

**STATUS OF THE STATE ELECTION COMMISSIONER OF
MIZORAM WITH REFERENCE TO 73rd& 74th
CONSTITUTIONAL AMENDMENTS**

**A Dissertation submitted in Partial Fulfilment for the Award of the Degree of
MASTER OF PHILOSOPHY IN PUBLIC ADMINISTRATION**

By

**H. LIANZELA
(Registration No. MZU/M.Phil./154 of 16.05.2014)**

Supervisor

**PROF. LALRINTLUANGA
Professor of Public Administration**

**DEPARTMENT OF PUBLIC ADMINISTRATION
MIZORAM UNIVERSITY,
AIZAWL, MIZORAM
DECEMBER, 2014**

MIZORAM UNIVERSITY
TANHRIL, AIZAWL – 796004

Gram: MZU Ph:0389-2331612 Fax : 0389-2331606 website : www.mzu.edn.in

Prof. Lalrintluanga
Professor,
Department of Public Administration

CERTIFICATE

This is to certify that **Mr. H. Lianzela**, a student of M.Phil programme during the year 2013-2014, has prepared a Dissertation under my Supervision on the topic *Status of The State Election Commissioner of Mizoram With Reference to 73rd & 74th Constitutional Amendments* in partial fulfilment for the award of the Degree of Master of Philosophy (M.Phil) in the Department of Public Administration, Mizoram University, Aizawl.

This Dissertation has been the outcome of his original work and it does not form a part of any other Dissertations submitted for the award of any other degrees.

He is duly permitted to submit his Dissertation for examination.

Dated Aizawl,
the ____ December 2014

(Prof. LALRINTLUANGA)
Supervisor

DECLARATION

I, **Mr. H. Lianzela**, do hereby declare that the Dissertation entitled *Status of the State Election Commissioner of Mizoram with Reference to 73rd & 74th Constitutional Amendments,* being submitted to the Mizoram University (Central) for the award of the Degree of Master of Philosophy (M.Phil) in the Department of Public Administration, is a record of work done by me under the supervision and guidance of Prof. Lalrintluanga, Department of Public Administration, Mizoram University, Aizawl, and that the contents of this Dissertation do not form the basis of the award of any previous degree to me or to the best of my knowledge, to anyone else, and that the Dissertation has not been submitted by me for any research degree in any other University or Institute.

Place: Aizawl
Date: 10th December, 2014

(H. LIANZELA)

ACKNOWLEDGEMENT

I would like to express my sincere gratitude to my Supervisor Prof. Lalrintluanga, the then Head of Department of Public Administration, Mizoram University, for giving me the opportunity to undertake this work. His inspiration, guidance, supervision, understanding, kind and liberal advice, valuable comments and suggestions have enriched this work and I am truly indebted to him for his constant support, guidance and able supervision throughout the course of the research.

I would also like to place it on record my sincere gratitude to Prof. Lalneihzovi, Head of Department of Public Administration, Mizoram University, Prof. Srinibas Pathi and all the faculty members in the Department of Public Administration as well as Clerical staff in the Department of Public Administration for their encouragement, help and support.

I must also express my sincere thanks to my family for their love, motivation and support and my fellow Research Scholars as well as my dedicated Staff for their readiness to help whenever needed.

Finally, I thank God for giving me determination, grit and strength with his abundant blessings.

Date: Aizawl
Place: 10th December, 2014

(H.LIANZELA)

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LIST OF ABBREVIATIONS

1.	AG	-	Accountant General/Advocate General
2.	ADC	-	Autonomous District Council
3.	AMC	-	Aizawl Municipal Council
4.	ARC	-	Administrative Reforms Commission
5.	CEC	-	Chief Election Commissioner
6.	CIC	-	Chief Information Commissioner
7.	DGP	-	Director General of Police
8.	DC	-	Deputy Commissioner
9.	DEO	-	District Election Officer
10.	ECI	-	Election Commission of India
11.	EVM	-	Electronic Voting Machine
12.	LC	-	Local Council
13.	MCC	-	Model Code of Conduct
14.	MoPR	-	Ministry of Panchayati Raj
15.	MPSC	-	Mizoram Public Service Commission
16.	MLA	-	Mizoram Legislative Assembly
17.	PRI	-	Panchayati Raj Institution
18.	RGPSA	-	Rajiv Gandhi Panchayat Sashaktikaran Abhiyan
19.	SEC	-	State Election Commission
20.	SECr	-	State Election Commissioner
21.	SIC	-	State Information Commissioner
22.	VC	-	Village Council
23.	VSP	-	Voter's Slip with Photograph

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CHAPTER-I

INTRODUCTION

India is the largest and one of the most vibrant democracies of the world, ably running a democratic system for more than six decades. Mizoram is one of the federating States of the Indian Union situated in the extreme southern part of North-East India. It is bounded on the East by Burma and on the West by Bangladesh and thus shares a common international border with Bangladesh over a length of about 318 Kilometres¹ and with Myanmar another 404 Kilometres.² It is also bounded in the north by Manipur and Cachar and by Tripura in the North-West.³ In the earlier days, the areas inhabited by the Mizo tribes extended upto the present Falam Area of Myanmar and the Chittagong Hill District of Bangladesh. Being a part of the largest democratic country in the world, democratic decentralisation of political powers had gained a fertile ground for its growth in Mizoram and democratic institutions, called “Autonomous District Council” was introduced at the district level in 1952 and consequently “Village Councils” were introduced at the grassroot level in the whole of Mizoram. This was the first time the people in Mizoram had begun to experience democratic elections conducted by the concerned government machineries and this conduct of democratic elections was necessitated by devolution of political powers by the erstwhile Assam State to the tribal people living in Mizoram.

Today more and more countries are attracted towards democracy which can ensure inclusive governance- governance of the people, by the people and for the people. Democracy demands greater devolution of powers not necessarily from the State to the Local Bodies but from the highest power centre to the lowest unit of administration and that is why a new slogan called “*Lok Sabha to Grama*

¹ Government of Mizoram. *Statistical Handbook, Mizoram, 2000*, (Directorate of Economics and Statistics, Aizawl), p.viii.

² *Ibid.*

³ Government of Mizoram. *Mizoram: Some Facts*, (Directorate of Information & Public Relations, Aizawl), p.1.

Sabha’ has been coined, whereby power has to be returned from the Central Government to Local Government.

The dream of Mahatma Gandhi, Father of the Nation, was to see that the local affairs were managed by the people of the Village themselves, i.e., at the grassroot level, through their Panchayats. The makers of the Constitution of Independent India had included Article 40 as one of the Directive Principles of State Policy which provided that "*the State shall take steps to organize village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.*"⁴ But, by mid-eighties it was realised that the said Directive was not sufficient to institutionalize Local self-government more particularly Panchayati Raj in India. The practice of Panchayati Raj as per the Directive Principles of State Policy was not to the satisfaction of the policy makers. There were several reasons for this. One of the reasons was that no uniform pattern of Panchayati Raj was being followed by the State governments. While few States followed a two-tier system, the others followed a system of three tiers. Further, many States were not holding regular elections to the Panchayati Raj Institutions (PRIs). Since the elections to the PRIs were being held by the State governments themselves, their fairness and independence was seriously doubtful.

Therefore, in order to realise the dream of the Mahatma, the Central Government considered it necessary and expedient to strengthen the Panchayati Raj Institutions in the country by giving a Constitutional guarantee to their existence, proper constitution and functioning at all times, and not at the discretion of the State Governments. Eventually, the Constitution (Seventy-third Amendment) Act, 1992 and the Constitution (Seventy-fourth Amendment) Act, 1992, were passed by the Parliament to ensure, *inter alia*, a term of five years for every Panchayati Raj Institution, like, *Gram Panchayats*, *Zilla Parishads*, and *Municipalities*; regular elections to them at the given periodic intervals or earlier

⁴ Basu D.D., *Shorter Constitution of India*, Agra/Nagpur/New Delhi: Wadhwa and Company, Law Publishers, 2006, p.454.

in the case of any premature dissolution and the like. These democratic elections to the Local Bodies shall be conducted by an independent Constitutional authority, namely, the State Election Commission (SEC), to be appointed by the concerned State Government under Articles 243K and 243ZA, on the lines of the independent Constitutional authority, the Election Commission of India, which conducts elections to the offices of the President and the Vice-President of India, and to Parliament and State Legislatures under Article 324.⁵ In fact, the enactment of 73rd and 74th Amendments to the Constitution of India is a milestone in the process of establishing democratic decentralized administration through Local Bodies and taking administration to the doorsteps of the people to ensure economic and social justice. The process of conducting elections to the local bodies is a Constitutional obligation as per the said amendments. These amendments came into force in 1993.

Giving due importance to the conduct of elections in a free and fair manner in a democratic set-up, the landmark 73rd and 74th Amendments to the Constitution of India as incorporated under Article 243K and Article 243ZA vested powers of the superintendence, direction and control of preparation of electoral rolls and conduct of all elections to Panchayats and Municipal Bodies with the State Election Commission consisting of a State Election Commissioner (SECr) who should be appointed by the Governor or the President of India as in the case of Union Territories.⁶ Once appointed, the State Election Commissioners are expected to function independent of the concerned State Governments, as it has been clearly stated that the State Election Commissioners cannot be removed except in the like manner and grounds satisfying for removal of a Judge of a High Court.

Article 243K and 243ZA of the Constitution requires all the States across the Country to set up State Election Commissions of their own and the Institution

⁵ Mendiratta S.K. & Rama Devi V.S., *How India Votes-Election Laws, Practice and Procedure*, New Delhi: Lexis Nexis Butterworths (A Division of Reed Elsevier India Pvt Ltd), 2007, p.22

⁶ See *Report of the Task Force to Strengthen the Institution of the State Election Commission and Related Matters*, 2011, p.p 2-3.

of State Election Commission was created in most of the States clearly with the intent to establish a Constitutional authority having an independent functioning to conduct free and fair elections to Panchayats and Municipalities. It may be pertinent to cite here that Article 243Q mandates every State to set up Municipalities. However, Article 243M exempts certain areas including the States of Meghalaya, Nagaland and Mizoram from the operation of Article 243K for constituting Panchayati Raj institutions and instead, allows them to continue with their traditional systems prevailing in those States.⁷ In Meghalaya, the traditional system of village administration, called *Gaonbhura*, is continuing whereas Village Councils (VCs), democratised traditional system of administration, are operating in Nagaland and Mizoram. However, most of the North East States are hesitant to constitute Municipalities envisaged in Part IX-A of the Constitution, despite mandatory provision of Article 243Q for more than a decade. They are, therefore, not eligible to receive grant from the Central Government.

The Government of Mizoram then woke up in 2005-'06 with the realisation that unless the State Government implements mandatory reforms agenda of the Central Government, the State will not be in a position to take up any urban development project with its own resources without the help of Government of India. At the same time, there was mounting pressure from Government of India to implement reforms agenda as required under Article 243Q. The Government of Mizoram, then, made up its mind and introduced the Mizoram Municipalities Bill which was finally enacted by the Mizoram Legislative Assembly (MLA) as 'The Mizoram Municipalities Act, 2007' which extends to the whole of the State of Mizoram except District Council Areas as referred to in Part 3 of the paragraph 20 of the Sixth Schedule of the Constitution.⁸ Thereafter, in exercise of the powers conferred under Article 243K of the Constitution of India read with sub-section (1) of Section 345 of the Mizoram Municipalities Act, 2007, the Governor of Mizoram also constituted the

⁷ Basu D.D., *Op.cit.*, p.1119.

⁸ See the Mizoram Municipalities Act, 2007 as amended, p.16.

State Election Commission (SEC), Mizoram, for superintendence, direction and control of the preparation, revision and correction of electoral rolls and for conduct of all elections to the various Local Bodies in the State on 28th August, 2008, which will consist of a State Election Commissioner appointed by the Governor under clause (1) of Article 243K of the Constitution of India. Pursuant to the constitution of the State Election Commission, the first State Election Commissioner was appointed by the Governor on 2nd September, 2008. The first State Election Commissioner then assumed his office on 16th September, 2008 under the terms and conditions of service governed by the Mizoram (Constitution of State Election Commission) Rules, 2008. The State Election Commission of Mizoram was inaugurated on 3rd October, 2008.

1.1 Statement of the Research Problem

It is apparently clear the powers, functions and responsibilities vested in the State Election Commissions under Article 243K and 243ZA of the Constitution are identical to those given to the Election Commission of India under Article 324(1) for elections to Parliament and State Legislatures.⁹ These have been reinforced time and again by High Court Judgments and most cogently by the Supreme Court of India in Case No. Appeal (Civil) 5756 of 2005 by the name of Kishansing Tomar-vrs- the Municipal Corporation of City of Ahmedabad and Ors, Judgment dated 19/10/2006. In this Judgment, the Hon'ble Supreme Court has unequivocally held that "it is necessary for all the State Governments to recognize the significance of the State Election Commission, which is a Constitutional body and it shall abide by the directions of the Commission in the same manner in which it follows the directions of the Election Commission of India during elections for Parliament and State Legislatures. In fact, in the domain of elections to the Panchayats and Municipal Bodies under Part IX & Part IX-A of the Constitution for conduct of elections to

⁹ See *Report of the Task Force to Strengthen the Institution of the State Election Commission and Related Matters*, 2011, pp. 2-3.

these bodies, they enjoy the same status as the Election Commission of India (ECI). In terms of Article 243K and Article 243ZA (1), the same powers are vested in the State Election Commission as the Election Commission of India under Article 324.¹⁰

Further, the Hon'ble Supreme Court observed: "it is clear that the powers of the State Election Commission in respect of conduct of elections is no less than that of the Election Commission of India in their respective domains¹¹". In the same Judgment quoted above, the Hon'ble Supreme Court further observed that "Article 243K (3) also recognizes the independent status of the State Election Commission. It is to be noted that in the matter of the conduct of elections, the concerned government shall have to render full assistance and cooperation to the State Election Commission and respect the latter's assessment of the needs in order to ensure that free and fair elections are conducted¹²".

Notwithstanding the above clear cut directions of the Hon'ble Supreme Court, the ground realities pertaining to the functioning of the State Election Commissions, particularly State Election Commissioner of Mizoram, are very different from those of Election Commission of India (ECI). There is, therefore, a large disparity and variation regarding the status and functioning of the State Election Commissioners across the country.

In order to maintain the Constitutional status of the State Election Commissioner of Mizoram as is being done to the Chief Election Commissioner (CEC) of India by the Union Government, the State Government has a lot more to do to give legitimate and long overdue stature to the State Election Commissioner of Mizoram so that he could earn public confidence as well as respect in the eyes of the public.

¹⁰ See *Judgment passed by the Hon'ble Supreme Court of India in Case No. Appeal (Civil) 5756 of 2005*, p. 5-6.

¹¹ *Ibid*, p.7.

¹² *Ibid*, p.7.

Towards this end, it is, therefore, important to explore the reasons responsible for these undue hurdles in the process of giving the State Election Commissioner of Mizoram the priority of attention and status which he legitimately needs and deserves for ensuring a free and equitable pattern of democracy as mandated by the Constitution and the remedial measures thereof.

1.2 Review of Literature

So far as the Status of State Election Commissioner is concerned, it is apparent that there is no book ever written on the subject. Besides, it seems that no scholar has ever undertaken a research on it. However, a few writers on Electoral Reforms and Election Laws have written about “State Election Commission and the State Election Commissioner.” Even then, the researcher has reviewed the following literature:

Durga Das Basu, in his book *Shorter Constitution of India*(2006) clearly brought out the provisions under Article 243K and 243ZA relating to the role and status of the State Election Commissioner as follows:-

“Art. 243K: (1) The Superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.

(2) Subject to the provisions of any law made by the Legislature of a State, the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine:

Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment.

(3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1).

(4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats.”

“Art. 243ZA: (1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of all elections to the Municipalities shall be vested in the State Election Commission referred to in Article 243K.”

B. Venkatesh Kumar, in his book *Electoral Reforms in India: Current Discourses* (2009) elaborates the fourth aspect of structural reform of electoral administration concerning the office of the State Election Commissioner wherein he stated that since the deepening of India’s democracy will be the result of the new political realities produced by Panchayati Raj Institution (PRI), having an independent State Election Commission is thus of paramount importance. He further narrated that it is essential to improve the areas of functioning of the State Election Commissioners as they currently lack independence and the authority of the Election Commission of India since their terms of employment, including tenure, are in accordance with the laws of the respective states. They are, therefore, subjected to under duress and this has led to questions about their neutrality. The State Election Commissioners, therefore, should have uniform terms and conditions of service and a fixed term of tenure. Besides, the State Election Commission should be able to enforce the Model Code of Conduct (MCC) as strictly as the Central Election Commission. As a result, the same independence and privileges that the Election Commission of India enjoys and has won through these five decades would also be available to the State Election Commission. This would be a step forward in creating a culture of politics that

would treat elections with certain sanctity. It would be another step in the direction of free and fair elections.

Amandeep Kaur, in her Book *Electoral Reforms in India-Problems and Needs: 1989-2009*(2009), discussed the importance and role of Election Commission in a very candid manner. The architects of the Indian Constitution also attached considerable significance to independent electoral machinery for the conduct of elections and gave careful and earnest consideration to these factors and accordingly evolved a device called the Election Commission after sustained deliberation and discussion. The Election Commission is deliberately safeguarded with a fixed tenure, etc in order to be able to function independently and impartially without any fear of legislative or executive disapproval.

S.K. Mendiratta & V.S. Rama Devi in their Book *How India Votes-Election Laws, Practice and Procedure* (2007) stated, *inter alia*, that in a democracy, elections play a key role. So, for the proper preparation of electoral rolls and the conduct of free and fair elections to Panchayats, a State Election Commission is to be appointed by the Governor in each state consisting of a State Election Commissioner [Art 243K(1)]. The Governor will determine by rules the service conditions of the State Election Commissioner [Art 243K (2)]. To maintain the independence of the office of the State Election Commissioner, it is provided that he can be removed from office only in like manner as a Judge of a High Court, that is to say, by impeachment [proviso to Art 243K(2)]. The Governor shall give necessary staff to him to discharge his functions properly [Art 243K (3)]. Laws will be made in each state for all matters relating to elections to Panchayats [Art 243K (4)].

In the *Report of the Task Force to Strengthen the Institution of the State Election Commission and related matters* constituted in the Ministry of Panchayati Raj by Order No. M-11011/51/2010-P&C (AR) Vol. II dated 18.3.2011 to suggest the measures for strengthening the institution of the State Election Commission headed by Dr. Hrusikesh Panda, Additional Secretary,

Ministry of Panchayati Raj observed that the status of State Election Commissioners vary from State to State. Some major States have not vested the status of a High Court Judge on the State Election Commissioner. For ensuring the proper functioning of State Election Commissioners as envisaged under the Constitution, the Task Force made the following suggestions:-

(a) State Election Commissioners should be given the status of a High Court Judge as otherwise, cooperation of the Chief Secretary, DGP, Finance Secretary and other important officials may not be forthcoming, and more importantly, the State Election Commissioner may not appear to be independent.

(b) The tenure of the State Election Commissioner should be fixed for a term of five or six years or till the State Election Commissioner reaches the age of 65 years, whichever is earlier. If the tenure is less than five years, it is possible that State Election Commissioners may complete their tenures without conducting Panchayat election even once. There should be no provision of extension. The Task Force recommends tenure of five years or 65 years of age, whichever is earlier, and without any provision of extension.

(c) There was a suggestion that State Election Commission should be a three-member body as a single Election Commissioner could be more vulnerable to pressure by the State Government and other groups. The Task Force examined the pros and cons of this. The independence and authority envisaged under the existing Constitutional provision has not been fully put in place. This should be done before the structure is expanded, and which has cost implications. Of course, this will also require amendment of Article 243K (1) of the Constitution. Hence, the Task Force does not support a three-member Commission.

In the light of the above review of literature, one can clearly understand the status of the State Election Commissioner as mandated by the Constitution and as recommended by the Task Force to Strengthen the Institution of the State Election Commission and related matters constituted in the Ministry of Panchayati Raj

(MOPR) which are, however, almost denied by the Government of Mizoram even after 5(five) years of the Commission's inception. While according an independent status to the State Election Commissioner is of paramount importance for strengthening grass-root democratic institutions in the country, the State Election Commissioner of Mizoram is currently lacking independence and the authority of the Central Election Commission. It is, therefore, essential for the State Government to improve the areas of functioning of the State Election Commissioner.

These reviews of literature substantially help in the formation of theoretical framework of the research topic and also in deciding the approach for conducting a research. However, these published works have not delved into the specific subjects pertaining to the Status of the State Election Commissioner of Mizoram. It is, therefore, required to undertake an in-depth study on the Status of the State Election Commissioner of Mizoram.

1.3 Objectives of the Study

The objectives of the study are:-

- (1) to analyze the method of Appointment of State Election Commissioner;
- (2) to analyze the status of State Election Commissioner as mandated by the 73rd and 74th Constitutional Amendments and other State Laws;
- (3) to study the present status of the State Election Commissioner of Mizoram as bestowed by the State Government and to examine the problems and challenges faced by the State Election Commissioner of Mizoram in discharging his Constitutional duties and in getting the status he legitimately deserves;
- (4) to explore the scope for improvement in the functioning of the State Election Commissioner of Mizoram in terms of status, independence and authority.

1.4 Scope of the Study

The study broadly focuses on the status of the State Election Commissioner of Mizoram, who is responsible for conducting free and fair elections to various Local Bodies like Municipalities, Local Councils (LCs), Village Councils (VCs) and Autonomous District Councils (ADCs) in Mizoram with reference to the 73rd & 74th Constitutional Amendments and other State laws.

The Study traces the status of the State Election Commissioner of Mizoram right from 2008 to 2014. It also covers an in-depth study of the State Government's relationship with the institution of State Election Commission and the State Election Commissioner in order to find out as to whether the State Election Commissioner has been bestowed with the status he legitimately deserves.

Finally, the Study tries to explore the scope for improvement in the functioning of the State Election Commissioner of Mizoram in terms of status, independence and authority so as to reflect a semblance of dignity for the institution as mandated by the Constitution of India.

1.5 Research Questions

For the purpose of the Study, the following research questions have been formulated:-

- (1) Should the State Election Commission be made a Multi- Member Commission like Election Commission of India?
- (2) Is the present status of the State Election Commissioner as mandated by the 73rd & 74th Constitutional Amendments not adequate?
- (3) Is the present status of the State Election Commissioner of Mizoram as bestowed by the State Government is not in sync with the provisions under the Constitution?

- (4) How far is the State Government committed to the strengthening of the institution of State Election Commission consisting of the State Election Commissioner of Mizoram so far as status, independence and authority are concerned?

1.6 Methodology

The Study is based on Primary and Secondary sources. Primary data have been collected through administration of structured-open ended questionnaires and collection of personal information through unstructured interviews of people including serving and retired State Election Commissioners and officers of the State Election Commission, Mizoram, as well as serving and former bureaucrats in the State Government and various State Election Commissions across the country. Records and publications of the State Election Commission and the State Government also constitute the Primary data. The relevant information relating to the research questions have been collected from *one* retired State Election Commissioner, *ten* Secretaries of State Election Commissions across the country, *eight* officials and *ten* non-officials in the State.

The secondary data have been collected from extensive survey of available literature in the form of books, articles, journals, magazines and newspaper reports; published and unpublished documents of independent studies, publications of State Election Commission of several States as well as other relevant information posted on the Websites.

1.7 Chapterisation

The whole work has been divided into five Chapters. The *First* Chapter which is introductory in nature provides an in-sight into 73rd & 74th Constitutional Amendments and evolution of the institution of State Election Commission consisting of the State Election Commissioner; literature survey; statement of the problem; scope and objectives of the study; research questions and the methodology applied in the study.

The *Second* Chapter studies the Method of Appointment of State Election Commissioner of Mizoram and analyses diverse opinions of politicians and bureaucrats on the proposition that the State Election Commissioner should be appointed by the Governor on the Recommendation of a Collegium.

In the *Third* Chapter, an in-depth study has been undertaken to explore the status of the State Election Commissioner as mandated by the 73rd and 74th Constitutional Amendments, including other State Laws, etc., and the actual status accorded to him or her by the State Governments across the country.

The *Fourth* Chapter has delved into the Status of the State Election Commissioner of Mizoram and discussed various problems and challenges faced by the State Election Commissioner during 2008-2014. The Chapter has also provided an analysis of the responses to the questionnaires both by the officials and the political functionaries. These questions have been framed and designed to give answers to the research questions on the Status of the State Election Commissioner of Mizoram.

The *Fifth* Chapter is a concluding Chapter which has brought out the summary and major findings of the Study. An attempt has also been made to offer suggestions for the improvement of the Status of the State Election Commissioner of Mizoram.

CHAPTER- II

METHOD OF APPOINTMENT OF STATE ELECTION COMMISSIONER OF MIZORAM

As per Article 243K and Article 243ZA, the superintendence, direction and control of preparation of electoral rolls and conduct of all elections to Panchayats and Municipalities vests with a State Election Commission(SEC) consisting of a State Election Commissioner to be appointed by the Governor. The State Election Commissions are to function independently of the State Government concerned. The State Election Commissioner (SECr) cannot be removed from office except in like manner and on like ground as a Judge of a High Court, and the Governor is mandated, when requested by the SEC, to make available such staff as may be necessary for the discharge of his duties. Subject to these provisions, the Constitution empowers the State Legislature to make laws regarding elections to Panchayats.

The provisions under the Constitution of India may be reproduced as follows:

- (1) “Art. 243K: (1) The Superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.”
- (2) “Subject to the provisions of any law made by the Legislature of a State, the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine:

Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like grounds as

a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment.”

- 3) “Art. 243ZA: (1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of all elections to the Municipalities shall be vested in the State Election Commission referred to in Article 243K.”

In accordance with the aforementioned Constitutional provisions, the Government of Mizoram also enacted the Mizoram Municipalities Act, 2007 wherein the following provisions were incorporated under Section 345(1)- With effect from such date as the State Government may by notification, appoint, there shall be a Commission, to be called the Mizoram State Election Commission, consisting of a State Election Commissioner appointed by the Governor under clause (1) of Article 243K of the Constitution.¹

In exercise of the powers conferred by Clause (2) of Article 243K and Article 243ZA of the Constitution of India read with sub-section (1) of Section 345 of the Mizoram Municipalities Act, 2007, the Government of Mizoram further made the Mizoram State Election Commission(Conditions of Service) Rules, 2011 wherein the following provisions were incorporated under Rule 3:

The Governor shall constitute a State Election Commission for superintendence, direction and control of the preparation, revision and correction of electoral rolls and for conduct of all elections to the various local bodies in the State.

(1) The Governor shall, on the recommendation of the State Government, appoint a State Election Commissioner by publication in the Official Gazette;

¹ See *The Mizoram Municipalities Act 2007 as amended* in 2009, pp. 96-97.

Provided that a person shall not be qualified for appointment as a State Election Commissioner, unless he holds or has held office in the rank of Secretary to the Government of Mizoram having knowledge and experience in conducting elections.

(2) The State Election Commissioner may, by writing under his signature addressed to the Governor, resign his office.

(3) Prohibition as to future employment – On ceasing to hold office, the State Election Commissioner shall be eligible for appointment as Chief Election Commissioner or Election Commissioner under Article 324 of the Constitution of India or as State Election Commissioner in any other State under Article 243K of the Constitution of India, but not for any other employment either under the Government of India or under the State Government.

(4) A person who has held office of the State Election Commissioner shall be ineligible for reappointment to that office if he has been removed from that office before the expiry of tenure.

Therefore, in exercise of the powers conferred under Article 243K of the Constitution of India read with sub-section (1) of Section 345 of the Mizoram Municipalities Act, 2007, the Government of Mizoram constituted the State Election Commission (SEC), Mizoram, for superintendence, direction and control of the preparation, revision and correction of electoral rolls and for conduct of all elections to the various Local Bodies in the State on 28th August, 2008, which consists of a State Election Commissioner appointed by the Governor under clause (1) of Article 243K of the Constitution of India. Pursuant to the constitution of the State Election Commission, the first State Election Commissioner was appointed by the Governor on 2nd September, 2008 on the recommendation of the State Government. The first State Election Commissioner

then assumed his office on 16th September, 2008 and the State Election Commission was officially inaugurated on 3rd October, 2008.

The above Constitutional provisions clearly indicate that the State Election Commission (SEC), Mizoram is a Constitutional body constituted under Article 243K & 243ZA of the Constitution of India and a single member body headed by the State Election Commissioner and is responsible for conducting and supervising free and fair elections to the Local Bodies as well as Autonomous District Councils in the State.

The Constitution explicitly stipulates that the State Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment. Accordingly, State Election Commissioner can be removed from his office only by an order of the President, "after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved mis-behaviour or incapacity²". Whereas the framers of the 73rd and 74th Constitutional provisions attached considerable significance to independent electoral machinery for the conduct of elections, the condition of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine.

First of all, the study tries to explore the opinion of the stake-holders with regard to the method of appointment of the State Election Commissioner and would it be better that the State Election Commissioner is appointed by the Governor on the recommendation of a Collegium?

² Basu D.D., *Shorter Constitution of India*, Agra/Nagpur/New Delhi: Wadhwa and Company, Law Publishers, 2006, clause (4) of Article 124, pp.531-532. & clause (1)(b) of Article 217, p.776.

70% of the respondents were of the opinion that the State Election Commissioner be appointed by the Governor on the recommendation of a Collegium in like manner as the State Chief Information Commissioners/State Information Commissioners are appointed and the Collegium may necessarily consist of Chief Minister, concerned Minister or Speaker of the Legislative Assembly and Leader of Opposition, etc.

In the meantime, 30% respondents were of the view that for appointment of State Election Commissioner, procedure as prescribed in the Constitution of India may be followed as they take a stance that the present procedure being followed still holds good. One of the respondents categorically elucidated that-

“Once, I proposed this for consideration in the National Conference of State Election Commissioners. Reservation was expressed against proposal by some of our colleagues of other States who cited selective cases, where continuity of one or two State Election Commission (s) had been interrupted due to problem rising out of non-consensus opinion between members of Collegium. If a qualified person is available for appointment, it may be ensured that continuity of the Commission is not interrupted and the Governor may be empowered to have a final say in the matter³”.

Secondly, the study focuses on the research question viz- Should the State Election Commission be made a multi-member body like Election Commission of India.? In the case of ECI, until October, 1989, there was just one CEC. In 1989, two ECs were appointed, but were removed again in January 1990. In 1991, however, the Parliament passed a law providing for the appointment of two ECs. This law was amended and renamed in 1993 as the CEC and other ECs (Conditions of Service) Amendment Act, 1993. On 1st October, 1993, the President appointed two more ECs, M.S. Gill and D.V.G. Krishnamurthy, thus

³Source: Mr. C.Ropianga IAS (Retd), formerly State Election Commissioner of Mizoram.

made the EC a three member body which included T.N. Seshan, the CEC. Thus, the concept of multi-member Commission has been in operation successfully since 1993, with decision making power of majority vote⁴ .

The study reveals that although it has been widely recognized that the State Election Commission has been able to maintain unanimity in most times, political parties, however, have been engaging in individual attacks on the State Election Commissioner so far as the enforcement of Model Code of Conduct(MCC) is concerned, which unfortunately is not a healthy trend. In view of this, the Study tries to explore the considered opinion of key functionaries of other State Election Commissions as well as stake-holders in the State on the research question- Should the State Election Commission be made a Multi-Member Commission like Election Commission of India?

60% of the Respondents were of the view that as the Article 243K(1) of the Constitution of India does not provide for appointment of multi-member Commission and the existing system has worked satisfactorily, there is no need to contemplate this proposition as of now.

Majority of respondents in Mizoram were of the view that given political scenario in Mizoram and in view of the State Government financial condition and population, instead of having a Multi-Member Commission, it will be advisable to have a Single-Member Commission at this stage. Selection of suitable person may, however, be made carefully and person of highest integrity who appears to be absolutely neutral in politics may be recommended for appointment by the Governor.

⁴ Kaur, Amandeep- *Electoral Reforms in India: Problems and Needs (1989-2009)*, Chandigarh: Unistar Books Pvt. Ltd , 2009, p.19.

On the other hand, 40% respondents were of the opinion that it is desirable to make the SEC as a Multi-Member Body like Election Commission of India. However, they stated their reservation that in view of the State Government financial condition, it may be difficult to put into practice at present.

Taking all crucial points into consideration, the researcher suggests that in order to ensure that the State Election Commission as an institution is not weakened and to prevent it from political parties who can thwart the independent functioning of the institution during the election process, it is imperative to have a multi member Commission like Election Commission of India (ECI), Mizoram Public Service Commission (MPSC), State Information Commission (SIC), etc.,. On the other hand, it is important to follow uniform methods for selection of the State Election Commissioners so that the current disparity that exists amongst the State Election Commissioners across the country is removed.

CHAPTER-III

THE STATUS OF STATE ELECTION COMMISSIONER AS MANDATED BY THE 73rd AND 74th CONSTITUTIONAL AMENDMENTS AND OTHER STATE LAWS

The State Election Commissions have been vested with the same powers under Article 243K and Article 243 ZA (1) as the Election Commission of India under Article 324. The State Election Commissions are to function independently of the State government concerned in the matter of their powers of superintendence, direction and control of all elections and preparation of electoral rolls for and the conduct of all elections to the Panchayats and Municipalities.

The State Election Commission constituted under Part IX and Part IX-A of the Constitution of India has functions, responsibility and authority to conduct elections to Panchayats and Municipalities at par with the Election Commission of India constituted under Part XV of the Constitution of India. In view of a very important role being played by the State Election Commission, Clause (1), (2) & (3) of Article 243K specifies certain Constitutional safeguards with regard to condition of service of the State Election Commissioner.

Since the SECs are to function independently of the State Government concerned, the SEC cannot be removed from office except in like manner and on like ground as a Judge of a High Court, and the Governor is mandated, when requested by the SEC, to make available such staff as may be necessary for the discharge of his duties. Subject to these provisions, the Constitution empowers the State Legislature to make laws. This has been reinforced time and again in High Court Judgments and most cogently by the Supreme Court of India in case No. Appeal (Civil) 5756 of 2005 by the name of Kishansing Tomar versus the

Municipal Corporation of City of Ahmedabad and others, Judgment dated 19/10/2006. In this judgment, the Hon'ble Supreme Court of India has unequivocally held that *"it is necessary for all the State Governments to recognize the significance of the State Election Commission, which is a Constitutional body and it shall abide by the directions of the Commission in the same manner in which it follows the directions of the Election Commission of India during elections for Parliament and State Legislatures. In fact in the domain of elections to the Panchayats & the Municipal Bodies under Part IX & Part IX-A for the conduct of the elections to these bodies, they enjoy the same status as the Election Commission of India. In terms of Article 243K and Article 243ZA (1) the same powers are vested in the State Election Commission as the Election Commission of India under Article 324."* Further, the Hon'ble Supreme Court has observed that *"it is clear that the powers of the State Election Commission in respect of conduct of elections are no less than that of the Election Commission of India in their respective domains"*. In the same judgment quoted above, the Hon'ble Supreme Court has observed that *"Article 243K (3) also recognizes the independent status of the State Election Commission. It states that upon a request made in that behalf the Governor shall make available to the State Election Commission "such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1). It is accordingly to be noted that in the matter of the conduct of elections, the concerned government shall have to render full assistance and cooperation to the State Election Commission and respect the latter's assessment of the needs in order to ensure that free and fair elections are conducted."*

Due to inadequate legal, administrative and financial provisions under the Constitution, several State Elections Commissions face enormous constraints in conducting free and fair elections. Even though the State Election Commissions are parallel organizations of the Election Commission of India, exclusively responsible for holding elections to the most diverse, vast and complex segment

of representative democracy in the country, namely the Panchayati Raj/Rural Local Bodies set up and Urban Local Bodies, they are hamstrung in their day to day functioning on account of the fact that most State Governments, would like to “control” their independence by needling them on petty day to day administrative and financial issues, presuming that they are subordinate to the State Government, or part of one of its departments. Unfortunately, most State Governments do not give the State Election Commissions the priority of attention they legitimately need and deserve for ensuring a free and equitable pattern of democracy. On top of that, the State Election Commissions are not given adequate funding for infrastructure development and modernization.

Further, a lot of election related jurisprudence has evolved in India especially in the context of Parliamentary and State Legislature elections. This jurisprudence is, *mutatis mutandis* applicable to elections to local bodies as well. However, the State Election Commissioners do not have the ability to handle legal work for want of in-house legal personnel, law officers and libraries. Moreover, the jurisprudence related to elections to local bodies has also not been put to use due to the incapacity of State Election Commissioner to handle legal issues and assert them in Courts and absence of an institutional mechanism for compilation of the jurisprudence. Moreover, many State Election Commissions have been provided inadequate staff by the State Governments, the provisions of Article 243K (3) notwithstanding.

The Second Administrative Reforms Commission (ARC) in its Sixth Report on Local Governance (2007) had vide para 3.2.2 observed as under:

"3.2.2 Constitution of the State Election Commission.

3.2.2.1 Given the common functions of the State Election Commissions with regard to local bodies' elections, it is necessary to examine how the system has functioned and what improvements to that system, if any, are required. The State

Election Commission performs functions similar to that of the Election Commission of India. The number of elected representatives of the people has enormously increased over the years and the conduct of elections to the local bodies is indeed a gigantic task. The institution is not yet two decades old, but holds the key to a highly representative system of democratic governance in the country. It is, therefore, essential that the machinery for organizing local elections is adequately supported.

The issue of the present Study with respect to the State Election Commissioners is their status, terms and conditions of services. The Constitution mandates that the SECr cannot be removed except in like manner and on like ground as a Judge of a High Court. It has been widely perceived that the intent of the Constitution is that the SECr should have the status of a Judge of a High Court. This is said to be the reason why majority of the States have followed the spirit of the Constitution. Out of 28 States, in 20 States the status of the SECr is that of a Judge of a High Court, in 5 States the status is that of Chief Secretary to the State Government and in others of Secretary/Additional Secretary, or even not properly defined. The status of the SECr is an extremely important issue as it empowers the SECr to insist on procedures being followed and full cooperation from the State Government is forthcoming. The tenure of the SECr also varies. In some States, the term of the SECr is less than 5 years, so that an SECr may complete his term without conducting any elections.

The Status and Service Conditions of State Election Commissioners in India may be shown as below:

Table 3.1: Status and Service Conditions of State Election Commissioners in India

Sl/no	Name of State/UT	Status	Pay Scale/ Grade/ Salary	Tenure/ Age Limit
1.	Andhra Pradesh	High Court Judge	80,000/-	05 yrs/ 65 yrs
2.	Arunachal Pradesh	High Court Judge	80,000/-	05 yrs/ 65 yrs
3.	Assam	High Court Judge & Chairman, Assam Public Service Commission	80,000/-	04 yrs/ 62 yrs
4.	Bihar	Chief Secretary	80,000/-	05 yrs/NA
5.	Chhattisgarh	High Court Judge	80,000/-	05 yrs/ 65 yrs
6.	Delhi	Status not clearly defined	80,000/-	03 yrs/ 65 yrs
7.	Gujarat	Addl.Chief Secretary	80,000/-	05 yrs/NA
8.	Goa	High Court Judge	80,000/-	05 yrs/ 65 yrs
9.	Haryana	High Court Judge	80,000/-	05 yrs/ 65 yrs
10.	Himachal Pradesh	Salary of the High Court Judge. Status not defined.	80,000/-	05 yrs/NA
11.	Jammu & Kashmir	High Court Judge	80,000/-	NA
12.	Jharkhand	High Court Judge	80,000/-	03 yrs/ 64 yrs
13.	Kerala	Chief Secretary	80,000/-	05 yrs/ 65 yrs
14.	Karnataka	High Court Judge	80,000/-	05 yrs/NA
15.	Maharashtra	High Court Judge	80,000/-	05 yrs/NA

16.	Madhya Pradesh	High Court Judge	80,000/-	06 yrs/ 66 yrs
17.	Manipur	NA	80,000/-	03 yrs/ 62 yrs
18.	Mizoram	Chief Secretary	80,000/-	05 yrs/65 yrs
19.	Nagaland	Chief Secretary	80,000/-	03 yrs/NA
20.	Orissa	High Court Judge	80,000/-	05 yrs/ 65 yrs
21.	Punjab	High Court Judge	80,000/-	05 yrs/ 65 yrs
22.	Rajasthan	Chief Secretary	80,000/-	05 yrs/ 65 yrs
23.	Sikkim	High Court Judge	80,000/-	05 yrs/ 67 yrs
24.	Tamil Nadu	High Court Judge	80,000/-	02 yrs/ age no limit
25.	Tripura	High Court Judge	80,000/-	05 yrs/ 62 yrs
26.	Uttar Pradesh	High Court Judge	80,000/-	05 yrs/ 65 yrs
27.	Uttarakhand	High Court Judge	80,000/-	05 yrs/ 65 yrs
28.	West Bengal	High Court Judge	80,000/-	05 yrs/ 66 yrs

As can be seen from the above Table, there are wide disparity against the intent of the Constitution as to the Status and Service Conditions of State Election Commissioners in India. This has created several difficulties for the State Election Commissioners in conducting free and fair elections time and again. These situations do not conform to the impartiality and independence of SEC envisaged under Articles 243K and 243ZA of the Constitution.

The study, therefore, tries to explore the opinion of the stake-holders as to whether the status of the State Election Commissioner as mandated by the 73rd& 74th Constitutional Amendment is not adequate?

80% of the respondents, who are key functionaries in other State Election Commissions across the country, were of the opinion that the status of the State Election Commissioner as mandated by the 73rd& 74th Constitutional Amendment Acts is adequate. Most of the State Election Commissioners are conferred with the status of a Judge of a High Court in tune with proviso to Article 243K(2) of the Constitution of India, which stipulates that the State Election Commissioner shall not be removed from his office except in like manner and on the like grounds as Judge of a High Court. They also placed the State Election Commissioner, after the Puisne Judge of the High Court, in the Order of Precedence as well. Since the local bodies' election is the bedrock of grass-root democracy, most of the State Governments have implemented all provisions relating to State Election Commission as mandated by the 73rd& 74th Constitutional Amendments in letter and spirit.

The Study reveals that the Task Force constituted by the Ministry of Panchayati Raj (MoPR), Govt. of India to study and recommend as to how to strengthen the Institution of State Election Commissions also recommended that it is necessary to give status of a High Court Judge to the State Election Commissioner for the sake of ensuring clean and impartial elections at the grass-root level. This recommendation was approved by the Central Government and accordingly, different States have been urged to comply with this recommendation. The Govt. of Mizoram is yet to take follow-up action as recommended.

CHAPTER-IV

STATUS OF THE STATE ELECTION COMMISSIONER OF MIZORAM: PROBLEMS AND CHALLENGES

The status of any office or official is determined by the powers and functions given to that office or official either by the Constitution of the land or the Legislations made either by the Union or the State Government. The State Election Commission (SEC) is one of the Constitutional Bodies. However, the Rules that govern their service conditions and entitlements are framed by the State Governments. Following are the relevant provisions of the Rules that govern the constitution of State Election Commission and the conditions of service of SECr of Mizoram:¹

4.1 Constitution of State Election Commission (Rule 3):

According to Rule 3-

(1) The Governor shall constitute a State Election Commission for superintendence, direction and control of the preparation, revision and correction of electoral rolls and for conduct of all elections to the various local bodies in the State.

(2) The Governor shall, on the recommendation of the State Government, appoint a State Election Commissioner by publication in the Official Gazette;

Provided that a person shall not be qualified for appointment as a State Election Commissioner, unless he holds or has held office in the rank of Secretary to the Government of Mizoram having knowledge and experience in conducting elections.

¹ The Mizoram State Election Commission (Conditions of Service) Rules, 2011.

(3) The State Election Commissioner may, by writing under his signature addressed to the Governor, resign his office.

(4) Prohibition as to future employment – On ceasing to hold office, the State Election Commissioner shall be eligible for appointment as Chief Election Commissioner or Election Commissioner under Article 324 of the Constitution of India or as State Election Commissioner in any other State under Article 243K of the Constitution of India, but not for any other employment either under the Government of India or under the State Government.

(5) A person who has held office of the State Election Commissioner shall be ineligible for reappointment to that office if he has been removed from that office before the expiry of tenure.

4.2 Composition (Rule 4):

Rule 4 prescribes that the number of Commissioner for SEC, Mizoram. According to this Rule, the Commission shall consist of a State Election Commissioner to be appointed by the Governor under Article 243K and Article 243 ZA of the Constitution of India, read with section 345 of the Mizoram Municipalities Act, 2007.

4.3 Tenure of Office (Rule 5):

The State Election Commissioner shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of 65 years, whichever is earlier. However, the State Election Commissioner shall not be removed from his office except in the manner and on the like grounds as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment.

Provided further that where no appointment is made on the expiry of the State Election Commissioner, the incumbent would continue in office for a period of upto six months thereafter or till the new incumbent is appointed whichever is earlier.

4.4 Salaries and Allowances (Rule 6):

(1) There shall be paid to the State Election Commissioner a fixed salary of Rs. 80,000 (pre-revised Rs. 26,000/-) (Rupees Eighty thousand) per month and such other allowances, at such rates as admissible to Chairman Mizoram Public Service Commission from time to time.

Provided that the State Election Commissioner who, on the date of his appointment as such, was in the service of the Government of India or of any State, a local body, or any other body wholly or substantially owned or controlled by the Government shall be deemed to have retired from such service from the date of appointment as State Election Commissioner.

(2) If the State Election Commissioner at the time of his appointment is in receipt of a pension, has received or has become entitled to receive any pension and other retirement benefits in respect of any previous service under the Government of India or a State Government, a local body, or any other body wholly or substantially owned or controlled by the Government, his pay in respect of the service in the Commission shall be reduced by the amount of that pension during the service under the Commission.

4.5 Leave Admissible (Rule 7):

(1) The State Election Commissioner may be granted Earned Leave, Half Pay Leave, Commuted Leave on Medical ground and Extraordinary Leave.

(2) The admissibility of leave as specified in sub-rule (1) above shall be regulated as per the provisions of the Central Civil Service (Leave) Rules, 1972 as applicable to the Government of Mizoram.

4.6 Power of the Governor to grant or refuse leave (Rule 8)

The power to grant or refuse leave to the State Election Commissioner and revoke or curtail the leave granted to him shall vest in the Governor.

4.7 Leave Credit of SECr to lapse (Rule 9):

Subject to the provisions of rule 7, leave at the credit of the State Election Commissioner shall lapse on the date on which he shall vacate Office under rule 5.

4.8 Pension (Rule 10)

(1) The State Election Commissioner, who, at the date of his appointment, was in the service of the Government of India or of a State, a local body, or any other body wholly or substantially owned or controlled by the Government his services as State Election Commissioner shall not count as qualifying services for the purpose of re-calculating his pension at the expiry of his office as State Election Commissioner.

(2) The State Election Commissioner, who at the date of his appointment was in receipt of Pension from the Government of India or a State Government, a local body, or any other body wholly or substantially owned or controlled by the Government shall draw pay prescribed in Part-II of these Rules and on the expiry of his tenure in the Commission, shall be eligible for pension for the service in the Commission in addition to pension received by him in respect of any previous service under the Government of India or a State Government as may be determined by the State Government from time to time.

Provided that no such pension shall be payable during any period for which such State Election Commissioner may, after his retirement as such, hold public office, save as provided under sub-rule (4) of rule 3 of these Rules.

Provided further that no such pension shall be payable if the State Election Commissioner is removed from his office before completion of his tenure in like manner and on the like grounds as a Judge of the High Court as provided under article 243K of the Constitution of India.

(3) The pension already drawn by the State Election Commissioner and the Pension under this Rules together shall not exceed the maximum pension fixed by the Govt. of India or the Govt. of Mizoram as the case may be.

(4) The Chief Controller of Accounts, Accounts and Treasuries, Government of Mizoram shall be deemed to have been authorized to settle payment of pensions and other retirement benefits in respect of the State Election Commissioner.

4.9 Question of Autonomy

Notwithstanding the aforementioned Constitutional provisions and clear cut directions of the Hon'ble Supreme Court, the ground realities pertaining to the functioning and status of the State Election Commissioners, particularly SECr of Mizoram, is very different from those of Chief Election Commissioner or Election Commissioners of India. It would perhaps not be incorrect to say that the State Election Commissions are at best poor cousins of the Election Commission of India. This can perhaps be largely attributed to the fact that while the Election Commission of India is a strong, cohesive and truly independent Constitutional Authority set up through an Act of Parliament, the State Election Commissions even though created within the framework of the Constitution are actually within the jurisdiction or mercy of their respective States as laws pertaining to Local Bodies can only be framed

by States and not by the Centre in a federal set-up. These powers are very jealously guarded by each State and any attempt to directly intervene even legitimately in the interest of grass-root democracy, is frowned upon by the State Governments. There is, therefore, a large disparity and variation regarding the status and functioning of the State Election Commissioners across the country.

On the other hand, the Government of Mizoram has taken various measures for strengthening the State Election Commission and extended certain co-operation to the State Election Commission, particularly during crucial period of elections in the past. Yet, the State Election Commission, is greatly handicapped, being in its nascent stage, with numerous problems which need to be addressed expeditiously as enumerated below:-

(1) Financial autonomy is one of the most important indicators of independence for Constitutional bodies. Government of Mizoram was doing a great job by delegating full financial powers to the Constitutional bodies viz, Chairman, Mizoram Public Service Commission (MPSC), the Chief Information Commissioner (CIC), the Chief Justice of Gauhati High Court, Aizawl Bench and the Speaker, Mizoram Legislative Assembly. The same power was also delegated to the State Election Commissioner.² This does not indicate that the Commission is at liberty to get its required fund directly from Consolidated Fund by enjoying a limited power. But, its power is limited within its budgetary allocation. As a matter of fact, the State Election Commission is at its nascent stage and even its annual budgetary allocation for the year 2011-2012 was only Rs. 59.35 lakhs whereas the budgetary allocation for MPSC was Rs.376 lakhs for the same year.

In the meantime, it is unfortunate that the full financial power delegated to the State Election Commission and other Constitutional bodies

² Government of Mizoram's *Notification issued under Memo No.G.17012/1/2003-F.Est*, dt. 26.11.2008.

were withdrawn by Mizoram Government.³ However, without much delay, the said power was restored to Chairman, MPSC, the Chief Information Commissioner, the Chief Justice of Gauhati High Court, Aizawl Bench and the Speaker, Mizoram Legislative Assembly (MLA) except State Election Commissioner, Mizoram. In fact, the State Election Commission is left to content with the financial power granted to the Head of Department viz, Secretary, State Election Commission, as listed in Annexure-I of the said Notification. If this issue is not addressed expeditiously in the right perspective, it is bound to affect the smooth functioning of the Commission. It may be appropriate to vest the State Election Commissioner with special financial powers with the flexibility to divert funds from one Head to another while incurring election related expenditure as well as for procurements etc., as per norms of Election Commission of India, without having to go back to the State Finance Departments for approval from time to time.

(2) It is also noted that in earlier days, most of the Departments in Mizoram run their office in rented houses due to non-availability of Government buildings. However, during 10th Five Year Plan the State Government constructed new Secretariat Complex within the land sliced out from the Assam Rifles occupied area in Khatla locality of Aizawl and other Constitutional bodies have been accommodated within the said complex by providing them with their own buildings. In the meantime, due to severe financial constraint, the Government of Mizoram cannot earmark substantial amount of requisite fund for construction of State Election Commission's building till today. This problem needs to be addressed sooner rather than later and appropriate step needs to be taken.

(3) The salary and other conditions of service of the State Election Commissioner are to be determined by the Governor subject to statutory regulations and the Constitution guarantees that the condition of service of

³ Government of Mizoram. *Notification regarding withdrawal of full Financial Power delegated to the State Election Commissioner* vide No. G.17012/1/2003-F.Est, dt. 29.8.2011.

the State Election Commissioner shall not be varied to his disadvantage after his appointment. So, it can be construed that the salary and allowances of the State Election Commissioner should be at par with a Judge of the High Court. However, no such determination of salary and allowances including pension in line with the High Court Judges (Salaries and Conditions of Service) Act, 1954, as amended, has been done so far.

(4) The Constitution mandates that the State Election Commissioner cannot be removed except in like manner and on like ground as a Judge of a High Court. It has been widely perceived that the intent of the Constitution is that the State Election Commissioner should have the status of a Judge of a High Court. This is said to be the reason why majority of the States have followed the spirit of the Constitution. Out of 28 States, where State Election Commission has been established, 20 States have so far accorded the status of a Judge of a High Court to their respective State Election Commissioners. However, the State Government of Mizoram has failed to confer the status of a High Court Judge to the State Election Commissioner of Mizoram till today. Moreover, the State Election Commissioner of Mizoram cannot find a place in the Order of Precedence issued by the State Government even after five years of the Commission's inception⁴. In order to maintain the Constitutional status of the State Election Commissioner of Mizoram as is being done to the Chief Election Commissioner of India by the Union Government, the State Government has a lot more to do to give legitimate and long overdue stature to the State Election Commissioner of Mizoram so that he could earn public confidence as well as respect in the eyes of the public. Towards this end, the present study makes an attempt to explore the reasons responsible for these undue hurdles in the process of giving the State Election Commissioner of Mizoram the priority of attention and status which he legitimately needs and

⁴ Government of Mizoram. *Notification regarding Table of Precedence vide No. F. 23012/1/2001-Protocol (GAD)*, dt. 1.4.2009.

deserves for ensuring a free and equitable pattern of democracy as mandated by the Constitution.

(5) The State Government has recently constituted State Finance Commission as provided under Article 243-I and 243-Y of the Constitution through enactment by the State Legislature by fixing their tenure for 5 years and also conferring a Cabinet status to the Chairman and the status of a Minister of State to the Secretary. In the meantime, the tenure for State Election Commissioner initially fixed for a period of 3 years has been raised to 5 years in line with the recommendation of the Task Force in the Ministry of Panchayati Raj, Government of India. At the same time, the salary was rightly fixed at par with Chief Secretary and Chairman, MPSC by applying a standard conversion of pay. It is however, noted that the status of the State Election Commissioner, Mizoram has not been determined by the State Government while most of other States conferred the status of a sitting High Court Judge to the State Election Commissioner. This inordinate delay of determining the status of the State Election Commissioner has created a ground for resentment as well as identity crisis for the incumbent. It is not out of place to mention here that the State Election Commissioner had always encountered an embarrassing situation during the occasion of important days so far as seat arrangements and car parking are concerned. In this connection, it may be pointed out that the Madras High Court on 17th March, 2011 issued a set of guidelines on the use of beacon lights atop vehicles and said that dignitaries including the Governor, Chief Minister, Deputy Chief Minister, Chief Justice and Judges of the High Court, Speaker of the Legislative Assembly, Cabinet Ministers, Director General of Police (DGP), Advocate General (AG) and the State Election Commissioner can use red beacon lights with a flasher on their vehicles. This clearly indicates that the status of State Election Commissioner cannot be undermined at the vagaries of a few bureaucrats at the top.

(6) The Study clearly reveals that the Government of Mizoram is lagging behind in giving due importance to the role and status of the State Election Commissioner due to the reasons not immediately available at this point of time. The State Election Commissioner, being a Constitutional authority, functioning outside the ambit of Government, cannot and should not be publicly perceived as cosyng up to the Government for seeking better status, administrative support and financial favours. This can seriously compromise with the true autonomy and independence of the State Election Commissioner who has to fulfil his or her Constitutional responsibility of holding free, transparent and fair elections without fear or favour. However, the State Election Commissioner appears to have been functioning at the mercy of the State Government during the last five years. This attitude not only affects the public perception about the dignity and role of the office of State Election Commission but also generates a signal that it is an extended hand of the State Government despite its Constitutional and autonomous status, which is comparable to that of Election Commission of India in its domain. In view of the above, the study tries to explore the opinion of the stake-holders as to how far is the State Government is committed to the strengthening of the institution of State Election Commission consisting of the State Election Commissioner so far as status, independence and authority are concerned?

According to the replies received from the respondents from outside Mizoram, 90% of the those respondents said that their State Election Commissioners are adequately empowered to take decisions on election matters independent of the Government. Adequate financial and administrative powers were delegated to the Commission to conduct elections and to run office smoothly. Their respective State Governments are also rendering necessary cooperation to conduct elections smoothly. To be more specific, as per Rule 8 of the State Election Commissioner (Conditions

of Service) Rules, 1994, the SEC, Haryana has been granted the facility as cited below:-

“Save as otherwise provided in these rules, the conditions of service relating to travelling allowance, rent free accommodation and exemption from liability to pay income tax on the value of such rent free accommodation, conveyance facilities, sumptuary allowance and such other conditions of service, as are, for the time being, applicable to a Judge of High Court under Chapter IV of the High Court Judges (Salaries and Conditions of Service) Act, 1954 (Central Act 28 of 1954) and the rules made there under, shall as far as may be, applicable to the State Election Commissioner.”⁵

In the meantime, the Government of Mizoram is not yet fully committed to the strengthening of the institution of State Election Commission so far as status of the State Election Commissioner, independence and authority of the Commission are concerned.

On the other hand, as aforementioned, following the 73rd and 74th Amendments to the Constitution of India, most of the States throughout the country have since established State Election Commission as mandated by the Constitution. Among the North Eastern states, Mizoram along with Assam, Sikkim and Arunachal Pradesh are the only States where there exist State Election Commissions consisting of State Election Commissioners appointed by respective Governor under Article 243K and 243ZA of the Constitution and other State Acts on full time basis. In the case of Mizoram, the State Government has constituted State Election Commission under the provisions of the Mizoram (Constitution of State Election Commission) Rules, 2008 and entrusted the responsibilities of superintendence, direction and control of the preparation of Electoral Rolls for, and the conduct of, all

⁵ See Rule 8 of the Haryana State Election Commissioner (Conditions of Service) Rules, 1994

Elections to the Municipalities and Local Councils under Aizawl Municipality by making the Mizoram Municipalities (Election of Councillors) Rules, 2007 and the Mizoram Municipalities (Election to Local Councils) Rules, 2011 respectively and Village Councils in six Districts of the State by amending the Mizoram (Election to Village Councils) Rules, 1974.

The 2nd Administrative Reforms Commission headed by Dr. Veerapa Moily, in its 15th Report, *inter alia*, recommends that Autonomous District Councils in Sixth Schedule Areas should also be covered by the State Election Commission. In pursuance, the Inter-Ministerial Task Force for Decentralised Governance in North East headed by Dr Hrusikesh Panda, Additional Secretary, Ministry of Panchayati Raj, Govt. of India pursued the recommendation and impressed upon the authorities of all Autonomous District Councils concerned for implementation of the same. Therefore, all the Autonomous District Councils amended their existing ‘Autonomous District Council (Constitution, Conduct of Business, etc.) Rules’ thereby vesting powers of superintendence, direction and control of the preparation of electoral rolls for, and the conduct of election to the State Election Commission headed by the State Election Commissioner. All these significantly reflect that the Government of Mizoram fully appreciates the importance of Local Self-Government at various levels, and also the role being played by an independent and neutral Constitutional body for ensuring free and fair elections.

It may also be pointed out here that the Task force constituted to strengthen the institution of State Election Commissions and related matters under the Ministry of Panchayati Raj suggested that the release of Finance Commission Grants could be linked to proper support and authority given by the State Government to the State Election Commissions. The Rajiv Gandhi Panchayat Sashaktikaran Abhiyan (RGPSA), which extends to all States and

Union Territories including Local Governments in areas where Panchayats do not exist in the North East, stipulates that all State would be required to fulfil some essential conditions for assessing any RGPSA fund which would inter alia include regular election to Panchayats or Local bodes in Non- Part-IX area under the superintendence and control of State Election Commission. In short, States that do not fulfil the essential conditions could not be eligible for funds under RGPSA. This has enhanced the role and importance of the State Election Commission in the eyes of the general public and policy makers.

Moreover, it is noted that the State Election Commission has been functioning from rented house without any building of its own. The State Election Commissioner had faced undue hardship and much inconvenience in discharging its Constitutional duties from a rented house particularly during elections. Since, there is no remedy, a small group of Commission's staff of different categories including Grade-IV and Drivers had to work day and night without requisitioning services of other State Government employees during elections to Aizawl Municipal Council (AMC), Village Councils, Local Councils and Autonomous District Councils. Apart from this inconvenience, it is also undignified, given the Constitutional status and independent functioning of the State Election Commission, to discharge such important and sensitive works of election machinery from private/rented building. In fact, if the State Election Commission has no office building of its own, there will be no scope for strengthening the Commission, thereby, affecting not only efficiency and independent functioning but also the Constitutional status of the Commission.

In spite of having baffled several hurdles, the Commission has had successfully conducted the following General Elections during the last five years:-

Table 4.1: General Elections conducted by the State Election Commission during 2009-2014

VILLAGE COUNCILS (NON-SIXTH SCHEDULE AREAS)					
Sl/ No	Name of Election	Date of Poll	No. of Village Councils	No. of Seats	No. of Voters
1	17 th General Election to Village Councils.	24.2.2009	555	2,071	5,33,134
2	18 th General Election to Village Councils.	23.2.2012	508	2,112	4,06,057
AIZAWL MUNICIPAL COUNCIL					
Sl/ No	Name of Election	Date of Poll	No. of Wards	No. of Seats	No. of Voters
1	1 st General Election to Aizawl Municipal Council.	3.11.2010	19	19, Reserved for Women-6	1,68,649
LOCAL COUNCILS UNDER AIZAWL MUNICIPAL COUNCIL					
Sl/ no	Name of Election	Date of Poll	No. of Local Councils	No. of Seats	No. of Voters
1	1 st General Election to Local Councils.	23.2.2012	82	522	1,74,821
AUTONOMOUS DISTRICT COUNCILS & VILLAGE COUNCILS UNDER SIXTH SCHEDULE					
Sl/ No	Name of Election	Date of Poll	No. of Constituencies	No. of Seats	No. of Voters
1	10 th General Election to Mara Autonomous District Council.	3.5.2012	25	25	32,898
2	9 th General Election to Chakma Autonomous District Council.	17.4.2013	20	20	25,694
3	General Election to Village Councils under Lai Autonomous District Council	25.3.2014	93	445	45,710

Local Bodies' Elections are events involving political mobilization and organizational complexity on an amazing scale, and it is the State Election Commission, that is responsible for their smooth operation. The task is mind boggling in locations that vary from the international boundaries along the Indo-Myanmar and Indo-Bangladesh border to inter-State boundaries of Assam, Manipur and Tripura along the Himalayas. The SEC has a difficult task to carry out peaceful elections in the regions of insurgent outfits from time to time. Safety is a major concern in these regions.

The SEC also has the task of monitoring all the candidates and parties to ensure that no malpractices take place during campaigning, or on the poll day. Monitoring hundreds of candidates is not an easy job. Yet, the SEC has consistently been able to achieve more than is expected from it.

In the annals of Indian electoral system, Shri *T.N. Seshan* has left his mark on the election process in India as one of the most powerful Chief Election Commissioners to hold this post. His appointment as the tenth Chief Election Commissioner in 1991 was the beginning of a new chapter in the history of India's parliamentary democracy. He not only reinvigorated the Election Commission, but was also largely successful in curbing electoral malpractices in the country. Seshan cancelled, or ordered re-polling in those areas where irregularities were reported, and took strict action against those who were found guilty of dereliction of duty. He deployed paramilitary forces in sensitive areas, and implemented the Election Commission's 'Model Code of Conduct' seriously. Seshan reviewed more than forty thousand alleged cases, and disqualified fourteen thousand potential candidates for public office. By the time he left office in December 1996, T.N. Seshan had set very high standards for his successors to this august office.

Likewise, The SEC headed by Shri C. Ropianga IAS (Retd), the first State Election Commissioner, has been instrumental in bringing about free, fair and impartial elections as well as stability to democratic institutions of

the State since its inception. The SEC has stood the test of time during the various elections to strengthen the elements of objectivity and transparency in electoral process. It has remained dynamic and responsive to the stakeholders' expectations thereby introducing various Electoral Reforms and Fine-tuned Electoral Management. Under his able guidance, the State Election Commission had had initiated the following Electoral Reforms and innovative measures since its inception:

- Use of Electronic Voting Machine (EVM) in Election to Autonomous District Councils and Aizawl Municipal Council.
- Preparation and Enforcement of Model Code of Conduct for all elections.
- Appointment of Observers and appointment of Deputy Commissioner (DC) as District Election Officer (DEO) for all elections.
- Creation/hosting of SEC Website.
- Preparation of Acts, Rules, Manuals/Handbooks and new Statutory Forms.
- Submission of Affidavits/Declaration regarding assets & liabilities, criminal background, educational qualifications of Candidates in Municipal and Autonomous District Council Elections.
- Introduction of Help-line during Elections.
- Expenditure Monitoring for Election to Autonomous District Councils and Aizawl Municipal Council.
- Introduction of Poll Monitoring System including proper Communication system.
- Introduction of Common Ballot Box and Common Ballot Paper in Village Council Elections.
- Introduction of Voter's Slip with Photograph (VSP) in the General Election to Chakma Autonomous District Council, 2013.
- Publication of Election Compendium for each General Election.

The Study also reveals that since there was no an independent and neutral election machinery in the State, the State Government took a conscious decision to establish the State Election Commission for superintendence, direction and control of the preparation of electoral roll, revision and for conduct of all elections to various Local Bodies in the State as envisaged under clause (1) of Article 243K of the Constitution. The State Election Commission, Mizoram was, therefore, constituted under Article 243K of the Constitution read with Section 345 of the Mizoram Municipalities Act, 2007 by vesting the powers of superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the various local bodies in the State to the Commission. The term, 'Local bodies,' is apparently used to include such democratic institutions at various levels in the State other than the State Legislative Assembly. In the meantime, vesting of power for conduct of election in respect of the Mara Autonomous District Council under Sixth Schedule to the Constitution of India to the State Election Commission has been challenged by some interested parties in the High Court and the matter is yet to be settled.

The 2nd Administrative Reforms Commission vide para 5.7.3 of its 15th Report recommended inter-alia that the Autonomous District Councils in Sixth Schedule areas in the North East should also be covered by the State Finance Commission and State Election Commission which was accepted by the Government of India and endorsed to the State Government. The Commission also observed that while Article 243M (1) expressly exempted areas under the Sixth Schedule from operation of the 73rd Constitutional Amendment, there is no bar on some of the arrangement introduced by it to be engrafted in the Schedule. Accordingly, the Commission was of the view that there are definite advantages if an independent and impartial body oversees preparation and conduct of election to the Autonomous District Councils under the Sixth Schedule area as well. The recommendation of the

2nd Administrative Reforms Commission has been purposefully accepted by Government of India in order to bring about direct linkage between the Sixth Schedule and the 73rd Constitutional Amendment. This was pursued by the Central Inter-Ministerial Team constituted under the Ministry of Panchayati Raj and as a result, the 3 (three) Autonomous District Councils, in exercise of the powers conferred by sub-para (7) of Para 2 of the Sixth Schedule to the Constitution read with Para 20B *ibid*, have since taken initiatives for amending their Acts/Rules on their own accord. With the coming into force of 73rd & 74th Constitutional Amendments, the constitution of State Election Commission in all States has become mandatory and subsequently vesting of powers for conduct of elections in the Autonomous District Councils has also become imperative in order to stabilize democratic institutions and the larger interest of democratic of ethos in the State. However, there are still some conflicting interests as to why the SEC should conduct elections to those Autonomous District Councils established under the Sixth Schedule to the Constitution of India.

The study also reveals that the said 3 (three) Autonomous District Councils in exercise of powers conferred by sub-para (7) of Para 2 of the Sixth Schedule to the Constitution of India had amended their respective Acts/Rules without any compulsion or pressure from the State Government or the State Election Commission. It is a fact that without their consent, no Acts/Rules of the State Government can be extended to these Council areas. In this connection, it may be pointed out that elections to Tripura Tribal Areas Autonomous District Council, Bodoland Territorial Council, Dima Hasao/Karbi Anglong Autonomous Council in Assam are all conducted by their respective State Election Commissions headed by State Election Commissioners. These indicate that there is no bar for smooth linkage between the Sixth Schedule and the 73rd or 74th Constitutional Amendment as appropriately done by the Government of Tripura and the Government of Assam so far as conduct of election is concerned. Even on the closer

examination of the recommendation of 2nd Administrative Reforms Commission, it appears that there is still point of conflict between the 6th Schedule and the 73rd & 74th Constitutional Amendment so far as holding of free, fair and peaceful election for these local bodies by a Constitutional body. It may be concluded in this regard that some vested interests think it otherwise and termed the extended role of State Election Commission as infringement over their autonomy.

CHAPTER -V

CONCLUSION & SUGGESTIONS

The final Chapter is divided into three parts. The first part contains a brief summary of the entire previous Chapters and the second part brings out the findings. Corresponding to the findings so made, the third part of this makes nine suggestions for the improvement of the working of the State Election Commission as well as the status of the State Election Commissioner of Mizoram.

I: Summary

The *First* Chapter of the Dissertation which is introductory in nature provides an in-sight into 73rd and 74th Constitutional Amendments and evolution of the institution of State Election Commission consisting of the State Election Commissioner; literature survey; statement of the problem; scope and objectives of the study; research questions and the methodology applied in the study.

The *Second* Chapter explains the Method of Appointment of State Election Commissioner of Mizoram and analyses diverse opinions of politicians and bureaucrats on the proposition that the State Election Commissioner should be appointed by the Governor on the recommendation of a Collegium.

In the *Third* Chapter, an in-depth study has been undertaken to explore the Status of State Election Commissioner as mandated by the 73rd and 74th Constitutional Amendments, other State Laws, etc., and the actual status accorded by the State Governments across the country.

The *Fourth* Chapter delves into the Status of the State Election Commissioner of Mizoram and discusses various problems and challenges faced by the State Election Commissioner during 2008-2014. The Chapter also provides an analysis of the responses to the questionnaires both by the officials and the political functionaries. These questions have been framed and designed to give answers to the research questions on the Status of the State Election Commissioner of Mizoram.

The *Fifth* Chapter is a concluding Chapter which brings out the summary and major findings of the Study. An attempt has also been made to offer suggestions for the improvement of the Status of the State Election Commissioner of Mizoram.

II: Findings

After carrying out an exhaustive study of the problem, the present study has brought out the following findings:-

(1) In response to the research question- Should the State Election Commission be made a Multi- Member Commission like Election Commission of India?, the respondents expressed their view that it is desirable that the State Election Commission be made a Multi-Member Commission like Election Commission of India subject to financial conditions of the State Government. The stature of the State Election Commission and Commissioner should be raised in public eye and this could be possible if the State Election Commissioner is selected through a Collegium consisting of Chief Minister, Leader of Opposition, Speaker, etc., in the like manner as the State Chief Information Commissioner and State Information Commissioner are selected. This will ensure that only person of impeccable integrity who appears to be absolutely neutral in politics is recommended for appointment by the Governor of Mizoram.

(2) In response to the research question- Is the present status of the State Election Commissioner as mandated by the 73rd& 74th Constitutional Amendment Acts not adequate? The respondents were of the view that the State Election Commission had a similar role to play with regard to Elections of urban and rural local bodies, but they possessed neither the same degree of authority nor the same kind of resources that were available to the Election Commission of India. In the absence of adequate support and resources, the ability of the State Election Commissions to ensure free and fair elections to Village Councils, (rural local bodies) and Municipalities (urban local bodies) has become severely restricted and more onerous. It is found out that the status of State Election Commissioners needs to be clearly spelt out and all protections afforded to the Election Commission of India should also be made available to the State Election Commissioner as well in the Constitution itself.

Further, it is also observed that greater attention needs to be given to implementing those provisions which give the State Election Commissions independence to function as an effective institution. As the State Election Commission is to conduct elections to both urban and rural local bodies, as far as Constitutional provisions are concerned, the role and function of State Election Commission is more or less analogous to the Election Commission of India. But in reality the functions of the State Election Commission is more complex and difficult as a large number of persons are required to be elected to local bodies as against the limited number of candidates to be elected by the Election Commission of India. Moreover, the State Election Commission has to function in a familiar environment which makes its functioning more delicate and difficult. For example, unlike the Representation of the People Act, which is the guiding law for Assembly and Parliamentary Elections, there is no single comprehensive law for covering both rural and urban local bodies. In view of this, comprehensive law and broad conditions of service of the State Election

Commissioner need to be laid down in the Constitution itself and his stature and the autonomy should be of no lesser degree.

80% are of the respondents are of the view that the State Election Commissioner should have the status, salary and perquisites of a High Court Judge with uniform service conditions throughout the country.

(3) In response to the research question- Is the present status of the State Election Commissioner of Mizoram as bestowed by the State Government is not in sync with the provisions under the Constitution?, it can be noted from the responses that due to inadequate legal, administrative and financial provisions, the State Election Commissioner of Mizoram used to face enormous constraints in conducting free and fair elections. The State Government does not give the State Election Commissioner the priority of attention he legitimately needs and deserves for ensuring a free and equitable pattern of democracy due to the following reasons:-

- (a) Initially, State Election Commissioner of Mizoram was delegated full financial power in recognition of his Constitutional status and autonomy vide Notification issued by Finance Department under Memo No.G.17012/1/2000-F.Estt, dt. 26.11.2008, which was, however, withdrawn in 2011 by the Finance Department vide Notification No. G.17012/1/2003-F.Estt, dt.29.8.2011 published in The Mizoram Gazette (Issue No.386, dt.1.9.2011). Under Article 243K of the Constitution, it is clearly provided that the conditions of service of the State Election Commissioner so appointed by the Governor shall not be varied to his disadvantage after his appointment. In view of this, withdrawal of full financial power delegated to the State Election Commissioner, Mizoram may be construed to be transgression of the Commission's administrative

and financial autonomy as mandated by the supreme law of the land.

- (b) The study also revealed that the State Election Commissioner of Mizoram, unlike other State Election Commissioners across the country, does not have the powers of a Civil Court to deal with election related cases under the relevant laws. The respondents of the research question also agreed with the Task Force recommendation that judicial powers be vested in the State Election Commission so that it can carry on its business without unnecessary interference from any quarter. It is also observed that the State Election Commissioners in other States usually have several unique powers, of which the salient one is that the SEC chairs the Delimitation Commission which delimits local government constituencies. But, the same powers have not been vested with the SEC of Mizoram.
- (c) It may be pointed here that out of 28 States, where State Election Commission have been established, 20 States have so far accorded the status of a Judge of a High Court to their respective State Election Commissioners. However, the State Government of Mizoram has so far failed to confer the status of a High Court Judge to the State Election Commissioner of Mizoram. As rightly observed by the Task Force, SECr needs to be given the status of a High Court Judge as otherwise, cooperation of the Chief Secretary, DGP, Finance Secretary and other important officials may not be forthcoming, and more importantly, the SEC may not appear to be independent.

- (d) The State Election Commissioner of Mizoram cannot find a place in the Order of Precedence even after five years of the Commission's inception.
- (e) It has been found out that most of the States in the country have extended various post-retiral benefits to the retired Chief Justices and retired Judges of the respective High Courts. But, no such determination of salary and allowances including pension in line with the High Court Judges (Salaries and Conditions of Service) Act, 1954, as amended, has been done so far by the State Government.

It may be pointed here that the Mizoram State Election Commission (Conditions of Service) Rules 2011 was notified on 13th September, 2011, wherein the pension payable to the State Election Commissioner has to be determined by the Government and the Chief Controller of Accounts, Government of Mizoram is deemed to have been authorized to settle payment of pensions and other retirement benefits in respect of the State Election Commissioner. However, on re-examination of the pension provisions as aforementioned, it was felt necessary to determine the amount of pension payable to the State Election Commissioner due to lack of clarity by way of amendments to the existing Rules. Accordingly, proposals for amendment to the Mizoram State Election Commission (Conditions of Service) Rules 2011, was initiated in the early part of 2013 by the State Election Commission and sent to the Principal Secretary, UD&PA Department, Government of Mizoram vide No. A. 12018/2/2011-SEC, dt. 4th & 8th March, 2013 and approval of the concerned Minister i.e., Minister, UD&PA Department was obtained on 18th March, 2013.

The proposal was carefully examined by the concerned three Departments viz., DP&AR, Finance Department and Law & Judicial Department and all of them vetted and concurred the same after making slight modifications. Later, the Principal Secretary to the Government of Mizoram, UD&PA Department submitted the matter for consideration and approval of the Council of Ministers, Government of Mizoram on 13th August, 2013, but the proposal was not approved by the Council of Ministers in their meeting on 11th September, 2013. This is a clear indication that the provisions under Rule 10 of the Mizoram State Election Commission (Conditions of Service) Rules 2011, has been deliberately ignored to the utter disregard of the rights and privileges conferred upon the State Election Commissioner. In view of the discriminatory action being purportedly carried out by the State Government, the retired SECr is said to have approached the Hon'ble Court to redress his grievances for the end of justice.

It is also pertinent to mention here that the Government of Mizoram has been allowing the State Information Commissioner, Mizoram, to avail of the following pension or retirement benefits:-

- The State Information Commissioner, Mizoram, who, at the date of his appointment, was in the service of the Government of India or of State, a local body or any other body, wholly or substantially owned or controlled by the Government, his subsequent services in the Mizoram Information Commission shall be reckoned as continuing approve service counting as qualifying services for the purpose of calculating pension in service to which he belonged.
- When the State Information Commissioner, Mizoram demits office, he shall on such demission be entitled to -

- (i) the pension to which he is entitled under the ordinary rules of his service if he had not been appointed as the State Information Commissioner, Mizoram his services as the State Information Commissioner, Mizoram being treated as service therein for the purpose of calculating that pension.
- (ii) A special additional pension of Rs.8,000/- per annum in respect of each completed year of service for pension in the Commission.

However, the same treatment as well as entitlement is not afforded to the State Election Commissioner, who has been given equivalent status in terms of salary.

- (f) The State Election Commission Bill, which intends to confer, inter alia, better status to the State Election Commissioner, had been formulated by the State Election Commission and initially submitted to the State Government in 2010 and re-submitted on 21st February, 2013, but the Bill has not been introduced before the State Legislative Assembly till today.

(4) Further, in the light of the recommendation of the Task Force duly constituted by the Ministry of Panchayati Raj for strengthening the Institution of the State Election Commission, 2011 and as decided in the 17th All India State Election Commissioners' Conference held at Goa on 13th& 14th July, 2012 and a meeting of Standing Committee of the State Election Commissioners held on 16th October, 2012 at New Delhi, the State Government has been requested to take necessary action for declaring the State Election Commissioners of other States, on their being Constitutional authorities, as State Guest during their visit to Mizoram as done by other States in the Country. The study reveals that most of the States have also declared and treated the State Election Commissioners of

other States as State Guest in their respective States during their visit on reciprocal basis. However, Govt. of Mizoram has not taken any action to declare all visiting State Election Commissioners as State Guests to enable the State Election Commissioner of Mizoram to enjoy the same status in other States on reciprocal basis as have been done by most of the State Governments across the country. This has deprived the State Election Commissioner of Mizoram to enjoy the status of a State Guest while visiting other States.

In response to the research question -How far is the State Government committed to the strengthening of the institution of State Election Commission consisting of the State Election Commissioner of Mizoram so far as status, independence and authority are concerned?, the study reveals that while the State Election Commission has been vested with greater responsibilities of the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the various local bodies including the 3 (three) Autonomous District Councils as required under Article 243K read with 243ZA of the Constitution and other relevant rules, the State Government appears to have not really committed to the strengthening of the institution of State Election Commission consisting of the State Election Commissioner of Mizoram so far as status, independence and authority are concerned. The State Election Commission, Mizoram is still at its nascent stage and it has to strive hard to uphold its status, role, autonomy and sanctity as a Constitutional body, but there is still a considerable degree of discrimination or degenerative attitudes towards the Commission from one pretext to another.

The study also reveals that the State Election Commissioner appears to have been functioning at the mercy of the State Government during the last five years. There were at times undue hurdles created by higher echelons of bureaucracy in the process of giving the State Election Commissioner of Mizoram the priority of attention and status which he legitimately needs and

deserves for ensuring a free and equitable pattern of democracy as mandated by the Constitution.

An efficient electoral system has, become an integral part of democracy. In order to establish democracy in true spirits, all advanced countries of the western world have been able to develop an electoral system which serves the purpose of free and fair elections to a considerable extent. The architects of Indian Constitution also attached considerable significance to independent electoral machinery for the conduct of elections. The successful management of General Elections requires a high quality of administrative competence and efficiency because of the huge and diverse size of electorate, the existence of a very large number of political parties and a usually large number of independent candidates. Though the election machinery in India deserve full credit for conducting the elections of such a magnitude at very short notice, in a free, fair and peaceful manner but there are still certain aspects of the electoral system which need to be streamlined and reformed in Mizoram.

As a matter of fact, a good electoral system is the bed rock of genuine representative government. There are certain conditions for the successful working of an electoral system in a democratic country like India. One of the most important conditions is an independent, honest, competent and non-partition election machinery (administration) to conduct elections. In the development of genuine electoral administration, there is an increasing need for administrative machinery capable of conducting elections with impartiality and without confusion. Unless public elections are conducted with accuracy and efficiency in a democratic country like India which is constituted by many federating States, not only the public services are discredited but the whole democratic system is endangered. In other words, if the electoral machinery of the country or a particular State is defective or is not efficient or is worked by people whose integrity cannot be depended upon, democracy will be poisoned at

the source. If such things happen, instead of learning from elections how they should exercise their vote, how by a judicious exercise of their vote they can bring about changes in the constitution and reform in the administration, people will learn only how parties based on intrigues can be formed and what unfair methods they can adopt to secure what they want.

III. Suggestions

In the light of the aforementioned discussions and findings, the researcher has made the following suggestions to give legitimate and long overdue status to the State Election Commissioner of Mizoram:-

(1) The State Election Commission may be made a three-member body like Election Commission of India as a single State Election Commissioner could be more vulnerable to pressure by the State Government and other groups.

(2) The State Election Commissioner may be appointed by the Governor on the recommendation of a Collegium consisting of Chief Minister, Leader of Opposition and Speaker, etc. in like manner as the State Chief Information Commissioner and State Information Commissioner are selected. It may also be made mandatory for the appointed State Election Commissioner to take oath before assumption of office.

(3) The present status of the State Election Commissioner as mandated by the 73rd & 74th Constitutional Amendments is not adequate. A clear and separate provisions relating to Conditions of Service of State Election Commissioner may be incorporated in the Constitution either by assigning a new Article or by amending the present Articles wherein an uniform status may be given to all State Election Commissioners regardless the size and population of the State.

(4) The State Election Commissioner of Mizoram, being a Constitutional Authority, should be accommodated in the Order of Precedence wherein he needs to be placed at the same Article with a Judge of the High Court.

(5) The State Election Commissioner of Mizoram may be empowered with the powers of a Civil Court to deal with election related cases under the relevant laws.

(6) Salary and allowances of the State Election Commissioner of Mizoram needs to be determined in line with the High Court Judges (Salaries and Conditions of Service) Act, 1954, as amended. At the same time, a pension which is equal to the pension payable to a Judge of a High Court in accordance with the provisions of Part III of the First Schedule to the High Court Judges (Salaries and Conditions of Service) Act, 1954, as amended from time to time may also be given to the State Election Commissioner of Mizoram. On the other hand, broad conditions of service of the State Election Commissioners may be laid down in the Constitution itself.

(7) The full financial power of the State Election Commissioner, which was withdrawn in 2011 by the State Finance Department, should be restored back to the State Election Commissioner of Mizoram. In this regard, it is desirable that the State Government follow the pattern adopted by the Government of India vis-à-vis the Election Commission of India in the matter of administrative and financial power of the State Election Commissioner. For instance, in Andhra Pradesh, the State Election Commissioner is authorized to divert fund from one Minor Head to another Minor Head in the budget allocation, without reference to Finance Department (subject to overall budget limit). Also, normally Finance Department imposed 'freeze' on Non-plan funds release in the month of February or March to various Departments, but such

freeze is not applicable to State Election Commissioner's office in Andhra Pradesh. The issue of meeting expenditure of the State Election Commission from the Consolidated Fund of the State may also be considered.

(8) Govt. of Mizoram should also declare all visiting State Election Commissioners throughout the country as State Guest to enable the State Election Commissioner of Mizoram to enjoy the same status and facilities in other States on reciprocal basis.

(9) The State Election Commissioner of Mizoram may also be vested with the powers to chair the Delimitation Commission of various local bodies which delimits local government constituencies.

Since the present study is the first attempt of its kind to look into the role and status of the State Election Commissioner of Mizoram with reference to the 73rd & 74th Constitutional Amendments, the findings would be helpful in carrying out future studies and research.

To conclude, the State Election Commission, being a Constitutional authority, functioning outside the ambit of Government, cannot be publicly perceived as cozying up to the Government in power, for seeking administrative support and financial favours time and again. This can seriously compromise with the true autonomy and independence of the State Election Commissioners who have to fulfil their Constitutional responsibility of holding free, transparent and fair elections without fear or favour. In the circumstances, it is desirable to see any dramatic transformation in the functioning of the State Election Commission, somewhat on the pattern of Election Commission of India, so that it gets its legitimate and long overdue stature and respect in the eyes of the common man who wishes to see a cleaner, truly representative and honest grass-root democracy so essential for sustainable development at all levels in our country.

Towards this end, the State Election Commission of Mizoram is also committed to accomplish the mandate the Constitution has shouldered upon it provided its legal, financial, administrative and infrastructure requirements are made available by the Government of India or the State Government.

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