



ELECTORAL PROCESS VIS A VIS DEMOCRACY: A COMPREHENSIVE STUDY

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Abstract

Democracy is regarded as the foremost thing for human civilization. India is one of the world's most populous democracies. The electoral process is the essence of democracy. Before democracy, people live in a society like an aristocracy, theocracy, oligarchy, dictatorship, where the basic rights of the citizen are not in an absolute sense and there is more chance of bias. Democracy shows that the people can enjoy their rights and it can be achieved by the electoral process. It is one of the most durable forms of choosing a government. The electoral system followed in India gives full opportunity to the people of India to participate in the election. Election in India is celebrated like other festivals. The election is the sole of democracy and it is an inseparable part of democracy. Indian constitution deals with the components of the election commission, its power and functions, compositions and also explain the role of election commissioners. This paper also deals with the electoral process and the officers involved in it. Elections in India is free and fair, it is free from all kind of interference.

There are many factors that determine the electoral system of a particular country, like hi

storical, economic, and social in addition to just political factors. India follows the plurality system which is also known as 'First past the Post System'. The methodology adopted while writing this paper is descriptive.

Keywords: Election, Democracy, Electoral system, Election's Principles, Right to vote.

(Ch.1) Introduction

"At the bottom of all tributes paid to democracy is the little man, walking into a little booth with a little pencil making a little cross on a little bit of paper - no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point".¹

- Winston Churchill.

An election is a process in which persons choose their representative. The Method used while choosing a representative is the 'voting method'. Voting and choosing representatives is the fundamental principle of democracy. In India, the voting right is given based on 'adult franchise' i.e., the person who comes under the majority according to the law. In India, Earlier, it was 21 years but it is then changed to 18 Years and now the people who are or more than 18 years are eligible to cast their vote irrespective of caste, colour, religion, sex, and place of birth etc. It is the beauty of democracy that the state is run by the sovereign but the sovereign is chosen by the people. Every voter is entitled to only a single vote and these votes are translated into seats, thereby, the number of seats determines the

¹Law for all, <https://freelegalconsultancy.blogspot.com/>, <https://freelegalconsultancy.blogspot.com/2015/10/section-867->

of-act-reads-as-follows-86.html .accessed on 03/08/2021



result of the election and the decision of the citizens. It means one person one vote. Election not only choose the government but it also shows the result of past work. It is also feedback of governance. It allows almost every citizen to participate in the election and become a part of the process of forming the government. In India, it is easy to see the election as in India, the election is very frequent due to the different levels of elections such as:

- 1) Election to the Lok sabha;
- 2) Election to the Rajya Sabha;
- 3) Election to the State Legislative Assembly (Vidhan Sabhas);
- 4) Election to the Legislative Council (Vidhan Parishad);
- 5) Election to President;
- 6) Election to Vice-President.

Apart from these elections, there are some more elections in India on the local level such as:

- 1) Election to Municipalities;
- 2) Election to Municipal corporation;
- 3) Election to Panchayati Raj.

In India, Election is one of the most complex processes as India is one the world largest democracies with 29 States and also the 2nd largest populated country in the world. Election needs the proper mechanism, scheduling, voting process, filing of nomination, constituency boundary, necessary qualification, and their scrutiny and polling. To conduct elections in India, there is the Election Commission of India, as provided under the Indian Constitution. There is also State Election Commissions for the election in State.

The Parliament or the assembly is said to be the 'representative', as the persons sitting there is send by the people through the voting process. It means the parliament or the assembly is the constitution of elected people. Political representation is structured in four aspects, such as:

- a) Who is representing;
- b) Who is being represented;
- c) What is being represented;
- d) Hoe is the representation taken place.

Hanna Pitkin, an American political theorist, defines representation as the process of making citizens' voices, opinions, and viewpoint "present" in the decision-making processes of the government (Pitkin, 1967). It simply means that the elected person will represent the will of the person, they will speak, advocate, symbolise and act on behalf of the citizens to whom he is representing. In India, the number of elected members believes that they won by the political power and due to caste dominance in some states of India and they also feel that they are only answerable to those people. They start ignoring the other class and communities and somehow this attitude towards the people is defeating the very soul of democracy.

The electoral system and elections in any country depend on various factors such as historical factors, economical factors, and social and political factors. Electoral methods are categorised into 3 groups, such as:

- a) Plurality system;
- b) Majoritarian system;
- c) Proportional representation system.

India follows the Plurality system. It is the 'single-member electorates or



constituencies'. This plurality system is one of the most straightforward systems of election since the person who wishes to represent and receives the most votes wins the election. Here, the highest vote means the candidate who scores the majority of the vote. In this system, a Majority vote means 50 percent plus one vote. It means the candidate scoring more than 50% vote is the winner in the election. There is very little chance of forming a government with 50 percent plus one vote, whether it is for the centre or the State. The Highest percentage seen is during the 1985 election when Indian National Congress received 48.1 percent vote and score 405 seats (74.6%). Mostly the govt. is formed by merging the seats of other party and due to merger the requirement of Plurality form of election is fulfilled and the government is formed.

Dr. B.R Ambedkar wrote a treaty during 1945 in his “‘magnum opus’ *What Congress and Gandhi have done to untouchables.*” At the time of British India, in electoral method, the most significant of them was the held seats with a 'Separate Electorate' for religious minorities. In his 1945 book, Ambedkar clarifies separate electorate in clear terms. The separate electorate includes relegating a region to a specific local area (like Muslim or Schedule caste), what is called separate voting public, and the citizen from that local area alone chooses the representative for their local area. (Ambedkar, 1945, pp. 150–151). There was a separate electoral constituency for a religious minority in India in the year 1937 and 1946. There are 11 provinces and 1,585 assembly seats. The electorates were:

- a) The Sikhs had 34 separate electorate seat in two provinces.
- b) The Muslims had 482 seats.
- c) Anglo India had 11 seats.
- d) The Europeans had 24 seats.
- e) The Indian Christians had 20 seats.
- f) On the basis of Minority, 30 seats are reserved for women.

Ambedkar won a separate electorate seat from the British and the seat is of separate Dalits electoral but it was not accepted by Gandhi Ji and he thwarted it in 1932. And lastly, this seat is merged into the general seats. The reason behind such act of Gandhi Ji is due to the arrangement called the Poona Pact on 24 September 1932 among Gandhi and Ambedkar, schedule caste candidates will be chosen by a joint democratic of Hindu electors and Dalit citizens. This was known as the Joint Electorate (Ambedkar, 1945, pp. 150–151).

(Ch.2) Provision related to the Elections in India

(2.1) Meaning and Definition Of Election

The election is part and parcel of Democracy. It is a way by which citizens express their views and determine their leader. Therefore, it becomes necessary for the democratic nation to hold an election on regular basis and in a proper manner. Some of the definition of election is:

- a) According to Webster’s dictionary “election” means the act or process of choosing a person for an office position or membership by voting.²
- b) According to the Representation of the People Act, 1951, the word “election” is

² Scribd, scribd.com, <<https://www.scribd.com/document/438656106/8-chapter-2>>. Accessed on 03/08/2021



defined as “Election means an election to fill a seat or seats in either House of Parliament or the House or either House of the Legislature of a State.”³

An election is an act of choosing. Choosing someone whom you believe will protect you and do betterment for you. The election also encourages citizen’s participants, it shows the value of citizen’s information of Government. The election is a very wide term to define as sometimes there is an election but there is no competition as the election is always between two, in many places, it is seen that there is only one nominee then but also election takes place. Therefore, the election can be termed as ‘given a right to someone who will work as sovereign’ for the people. In a wider sense election means and include all the commencement from the very beginning of notification to the declaration of result. In the case of *N.P. Ponnuswami v. Returning officer, Namakkal Constituency*, the Hon’ble Supreme Court held that the term election ‘has been used in part XY 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’⁴. This case is also regarded as one of the landmark cases in Election Laws. In another judgment of the Hon’ble Supreme Court in the case of *Mohinder Singh Gill v. Chief Election Commissioner*, held that “The rainbow of operations covered by the compendious expression election thus commences from the initial notification and culminates in the declaration of the return of a candidate”⁵

³ The R.P.Act. 1951, Act of Parliament , (Act No. 43 of 1951), Sec2(d).

⁴ *N.P. Ponnuswami v. Returning officer, Namakkal Constituency*, A.I.R. 1928, Mad 253 (India).

(2.2) Framework of Electoral System

The legal and administrative framework of election rests on the following Acts and codes:

- a) The Constitution of India
- b) The Representation of the People Act, 1950 and
- c) The Representation of the People Act, 1951
- d) The Indian penal Code, 1860, and the Delimitation Act, 1972.

(2.2.1) Constitution of India.

The procedure laid down in the constitution of India for the election of President and vice-President of India is given under *Article 52-71*. Composition and terms of the council of States (Rajya Sabha) and the House of the People (Lok Sabha) are given under *Article 80 and 83*. The provision says that the council of state has to continue its existence with one-third of the members retiring every two years and the provision for the house of people has a term of five years but it can be dissolved earlier in a case where the ministry loses the confidence. The qualification of the member of Parliament is prescribed under *Article 84*, which says that the member who is or more than 25 years of age and a citizen of India in the case of Lok Sabha and for the Rajya Sabha the age must be 35 or above. Apart from the membership, the constitution also talks about the restrictions under *Article 101* which says that ‘no person shall be the member of both the house at once. The disqualification of the member of Parliament is discussed under *Article 102* which says that if a member of Parliament holds an office of profit under Govt. or being an undischarged

⁵ *Mohinder Singh Gill v. Chief Election Commissioner*, A.I.R. 1978, S.C 851 (India).



insolvent or is declared to be of unsound mind by the competent court or voluntarily acquire the citizenship of some other country. Articles 163 to 173 and 190 to 192 contain similar regulations relating to state legislatures, such as qualification, disqualification, and composition. All the elections in India are conducted by a body called the ‘Election Commission’ of India. There are separation State Election Commissions for every state as well. The Election commission is given under Article 324 of the constitution of India. It shall consist of the Chief election Commission and other commissioners as the president may prescribe. Earlier there was one Commissioner only but later on it was changed to more than one as this post holds the responsibility and due to the nature of the responsibility, it should not be given in one hand as it may lead to arbitrary. It is already discussed in the paper as the election is to be conducted on the basis of Adult Suffrage, it is specifically mentioned under Article 326. B.R Ambedkar wanted the representation of the SC/ST community in the parliament as well as under the state legislature. *Article 330 and 334* provides reservation of seats for SC&ST for the same. It was earlier decided that such reservation should be for 20 years from the date of commencement of the constitution but it is still in continuity as it has been extended by the parliament from time to time. Apart from the Articles, there is schedule No. 10 which was made in the year 1985 to check the defection.

(2.2.2) The Representation of the People Act, 1950 and the Delimitation Act, 1972.

The fundamental objects of these two laws are delimitation of voting public, it prescribes the qualifications for voters and preparation

of electoral rolls etc. Earlier the delimitation of constituencies was under the control of the Election Commission but in the year 1972, the Delimitation act was passed by the parliament. After that, there have been no modifications of electorates because or for choice of Government to freeze the electorates so as not to give expanded portrayal in parliament to States where the populace has been growing exceptionally high.

(2.2.3) The Representation of the People Act, 1951

This legislation may be compared with the legs of a chair. It is the most important part of any election in India. It contains the detailed provision related to the

- i) Qualification
- ii) Dis-qualification
- iii) Time Schedule for election
- iv) Administrative Machinery for election
- v) Power to hold any premises and Vehicles.
- vi) Role and Function of the candidate.
- vii) The manner in which votes would be counted.
- viii) Declaration of Result.
- ix) Disposal of election offences.
- x) Suspension of the poll.
- xi) Expenditure related to the election.

These all are the power of Govt. and govt. may use its power for Election. All the basics to conduct the election is discussed in the Act of 1951.



(2.2.4) The Indian penal Code, 1860

Indian Penal code deals with the penal provision in criminal matters. There are certain offences related to elections that are dealt with by the IPC, 1860. The offence related to the election are:

- a) Fostering animosity between different groups on the basis of religion, race, birthplace, residence, language, and other factors. (Section 153A).
- b) Imputations and assertions are prejudicial to national integration (Section 153B).
- c) Failure to keep election accounts (171).
- d) Bribery (171B).
- e) Use of undue influence to interfere with the free exercise of any electoral right (171 C).
- f) Personation at an election (171 D).
- g) Making false statements (171 G).
- h) Illegal payments (171 H).

(Ch.3) Election commission in India and its practices

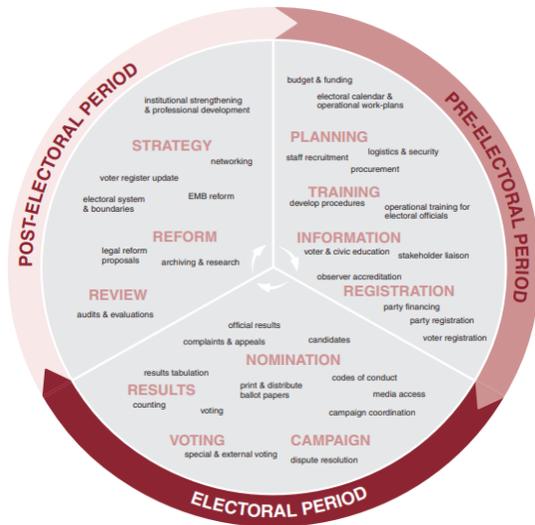
India with the 2nd largest population in the world and the most vibrant in culture and tradition is very difficult to compare the function and the mode of election or the practices related to the election of any other country. According to G.G. Mirchandani "The total electorate of this country in 1980 was over 360 million which is one and a half times the population of United States"⁶. Mr. S.P Sen Verma the then Chief Election Commissioner said that "In order that elections based on adult suffrage may be free and fair, it is essential that the election work should be spread throughout the length and breadth of the country and that even in the remotest villages, this work should be done

in a manner to inspire the confidence of the people". Due to the large area of our country, it is important that the election must be functional in every village, town and city. All elections must be conducted in a fair and impartial manner. The secretariat of the constituent assembly suggested that there should be one all India election Commission and no other commission is to be formed to maintain the uniformity in Election. It was accepted by the assembly and Dr. B.R Ambedkar accepted and introduced the single central election Commission⁷. All the provisions regarding the conduct of the election and composition of the election commission are given under the Representation of the People Act 1951. This Act of 1951 provides for the conduct of election to the Houses of Parliament and the House or Houses of the Legislature of each state, the qualifications and disqualifications for membership of these houses, the concept, 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"⁸.

⁶ Mirchandani, G G., "The People's Verdict", Vikas Publishing, NeHI Delhi, /98, p.25.

⁷ Shiva Rao, B., "The Framing of India's Constitution", Select Documents, /JPA, 1968.

⁸ R.P.Act, 1951, Act of Parliament, (Act No. 43 of 1951), p.1.



Source: Wall, A. et al., Electoral Management Design: The International IDEA Handbook (Stockholm, International IDEA, 2005).

(3.1) Functions of the Election Commission

The prime and the foremost work of the election commission is the superintendence, direction and control of the preparation of the electoral rolls for, and conduct of elections for parliament, for the legislature of every State, for the president and the vice-president.

The Hon'ble Supreme Court in the case of **Kanhiya Lal Omar V R.K Trivedi and Ors.**⁹, held the validity of Election Symbols (Reservation and Allotment) Order 1968. 3 questions arise in the case such as:

- a) The promulgation by EC for recognition of party as National or State Party.

⁹ Kanhiya Lal Omar V R.K Trivedi and Ors , AIR 1986 SC 111 (India).

¹⁰ AC Jose v Sivan Pillai and Ors., AIR 1984 SC 921 (India).

- b) The promulgation by EC for determination of disputes between the splinter groups of such recognised political parties.
- c) Allotment of symbols to candidates.

It was alleged that the allotment of the symbol was a legislative act and it cannot be determined by the commissions. The Hon'ble Court rejected the contention by holding that the power to issue symbols is a part of the power and function of the Election Commission for the free and fair election according to Article 324 of the constitution of India.

In **AC Jose v Sivan Pillai and Ors.**¹⁰ the Hon'ble Supreme Court held that the Election Commission is filled with wide power and can exercise it as they want to for a fair election. They can pass any order or notification of the conduct of the election. There is no bar until there is some specific legislation for a particular purpose. If there is any Act, rules or expression already passed by the legislation, then EC cannot override and made its order. The function of the election commission is to supplement the election not to supplement the law. In this case, the court struck down the order passed by EC to conduct an election by electronic voting machine (EVM) in place of ballot boxes.

In **Common Cause v Union of India and Ors**¹¹, the Hon'ble Supreme Court elaborated the term "conduct of the election", the court while doing so said that Article 324 include very wide meaning and power to EC, it includes:

¹¹ Common Cause v Union of India and Ors , AIR 1996 SC 3081 : (1996) 2 SCC 752 (India).



- a) Power of EC to issue an order in the process of conduct of the election.
- b) It can direct the parties to submit for its scrutiny.
- c) Can ask the detail of the expenditure incurred or authorised by the parties.

Apart from these functions, the constitution had given some more power to the Election commission. The Election commission is empowered to advising the president and the governor in a matter of disqualification of the Member of Parliament and the state legislature. In the matter of disqualification of members of parliament, the president decides the question (Article 103), and when the disqualification of the member of State is in question the Governor decides the question (Article 192). They both refer the matter to the election commission for its opinion and on the basis of opinion, the decision is formed. It is to be taken into consideration that the Election Commission has no to do anything when the matter is in 'Anti-Defection' Law.

The Hon'ble Supreme Court in the case of **Brundaben Nayak v Election Commission of India and Anor**¹² held that the president and the Governor are bound by the opinion of the Election commission and they are even not required to consult with their COM (Council of Ministers). A similar and stringent judgment came in the case of **Shamsher Singh v. the State of Punjab**¹³, the court held that the adjudication made by the election commission is final and the govt., president, and governor are bound to follow the adjudication of the election commission

on such matters. The president and the governor are merely to put their signature to such a decision. The person who is in question will not be allowed to hear by the president of the governor as they are following the adjudication of the election commission (**Nand Lal Sharma v. Election Commission**¹⁴). If some member is in the question of disqualification before the election, then there is nothing to deal with the president and governor. The election commission cannot adjudicate on such a matter. Such questions may be raised through an election petition.¹⁵ The election commission also has been given advisory power in certain cases. If a person is found guilty of any kind of illegal practices at the election by the court in the election petition, in such cases the president decides whether the disqualified person can contest future elections or not, if yes, then for how much time. This power is given under *Section 8A(1)* of the Representation of the People Act 1951. Before making a decision on the matter, the president will contact the election commission and act on their advice. The disqualification may be given for a maximum of 6 years from the date of the order.

The election commission also holds the quasi-judicial function. All the bodies and individuals who are believing themselves as a political party, then need to register their party and the registration of any new party is done by the election commission and after the approval of EC, the party may contest the election. This function of the election commission has been considered to be a quasi-judicial function by the Supreme Court

¹² Brundaben Nayak v Election Commission of India and Anor, AIR 1965 SC 2192 (India).

¹³ Shamsher Singh v. State of Punjab, AIR 1974 SC 2192 (India).

¹⁴ Nand Lal Sharma v. Election Commission, AIR 1984 Raj 88 (India).

¹⁵ Election Commission of India v Saka Venkata Rao AIR 1953 SC 210 (India).



in the case of *Indian National Congress v Institute of Social welfare and ors.*¹⁶

(3.2) Independence of the Election Commission

The independence of the election commission is very important to ensure a free and fair election. Justice can only be delivered when there is no fear or favour. The confidence of the people should not be in any manner defeat. Therefore, the independent, free, unfavoured, and unbiased commission is very essential for the fabric of any democratic country. The constitutional assembly while discussing mention the independence and freedom from any kind of interference from government or any other body of election commission. By this we have Article 324 (5) of the constitution read as:

“ 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 the 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 than any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner”¹⁷

(3.3) Composition the Election Commission.

The election commission consists of the Chief Election commission and other commissioners as may be decided by the president of India. Earlier there was only one election commissioner in India. The first election commissioner was appointed by the president in 1950. Further, it was added that there must be some more commissioners and after 1989, it was increased. The commission is filled with other officials too for the assistance. Now, amongst the election commissioners, whoever be the senior will holds the position of Chief election commissioner.

(3.4) Tenure and Removal.

The Chief Election Commissioner and all other commissioners are appointed for a term of 6 years or till the age of 65, whichever is earlier. The appointment is done by the president but he is not authorised to remove him. The removal of the Chief election commissioner is in the manner in which the Supreme Court judges can be removed. However, the other commissioners and the regional election commissioners who are working under the CEC may be removed from his office by the president of India of the recommendation for CEC.

(3.5) Officers on election duty.

To conduct the election, manpower is necessary. Just to ensure a free and fair election and the feasibility of election, Election Commission appoints thousands of polling personal. These are not the person

¹⁶ Indian National Congress v Institute of Social welfare and ors, (2002) 2 LRI 709 (India).

¹⁷ The Constitution of India, Article 324 (5), https://www.constitutionofindia.net/constitution_of_i

ndia/elections/articles/Article%20324 . accessed on 04/08/2021



selected on a random basis, these persons are highly qualified and educated such as:

- a) Magistrate
- b) Professors
- c) Police Officer
- d) Civil Servants
- e) Clerks
- f) Typists
- g) School Teacher
- h) Driver
- i) Peon.

Apart from these officers, there are 3 main officers whose role is very crucial in the conduct of the election. They are:

- A) Returning Officer,
- B) Presiding Officer
- C) Polling Officers

(3.5.1) Returning officers.

In every constituency, there is only one Returning officer who is appointed by the commission in consultation with the concerned State Government. Also, there is no bar in appointing one Returning officer in more than one State. One Returning officer may represent two or more States. His main duty is to scrutiny the nomination filed by the candidate. He is the one who accepts or reject the nomination. He allots the election symbol in consultation with the election commission. If any candidate wants to withdraw his nomination, he is the only authorised person to accept such withdrawal. He is the sole responsible for the free and fair election in his constituency.

(3.5.2) Presiding Officers.

The presiding officer is the in-charge of a booth. Every constituency has several polling booths where the voters go to vote. He ensures the free and fair voting process at his allotted polling booth. He is responsible for his polling booth. At the end of voting, he collected all the voting and submit it to the Returning officer.

(3.5.3) Polling Officers

At every polling booths, the Presiding officers need some polling officers for their assistance to check the name of the voters in the roll, put ink on the figure, issue paper and maintain secrecy. Therefore, the polling officers are the assisting officers under the Presiding officer.

(Ch.4) Conclusion

Indian is a democratic country with diversified culture and ethics. It needs elections free and fair i.e., unbiased and on regular basis. The principle of a free and fair election is a part of the basic structure of the constitution¹⁸. The electoral process adopted by India is one of the finest and the best practices in the world as it involves individual participants and allows the citizen to choose sovereign based on majority rule. It also shows the value and the power of being a citizen of India. The election system is one of the best systems of selection in comparison to any other system of government. This process of selecting the sovereign is not a new concept in India, it is as old as human civilization. People use to choose many things of majority basis, except the kings and queens, because that is followed by kinship. For example, the son of the king would be the

¹⁸ The principle of free and fair elections is an essential postulate of democracy, which in its turn is a part of the basic structure of the Constitution of India.



next king. But apart from this, there are several small structures where majority rule follows. That is why this adopted mode of selective the sovereign is supreme and the best mode of selection in the world. Now the electoral process is one of the fundamental laws in India. There are certain fundamental principles that the government has to follow so that the system survive successfully. The principles are dealt with in the constitution of India and there are some legislations for election. 'Universal adult suffrage' is one of the essential foundations of election. However, we have seen that the system is somehow lacking due to the less participation of the people. There is a high need for awareness amongst the people of India. People should that why this right to vote is important. Even a single vote can change the scenario. Literacy is one of the reasons for less participation. People should come to know about their rights and duties through education. In India, one voter holds one vote irrespective of any form of discrimination. It means there is no difference between the rich, poor or middle. Universal adult suffrage is based on the concept of equality. The basic component of an election are as follow:

- a) There must be Rajya Sabha and Lok Sabha constituting the 'electorate office'.
- b) All the electoral offices must have an 'electorate'.
- c) There must be a 'candidate' for the election.

The power and the function of the election commission are very wide and the appointment is done by the president of India. It is an independent body and no other body can interfere in the matter of the Election Commission. The election commission is the sole responsible for the election and it is the duty of Election Commission to inspire the

confidence of the public by free and fair elections. This commission is a statutory committee established under the constitution. It would be more meaningful for democracy that incorporates desirable outcomes such as inclusiveness, diversity, and accountability to citizens if everyone understood what elections are and what they are not just about majority rule.

