

**ELECTION LAW AND RULES—
TECHNIQUE
AND PROPAGANDA**

A. K. SEN

INDIAN NATIONAL CONGRESS

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NOTE

We are grateful to Shri A. K. Sen, Union Law Minister, for the pains he has taken to prepare this pamphlet for us. The matters it deals with are important for a proper understanding of some important aspects of the democratic structure we have established in the country.

The basic fact of democracy is that the ordinary men and women of India choose at regular intervals representatives who take charge on their behalf of the whole vast machinery of democratic government. How exactly this is done is a matter in which all of us are, or, at any rate, should be interested. It involves the understanding of the Election Law and Rules and other matters. It is rather a dry subject but Shri Sen, in the way he has dealt with it, has made it lively and interesting.

*New Delhi,
August 25, 1961.*

—SADIQ ALI

INDIA is a sovereign democratic republic, and democracy, in plain terms, means government by the people themselves. Unless the people can take part in the governance of the country, the dignity of the individual is not assured. It may be that some exceptionally great and high-souled men might recognise the dignity of the individual citizens as did St. Francis of Assisi of whom it has been said that "he treated the whole mob of men as a mob of kings." But this deep and sincere respect for the dignity of the individual cannot be expected on a universal scale unless democracy has been firmly established. It is by democracy, and democracy alone, that justice, social, economic, and political, liberty of thought, expression, belief, faith and worship, and equality of status and opportunity can be secured to all the citizens of the country. Hence, the very basic idea of democracy is, as already observed, that democracy is government by the people themselves.

Impossibility of Direct Democracy

But, under modern conditions, the processes of government cannot be directly and effectively carried out by the whole body of citizens. It is often asserted that in the ancient Greek City States "direct democracy" or "pure democracy" prevailed. But it is doubtful whether this claim can be accepted. Even if we disregard the material fact that in those Greek City States women, aliens and slaves who together constituted perhaps five-sixths of the adult population, were not regarded as citizens, and were allowed no share in the government, there is the further fact that even

then the citizen-body was still far too large for it as a whole to govern effectively. According to Hattersley in his book "A Short History of Democracy" (1930), p. 29, the *Ecclesia* or popular Assembly composed of all the adult citizens at Athens "met forty times a year apart from special occasions. For a few designated purposes the quorum was six thousand, but the attendance seldom exceeded five thousand and was mostly given by the radical dwellers in the urban area." It is clear that attendance was far from universal and it seems likely that those who did attend were not fully typical even of the adult citizens. In a modern large-scale community like India with a population of more than four hundred and thirty millions, it is clear that direct democracy on the Greek pattern is altogether out of the question.

Representative System

Hence, a modern democracy must necessarily be a representative democracy. The only way in which, in modern conditions, the people as a whole can be directly and effectively associated with the work of government is by means of the representative system. Of the three branches of government, the executive and the judicial require for their effective operation the employment of experts having security of tenure and freedom from interference in the execution of their duties. Hence, the representative system can only be applied satisfactorily to the legislative branch, which in this context may be taken to include the Ministry. But, since the legislative branch controls in the long run the policy carried out by the executive and the judicial branches, the effective application of the representative system to the legislative branch ensures the ultimate control of the whole range of government by the people themselves through their chosen representatives.

The immense range and complexity of modern government makes detailed control of its day-to-day activities by the people quite out of the question. It is only the *ultimate control* of government that can be ensured to the people

by means of the representative system. But if this ultimate control is a reality and not a sham, it provides all that is necessary to give the community substantial charge of its own destiny. This result can only be secured, however, by the effective application of the representative system. The outward *forms* of representation are not, however, enough : there must be the *inner reality* behind the outward forms. Nor is it sufficient that a nominally representative system appears to work : the question is not *whether* it works but *how* it works. Even a totalitarian regime may present some sort of democratic facade to the world ; and a so-called representative system may be very far from truly representative.

We may distinguish three major factors in this problem of representation. The first is the people, the ordinary men and women who are called upon to choose their representatives. The second is the machinery by which their choice is recorded and made effective. The third is the ethos of the community, the climate of public opinion, the code of values that governs its outlook and influences its judgment. The law of election deals with the first two of these three factors, as we shall show presently.

Therefore, the first point to note is that the people, that is, the ordinary members of the community in their capacity of electors choose representatives to take charge on their behalf of the whole vast machinery of government.

Adult Suffrage

The most obvious sign of democracy in any community is the *vote*. In the early Nineteenth Century the chief political issue in the United Kingdom was the right to vote ; adult suffrage for both sexes is now generally regarded as the only true political democracy. Citizens are supposed to think of public affairs and make decisions by voting on certain issues of public policy and this is held to distinguish a citizen from a subject. (Delisle Burns,—(Democracy)

pp. 119-20). In India, as in most modern civilised communities, the electorate includes practically all its adult men and women. Adult suffrage has been provided for in the Constitution of India itself. Article 326 of the Constitution reads as follows :—

“326. The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage ; that is to say, every person who is a citizen of India and who is not less than twenty-one years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice shall be entitled to be registered as a voter at any such election.”

In the true spirit of democracy the Constituent Assembly of India unhesitatingly adopted the principle of adult suffrage as enunciated in Article 326. This was indeed an act of faith—faith in the common man and woman of India and in their practical commonsense. This decision of the framers of the Constitution launched a great and fateful experiment unique in the world in its stupendousness. When the first General Election to the Lok Sabha and the State Legislative Assemblies was held in 1952 on the basis of adult suffrage, this unprecedented experiment attracted world-wide attention and journalists, politicians and other observers came from numerous foreign countries to study its working at first hand. But both the first and the second General Elections on the basis of adult suffrage proved a complete success and demonstrated before the whole world the native intelligence and practical commonsense of the common man and woman of India in choosing their representatives to Parliament and the State Assemblies.

The law of elections to Parliament and the State Legislatures is contained in the several provisions of the Constitution and the Representation of the People Act, 1950, and the Representation of the People Act, 1951, and the rules made under these two Acts.

No Communal Electorates

Before proceeding, however, to give the salient features of our election law, I may mention here two basic and fundamental points. In the first place, there is no more any room for any separate or communal electorate in our land. The makers of our Constitution in their collective wisdom made specific provisions in the Constitution itself totally prohibiting separate communal electorates which before the Independence of India ate into the vitals of this ancient land which has since the dawn of civilisation remained essentially and basically one in the midst of apparent diversities. As one thoughtful Indian has observed :

“The land-mass that is called India has always been regarded as one with the human mass that inhabits it, this fusion being effected in the consciousness of the people through its inherent spiritual outlook to which everything is a manifestation of the Spirit. If the Indian sees God in himself, he sees Him also in others and even in the phenomenal universe around him.”—
Sisir Kumar Mitra (The Vision of India (1954) pp. 46-47).

And this fundamental unity of India has attracted the attention and admiration of foreigners also. As was observed by C.E.M. Joad :

“This admixture of races has had important effects on India’s past history and present outlook. The first of these is a sense of fundamental unity far more vivid and persistent than can be accounted for by the circumstances of propinquity in the same geographical

area. Europeans lived together in a geographical area whose size is not very different from that of India. But as the wars which have disgraced European history in the past and the quarrels and rivalries that enfeeble the League of Nations in the present only too clearly show, that the inhabitants of Europe are very far from being imbued with the sense of unity which distinguishes the inhabitants of India. One cannot, in short, speak of a "European" with the same appropriateness as we can speak of an "Indian" who in spite of differences of colour, caste and creed looks upon all other Indians as his fellow-countrymen and upon India as his home."

To preserve this unity and oneness of India which was unfortunately disturbed by communal passions and frenzy resulting in the bisection of India, the framers of the Constitution have provided in Article 325 of the Constitution as follows :—

"325. There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll or any such constituency on grounds only of religion, race, caste, sex or any of them."

Independent Election Commission

In the second place, the entire charge of elections has been vested by the Constitution in an independent body, namely, the Election Commission. Election means the deliberate choice of a person to act as the elector's representative in Parliament or a State Legislature. Unless, therefore, conditions are created and maintained whereunder every elector can make his choice freely and without any pressure or influence from any quarter, the whole process of election is reduced to a farce and a mockery. The Election Commission is an independent organ which

has been entrusted by the Constitution itself with the maintenance of conditions under which the whole processes of elections may be carried out in a free atmosphere. This is why the position of the Chief Election Commissioner has been placed on the same footing as a Judge of the Supreme Court. Unless the machinery of election is strong and independent of the government of the day, it is very difficult to avoid the dangers and pitfalls which may beset the preparation for and conduct of elections on a nation-wide scale in so vast a country as ours. As C.E.M. Joad has observed in his "Modern Political Theory", pp. 35-36 :

"The machinery of election in a centralised State administered by a governing body elected on a geographical basis is liable to very serious defects which may prevent it from giving adequate expression to what is best as opposed to what is worst in the popular will. The electorate may be hypnotised by the popular press, drugged by advertisements, deafened by the "boosting" of so-called business candidates. It may be influenced.....by centralised mass suggestion exercised through all the organs which form and control public opinion, into condoning and even encouraging a policy of hatred and passion of which each individual would in his private capacity be ashamed. It may be suborned by powerful financial groups into voting for measures which though prejudicial to the common welfare are advantageous to the groups in question."

The Election Commission, therefore, under the Indian constitutional structure is the pivot round which the entire election machinery runs and the Election Commission has been able to maintain the purity, freedom and fairness in elections in the last two General Elections and a large number of bye-elections and General Elections to some State Legislative Assemblies which have taken place since the commencement of the Constitution on the 26th January,

1950. Article 324 of the Constitution provides *inter alia* that "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, including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections to Parliament and to the Legislatures of States shall be vested in a Commission (referred to in this Constitution as the Election Commission)."

Electors' Qualifications

The first question to which we may now address ourselves is *who can be electors* under our election law. As we have seen, Article 326 of the Constitution providing for adult suffrage contains in substance the entire answer to this question, and this has been elaborated in sections 16 to 20 of the Representation of the People Act, 1950. In order to understand in clear perspective as to who can be electors, we are to see, in the first place, *who cannot be electors*. By this process of exclusion and elimination, we shall have a clear idea as to who can be electors.

In the first place, a person who is not a citizen of India cannot be an elector.

In the next place, even a citizen cannot be an elector if he—

- (a) is less than twenty-one years of age on the qualifying date, that is, the 1st day of January of the year in which the electoral roll for the constituency in which he is resident is prepared or revised ;
or
- (b) is of unsound mind and stands so declared by a competent court ; or
- (c) is disqualified from voting because of the commission of some corrupt practice or electoral offence.

(See Article 326 of the Constitution and section 16 of the 1950 Act).

Thus we see that an adult citizen if he does not suffer from any of the above disqualifications can be an elector in a constituency.

But even then he will not be entitled to be registered in the electoral roll of a constituency unless he has been ordinarily resident in that constituency (section 19 of the 1950 Act). It will thus be seen that, besides disqualifications on the ground of mental defect, corrupt practice and electoral offence, the three principal requirements for being registered in the electoral roll or for voting are—

- (a) age,
- (b) citizenship, and
- (c) residence in the constituency.

I have already referred to the electoral roll for a constituency. For elections to the Lok Sabha and to the State Legislative Assemblies, the whole country has been divided into a large number of territorial constituencies. This is in pursuance of the provisions of the Constitution itself. Thus, Article 81 of the Constitution lays down *inter alia* that the House of the People (the Lok Sabha) shall consist of—

- (a) not more than five hundred members chosen by direct election from *territorial constituencies* in the States, and
- (b) not more than twenty members to represent the Union Territories chosen in such manner as may be laid down by Parliament by law.

And that for the purpose of clause (a) above, each State shall be divided into *territorial constituencies*. Similar provisions are contained in Article 170 for the State Legislative Assemblies (the Vidhan Sabhas).

Then Article 327 of the Constitution empowers Parliament to make laws with respect to all matters relating to

elections including delimitation of constituencies, preparation of electoral rolls for such constituencies, etc. In pursuance of these provisions read with entry 72 in the Union List in the Seventh Schedule to the Constitution Parliament passed the Representation of the People Act, 1950, and the Representation of the People Act, 1951.

Delimitation of Constituencies

But I was speaking of territorial constituencies for the Lok Sabha and the Vidhan Sabhas. Under Articles 82 and 170(3) of the Constitution read with Article 327 and entry 72 in the Union List, an Act was passed by Parliament in 1952, known as the Delimitation Commission Act under which a Delimitation Commission was set up. This Commission divided the entire country into a large number of Parliamentary constituencies for elections to the Lok Sabha and a far larger number of Assembly constituencies for elections to the Vidhan Sabhas and made an Order known as the Delimitation of Parliamentary and Assembly Constituencies Order setting out the names, extent, etc. of each constituency. This Order of the Delimitation Commission was entirely revised on the re-organisation of States in 1956. Parliament has very recently passed an Act providing for the abolition of two-member constituencies. The Election Commission has already started the work of bifurcation of two-member Parliamentary and Assembly constituencies in the various States in pursuance of this Act. As a result of this bifurcation, the Delimitation Order will further be revised. The next General Election of 1962, will be held on the basis of the Delimitation Order as so revised by the Election Commission. In other words, in the next General Election all Parliamentary and Assembly constituencies will be single-member constituencies.

Now, for each Parliamentary and for each Assembly constituency there will have to be an electoral roll and in that roll every adult citizen—man or woman—who satisfies

the requirements mentioned earlier is entitled to be registered.

The electoral rolls are prepared and thereafter revised every year by the electoral registration officer and his assistants under the general supervision and control of the Chief Electoral Officer of the State and the Election Commission in accordance with the provisions contained in sections 21 to 23 of the Representation of the People Act, 1950, and the Registration of Electors Rules, 1960, made under that Act.

Preparation of Electoral Roll

In the course of preparation or annual revision of an electoral roll, a preliminary roll is first published inviting claims and objections to the preliminary roll. Any person may, within thirty days after the publication of the preliminary roll, file any claim for the inclusion of any name in the roll or any objection to any entry therein. This is very important. Unless we are particularly vigilant about this, the names of several persons who are entitled to be registered as voters may not be included in the roll; on the contrary, even false and fictitious names may remain included therein. Indolence and apathy, as Viscount Bryce observed many years ago, are hindrances to good citizenship. And we must see that through our indolence and apathy the electoral roll which is the basic document on the strength of which our legislative bodies are constituted, does not remain defective.

The Electoral Registration Officer decides every claim and objection and corrects the roll accordingly. Any person dissatisfied with the decision of the Electoral Registration Officer may prefer an appeal to an appellate officer designated by the Election Commission for the purpose. Without entering into further details, I may, in this connection, draw attention to rules 10 to 25 of the Registration of Electors Rules, 1960. But it may happen—and it is not unusual—that even after the electoral roll has been finally

published after hearing all claims and objections, some names are not still included therein. Our election law is comprehensive enough to provide for such contingencies also. Section 23 of the 1950-Act provides for the inclusion of names in the electoral roll in such cases even after the final publication of the roll. Under that section, any person may apply for the inclusion of his name in the electoral roll of a constituency if it is not already included therein. Such application may be made even after the notification calling an election has been issued, but in such a case the application should be made to the Chief Electoral Officer of the State ; otherwise the application for such post-final publication inclusion should be made to the Electoral Registration Officer.

We have so far considered above as to who can be electors as also the question of registration of electors in the electoral rolls of the Parliamentary and Assembly constituencies.

Now, what for are these Parliamentary and Assembly constituencies and the electoral rolls for such constituencies ? All these questions as to constituencies and electoral rolls for constituencies assume importance only in the context of choosing representatives of the people who will form the legislative branch of the government, namely, Parliament and the State Legislatures from whom the Ministers of the government will be chosen. Therefore, the next important question that naturally arises is—*who can be candidates*—who are the persons who are entitled to be the representatives of the people, to be members of Parliament and of the State Legislatures ?

Before answering this important question, a short digression is necessary. The Lok Sabha stands *automatically* dissolved after the expiry of five years from its constitution but it may be dissolved earlier also. [See Article 83(2) of the Constitution]. Similar is the case with the State Legislative Assemblies. [See Article 172(1)]. The first

Lok Sabha was constituted in May, 1952, after the first General Election held in January-February, 1952, and the second Lok Sabha was constituted after five years in 1957, after the second General Election held in February-March, 1957. In the same manner the third Lok Sabha will be constituted next year, that is, in 1962 and for that purpose the third General Election will take place in the beginning of 1962. At the same time, the General Elections for the State Legislative Assemblies will also take place except in the States of Kerala and Orissa where the Legislative Assemblies had been dissolved earlier and the General Elections to them were held in February, 1960 and in June, 1961 respectively. Besides these General Elections, there are bye-elections also caused by the resignation or death of any member or by the setting aside of the election of any returned candidate.

Who can be Candidates.

Now we are in a position to give an answer to the question as to *who can be candidates*. In order that a person may stand as a candidate he must have certain positive qualifications and also must not suffer from certain disqualifications. The positive qualifications are that he—

- (a) must be a citizen of India,
- (b) must not be less than twenty-five years of age in the case of a seat in the Lok Sabha or the State Legislative Assembly or less than thirty years of age in the case of a seat in the Rajya Sabha or the State Legislative Council, and
- (c) must be an elector for *any* Parliamentary constituency in India in the case of election to the Lok Sabha, and an elector for *any* Assembly constituency *in the State* in the case of election to the Legislative Assembly.

Besides, a candidate for a reserved seat must belong to one of the Scheduled Castes or Scheduled Tribes. (See

Articles 84 and 173 of the Constitution and sections 4 and 5 of the Representation of the People Act, 1951.). In this connection, one point may be specifically mentioned. It is this. For the Lok Sabha, an elector for any Parliamentary constituency in the country may stand for election from any other constituency in the country. Thus, a person whose name is entered in the electoral roll for the Parliamentary constituency in West Bengal may stand as a candidate for election from a Parliamentary constituency in Uttar Pradesh or Kerala or any other State or Union Territory. But, in the case of election to a State Legislative Assembly, in order to stand as a candidate a person must be an elector in any assembly constituency within the State and not outside.

In addition to these positive qualifications, a candidate must not suffer from certain disqualifications mentioned in Articles 102 and 191 of the Constitution and section 7 of the Representation of the People Act, 1951. Some of these important disqualifications are as follows :

- (a) he must not hold any office of profit under the government, Central or State, or hold the office of any managing agent, manager, etc., in a company in which the appropriate government has not less than twenty-five per cent. of the share capital ;
- (b) he must not be of unsound mind ;
- (c) he must not be an undischarged insolvent ;
- (d) he must not be a foreigner ;
- (e) if he is guilty of any corrupt practice or electoral offence entailing disqualification for membership for the period mentioned in sections 139 and 140 of the Representation of the People Act, 1951, then, within that period of disqualification he must not stand as a candidate unless the disqualification has been removed in the meantime by the Election Commission ;

- (f) if he is convicted for any of the other offences for not less than two years, then, a period of five years must have elapsed since the date of his release from imprisonment before he can stand as a candidate unless the Election Commission has reduced that period of five years ;
- (g) he must not enter into any contract with the appropriate government in the course of his trade or business for the supply of goods to or execution of any works undertaken by that government ;
- (h) if he has been dismissed from government service for corruption or disloyalty to the State, he must not stand as a candidate unless a period of five years has elapsed since his dismissal.

These are the important disqualifications to which a person must not be subject to if he wishes to stand as a candidate and to be elected as a representative of the people either in Parliament or in a State Legislature.

The object of all these disqualifications, you will readily see, is that the chosen representatives of the people on whom the governance of the country and, therefore, the welfare of the citizens will depend in final and ultimate analysis, will be honest, independent and fearless men, men of sound judgment and noble character to whom the interests of the people represented by them are much higher and more dear than their own private self-interest.

Conduct of Elections

We are now in a position to ask next—*how the representatives of the people are elected*, in other words, *how elections are conducted*.

The initial step for a General Election to the Lok Sabha starts with the issue of one or more notifications by the President of India on the recommendation of the Election Commission calling upon all Parliamentary constituencies in the country to elect members in accor-

dance with law. (Section 14 of the Representation of the People Act, 1951).

For General Elections to any State Legislative Assembly, a similar notification or notifications are issued by the Governor of the State on the recommendation of the Election Commission. (Section 15 of the 1951-Act).

As soon as these notifications have been issued, the General Elections have commenced. Simultaneously with or very shortly after the issue of these notifications by the President or the Governor, the Election Commission issues a notification fixing the time-table for the entire processes of the elections beginning from the nomination of candidates down to the taking of the actual poll and the completion of the election. This time schedule for the various stages of election has been laid down in detail in section 30 of the Representation of the People Act, 1951. From this section it will appear that

- (a) the last date for making nominations shall be the tenth day after the date of the publication of the notification of the President or the Governor calling the election ;
- (b) the date for the scrutiny of nominations shall be the third day after the last date for making nominations ;
- (c) the last date for the withdrawal of candidatures shall be the third day after the date for the scrutiny of nominations ; and
- (b) the date for the poll shall not be earlier than the twentieth day after the last date for the withdrawal of candidatures.

From this above time-table it will appear that the whole process of election beginning from the notification of the President or the Governor and ending with the taking of the poll can be finished within a period of about 36 or 37 days.

Returning Officer

After the issue of the Election Commission's notification under section 30 fixing the time-table, the whole conduct of elections passes under the direct and immediate control of the returning officer who is a principal functionary in the entire conduct of elections. He is no doubt assisted by the assistant returning officers, presiding officers and polling officers and he works no doubt under the supervision and control of the Election Commission and the Chief Electoral Officer of the State, but nonetheless he is the central figure in the conduct of elections.

For every constituency there is a returning officer who is ordinarily the District Magistrate but in Parliamentary constituencies sometimes the Commissioner of a Division is also appointed the returning officer and in small Assembly constituencies the Sub-divisional Magistrate may be appointed a returning officer. As soon as the notification fixing the time-table of the election has been issued by the Election Commission under section 30, the returning officer issues a public notice under section 31 of the 1951 Act inviting nominations of candidates and specifying the place at which the nomination papers are to be delivered. Nomination papers may be presented either before the returning officer or any of his assistant returning officers in his office between 11 A.M. and 3 P.M. Nomination of candidates under our law is a simple affair. A nomination paper is to be completed in the prescribed form and signed by the candidate himself and by an elector of the constituency as *proposer*. Mind you, the proposer must be an elector of the constituency from which the candidate is seeking election. He must not be an outsider, that is to say, he must not be an elector in a different constituency.

Deposit: Every candidate presenting a nomination paper is required to deposit in cash with the returning officer or in the Reserve Bank of India or a Government Treasury the appropriate sum under section 34 of the Representation

of the People Act, 1951. This sum is, in the case of an election from a Parliamentary constituency, a sum of Rs. 500/- or where the candidate is a member of a Scheduled Caste or a Scheduled Tribe a sum of Rs. 250/- and this sum is, in the case of an election from an Assembly constituency, a sum of Rs. 250/- and where the candidate is a member of a Scheduled Caste or Scheduled Tribe a sum of Rs. 125/- Except in cases where the sum is deposited in cash with the returning officer, a receipt in proof of the deposit must be enclosed with the first nomination paper presented on behalf of the candidate. One such deposit only is required from a candidate in respect of his candidature in *thesame constituency*, and once such a deposit has been made, the candidate is not required to make any further deposit in respect of any subsequent nomination papers which may be presented on his behalf in that constituency. If, however, a candidate offers himself for election in more than one constituency, he must make a separate deposit in respect of each such constituency.

A candidate who wishes to contest a reserved seat is compulsorily required to make a declaration in the nomination paper itself to the effect that he is a member of Scheduled Caste or a Scheduled Tribe.

Scrutiny of Nomination Papers : As each nomination paper is filed, the returning officer or the assistant returning officer is required to examine it for technical defects, if any. If there are any clerical or technical errors in the nomination paper, the candidate is allowed to correct the same at this stage. This is required by section 33(4) of the 1951 Act. Thereafter, the formal scrutiny of the nomination papers takes place. The returning officer gives a notice to every candidate of the date and time for scrutiny under section 35 of the Act. On the date fixed for the scrutiny, the candidates, their elections agents, if any, one proposer of each candidate and one other person duly authorised in writing by each candidate but no other person may attend

at the time and place appointed by the returning officer for the scrutiny of nominations, and by section 36(1), the returning officer is required to give all these persons all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner required by law. A nomination paper cannot be rejected on the ground of any defect which is not of a substantial character. Section 36 lays down the grounds on which a nomination paper can be rejected. These are as follows. A nomination paper is rejected by the returning officer if—

- (a) the candidate is clearly not qualified in law to be a member of the Legislature concerned, or
- (b) the candidate is clearly disqualified in law to be such a member, or
- (c) the nomination paper has not been delivered in time, or
- (d) the nomination paper has been delivered to the returning officer or to the assistant returning officer by a person other than the candidate himself or his proposer, or
- (e) the nomination paper has not been delivered at the place specified in the public notice issued by the returning officer under section 31 of the Act, or
- (f) the nomination paper has been delivered to a person other than the returning officer, or any of his assistant returning officers, or
- (g) the nomination paper is not substantially in the prescribed form, or
- (h) the nomination paper has not been signed by the candidate or his proposer, or
- (i) the proper deposit has not been made by the candidate in accordance with section 34 of the Act.

As the grounds on which a nomination paper may be rejected are very important and should be known to everybody concerned in elections, I have specifically mentioned the various grounds after analysing the relevant provisions of section 36 of the Act. Proceedings relating to the scrutiny of nomination papers are summary in their nature and it has been held by the Supreme Court in the case of *Virindar Kumar Satyawadi, v. the State of Punjab*, A.I.R. (1956) S.C. 153, that the returning officer holding scrutiny of nominations under section 36 is not a court although his function under that section is undoubtedly judicial in character. A candidate to whose nomination paper an objection has been taken may apply for time to rebut such objection, and in such a case he is allowed an adjournment up to two days. In the first General Election in 1952 there were numerous instances where nomination papers were rejected on family grounds but the matter improved very much due to experience and other factors during the time of the second General Election of 1957.

Withdrawal of Candidates: A candidate though validly nominated is entitled to withdraw his candidature on or before the last date fixed by law for such withdrawal which is the third day after the date for the scrutiny of nominations or if that is a public holiday, the next succeeding day which is not a public holiday. The withdrawal must be made by the candidate himself by notice in writing as required by section 37 of the Act. This notice is required to be delivered to the returning officer either by the candidate personally or by his proposer or election agent, who must have been authorised in writing in this behalf by the candidate. A notice in withdrawal once given by the candidate is binding on him and he is not allowed to cancel the same and continue as a candidate. During the second General Elections, out of 2,237 candidates validly nominated for election to the House of the People, 643 withdrew their candidatures in time. Out of 16,123 candidates

validly nominated for election to the State Legislative Assemblies, as many as 5,329 withdrew their candidatures. The reason for the large proportion of candidates who withdrew their candidatures appears mainly to have been the practice almost universally followed by every political party of putting up in addition to its principal candidate in every constituency one or more covering or shadow candidates who are required to withdraw from the contest as soon as the nomination paper of the principal candidate set up by the party has been accepted.

Polling : As all Parliamentary and Assembly constituencies will be now single-member constituencies, if in any constituency there is only one candidate in the field whose nomination paper has been found valid, the returning officer is required to declare him forthwith to be duly elected to fill the seat. If, however, there are several contesting candidates in the field, then, a poll becomes necessary and naturally, therefore, we are led to a discussion on the subject of the taking of the poll and matters incidental thereto.

The returning officer is responsible for the taking of the poll within the constituency of which he is the returning officer. Under section 21 of the Act, the returning officer for a constituency is appointed by the Election Commission after consultation with the State Government. He is required by this section to be an officer of government. To help the returning officer, the Election Commission may appoint one or more assistant returning officers in every constituency. Section 24 of the Act provides that it shall be the general duty of the returning officer at any election to do all such acts and things himself as may be necessary for effectually conducting the election in accordance with the Representation of the People Act, 1951, and the rules and orders made thereunder. For the convenience of voters a number of polling stations are set up in every constituency. Section 25 of the Act requires

that the returning officer for each constituency shall, with the previous approval of the Election Commission, provide a sufficient number of polling stations for the constituency and shall publish in the manner laid down by the Election Commission a list showing the polling stations and polling areas for which they have respectively been provided. During the second General Election in 1957, there were as many as 2,20,478 polling stations throughout the whole country and on an average not more than 1,000 voters were assigned to any single polling station. Each polling station is placed in charge of an officer called the Presiding Officer who is appointed by the returning officer and who is assisted in his work by a number of polling officers who are also appointed by the returning officer. The law (section 26), however, strictly enjoins that the returning officer shall not appoint any person as a Presiding officer or a polling officer for a polling station who has been employed by or on behalf of or has been otherwise working for a candidate in or about the election. This is a salutary provision intended to maintain the purity of elections. The Presiding Officer plays a very important role during the poll. His task is trying and difficult and taxes his physical and mental capacity to the utmost. About the general duty of Presiding Officer, it is stated in section 27 of the Act that it shall be the general duty of the Presiding Officer at a polling station to keep order there and to see that the poll is fairly taken.

Election Agent : Under our election law it is no more compulsory for a candidate to appoint an election agent. But where a candidate has appointed an election agent under section 45 of the Act, the election agent performs such functions of the candidate in relation to the election as he is authorised under the Act to perform for the candidate. Where an election agent is appointed, he may perform many of the functions of the candidate himself in accordance with the provisions of the law.

Polling Agent: Polling agents, however, play an important role at the time of the poll. Under section 46 of the Act, a contesting candidate or his election agent may appoint a prescribed number of polling agents for each polling station. Under rule 13 of the Conduct of Elections Rules, 1961, issued very recently, the number of polling agents that may be appointed by a candidate or his election agent under section 46 shall be one agent and two relief agents. Polling agents are the representatives of the candidates at the polling stations for which they are appointed. Polling agents can and should play a very important role in the actual taking of the poll which is the most vital part of an election.

It is very important that the presiding and polling officers, on the one hand, and the candidates and their polling agents, on the other, clearly appreciate their duties and responsibilities at the poll and carry them out intelligently and in a cooperative spirit. The Election Commission, during the last General Election of 1957, issued several hand books for the benefit of the polling agents whose attention was especially drawn to the salient points which they should bear in mind at the polling station.

One of the main duties of a polling agent is to see that the interests of his candidate do not suffer in any way at the polling station where he serves as a polling agent. Every polling agent should approach his duty bearing this important duty in mind. The other duties of a polling agent are—

- (a) to help the presiding officer to detect and prevent impersonation of voters or challenge the persons who attempt impersonation ;
- (b) to see that the ballot boxes are properly secured and sealed according to the Conduct of Elections Rules and the instructions ; and
- (c) to see that the documents relating to the poll are also secured and sealed properly at the end of

the poll as required by the Conduct of Elections Rules.

Under section 56 of the Act read with Rule 15 of the Conduct of Elections Rules, 1961, the Election Commission fixes the hours during which the poll will be taken by notification published in the Official Gazette; but the total period allotted on any one day for polling at an election in a Parliamentary or Assembly constituency shall not be less than eight hours. It may be more but it must not be less. Thus, in the last General Election of 1957, eight hours per day were fixed for the poll in all the States and Union Territories except in the State of Kerala where the total period was 8½ hours and in the Union Territory of Himachal Pradesh where the period was nine hours per day. The details relating to the taking of the poll have been provided for in the Conduct of Elections Rules, 1961, and it is not necessary for me to refer to each one of them.

Voting System : To one important point, however, I may draw your attention. It is this. Under the Conduct of Election Rules, 1961, poll will be taken generally in all Parliamentary and Assembly constituencies on what has come to be known as the marking system of voting as distinguished from the balloting system. Under the balloting system which mainly prevailed so far there was a separate ballot box placed in the polling compartment at the polling station for each separate candidate. What a voter was required to do on entering the polling compartment was to put the ballot paper into the box of the candidate of his choice without putting any mark or other writing on the ballot paper. It was thought that in a country like India where the percentage of illiteracy is very high, this system would work well. But the marking system of voting has been tried with great success in a large number of bye-elections and it has been decided that this marking system of voting will be adopted in every

Parliamentary and Assembly constituency in the next General Election unless the Election Commission decides otherwise in respect of any specified constituency or constituencies. Thus, by Rule 49 of the Conduct of Elections Rules, 1961, it is provided *inter alia* that Election Commission may by notification in the Official Gazette published at least fifteen days before the date of the poll appointed for an election, direct that the method of voting by ballot shall be followed in that election at such polling stations as may be specified in the notification.

Under the marking system of voting, the names of all the contesting candidates together with the symbols allotted to them are printed on the same ballot paper and only one ballot box is placed in the voting compartment and an elector on entering the voting compartment with the ballot paper supplied to him by the presiding officer is to make a mark on the ballot paper on or near the symbol of the candidate for whom he intends to vote and then place the ballot paper in the ballot box. The last two General Elections have proved that the electorate of our country possesses a fund of innate commonsense and it is hoped that in the next General Elections this system will prove a success, as it has already proved a success in a number of bye-elections.

Symbols : In this connection, I may refer in brief to the allotment of symbols to the contesting candidates at an election in a Parliamentary or Assembly constituency. Under rule 5 of the Conduct of Elections Rules, 1961, the Election Commission is required to specify by notification in the Gazette of India, as well as in the Official Gazette of each State, the symbols that may be chosen by candidates at elections in Parliamentary and Assembly constituencies and the restrictions to which their choice shall be subject. In each nomination paper by which a candidate for an election in a Parliamentary or Assembly constituency is nominated, the candidate is required to

declare the three symbols he has chosen in order of preference. Rule 5(2) of the Conduct of Elections Rules provides that where at any election more nomination papers than one are delivered by or on behalf of a candidate, the declaration as to symbols made in the nomination papers first delivered and no other declaration as to symbols shall be taken into consideration at the time of allotment of symbols to a candidate by the returning officer. As soon as the date for withdrawal of candidature is over and it is found that a poll is necessary because of a number of contesting candidates in a constituency, the returning officer considers the choice of symbols for allotment to the candidates and, subject to any general or special direction issued in this behalf by the Election Commission, the returning officer is required to allot a different symbol to each contesting candidate in conformity, as far as practicable, with his choice and, if more contesting candidates than one indicated their preference for the same symbol, decide by lot to which of such candidates the symbol will be allotted. This is provided for in rule 10(4) of the Conduct of Elections Rules, 1961.

Postal Ballot : In this connection, mention should be made of voting by postal ballot. The following categories of voters are entitled to vote by postal ballot, namely,—

- (a) special voters, that is to say, persons holding office to which the provisions of section 20(4) of the 1950 Act are declared to apply and the wives of such persons : these persons are the President of India, the Vice-President, the Governors of States, the Speakers and Deputy Speakers of the Lok Sabha and the State Legislative Assemblies, Ministers of the Union and the States and the like ;
- (b) Service voters and their wives ; by Service voters are meant members of the Armed Forces of the Union and persons employed under the Government of India in posts outside India ;

(c) voters on election duty, that is to say, public servants on election duty and polling agents who are prevented by reason of their duties as polling agents from voting at the polling stations where they are normally entitled to vote, provided that they applied in time for the facility of the postal ballot ;

(d) electors subjected to preventive detention.

These categories of persons can for obvious reasons exercise their franchise by means of postal ballot instead of personally attending at the polling station.

Election Expenses : An account of our election system will be incomplete without a brief reference to election expenses and corrupt practices. Under section 77 of the Representation of the People Act, every candidate at an election in a Parliamentary or Assembly constituency is required to keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or his election agent between the date of the publication of the notification calling the election and the date of the declaration of the result thereof. That section also requires that the maximum amount of election expenditure shall not exceed such sum as may be prescribed. In rule 90 of the Conduct of Elections Rules, 1961, the maximum amount of election expenses has been fixed at Rs. 25,000/- in the case of a Parliamentary constituency in any State and at Rs. 10,000/- in the case of a Parliamentary constituency in any Union Territory. By that very rule, the maximum amount of election expenses in an Assembly constituency varies from Rs. 6,000/- to Rs. 9,000/- in the various States. Under section 78 of the Act, every contesting candidate, whether he has been elected or not, is required within thirty days from the date of the election of the returned candidate to lodge with the returning officer an account of his election expenses. A failure to lodge this account with the returning officer within the time

and in the manner specified in section 78 entails a disqualification for membership of Parliament or a State Legislature for three years under section 7 of the Act, although power has been given to the Election Commission to remove the disqualification.

It is being questioned in many quarters as to how far these provisions relating to the maximum of election expenditure and the account of election expenses serve any useful purpose. It is almost the unanimous view that the actual expenses incurred by a candidate exceed very much the maximum amount laid down by the law and that, therefore, the law forces even an honest candidate to have recourse to false and untrue statements. Moreover, the experience of the candidates in the last elections is that it is not practically possible to keep a correct and separate account of all expenditure incurred by a candidate during the fast tempo of an election campaign. The view is, therefore, being generally held by practically all the parties that the provisions as to election expenses should be altogether done away with and the Government is considering this question in consultation with the Election Commission.

Corrupt Practices : Unless an election is conducted in a free and pure atmosphere, the whole object of election is vitiated. By resorting to corrupt and fraudulent practices, even unscrupulous candidates who are not actuated by any sense of public duty but are only guided by their private self-interests may get elected to our Legislatures, thereby undermining the very basis of the most important branch of the Government, namely, the legislative branch. Our law, therefore, provides that if any corrupt practice is committed by a returned candidate or his election agent or by any other person with the consent of the returned candidate or his election agent, then, his election will be declared void by the election tribunal. As the standard of public morality goes up in our country, it is hoped that elections in this country will not be vitiated by corrupt practices.

In the United Kingdom, it is said that bribery and corruption are now things of the past. A great authority on election law, Dr. J. F. Ross, in his book, "Elections and Electors" (1955) with reference to the United Kingdom observes at p. 195 as follows :—

"Elections in this country are now conducted with extreme decorum and with the most scrupulous regard for the correct procedure. Bribery and corruption, too, are things of the past. Indeed, we have secured a standard of integrity and good behaviour in the actual conduct of elections that has probably not been surpassed anywhere or at any time. A major factor in bringing about this desirable state of affairs was undoubtedly the Ballot Act of 1872 and another was the stringent Corrupt and Illegal Practices Prevention Act of 1883 ; but there can be little doubt that the immensely widened franchise, the increased sobriety, the greatly improved social conditions and the higher educational standards of the population as a whole have also played their part."

It is hoped that in our country also our elections will be conducted with the same decorum, same honesty and the same sobriety so that corrupt practices will, in time to come, become a thing of the past.

Under section 123 of the Representation of the People Act, several practices by candidates or their agents or persons acting with the consent of the candidates or their agents have been specified as corrupt practices. These are mainly the following, namely,—

- (a) bribery,
- (b) undue influence,
- (c) systematic appeal to vote or refrain from voting on racial, communal, caste or religious grounds,
- (d) publication of false statements relating to personal character or conduct of any candidate,

- (e) the hiring or procuring of any vehicle or vessel by or on behalf of a candidate for the conveyance of voters other than the candidate himself or members of his family or his agents,
- (f) obtaining the assistance of certain categories of government employees for the furtherance of the prospects of a candidate's election.

It is interesting to point out that purity of elections in the United Kingdom has been a fundamental axiom of representative government since the earliest times. The earliest British enactment for ensuring the purity of elections is as old as 1275 when a Statute of Edward I indicated that because elections ought to be free, "the King commandeth upon great forfeiture, that no man by force of arms, nor malice or menacing, shall disturb any to make free election".

Counting of Votes: Shortly after the close of the poll, the counting of votes starts. Section 64 of the 1951 Act lays down that at every election where a poll is taken votes shall be counted by or under the supervision or direction of the returning officer and each contesting candidate, his election agent and his counting agents shall have a right to be present at the time of counting. The number of counting agents that a candidate may appoint under section 47 of the Act is not to exceed sixteen at the place or each of places fixed for the counting. This is provided for in rule 52 of the Conduct of Elections Rules, 1961. For detailed procedure as to counting, I may draw attention to Chapter V of the Conduct of Elections Rules, 1961 and I need not repeat those detailed provisions here. As soon as the counting of votes is completed, the returning officer is required by section 66 of the Act to declare the result of the election. Rule 64 of the Conduct of Elections Rules says that on the completion of the counting of votes, the returning officer shall declare to be elected the candidate to whom the largest number of valid votes has been given.

The counting of votes is conducted as pointed out already by the returning officer and his assistants under the general supervision, control and superintendance of the Election Commission. Our law thus ensures that the government of the day cannot, in any way, interfere or tamper with the counting of votes. In this connection, I may like to draw your attention to what a noted political scientist, Prof. Delisle Burns in his "Democracy" at p. 124 has observed. He states as follows :—

“ And in the organisation for counting votes under a democracy, a fundamental distinction appears between the system of government and the government of the day. If the government of the day, that is to say, the particular persons in control, whose actions are judged by the voter, has power over the counting of votes, no confidence can exist among voters as to the results published. Therefore there must be some institution of government which carries on the administration independently of the policy of this or that political group in control at the moment. Hence the need for a civil service, whose members are removable solely at the will of the government of the day.”

The framers of our Constitution, therefore, rightly entrusted the counting of votes to the returning officer and his assistants who are permanent officers of the government and who act under the control and superintendance of the Election Commission, an entirely independent body.

Propaganda and Publicity : I have thus far given a brief account of the law of election, its procedure and technique. I now like to say a few words about election propaganda and publicity. For obvious reasons, political propaganda and publicity are carried out by political parties most intensively during a general election. An election campaign is, in fact, largely fed and assisted by propaganda and publicity carried out by rival parties and candidates. Party prejudice is a

powerful distorter of the judgment and party propaganda is not meant to be primarily informative but, on the other hand, cannot but be laudatory or recriminative in a large measure. Its primary object is not to impart political education to the electorate but to persuade the voters to vote in favour of a particular political party or candidate. In a young democracy like ours where the great bulk of the electorate is unfortunately still illiterate, it goes without saying that there is a great deal of ignorance amongst large sections of the public about the fundamental features of our Constitution, the composition, functions and powers of Parliament and the State Legislatures as also the role of the common voter in bringing these Legislatures into existence through his vote. Unless the common citizen can independently appreciate the nature and functions of the Legislatures and the financial and other powers vested in these bodies, he cannot adequately realise the significance or the value of his vote, nor can he exercise it with the requisite degree of intelligent deliberation and clear understanding of the issues involved.

Political propaganda undertaken by the parties and the candidates no doubt plays an important though indirect role in educating the electorate in some of these matters but it cannot be expected to be adequate or fully objective in view of its obvious limitations. It is, therefore, a vital necessity in a country like India to explain to the electorate in an objective and non-partisan manner the basic features of the democratic system of government, the role of the individual elector therein, the value and importance of his vote, the real meaning and purpose of the elections and the mechanics of the poll through which the will of the nation is expressed.

Free Discussion : It should not be forgotten, in this connection, that the actual voting is clearly less important, as de Tocqueville showed, than the discussion which precedes the vote ; for this discussion defines the policy,

illuminates the situation and the forces available for dealing with it, and should make all citizens more willing to live in peace with those who disagree with them. It follows that a vote taken in a dictatorship, without preliminary discussion of the opposing views and without free criticism of authorities, is not the same as a vote in a democracy. Votes under dictatorships are in no sense democratic. They are only cheers for whatever the government proposes which do not at all imply any understanding of the proposal. The vote, then, in a democracy is an expression of an opinion, right or wrong, wise or foolish, following upon free discussion. The public discussion between those of opposing opinions is assumed to have given the vote its quality of intelligent consent (*Vide* Delisle Burns "Democracy", pp. 120-21) and herein lies the importance of propaganda. It is with these objects in view that the parties, the candidates and the Press should carry on election propaganda during a general election.

Restrictions : Under the Representation of the People Act, 1951, however, certain restrictions have been placed on election propaganda for very good reasons. Thus public meetings on the election day have been prohibited by section 126 of the Act. Any person who convenes, holds or attends any public meeting within a polling area on the date on which the poll is taken for an election, is punishable with fine which may extend to Rs. 250/-. Under section 127 of the Act, any person who at a public meeting of a political character held in any constituency between the date of the issue of a notification calling an election and the date on which the election is held, acts or incites others to act in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called is punishable with fine which may extend to Rs. 250/-. Under section 129 of the Act, the returning officer, presiding and polling officers and other officers on election duty shall not influence the voting of any person at an election in any

manner. Again, under section 130 of the Act, canvassing within a polling station or in a place within a distance of hundred yards of the polling station has been made an offence punishable with fine which may extend to Rs. 250/-. In this manner we see that though election propaganda and free discussions on elections are fully allowed, certain acts of propaganda have been made punishable for the smooth holding of the elections.

I have now given a very short account of our law relating to election and its technique and propaganda. The law of election is a vast and extremely complicated subject. I have tried to show that where democracy prevails, that is, where the people rule themselves, the representative legislature is the centre of political gravity and the entire object of the law of election is to ensure that the representatives who are chosen to form our legislative bodies, though they may not be persons of professional skill or technical knowledge—these things are not so much needed in the legislative branch of the government as in the executive and judicial branches—should be men having high qualities of mind, heart and character. Intelligence, breadth of vision, warm human sympathies, receptiveness to new ideas, balanced judgment, capacity for hard work, mastery of detail—such is the equipment to be desired in the people who undertake to direct public policy on behalf of their fellow citizens. The success of an electoral system depends upon the extent to which it enables the electors to send to their legislative bodies men and women having the qualities and virtues recounted above.