

ELECTION LAWS OF INDIA

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The term election has been explained by justice Fajal Ali In the case **N.P. Ponnuswami vs. Returning Officer**,¹ .In his words “It seems to me 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 use of the expression "conduct of elections" in [article 324](#) specifically points to the wide meaning, and that meaning can also be read consistently into the other provisions which occur in Part XV including [article 329 \(b\)](#). That the word "election" bears this wide meaning whenever we talk of elections in a democratic country, is borne out by the fact that in most of the books on the subject and in several cases dealing with the matter, one of the questions mooted is, when the election begins. The subject is dealt with quite concisely in Halsbury's Laws of England in the following passage(s) under the heading " Commencement of the Election ":-

"Although the first formal step in every election is the issue of the writ, the election is considered for some purposes to begin at an earlier date. It is a question of fact in each case when an election begins in such a way as to make the parties concerned responsible for breaches of election law, the test being whether the contest is "reason- ably imminent" . Neither the issue of the writ nor the publication of the notice of election can be looked to as fixing the date when an election begins from this point of view. Nor, again, does the nomination day afford any criterion. The election will usually begin at least earlier than the issue of the writ. The question when the election begins must distinguished from that as to when "the conduct and management of" an election may be said to begin. Again, the question as to when a particular person commences to be a candidate is a question to be considered in each case."

¹ A.I.R.2006 SC 64

The discussion in this passage makes it clear that the word 'election' can be and has been appropriately used with reference to the entire process which consists of several stages and embraces many steps, some of which may have an important bearing on the result of the process.

Law is an instrument to regulate people's conduct. Fair election is the key of success of any electoral government system. India is a largest democracy in the world. After each five years we choose our government through voting. For fair election it becomes necessary to regulate election. Otherwise entire system will be collapsed; there will be democracy for name only. Our supreme court has accepted fair election as basic structure of our constitution. For fulfilling this purpose a number of laws have been enacted time to time. All these laws have been made our elections free from misuse of money, power and other factors. **In Re Indian Iron And Steel Co. Case**² the Calcutta high court pointed out the danger involved in political parties being financed for election purposes by large business houses.

According to **Lord Halsbury, L.C.**, "A preamble may afford useful light as to what the statute intend to reach, and if an enactment itself clear and unambiguous, no preamble can qualify or cut down enactment." The Supreme court also showed the same view in its decisions. In the preamble of the constitution, India has been declared to be Sovereign Socialist, Secular and Democratic Republic Parliamentary form of government while adult franchise has been adopted in the constitution of India.

The Constitution of India provides a number of provisions regarding elections. Article 324 provides for independent Election Commission of India for superintendence, direction and control of preparation of electoral rolls for, and conducts of elections to, the offices of President and Vice-President of India and Parliament and State Legislatures (Article 324). Articles 243 K and 243 ZA provides for A similar independent constitutional authority for conduct of elections to municipalities, panchayats and other local bodies.

Articles 71 and 327 provide for The authority to enact laws for elections to the offices of President and Vice-President and to Parliament and State Legislatures has been reposed by the Constitution in Indian Parliament. Articles 243 K and 243 ZA provides for conduct of

² A.I.R.1957 Cal.234.

elections to municipalities, panchayats and other local bodies by the respective State Legislatures. Article 71 says that all doubts and disputes relating to the elections to the office of President and Vice-President are dealt with by the Supreme Court, whereas the initial jurisdiction to deal with all doubts and disputes relating to the elections to Parliament and State Legislatures vests in the High Court of the State concerned, with a right of appeal to the Supreme Court (Article 329). The disputed matters relating to elections to municipalities, etc. are decided by the lower courts in accordance with the laws made by the respective State Governments.

Where reading as a whole it can not be denied that its tone was communal held by the Supreme Court in **Ibrahim Suleiman Satt V M.C. Mohammed**³ that communal parties are allowed to function in the politics⁴.

The law relating to the elections to the offices of President and Vice-President of India has been provided in Presidential and Vice-Presidential Elections Act 1952. which has been supplemented by the Presidential and Vice-Presidential Elections Rules 1974 and further supplemented by the Election Commission's directions and instructions on all aspects.

Conduct of elections to Parliament and State Legislatures are governed by the provisions of two Acts, namely, Representation of the People Act 1950 and Representation of the People Act 1951.

Representation of the People Act, 1950 was enacted to provide for the allocation of seats in, and the delimitation of constituencies for the purpose of elections to, the House of the People and the Legislatures of States, the qualifications of voters at such elections, the preparation of electoral rolls, the manner of filling seats in the Council of States to be filled by representatives of Union territories, and matters connected therewith.

The provisions of this Act have been supplemented by Registration of Electors Rules 1960, made by the Central Government, in consultation with the Election Commission, under Section 28 of that Act and these rules deal with all the aspects of preparation of electoral rolls,

³ (1908) 1 S.C.C. 398.

⁴ ADVOCATE O.P.TIWARI, LAW OF ELECTIONS IN INDIA, 14(3rd Edition, Allahabad Law Agency).

their periodic revision and updating, inclusion of eligible names, exclusion of ineligible names, correction of particulars, etc.

Representation of the People Act, 1951 was enacted to provide for the conduct of elections to the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections.

The Representation of the People Act 1951 is supplemented by the Conduct of Elections Rules 1961 framed by the Central Government, in consultation with the Election Commission, under Section 169 of that Act. This Act and the rules make detailed provisions for conduct of elections from beginning to last stage of election like the issue of writ notification calling the election, filing of nominations, scrutiny of nominations, withdrawal of candidatures, taking of poll, counting of votes and constitution of the Houses on the basis of the results so declared.

Indian penal code provides various provisions regarding elections. Sections 171 to 171 I deals about definition of candidate, electoral right, Bribery, Undue influence, personation at an election and punishment for them. Failure to keep election accounts is also punishable Under Indian Penal Code.

The Parliament Prevention Of Disqualification Act, 1959 was enacted declare that certain offices of profit under the Government shall not disqualify the holders thereof for being chosen as, or for being, members of Parliament.

Maximum Election Expenses Under Conduct Of Election Rules, 1961 (See Rule 90) provides For Maximum Limit Of Election And Expenses In Various States And Union Territories Of India.

Conclusion;

Although a number of laws have been made and our election commission is working hard to conduct election fair .Still there is a lot of corruption in elections. Money and power is

playing important role in elections. Casteism, regionalism, and religionism have become deciding factor in winning election. Every party wants to win election by crook or hooks. Not a single party is willing to come under Right To Information Act as they do not want to disclose their financial means. While our Apex court has demotivated role of money power in elections. In **Kunwar Lal Gupta case**⁵ our Supreme Court criticized influence of big money in electoral process. Therefore it is suggested that all political should be brought under Right To Information Act. Besides this our enforcement machinery should be given more powers regarding election.

⁵ (1975)3 SCC 646.