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## **UNIT 8 STATE ELECTION COMMISSION\***

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### **8.0 OBJECTIVES**

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After studying this Unit, you should be able to:

- Describe the significance of an Election Commission;
- Discuss the Composition of State Election Commission;
- Explain the powers and functions of State Election Commission;
- Highlight the role of State Election Commission; and
- Examine the impact of State Election Commission in democratic governance at the grass roots level.

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### **8.1 INTRODUCTION**

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For a democratic polity, conduct of free, fair and impartial elections is considered to be the most essential feature. India has the distinction of being the world's largest democracy. As you know, the Constitution of India under Article 324 has specifically provided for an independent Election Commission to conduct elections of the President and Vice-President of India; and elections for the Lok Sabha, Rajya Sabha, Vidhan Sabha and Vidhan Parishad. After the 73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amendments, a provision was made to setup a State Election Commission (SEC), to carry out activities related to supervision, direction and control of elections to the local bodies-Panchayats and Municipalities. In this unit, we will be focusing on the significance, composition, powers, functions and role of the SEC.

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## 8.2 STATE ELECTION COMMISSION: SIGNIFICANCE

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The crux of political development in any country lies in the cultivation of institutions and processes conducive to people's participation. The institutions of local government provide a way of reconciling people's desires, their enthusiasm and active participation in governance. In other words, the institutions of local government fulfil the democratic needs of people; and serve as the channels of expression of political consciousness. The local government can contribute in strengthening the democratic institutions, which require sincere efforts. For a long time, this has been a serious problem in India. Since independence, most of the state governments in India have been showing lukewarm attitude towards the development of self-governing local bodies. There has been widespread arbitrariness in superseding these institutions; and elections were not held in many states for years. An example on this count is that of Himachal Pradesh, where elections to Shimla Municipal Corporation along with 15 towns were held in 1986 after a gap of 26 years. Similar other examples can be found in various other states too. In Punjab, three Municipal Corporations were established in 1977, but these remained as undemocratic bodies for a long period.

In order to remove this problem, there has been a repeated demand from various corners to devise a mechanism for regular and fair elections to the local bodies. It was fulfilled as a part of 73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amendment Acts, which carried the provision of establishing a SEC to be appointed by the Governor to supervise, direct and control the elections to the Panchayat and Municipal bodies. In this regard, Article 243 ZA with Article 243 K provides that superintendence, direction, control relating to conduct of all elections of Panchayats and Municipalities is to be the responsibility of the SEC. The Article 243 U, incorporated through the Constitutional amendment, provides for fixing the tenure of all local bodies at five years; and in case of dissolution before the expiry of five years, the local bodies would go for re-election within a period of six months of dissolution. This highlights the role of a SEC to conduct regular elections after the expiry of every five years, and whenever these are required in between for the residue term only.

Ever since the adoption of the Constitutional provisions, the states passed their own legislations for the Panchayats and Municipalities, and incorporated the provision for setting up of a State Election Commission. However, some states, such as Punjab has passed a separate Act for setting up of the SEC. Most of the states constituted State Election Commissions, which have been entrusted with the functions of conducting regular, free, fair and impartial elections to the local bodies in the state. It may be added that the Commissions, would determine to what extent people's involvement could ultimately be secured to establish linkage between local leadership and government to translate policies of the government.

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## 8.3 STATE ELECTION COMMISSION: COMPOSITION AND SETUP

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In all the states, the State Election Commissions are headed by a State Election Commissioner appointed by the Governor. However in some states like Punjab, there is a provision for the appointment of a Deputy Election Commissioner. In most of the states, a retired Civil servant or a Retired Judge is appointed as the Election Commissioner. We may here take up the case of Punjab.

i) **Election Commissioner**

The Governor by notification in the Official Gazette, appoints, a) an officer of the State Government not below the age of fifty-five years, and of the rank of Financial Commissioner, or the Principal Secretary to the State Government having service as such for a minimum period of two years or b) a serving or retired Judge of the High Court as State Election Commissioner.

Provided that no officer, who has attained such age of superannuation, as may from time to time be fixed by the State Government, shall be appointed as Election Commissioner. On ceasing to hold office of Election Commissioner, s/he becomes ineligible for any further appointment under the State Government.

ii) **Deputy Election Commissioner**

The State Government appoints one or more than one Deputy Election Commissioners to assist the State Election Commissioner in the discharge of her/his duties under this Act and the rules made there under, and also appoints Secretary to the SEC.

iii) **Other Election Officers**

- a) ***District Electoral Officer:*** There is a District Electoral Officer for each district, subject to the superintendence, direction and control of the SEC. At the district level, District Electoral Officer mainly supervises the preparation, revision and correction of electoral rolls. The officer also performs such other functions, as entrusted to her/him by the SEC.
- b) ***Electoral Registration Officer:*** The electoral rolls for each Panchayat or Municipality are prepared, and revised by an Electoral Registration Officer. An Electoral Registration officer employs persons for the preparation and revision of the electoral rolls for the Panchayats or Municipalities.
- c) ***Returning Officer:*** For every constituency, for every election to fill a seat or seats in a Panchayat or Municipality, the SEC in consultation with the State Government, designates or nominates an officer of the State Government or of a local authority as a Returning Officer, and one or more Assistant Returning Officers.
- d) ***Polling Stations and Presiding Officers:*** District Electoral Officer, provides a sufficient number of polling stations for every constituency, within her/his jurisdiction, and publishes a list showing the polling stations and the polling areas or groups of voters.

The District Electoral Officer appoints a Presiding Officer for each polling station and Polling Officer(s) as s/he thinks necessary. In this regard, a Polling Officer, as per the direction of Presiding Officer, performs the functions.

***Duties of Presiding Officer:*** At a polling station, the Presiding Officer ensures order and fair conduct of polls; and the Polling Officer assists her/him in the performance of her/his functions.

In another state, that is, Tamil Nadu, the SEC is headed by an Election Commissioner who is assisted by a Secretary. The Secretary is assisted by a large number of administrative and technical staff, such as Chief Administrative Officer, Financial Advisor and Chief Accounts Officer, Principal Election Officer (Panchayats), Principal Election Officer (Municipalities), Legal Advisor, Public Relations Officer (PRO), Computer Programmer, etc.

## **8.4 STATE ELECTION COMMISSION: POWERS**

Besides the above stated functions of a SEC, it is generally enabled to exercise certain powers in order to smooth discharge of its duties. The Punjab State Election Commission, for instance, provides for the following set of powers (Punjab State Election Commission, <http://www.pbsec.gov.in/>).

### **8.4.1 Power of Election Commission as a Civil Court**

The Election Commission has the power of a Civil Court for an inquiry, in the following matters:

- i) Summons and enforces the attendance of any person, and examining her/him on oath.
- ii) Requires the discovery and production of documents or other material object producible as evidence.
- iii) Requisitions of public record or a copy thereof from any court or office.
- iv) Receives evidence on affidavits.
- v) Issues orders for the examination of witness or documents.

In addition, the SEC has the power to inquire any person subject to any privilege, which may be claimed by her/him to furnish information on such points or matter as in its opinion may be useful for the subject matter of inquiry.

The SEC is deemed to be a Civil Court and when any such offence (section 175, section 178, section 179, section 180 or 228 of the Indian Penal Code 1860) is committed in the view or presence of the Commission, it forwards the recorded facts constituting the offence and the statement of the accused to a Magistrate having jurisdiction.

### **8.4.2 Power to Make Rules**

The State Government, after due consultation with the SEC, by notification in the Official Gazette, makes rules for carrying out the purposes, for following matters:

- i) The duties of the Presiding Officers and Polling Officers.
- ii) The checking of voters with reference to the electoral roll.
- iii) The manner in which votes are to be given in the constituency.
- iv) The procedure to be followed in case of tendering a vote by a person representing herself/himself to be an elector.
- v) The manner of giving and recording of votes by means of voting machines, and the procedure as to be followed at polling station where such machines will be used.
- vi) The security and counting of votes before the declaration of result of election.
- vii) The procedure for counting of votes recorded by means of voting machine.
- viii) The safe custody of ballot boxes, voting machines, ballot papers and other necessary papers for the specific period for which such papers shall be preserved; and inspection and production of such papers.

- ix) The place, date and time at which claims or objections shall be heard; and the manner in which such claims or objections shall be heard and disposed of.
- x) The final publication of electoral rolls for the constituencies.
- xi) Election agents, election expenses and so on.

**Check Your Progress 1**

- Note :** i) Use the space given below for your answers.  
ii) Check your answer with those given at the end of the Unit.

1) What is the basic purpose of setting up of a State Election Commission?

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2) Discuss the composition and setup of State Election Commission in a state.

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3) What are the major powers of a State Election Commission?

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Before we interpret the functions of State Election Commission, it would be appropriate to have a brief look on the functions of the Election Commission at the Centre. These functions are outlined in Article 324-329 of the constitution.

- i) The Election Commission supervises, directs, control and conducts the elections in the country. It is charged with the responsibility to conduct free and fair elections.
- ii) It prepares the electoral rolls of each constituency of Lok Sabha as also of the state Vidhan Sabha. The electoral rolls are revised and updated after every census operation and before every election.
- iii) It conducts the elections to the Lok Sabha and state Vidhan Sabhas whenever the elections fall due. It also holds the bye-elections. It is responsible for conducting elections to the Vidhan Parishads (upper house of the state legislature) wherever

they exist. It also conducts elections to the Rajya Sabha /after every two years since 1/3<sup>rd</sup> members of the Rajya Sabha retire after every two years.

- iv) It conducts the elections of the President of India and the Vice-President whenever they fall due. It prepares the voters list and works out the quota of votes needed to win the election along with the weightage and the value of each voter of Electoral College.
- v) In order to conduct the election, the Election Commission can demand the services of required persons from the centre as well as the states. Out of these officials, the Commission appoints the Returning Officers, the Presiding Officers and other polling officers.
- vi) After the General Election, the Election Commission grants recognition to the political parties - whether the party is a National level or a State level.
- vii) In order to conduct the elections in a fair and impartial manner, the Election Commission determines and announces the code of conduct for the election.
- viii) The Commission also grants symbols for the election to the “Independent” candidates.

After a clear understanding of the role and functions of the Finance Commission at the Centre, in the subsequent section, we will explain the functions of SEC.

## **8.5 STATE ELECTION COMMISSION: FUNCTIONS**

As noted earlier, the State Election Commission in each state has been constituted to conduct free and fair elections to the local bodies. For this purpose, the Commission is required to undertake a large number of functions and related activities. For instance in Gujarat, the SEC carries out activities related to preparation of wards/election division as per local body’s rules, decision of boundaries, and distribution of seats along with preparation of voters list for the local bodies like Gram Panchayat, Taluka and District Panchayat/Municipality and Municipal Corporation of the state; and conducting general/mid-term/bye-elections, and supervising them. For all these functions, the authority is vested in the SEC under Article 243K under which it has been empowered with superintendence, direction and control of elections of local bodies. We can, now, elaborate a bit on the following functions of SEC being undertaken in most of the States:

- i) **Preparation of Electoral Rolls:** For every Panchayat and Municipality there is an electoral roll, which is prepared under the superintendence, direction and control of the SEC. The electoral roll for each constituency is prepared in the prescribed manner and comes into force in accordance with the rules made under the Act.

The Electoral Rolls for every Constituency is revised:

- a) before every general election; and
  - b) before every bye-election to fill a casual vacancy.
- ii) **Appointment of Dates for Nominations, etc.:** As soon as the notification calling upon a constituency to elect a member is issued, the SEC appoints:
    - a) last date for making nominations, which is the seventh day after the date of publication of the first mentioned notification; and in case of public holiday, the next succeeding day, that is, not a public holiday;

- b) date for the scrutiny of nominations for election;
  - c) last date for the withdrawal of candidature by the candidate;
  - d) date when a poll has to be taken; and
  - e) last date, before which the election is to be completed.
- iii) **Public Notice of Election:** On issuance of a notification, the Returning Officer gives public notice of the intended election, inviting nominations of candidates for election; and specifying the place at which the nomination papers will be delivered.
- iv) **Nomination of Candidates for Election:** Any citizen may be nominated as a candidate for election to fill a seat, if s/he is qualified.
- v) **Publication of List of Contesting Candidates:** After the expiry of period within which candidatures are withdrawn, the Returning Officer prepares and publishes a list of contesting candidates, that is, the list of validly nominated candidates; who have not withdrawn their candidatures within the laid period. The list contains the names in alphabetical order and the addresses of the contesting candidates as given in the nomination papers, which were together with other particulars.
- vi) **Fixing Time for Poll:** The SEC fixes the hours during which the poll will be conducted, and the fixed hours are published. The period allotted for polling at an election cannot be less than eight hours a day.
- vii) **Adjournment of Poll in Emergencies:** If the proceedings at any polling station are interrupted or obstructed, the Presiding Officer may announce an adjournment of the poll under her/his jurisdiction.
- viii) **Counting of Votes:** After every election of Panchayat or Municipality, votes are counted under the supervision and direction of the Returning Officer.

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## 8.6 ELECTION TRIBUNAL

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Some of the states have provided for a provision to setup an Election Tribunal at the State level to take up election related disputes. In this regard, in Punjab, an Election Tribunal is constituted by the State Government in consultation with the SEC for each district or part thereof, at the District or Sub-Divisional Headquarters. The State Government by Notification in the official gazette appoints an IAS or PCS Class I/ Group A Officer of the State Government having adequate administrative, legal or magisterial experience, as the Presiding Officer of an Election Tribunal.

It is to be noted that no election is called in question, except by an Election Petition presented in accordance with the provision of the Act. In this regard, only the Election Tribunal, having jurisdiction, has the power to adjudicate upon the Election Petitions. However, the Election Tribunal in its discretion may, in the interest of justice or convenience try an Election Petition wholly or partly, at a place other than its specified headquarters.

### Procedure before the Election Tribunal

Subject to the provision of the Act, every Election Petition is tried by the Election Tribunal, as nearly as may be in accordance with the procedure contained in the Code of Civil Procedure, 1908 (Central Act 5 of 1908) to the trial of suits. “The Election Tribunal shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses, if it is of the opinion that the evidence of such witness

or witnesses is not material for the decision of the election petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings of the election petition.” (Punjab State Election Commission Act, 1994, Chapter XII (81)). The provisions of the Indian Evidence Act, 1872 (Central Act 1 of 1872) subject to the provisions of the Act, apply in all respects to the trial of an Election Petition. First of all, we will discuss the corrupt practices and electoral offences, which can be observed during the elections.

### **Corrupt Practices and Electoral Offences**

Here it would also be appropriate, if we have a look into the general corrupt practices during the elections.

The following are deemed to be corrupt practices under the SEC Act (Punjab):

#### **D) Bribery**

- i) Any gift offer or promise by a candidate or her/his election agent of any gratification to any person directly or indirectly inducing:
  - a) A person to stand or not to stand as a candidate at an election; or
  - b) An elector to vote or refrain from voting, especially at an election or as a reward to:
    - a citizen for having so stood or not stood as a candidate, or for having withdrawn, or not having withdrawn her/his candidature, or
    - an elector for voting or refrained from voting.
- ii) The receipt/agreement to receive, any gratification, whether as a native or reward:
  - a) by a person for standing as a candidate or withdrawing from being a candidate; or
  - b) by a person for herself/himself for voting or refraining from voting, or inducing any elector to vote or refrain from voting, or any candidate to withdraw her/his candidature.

II) Undue influence, that is, any interference or attempt to interfere on the part of the candidate or her/his election agent, with the free exercise of any electoral right. In this context, the Act provides that:

- i) Without prejudice to the generality of the provisions of this clause, any such person who:
  - a) threatens any candidate or any elector, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or
  - b) induces or attempts to induce a candidate or an elector to believe that s/he will be considered as an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of an electoral right of a candidate or elector.
- ii) A declaration of public policy or a promise of public action or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be an interference.



- III) The appeal by a candidate or her/his agent with the consent of a candidate to vote or refrain from voting for any person on the basis of her/his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of national symbols, like the national flag for the furtherance of the prospects of the election of that candidate.
- IV) The promotion of feeling of enmity or hatred between different classes of the citizens of India on basis of religion, race, caste, community, or language, by a candidate or her/his agent with the consent of a candidate for the furtherance of the prospects of the election of that candidate.
- V) The propagation of the practice or the commission of Sati or its glorification by a candidate or her/his agent with the consent of the candidate for furtherance of the prospects of election of that candidate. Explanation for the purposes of this clause, “sati” and “glorification” in relation to sati shall have the meaning respectively assigned to her in the commission of Sati (prevention) Act, 1987.
- VI) The publication by a candidate or her/his agent with the consent of a candidate, of any statement of fact, which is false, and which s/he believes to be false regarding the personal character or conduct of candidate, in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate’s election.
- VII) The hiring or procuring, any vehicle by a candidate or her/his agent with the consent of a candidate or the use of such vehicle for the free conveyance of any elector other than the candidate herself/himself, the members of her/his family or an agent, to or from any polling station: a) The hiring of a vehicle or vessel by an elector or by several electors at their joint costs for conveying her/him or them to and from any polling station or place fixed for the poll is not deemed to be a corrupt practice, if the vehicle so hired is a vehicle or vessel not propelled by mechanical power. b) The use of any public transport vehicle or vessel or any trolley or railway carriage by any elector at her/his own cost for going to or coming from any polling station or place fixed for the poll is not deemed to be corrupt practice.
- VIII) The obtaining or, procuring or abetting or attempting to obtain or procure by a candidate or her/his agent with the consent of a candidate any assistance other than giving of vote for the furtherance of the prospects of that candidate’s election, from any person in the Government service.

**IX) Booth capturing**

In case of booth capturing by a candidate or her/his agent, the expression “agent” includes an election agent, a polling agent who is held to have acted as an agent in connection with the election with the consent of the candidate. A person is deemed to assist in furtherance of the prospects of a candidate’s election, if s/he acts as an election agent of that candidate.

**Promoting Enmity between Classes**

A person who has connection with an election, promotes and attempts on the basis of religion, race, caste, language etc., feelings of enmity between different classes of the citizens, is punishable with imprisonment for a term that may extend to three years or with fine or with both.

**Appeal to High Court**

In case, the decision of Election Tribunal is not withstanding anything contained in any

other law for the time being in force, an appeal can be made to the High Court on any question whether it pertains to law or fact from every order made by an Election Tribunal.

## 8.7 ROLE OF STATE ELECTION COMMISSION

As mandated by the 73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amendment Acts, the State Election Commissions were established and are playing an important role of strengthening the grassroots democracy in the country. These are working on the similar pattern of the central Election Commission, and are enjoying more or less, similar powers towards the conduct of free and fair elections to the local bodies. To this effect, the SECs are performing a variety of functions and role. Their role may be categorised as Regulatory, Administrative, and Quasi-Judicial.

The State Finance Commission’s regulatory role is clearly reflected from its functions listed earlier. Its power to control and regulate the delimitation of wards or territorial constituencies, election symbols, electoral rolls, election expenses, etc. are the significant regulatory tasks, which are essential for the smooth conduct of any election. Towards the conduct of elections, a large number of preparatory tasks are required to be performed with the help of its own staff; and staff of other departments at the local level. This involves a variety of administrative and routine functions to be undertaken by the SEC. At the same time, the SEC has to undertake some quasi-judicial functions during the election process. In fact, in any election process some disputes are likely to be raised by one or the other party. The SECs are empowered to dispose of such election petitions or appeals, etc. in order to declare the election results in a time bound manner. As per the provisions of Article 243 (O) the interference by the courts have been barred, however, appeal against the decision of the SEC may be made in the court, if there is an error or dispute of jurisdiction or there is a violation of any Constitutional provision. To this effect, earlier common complaints of irregular elections are now negligible; and wherever such incidents are reported, these are generally resolved by the Commission.

### Check Your Progress 2

- Note :** i) Use the space given below for your answers.  
ii) Check your answer with those given at the end of the Unit.

1) Discuss the major functions of State Election Commission?

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2) Enlist any four corrupt practices and electoral offences during the elections.

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3) Highlight the role of State Election Commission.

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## 8.8 CONCLUSION

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India is one of the vibrant democratic country in the world. The faithful discharge of its duties by the State Election Commission has put democracy on the firm footing. The Commission over the years has enhanced its credibility by fair, fearless and impartial exercise of its constitutional authority in cleansing the Indian electoral system. With the enactment of 73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amendments to the Constitution a big milestone has been added in the process of establishing and strengthening the system of democratic decentralisation. In this unit, we have described the significance, composition, powers, functions and role of the State Election Commission. It has been observed that the SECs are playing important role in conducting free, fair and timely elections in order to strengthen the roots of democracy in India.

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## 8.9 GLOSSARY

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<b>Electoral College</b>	: It means a body of electors empowered to elect someone to a particular office.
<b>Electoral Roll</b>	: It is a list of eligible voters in a particular electoral district area, and who are registered to vote.
<b>Nomination</b>	: It is a part of the process of selecting a candidate for election to a public office.
<b>Petition</b>	: A written document, signed by many people, that asks a government to do or change something at the local level.
<b>Polling Officer</b>	: S/he is an official responsible for the proper and orderly voting at polling stations.
<b>Returning Officer</b>	: The returning officer is responsible for the conduct of elections in the Constituency. S/he ensures that elections are conducted in accordance with the law.

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## 8.11 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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### Check Your Progress 1

- 1) Your answer should include the following points:
  - To conduct free and fair elections to the local bodies-Panchayats and Municipalities.
  - To conduct regular elections.
- 2) Your answer should include the following points:
  - Refer Section 8.3
- 3) Your answer should include the following points:
  - Summoning of any person, documents; receiving evidence/affidavits; and requisitioning of any public document; and
  - Power to make various rules.

### Check Your Progress 2

- 1) Your answer should include the following points:
  - Preparation of Electoral Roll;
  - Nomination of Candidates for Elections;
  - Publication of lists of candidates; and
  - Conducting polls and counting of votes.
- 2) Your answer should include the following points:
  - Bribery;
  - Receipt of reward;
  - Undue influence; and
  - Promotion of feeling of enmity or hatred between different classes of citizens of India.
- 3) Your answer should include the following points:
  - Refer Section 8.7