution is what the Judges say it is”, Part XV of the Constitution deals with ‘elections’, It has six Articles viz., 324,325,326,327,328 and 329. Article 324 provides for the appointment of Election Commission and its functions, Powers of the election Commission.

The Powers of the election Commission under Art.324 are meant to supplement rather than supplant the law in the matter of superintendence, direction and control as provide therein and therefore, that power does not prevail over the Acts passed by the Parliament or rules framed there under. The important factor is that Art. 324 must be read in harmony with and not in subordination of Articles 326 to 329. The Commission under protection of passing orders for regulating the conduct of elections cannot take upon itself a purely legislative function which is vested only in Parliament and State Legislature as ruled by the highest Court in *A.C Jose vs. Sivan Pillai*²⁷ So far as the framing of the schedule or calendar for election of the legislative Assembly is concerned, the same is as the exclusive domain of the Election Commission which is not subject to any law framed by Parliament.

Parliament is empowered to frame a law as regards conduct of elections. But conducting elections is the sole responsibility of the Election Commission as opined by the apex Court in *Special Reference No 1*.

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

Conduct of Elections-Superintendence and Control:

The phrase ‘Conduct of election’ has been accepted to be of wide amplitude it includes power to make all necessary provisions for conducting free and fair elections the same view was laid

in **Union of India vs Association for Democratic Reforms** Superintendence and Control over conduct of elections by the election commission include

- (i) The scrutiny of all expenses incurred by a political party,
- (ii) a candidate or any other person or body of persons or by any individual in course of the election. The expression “conduct of election’ is wider enough to include in its purview the power to issue directions-in the process of conduct of an election- to that effect that the political parties shall submit to the election Commission, for its scrutiny, the details of expenditure incurred or authorised by the parties in connection with the election of their representative candidates as it was held in **Common cause Vs. Union of India.**

Democracy is a part of the basic structure of the constitution; free and fair election is substratum of democracy. If there is no free and fair election, it is the end of democracy, as it was observed by the Court in In Re Special Reference No.132 relies on **M.S Gill vs Chief Election Commission.**

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

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

The Chief Election Commission: The provisions

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

Chief election Commission Versus Election Commission & Elections Commissions:

Though it is only a case of the chief Election commission that the first proviso the clause (5) of Article 324 lays down that conditions of the services cannot be varied to the disadvantage of the incumbent, they (CEC & EC) are placed on a par with the Judge of the Supreme Court in the matter of salary etc. The absence of afore said protection to the election Commission or

Commissions does not make the CEC superior to them. Similarly, the difference in the matter of removal from service, is not an indication for conferring higher status on the C E C. As observed in **T.N. Sheshan E.C of India vs union of India**. The Election Commission of India form part of the election Commission and have a say in decision making. If the Chief Election Commission is considered to be superior in the sense that his word is final, he would render the Election Commission non-functional or ornamental. Such an intention is difficult to call out from Art.324 nor can it be attributed to the Constitution-makers. The Court accordingly rejected the argument that the Election Commissions function is only to tender an advice to Chief Election Commission.

As viewed in **T.N. Sheshan E C of India vs. Union of India**

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

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

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

There is a great demand to make the Election Commission more transparent, impartial and independent. Regarding the powers and duties of the E C I, Chief Election Commissioner- Mr.B.B Tandon- made some suggestions in the year 2001. In a letter to the President, Mr. Tandon appears to have suggested that the selection of persons to man the posts of the Chief Election Commissioner and Election Commissioners should be done by a broad-based Committee. This is not first time that someone has suggested that a credible transparent procedure be instituted to select the Chief Election Commissioner and the Election in Commissioners. This was first proposed by Mr.V.M Takunda over four decades ago and firmly reiterated by the Dinesh Goswami Committee that examined electoral reforms in 1990. But it has

not been worked out. Mr. Tandon proposed that a committee would select the Chief election Commissioner and the election Commissioners to be headed by the Prime Minister. The Committee should Comprise of Lok Sabha Speaker, The Law Minister, the Leader of opposition in the Lok Sabha, the Rajya Sabha Deputy Chairperson and a Judge of the Supreme Court nominated by the Chief Justice of India. Mr Tandon has said that the selection process should be akin to the manner in which the Central Vigilance Commissioner or the Chairman of the National Human Rights Commission is Chosen. The former Chief Election Commissioner has said that much changes in the process of selection and appointment of Election Commissioners would further enhance the image of Commission as a free and independent Commission. Mr. Tandon is of the opinion “a broad-based selection Committee will further strengthen the faith and confidence in the public mind. The Election Commission of India submitted its” views and proposals for Consideration on Electoral reforms” are as under(In Item No.21 on “mode of appointment of Chief Election Commissioner and other Election Commissioners)“The commission feels that Article 324 of the Constitution should be amended to provide as under(a) There should be a maximum of 2 Election Commissioners along with Chief Election Commissioner;(b) The method of appointment and Constitutional Protection, after appointment should be the same for the Chief Election Commission and other Election Commissioners. In item No 22 on “The Chief Election Commissioner and other Election Commissioners to be made ineligible for further appointment under the government.

Heading a Committee on Electoral Reforms appointed by Jayaprakash Narayan- a former Indian Public Administrator, prior to the emergency in 1975, the noted Jurist Mr. V.M. Tar Kunde had made a number of suggestions to free the Electoral process from governmental influence. The Committee felt that the Election Commission should be seen as a fair and impartial body and therefore the Chief Election Commissioner and Election Commissioner should be chosen by a Committee Consisting of the Prime Minister, the leader of opposition in the Lok Sabha and the Chief Justice of India. The government of the day brushed aside the suggestion. The issue remained dormant for fifteen years until Mr. Dinesh Goswami became the Law Minister in the V.P Singh-led Coalition Government in 1989-90.

The Prime Minister asked him to head an electoral reforms Committee. The Committee said that the election commission should be a three-member body. The appointment of the Chief Election Commissioner should be done in consultation with the Chief Justice of India and the leader of the opposition and the Chief Election Commissioner” should be consulted “While

appointing the other members the Goswami Committee opined that the Committee should be broad-based. They shall not only choose the Chief election Commissioner and the other Election Commissioners, but also persons holding other Constitutional offices.

The involvement of the presiding officers of the two houses of Parliament and the leaders of opposition and a judge of the Supreme Court is certain to put the stamp of impartiality on the selection process and on the persons selected. If this proposal for constitution of a broad-based Committee is accepted then some of the other proposals in regard to Constitutional status of election Commissioner can be considered.

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

Mr. NAVIN CHAWLA'S CASE: Though the Shah Commission(Emergency Excess Commission) of inquiry has declared that he (Mr Navi chawla a retired Indian Civil Servant) was unfit for any public office and the evidence before the Commission proved him to be a person completely devoid of democratic credentials, The government appointed him as an election Commissioner. Ever since his appointment, there are doubts in public mind about the impartiality of this Constitutional body that has to supervise elections in the Country. If the selection of Election Commissioners were to be done by the committee as suggested by the TARKUNDE and GOSWAMI COMMITTEES and reiterated by the former Chief Election Commissioner Mr.TANDON, that perhaps Mr. NAVIN CHAWALA'S name would not have been put in the Parliamentary seniority list of names. In spite of the recommendations of Mr. N.Gopalaswamy the then Chief Election Commissioner for removal of Mr Navin chawala from his office as Election Commissioner he holds the office until, he was removed by next Political government 46 While the Election Commission needs greater constitutional insulation that all

have to wait until an impartial process is in place to select them. The Government will have to take a holistic view of the process of selection of Election Commissioners and their powers.

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

The Constitution of India was framed with the participation of millions of public. The true spirit of the freedoms struggle is reflected in every part of the Constitution that culminated the dialogue between the members of the Drafting Committee and millions of Indian people. As far back as in 1952 Justice Vivian Bose while dealing with Art. 14 opined “whether the collective conscience of a sovereign democratic republic can regard (a disputed law)... as the sort of substantially equal treatment which men of resolute minds and unbiased views can regard as right and proper in a democracy of the kind we have proclaimed ourselves to be “ At the concluding session of the Constituent Assembly both Dr. B.R. Ambedkar one of the chief Architect of The Indian Republic Constitution and Dr. Babu Rajendra Prasad the Chairman of Constituent Assembly and First president of Republic of India struck a note of caution” I feel however good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a Constitution may be, it may turn out to be good if those who are called upon to work it, happen to a good lot” Dr. Rajendra Prasad in his concluding address expressed satisfaction at the drafting of a good Constitution to serve the Country well, but he added:” whatever the Constitution may or may not provide, the welfare of the country will depend upon the way in which the Country administered. That will depend upon the men who administer it. If the people who are capable and men of character and integrity, they would be able to make the best even of a defective Constitution. If they are lacking in these, the Constitution cannot help the Country. The word “these” signifies” capable and men of Character and integrity” In his concluding remarks Dr. Babasaheb Ambedkar a great liberator of Indian opined that “on the 26th January, 1950 India would be democratic Country in the sense that India, from that date, would have a Government of the people, by the people and for the people” It is a Government” Of the people ”because citizens are both the subjects and rulers and they are equally subject to Laws. It is “for the People” as it aims at establishing a welfare State where in, maximum good to maximum number of people is sought to be secured.

More importantly, it is government “By the People” in as much as every adult citizen participates in the process of government through elected representatives. In other words, the people would have the power to make or unmake the Government, irrespective of any distinction based on caste, creed, race, sex, religion etc.

Suggestion and conclusion

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

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