

## **ADR/NEW Recommendations for Electoral Reforms**

**to**

**Ministry of Law and Justice, Government of India**  
And  
**Election Commission of India**

**By**

**Association for Democratic Reforms (ADR), and**  
**National Election Watch (NEW)**

**April 2011**

## Preface

This document has been prepared in the context of the National Consultation on Electoral Reforms initiated by the Ministry of Law and Justice, Government of India, in late 2010.

The ministry constituted a Core Committee on Electoral Reforms who prepared a Background Paper, meant to be the starting point for national dialogue on the reforms and changes that were needed to make the electoral system more responsive to current and foreseeable needs for making democracy more effective. The Paper was brought out in December 2010.

The Core Committee mentioned in the Executive Summary of the Background Paper that it “will take into account the opinions of political leaders, Government servants, legal experts, NGOs, scholars, academics, journalists, and other stakeholders.” It is in response to this that the Association for Democratic Reforms (ADR) and the National Election Watch (NEW) decided to prepare this set of recommendations for electoral reforms.

This document is based essentially on the seven reports mentioned in the Background Paper (also listed below), supplemented by the field experience and research of ADR and NEW over the last 11 years.

- Goswami Committee on Electoral Reforms (1990)
- Vohra Committee Report (1993)
- Indrajit Gupta Committee on State Funding of Elections (1998)
- Law Commission Report on Reform of the Electoral Laws (1999)
- National Commission to Review the Working of the Constitution (2001)
- Election Commission of India – Proposed Electoral Reforms (2004)
- The Second Administrative Reforms Commission (2008)

The document first deals with all the issues flagged in the Background Paper and then presents some additional issues, which are considered extremely critical and necessary, in Section 9.

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## **1. Introduction**

The ship of democracy in India is adrift in choppy waters. Grave risks lurk all around. Unless it is steered with great care and in the appropriate direction, it just might hit a rock of an iceberg and disintegrate or sink. Nothing is impossible in the volatile world in which not everyone is happy to see India prosper.

The nationwide consultation process undertaken by the Law Ministry in collaboration with the Election Commission of India is indeed a historic initiative that distinctly has the potential of steering Indian Democracy on the right course.

The Background Paper prepared by the Core Committee does cover a lot of ground in the vast area of electoral reforms but it seems to have overlooked the fact that no electoral system can function properly unless the underlying political system in which it operates is appropriate, just as a healthy plant cannot grow and bear good fruit unless the soil is properly prepared...the fruit in this case being governance.

The two parts of the Background Paper, regulation of political parties and auditing of finances of parties, that touch upon the political system barely scratch the surface and are very limiting in what they comment on.

This document will first comment on the issues discussed in the Background Paper, giving the recommendations of ADR/NEW on each of the issues, and then provide the observations and suggestions of ADR/NEW on some of the critical issues that seem to have been overlooked in the Background Paper.

The Core Committee has grouped its observations in the Background Paper on Electoral Reforms (December 2010) into seven issues: criminalisation of politics, financing of elections, conduct and better management of election, regulation of political parties, auditing of finances of parties, adjudication of election disputes, and review of the anti-defection law. The recommendations of the Association for Democratic Reforms (ADR) and the National Election Watch (NEW) Network are given below, in the same sequence as adopted by the Core Committee. Other recommendations, not covered in the seven issues, are given after that.

## 2. Criminalisation of Politics

This is item IV in the Core Committee Background Paper, and is dealt with in three parts: Disclosure of criminal antecedents of candidates (4.1), Eligibility of candidates with criminal cases pending against them (4.2), and Negative or Neutral Voting (4.3).

2.1 **Disclosure of criminal antecedents of candidates** started with the Supreme Court judgment in Writ Petition (Civil) No. 515 of 2002 (Association for Democratic Reforms vs Union of India and another) (AIR 2003 SC 2363), following which Election Commission of India issued order no. 3/ER/2003/JS-II, dated 27<sup>th</sup> March, 2003, requiring candidates contesting elections to the Parliament and State Assemblies to file affidavits in the specified format as essential parts of their nomination forms.

The Election Commission has since revised the format of the affidavit vide their order no. 3/ER/2011/SDR dated 25th February, 2011. This revision has been done based on the experience from 2003 to 2010.

**ADR/NEW's recommendation is that this format should continue. In addition, ADR/NEW support the Election Commission of India's recommendation, in its report on Proposed Election Reforms, 2004, that (a) an amendment should be made to Section 125A of the R.P. Act, 1951 to provide for more stringent punishment for concealing or providing wrong information on Form 26 of Conduct of Election Rules, 1961 to minimum two years imprisonment and removing the alternative punishment of assessing a fine upon the candidate, and (b) Form 26 be amended to include all items from the additional affidavit prescribed by the Election Commission, add a column requiring candidates to disclose their annual declared income for tax purpose as well as their profession.**

Since an overwhelming majority of candidates are put up by political parties, and political parties also campaign for candidates including spending money on their campaigns, it is logical that the parties take responsibility and vouch for the candidates' antecedents.

ADR/NEW therefore recommend that **the information submitted in the affidavits by the candidates should be certified by Political Parties.**

Information given by candidates in their affidavits will be cease to have any useful effect if its correctness and accuracy are not ensured. It is therefore recommended that **the information given in the affidavits of**

**the candidates on criminal charges, assets etc. should be verified by an independent central authority in a time bound manner.**

**2.2** The issue of **eligibility of candidates with criminal cases pending against them** has been discussed for a long time. The Election Commission of India recommended, as far back as 1998, that candidates with pending criminal cases against them not be allowed to contest elections. It reiterated that recommendation in 2004.

The Law Commission of India, in their 170<sup>th</sup> report in 1999, proposed enactment of Section 8B of the Representation of the People Act, 1951, by which framing of charges by court in respect of any offence, electoral or others, would be a ground for disqualifying the candidate from contesting election.

The National Commission to Review the Working of the Constitution (NCRWC) said, in Para 4.12.3 of their report in 2001, that “Any person convicted for any heinous crime like murder, rape, smuggling, dacoity, etc. should be permanently debarred from contesting for any political office” (Emphasis added).

The NCRWC went beyond the candidates and holding political parties responsible for the candidates to whom they give tickets, recommended the following: “...the proposed law on political parties should provide that no political party should sponsor or provide ticket to a candidate for contesting elections if he was convicted by any court for any criminal offence or if the courts have framed criminal charges against him. The law should specifically provide that if any party violates this provision, the candidate involved should be liable to be disqualified and the party deregistered and derecognized forthwith” (Emphasis added) [Para 4.34].

The Second Administrative Reforms Commission (2008) has also recommended the amendment of Section 8 of the Representation of the People Act, 1951. It states, “Section 8 of the Representation of the People Act, 1951 needs to be amended to disqualify all persons facing charges related to grave and heinous offences and corruption, with the modification suggested by the Election Commission” [Para 2.1.3.3.2].

As seen from the above, there is near-unanimity in all the recommendations about keeping people who have criminal cases pending against them out of the legislatures. The Election Commission has stated this elegantly in their recommendation of 2004, “The Commission reiterates that such a step would go a long way in cleansing the political establishment from the influence of criminal elements and *protecting the sanctity of the Legislative Houses*. The counter view to this proposal is based on the doctrine that a person is presumed to be innocent until he is



proved guilty. The Commission is of the view that keeping a person, who is accused of serious criminal charges and where the Court is prima facie satisfied about his involvement in the crime and consequently framed charges, out of electoral arena would be a reasonable restriction in greater public interests” (Emphasis added).

**ADR/NEW, therefore, recommend that (a) any person against whom a charge has been framed by a court of law, in a criminal case for which the punishment is imprisonment of two years or more, not be allowed to contest elections, and (b) any political party that gives a ticket to such an individual be “deregistered and derecognized forthwith”.**

**2.3 Negative or Neutral Voting** is closely linked with at least 50%+1 votes being required to win an election, and has also been often discussed in the past. It was first recommended by the Law Commission of India in 1999, whose report also gave it the most comprehensive treatment. The rationale was explained as follows:

“This method of election is designed to achieve two important objectives viz., (i) to cut down or, at any rate, to curtail the significance and role played by caste factor in the electoral process. There is hardly any constituency in the country where anyone particular caste can command more than 50% of the votes. This means that a candidate has to carry with him several castes and communities, to succeed; (ii) the negative vote is intended to put moral pressure on political parties not to put forward candidates with undesirable record i.e., criminals, corrupt elements and persons with unsavory background” (Para 8.2).

“No doubt this method calls for a run-off and a fresh election in case no candidate obtains 50% or more votes even in the run-off, and in that sense expensive and elaborate, yet it has the merit of compelling the political parties to put forward only good candidates and to eschew bad characters and corrupt elements” (Para 8.2.1).

Not being oblivious of the issues arising out of the implementation of what they called “an alternative method of election”, the Law Commission observed: “If the above practical difficulties and problems can be overcome, the idea of 50%+1 vote - and even the idea of negative vote (as explained hereinabove), can be implemented. We may mention that if electronic voting machines are introduced throughout the country, it will become a little more easier to hold a run-off election inasmuch as it would then be not

necessary to print fresh ballot papers showing the names of the two candidates competing in the run-off - or for that matter, for holding a fresh election (in case the idea of negative vote is also given effect to)” (Emphasis added) (Para 8.7).

It does not need to be pointed out that the condition precedent mentioned by the Law Commission, of usage of electronic voting machines “throughout the country”, has already been satisfied and therefore there is really no major obstacle to the adoption of this suggestion, particularly in view of the Law Commission’s observation in the very next paragraph, “Alternative method mitigates undesirable practices. - Probably, the aforesaid problems arise because of the vastness of the country and lack of requisite standards of behaviour and also of cooperation and understanding among the political parties to ensure a peaceful poll. As a matter of fact, the election offences are not decreasing but are increasing, with every passing election. This is really unfortunate. Even so, we may make every effort to mitigate the undesirable practices and the alternate method of election set out in this chapter is certainly a step in that direction” (Emphasis added) (Para 8.8).

The observations about “lack of requisite standards of behaviour and also of cooperation and understanding among political parties” need to be noted. These will be relevant later in this document for sections where recommendations for regulation of the functioning of political parties are discussed.

Some observations of the NCRWC are very pertinent to this issue. In Para 4.5 of its 2001 report, the NCRWC said, “*With the electorate having no role in the selection of candidates and with majority of candidates being elected by minority of votes under the first-past-the-post system, the representative character of the representatives itself becomes doubtful and their representational legitimacy is seriously eroded. In many cases, more votes are cast against the winning candidates than for them*. One of the significant probable causes may be the mismatch between the majoritarian or first-past-the-post system and the multiplicity of parties and large number of independents” (Emphasis added).

The NCRWC, in 2001, did note the benefits of this system but was somewhat circumspect, saying, “In the circumstances, the Commission while recognizing the beneficial potential of this system for a more representative democracy, recommends that the Government and the Election Commission of India should examine

this issue of prescribing a minimum of 50% plus one vote for election in all its aspects, consult various political parties, and other interests that might consider themselves affected by this change and evaluate the acceptability and benefits of this system. The Commission recommends a careful and full examination of this issue by the Government and the Election Commission of India” (Emphasis added) (Para 4.16.6).

The Election Commission first suggested a “None of the above” in 2001 and revisited it in 2004 as part of Proposed Electoral Reforms. This is what the Election Commission said in 2004: “In the voting using the conventional ballot paper and ballot boxes, an elector can drop the ballot paper without marking his vote against any of the candidates, if he chooses so. However, in the voting using the Electronic Voting Machines, such a facility is not available to the voter. Although, Rule 49 O of the Conduct of Election Rules, 1961 provides that an elector may refuse to vote after he has been identified and necessary entries made in the Register of Electors and the marked copy of the electoral roll, the secrecy of voting is not protected here inasmuch as the polling officials and the polling agents in the polling station get to know about the decision of such a voter.

The Commission recommends that the law should be amended to specifically provide for negative / neutral voting. For this purpose, Rules 22 and 49B of the Conduct of Election Rules, 1961 may be suitably amended adding a proviso that in the ballot paper and the particulars on the ballot unit, in the column relating to names of candidates, after the entry relating to the last candidate, there shall be a column “None of the above”, to enable a voter to reject all the candidates, if he chooses so. Such a proposal was earlier made by the Commission in 2001 (vide letter dated 10.12.2001)” (Emphasis added).

While pointing out the limitations of Rule 49-O, the 2004 observations of the Election Commission overlooked the fact that votes deemed to have been cast under Rule 49-O are not counted.

Keeping all of the above in mind and with a view of getting the highest level of representative-ness in the elected representatives, ADR/NEW recommend the following:

- **EVMs should have an option or a button for “None-of-the-above”.**
- **Votes cast for the “None-of-the-above” option should also be counted.**

- **In case the “None-of-the-above” option gets more votes than any of the candidates, none of the candidates should be declared elected and a fresh election held in which all the candidates in this election are not allowed to contest.**
- **In the following elections, with fresh candidates and with a “None-of-the-above” option, only that candidate should be declared elected who gets at least 50%+1 of the votes cast.**
- **IF even in this round, the “None-of-the-above” option gets the highest number of votes cast or none of the candidate gets at least 50%+1 of the votes cast, then the process should be repeated.**

This may appear to be a cumbersome and tedious process but it will nudge the entire system in the direction of (a) better representative-ness among the elected representatives by reducing the sectarian effects of vote banks, and (b) encouraging political parties to put up better candidates.

### 3. **Financing of Elections**

This, item V in the Core Committee Background Paper, and is dealt with in three parts: Official limits on campaign expenditure (5.1), Disclosure audit of assets and liabilities of candidates (5.2), Curbing the cost of campaigning (5.3), and State Funding of Elections (5.4).

The opening comment of this section of the Background Paper says, “It is widely believed that in many cases successfully contesting an election costs a significant amount of money that is often much greater than the prescribed limits.” While this comment is indeed true, the complexity of the issue can be appreciated by two facts, (a) there has been, and continues to be, a general clamour, particularly by political leaders, that election expenditure limits are too low, and that these should be increased (these have since been increased), and (b) In the 2009 Lok Sabha elections, as many as 6719 out of 6753 candidates (99.5%) declared, in their election expenditure statements submitted to the Election Commission, that they had spent between 45% to 55% of the limit. Only four candidates declared that they had spent more than the limit. Of the remaining, only 30 declared having spent between 90 and 95% of the limit.

**3.1 Official limits on campaign expenditure** (item 5.1 of the Background Paper) is an issue that attracts comment very often. A large number of candidates and political parties often complain about the limits being unrealistically low, and seek a revision. The Election Commission of India is often blamed for keeping the limits too low. The fact however is that these limits are fixed by the Ministry of Law and Justice, Legislative Department, under Rule 90 of Conduct of Elections Rules, 1961. Only the government has the power to amend these rules. The Election Commission only makes recommendations for what the limits should be; the final decision is taken by the government of the day.

Given the opening comment of the Background Paper and the widespread belief, often accepted by politicians, that the actual expenditures far exceed the limits, notwithstanding the fact that around 99.5% of the candidates declare that they spend about half of the limit (as mentioned above for the 2009 Lok Sabha election), it has often been suggested by many people including politicians, and also former Chief Election Commissioners, that the limits really do not seem to serve any purpose and should be abolished. There are however legitimate concerns about the excessive use of “money power” in the electoral process, causing severe distortions in the basic functioning of democracy in the country.

Some of these distortions have been noted in the Background Paper itself by quoting from the (a) Consultation Paper to the NCRWC, 2001, that “the campaign expenditure by candidates is in the range of about twenty to thirty

times the legal limits”, (b) Chapter 4 of the Report of the NCRWC that the high cost of elections “creates a high degree of compulsion for corruption in the public arena”, that “the sources of some of the election funds are believed to be unaccounted criminal money in return for protection, unaccounted funds from business groups who expect a high return on this investment, kickbacks or commissions on contracts, etc.”, and that “Electoral compulsions for funds become the foundation of the whole super structure of corruption”.

The “pernicious influence of big money in derailing the democratic process” was noticed and documented as early as 1993 in what has come to be called the Vohra Committee Report, which, though not officially released, is freely available on the Internet. Writing on October 05, 1993, Mr. N.N. Vohra, then Union Home Secretary, and now Governor of Jammu and Kashmir, quoted reports from the Central Bureau of Investigation (CBI), “An organised crime Syndicate/Mafia generally commences its activities by indulging in petty crime at the local level, mostly relating to illicit distillation/gambling/organised satta and prostitution in the larger towns. In port towns, their activities involve smuggling and sale of imported goods and progressively graduate to narcotics and drug trafficking. In the bigger cities, the main source of income relates to real estate – forcibly occupying lands/buildings, procuring such properties at cheap rates by forcing out the existing occupants/tenants etc. *Over time, the money power thus acquired is used for building up contacts with bureaucrats and politicians and expansion of activities with impunity. The money power is used to develop a network of muscle-power which is also used by the politicians during elections... The nexus between the criminal gangs, police, bureaucracy and politicians has come out clearly in various parts of the country” (Emphasis added) (Para 3.2).*

Further, quoting the Director of the Intelligence Bureau (IB), Mr. Vohra writes, “Certain elements of the Mafia have shifted to narcotics, drugs and weapon smuggling and established narco-terrorism networks...The cost of contesting elections has thrown the politician into the lap of these elements and led to a grave compromise by officials of the preventive/detective systems” (Emphasis added)(Para 6.2.iii).

The NCRWC has also recommended that the existing ceiling on election expenses should be increased to a reasonable level, and that it should include all expenses not just by the candidate but by his political party or his friends and his well-wishers. Let para 4.14.2 of its report speak for itself, “The present provisions of law have a significant loophole in the shape of Explanation 1 to section 77(1) of the Representation of the People Act, 1951, under which the amounts spent by persons other than the candidate and his agent themselves, are not counted in his election expenses. *This means that there can be never any violation of the expenditure limits.* All extra

expenditure, even when known and proven, can be shown to have been spent by the party or by any friends and it remains outside of the enforceable limits. In view of the increasing cost of the election campaigns, it is desirable that the existing ceiling on election expenses for the various legislative bodies be suitably raised to a reasonable level reflecting the increasing costs. However, this ceiling should be fixed by the Election Commission from time to time and should include all the expenses by the candidate as well as by his political party or his friends and his well-wishers and any other expenses incurred in any political activity on behalf of the candidate by an individual or a corporate entity. Such a provision should be the part of a legislation regulating political funding in India. The Commission recommends that Explanation 1 to section 77(1) of the Representation of the People Act, 1951 should be deleted” (Emphasis added).

In view of the above, commenting on or giving recommendations for merely on “Official limits on campaign expenditure” will be very limiting and will not serve much purpose. ADR/NEW therefore propose to give their recommendations on it after other issues pertaining to Financing of Elections have been discussed.

- 3.2 **Disclosure audit of assets and liabilities of candidates** (item 5.2 of the Background Paper), as noted in the Background Paper, also started with the Supreme Court judgment in Writ Petition (Civil) No. 515 of 2002 (Association for Democratic Reforms vs Union of India and another) (AIR 2003 SC 2363), following which Election Commission of India issued order no. 3/ER/2003/JS-II, dated 27<sup>th</sup> March, 2003, following which Election Commission of India issued order no. 3/ER/2003/JS-II, dated 27<sup>th</sup> March, 2003, requiring candidates contesting elections to the Parliament and State Assemblies to file affidavits in the specified format as essential parts of their nomination forms.

There is, however, a distinction between the income of a candidate as declared in the affidavit and the source(s) of income. The NCRWC has commented on this by stating, “Transparency in the context of election means both the sources of finance as well as their utilization as are listed out in an audited statement. If the candidates are required to list the sources of their income, this can be checked back by the income tax authorities” (Emphasis added) (Para 4.14.3). It continues, “The Commission recommends that the political parties as well as individual candidates be made subject to a proper statutory audit of the amounts they spend. These accounts should be monitored through a system of checking and cross-checking through the income-tax returns filed by the candidates, parties and their well-wishers. At the end of the election each candidate should submit an audited statement of expenses under specific heads” (Para 4.14.3]

This issue has also engaged the Election Commission of India. It has recommended, in its Proposed Electoral Reforms (2004), that a separate column be added in the affidavits filed by the candidates, in which they should be required to declare their annual income. Para 1(a) of Part I of their proposals reads as follows:

“In terms of Section 33A of the Representation of the People Act, 1951, read with Rule 4A of Conduct of Election Rules, 1961, each candidate has to file an affidavit in Form 26 appended to the Conduct of Election Rules, 1961, giving information on the following: -

- (i) Cases, if any, in which the candidate has been accused of any offence punishable with imprisonment for two years or more in a pending case in which charges have been framed by the court.
- (ii) Cases of conviction for an offence other than any of the offences mentioned in Section 8 of the Representation of the People Act, 1951, and sentenced to imprisonment for one year or more.

In addition to the above affidavit, a candidate has to file another affidavit in the format prescribed by the Commission vide its order dated 27.3.2003, in pursuance of the Hon'ble Supreme Court's judgment dated 13.3.2003 in Civil Appeal No. 490 of 2002 (Peoples Union for Civil Liberties & Another Vs. Union of India). In this affidavit, the candidate has to give information relating to all pending cases in which cognizance has been taken by a Court, his assets and liabilities, and educational qualifications. With the Supreme Court striking down Section 33B of the Representation of the People Act, 1951, the directions of the Court in its order dated 13.3.2003, have become the law of the land in terms of Article 141 of the Constitution and therefore, to facilitate the candidates in filing their nomination papers, the Commission is of the view that there should be only one form of affidavit containing all vital information as required under Section 33A of the Representation of the People Act, 1951, and the directions of the Supreme Court referred to above. Such a measure will certainly reduce the confusion that prevails about the two separate sets of affidavits now required to be filed. The Commission, therefore, recommends that Form 26 may be amended so as to include in it all the items mentioned in the Format of affidavit prescribed by the Commission's order dated 27.3.2003. While doing this, it is also suggested that a further column may be added in the format about the **annual declared income of the candidate** for tax purpose and his profession.”



Since the issue is about “Disclosure *audit* of assets and liabilities of candidates”, *there has to be a provision for verifying the declarations in the affidavits of the candidates*. The Election Commission has made the following recommendations for stricter punishment for candidates who conceal information or produce wrong information in the affidavits filed by them, in Para 1(b) of Part I of the Proposed Electoral Reforms (2004):

“It has been the experience in the past few elections that in some cases, the candidates leave some of the columns blank, and there have been cases where the candidates are alleged to have given grossly undervalued information, mainly about their assets. Section 125A provides for punishment of imprisonment for a term up to six months or with fine or with both, for furnishing wrong information or concealing any information in Form 26. The Commission is of the view that to protect the right to information of the electors as per the spirit of the judgment dated 13.3.2003 of the Supreme Court referred to above, *the punishment here should be made more stringent by providing for imprisonment of a minimum term of two years and doing away with the alternative clause for fine*. Conviction for offences under Section 125A should further be made part of Section 8(1)(i) of the Representation of People Act, 1951, dealing with disqualification or conviction for certain offences. Such a provision will reduce instances of candidates wilfully concealing information or furnishing wrong information” (Emphasis added).

The Election Commission has since revised the format of the affidavit vide their order no. 3/ER/2011/SDR dated 25th February, 2011. This revision has been done based on the experience from 2003 to 2010.

**ADR/NEW’s commend the new format and recommend its continuation. It is further recommended that this form be supplemented by the same or similar information that is being asked from Rajya Sabha members as part of “Register of Interest”. The information should include details like name of companies with controlling shareholding interest, directorship in various trusts and companies, etc. This would be in addition to the source of income that is already asked for in the revised format of the affidavit. The format of the “Register of Interests” of the Rajya Sabha is attached for ready reference as Annexure A of this document. In addition, ADR/NEW support the Election Commission of India’s recommendation, in its report on Proposed Election Reforms, 2004, that (a) an amendment should be made to Section 125A of the R.P. Act, 1951 to provide for more stringent punishment for concealing or providing wrong information on Form 26 of Conduct of Election Rules, 1961 to minimum two years imprisonment and removing the alternative punishment of assessing a fine upon the candidate, and (b) Form 26 be amended to include all items from the additional affidavit prescribed by**

**the Election Commission, add a column requiring candidates to disclose their annual declared income for tax purposes as well as their profession.**

- 3.3 Curbing the cost of campaigning** (item 5.3 of the Background Paper) refers to “the negative impact of excessive cost of elections”, and refers to attempts to “reduce the cost of elections themselves”. The only recommendations the Background Paper refers to are those of the Indrajit Gupta Committee on State Funding of Elections, 1999, and the NCRWC, 2001, that suggest putting controls on activities such as wall writings, rallies on public property, using loudspeakers for campaigning. The NCRWC has also suggested that (a) the State and Parliamentary level elections should be held at the same time; (b) the campaign period should be reduced considerably, and (c) candidates should not be allowed to contest election simultaneously for the same office from more than one constituency.

The most fundamental questions such as why is the cost of campaigning so high, and who and what has caused the cost to increase so much is not asked. While the reasons for high cost of campaigning may be many and varied, one of the contributory factors could well be that political parties do not pay much attention to their traditional role, that of mobilizing public opinion and acting as a mediator between the public at large and the government, but have decided that they are in the business of winning elections at any cost. One outcome of this is the selection of candidates solely on the basis of an all-inclusive characteristic called “winnability”. Given the widely known and widespread use of money and muscle power in the electoral process, candidates who are able to spend more money seem to have higher “winnability”. This is also proved by the data from several elections, collected and analysed by ADR. For example, in the 2009 Lok Sabha election, 33% of the candidates who declared assets of Rs 5 crore and above were elected, whereas less than 1% of candidates with declared assets of less than 10 lakh were elected.

Since this issue, like “Official limits on campaign expenditure”, is closely linked with other issues in this section, ADR/NEW therefore propose to give their recommendations on it after other issues pertaining to Financing of Elections have been discussed.

- 3.4 State Funding of Elections** (Item 5.4 of the Background Paper) is arguably the most important issue when it comes to the cost of elections. The Background Paper makes references to the Indrajit Gupta Committee on State Funding of Elections, 1998, the 1999 report of the Law Commission of India, the Report “Ethics in Governance” of the Second Administrative Reforms Commission, the National Commission to Review the Working of the Constitution, 2001, and the views of the Election Commission.

It says: “The Indrajit Gupta Committee on State Funding of Elections, 1998, backed the idea of state funding of elections on principle, stating that ‘The Committee see full justification constitutional, legal as well as on ground of public interest, for grant of State subvention to political parties, so as to establish such conditions where even the parties with modest financial resources may be able to compete with those who have superior financial resources.’ It added two limitations, namely (i) such funds could not be doled out to independent candidates, and only to national and state parties having granted a symbol and proven their popularity among the electorate, and (ii) in the short-term, State funding may be given only in kind, in the form of certain facilities to the recognised political parties and their candidates. However, despite strongly backing full State funding of elections principle, it stated that only partial State funding would be possible in the short-term given the prevailing economic condition of the country.”

The Background Paper appears to have overlooked the opening paragraph of the “Conclusion” which says, “Before concluding, the Committee cannot help expressing its considered view that *its recommendations* being limited in nature and confined to only one of the aspects of the electoral reforms *may bring about only some cosmetic changes in the electoral sphere*. What is needed, however, is an immediate overhauling of the electoral process whereby elections are freed from evil influence of all vitiating factors, particularly, criminalisation of politics. It goes without saying that money power and muscle power go together to vitiate the electoral process and it is their combined effect which is sullyng the purity of electoral contests and effecting free and fair elections. Meaningful electoral reforms in other spheres of electoral activity are also urgently needed” (Emphasis added).

It is worth pointing out the “considered view” of the committee of the need for “immediate overhauling of the electoral process” to eliminate the “evil influence of all vitiating factors, particularly, criminalisation of politics”, and that state funding “*may bring out only some cosmetic changes.*” The committee’s backing of “the idea of state funding of elections on principle, (and) stating that ‘The Committee see full justification constitutional, legal as well as on ground of public interest, for grant of State subvention to political parties, so as to establish such conditions where even the parties with modest financial resources may be able to compete with those who have superior financial resources’” has to be seen in the light of the opening paragraph of the “Conclusion”.

The Background Paper’s summary of the Law Commission’s report says, “The 1999 report of the Law Commission of India concurred with the Indrajit Gupta Commission, stating that ‘it is desirable that total state funding be introduced, but on the condition that political parties are barred from raising funds from any other source’. It also agreed with the Indrajit Gupta

Commission that only partial state funding was possible at the present time given the economic conditions of the country. Additionally, it strongly recommended that the appropriate regulatory framework be put in place with regard to political parties (provisions ensuring internal democracy, internal structures and maintenance of accounts, their auditing and submission to Election Commission) before state funding of elections is attempted.”

While the impression of general agreement with the Indrajit Gupta committee report with some additional safeguards, is not incorrect, the Background Paper’s summarisation of the Law Commission’s report overlooks some very significant observations of the Law Commission pertaining to state funding.

One full part (Part IV) of the 208-page report is devoted to “Control of Election Expenses” which contains an 11-page chapter on “State Funding”. The entire chapter should be read to get a proper understanding of the complexity of state funding. The concluding paragraph (4.3.4) is reproduced below.

“Conclusions – After considering views expressed by the participants in the seminars and by various persons and organizations in their responses and after perusing relevant literature on the subject, the Law Commission is of the opinion that in the present circumstances only partial state funding could be contemplated more as a first step towards total state funding *but it is absolutely essential* that *before the idea of state funding (whether partial or total) is resorted to, the provisions suggested in this report relating to political parties (including the provisions ensuring internal democracy, internal structures) and maintenance of accounts, their auditing and submission to Election Commission are implemented.* In other words, the implementation of the provisions recommended in Chapter one Part three should be *pre-condition to the implementation of the provisions relating to partial state funding* set out in the working paper in the Law Commission (partial funding, as already stated, has also been recommended by the Indrajit Gupta Committee). *If without such pre-conditions, state funding, even if partial is resorted to, it would not serve the purpose underlying the idea of state funding.* The idea of state funding is to eliminate the influence of money power and also to eliminate corporate funding, black money support and raising of funds in the name of elections by the parties and their leaders. *The state funding, without the aforesaid pre-conditions, would merely become another source of funds for the political parties and candidates at the cost of public exchequer.* We are, therefore, of the opinion that *the proposals relating to state funding contained in the Indrajit Gupta Committee Report should be implemented only after or simultaneously with the implementation of the provisions contained in this Report relating to political parties viz., deletion of Explanation 1 to section 77, maintenance of accounts and their*

*submission etc. and the provisions governing the functioning of political parties contained in chapters I and II of Part IV and Chapter I of Part III. The state funding, even if partial, should never be resorted to unless the other provisions mentioned aforesaid are implemented lest the very idea may prove counter-productive and may defeat the every object underlying the idea of state funding of elections*” (Emphasis added).

The Background Paper says that “The National Commission to Review the Working of the Constitution, 2001, did not comment on the desirability of State funding of elections but reiterated the point of the Law Commission that the appropriate framework for regulation of political parties would need to be implemented before proposals for State funding are considered.” The actual wording of the NCRWC’s report is, “Any system of State funding of elections bears a close nexus to the regulation of working of political parties by law and to the creation of a foolproof mechanism under law with a view to implementing the financial limits strictly. Therefore, proposal for State funding should be deferred till these regulator mechanisms are firmly in position” (Emphasis added) (Para 4.14.5).

The Background Paper also refers to the fourth report, “Ethics in Governance,” 2007, of the Second Administrative Reforms Commission (ARC) and says that the ARC “also recommended that ‘a system for partial state funding should be introduced to reduce the scope of illegitimate and unnecessary funding of expenditure for elections.’” This recommendation of the ARC is contained in para 2.1.3.1.6 of its report. To fully understand the context in which this recommendation is made, it is necessary to also read the preceding paragraph (2.1.3.1.5) and that says, “In order to eradicate the major source of political corruption, there is a compelling case for state funding of elections. As recommended by the Indrajit Gupta Committee on State Funding of Elections, the funding should be partial state funding mainly in kind for certain essential items.” The above-mentioned comments on the Indrajit Gupta committee report may please be taken into account while considering the recommendation of the ARC.

The Background Paper says that “ The Election Commission is not in favour of state funding as it will not be possible to prohibit or check candidate’s own expenditure or expenditure by others over and above that which is provided by the State. The Election Commission’s view is that for addressing the real issues, there have to be radical changes in the provisions regarding receipts of funds by political parties and the manner in which such funds are spent by them so as to provide for complete transparency in the matter.”

3.5 In view of the foregoing and the experience of watching the electoral process unfold over the last ten years, ADR/NEW recommend as follows:

- 3.5.1 No worthwhile measures concerning financing of elections can even be contemplated till there is reliable data about the cost of elections. The largest proportion of election expenditure is presumably done by political parties. As of now, there is no reliable data about the financial affairs of political parties. **The foremost requirement for getting a clear and comprehensible picture of financing of elections is to get financial transparency in the financial affairs of political parties.**
- 3.5.2 **Following 3.5.1, political parties should be required to maintain proper accounts and these accounts should be available for public scrutiny.**
- 3.5.3 **The Election Commission has recently got the Institute of Chartered Accountants of India (ICAI) to draw up guidelines concerning the formats, frequency, scrutiny, etc. of the accounts to be maintained by political parties. These guidelines should be made mandatory, and any failure to comply with these should lead to automatic de-registration of the party.**
- 3.5.4 **These accounts should also be required to be audited periodically, which is an issue dealt in Section VIII of the Background Paper, under the heading “Auditing of finances of parties.”**
- 3.5.5 **There should be a ceiling on the expenditure that a candidate can incur during the election. This ceiling should be fixed, and revised periodically, by the Election Commission of India, without the need of any reference or recommendation to the government.**
- 3.5.6 **There should be a ceiling on expenses that can be incurred by political parties during the election period.**
- 3.5.7 **All attempts at “Curbing the cost of campaigning” are going to be unrealistic and impossible to implement without the removal of the basic cause of constantly increasing expenditure on campaigning. That will happen only when political parties return to their traditional role, that of mobilizing public opinion and acting as a mediator between the public at large and the government, and cease to function as corporate enterprises engaged in the business of winning elections at any cost. This will require (a) selecting candidates democratically and NOT solely on the basis of “winnability”, which, in turn, will happen when (b) the internal functioning of political**

parties is really and effectively democratic. These will require regulating the functioning of political parties which is discussed in Section 9 below.

- 3.5.8 In keeping with the explanations at 2.4 above, while on the whole ADR/NEW are not against the concept of state funding of elections but are NOT in favour of state funding being provided for elections in any form in the current situation till the functioning and finances of political parties are not made transparent and amenable to public scrutiny.

#### 4. Conduct and better management of elections

This, item VI in the Core Committee Background Paper, and is dealt with in 18 parts: Irregularities in polling (6.1), Proliferation of candidates (6.2), Measures for Election Commission (6.3), Restrictions on Government sponsored advertisements (6.4), Restriction on the number of seats which one may contest (6.5), Restriction on the number of seats which one may contest (6.6), Restrictions on opinion polls (6.7), Prohibition of Campaign during the Last 48 Hours (6.8), Ban on transfer of officers likely to serve elections (6.9), False declaration in connection with elections to be an offence (6.10), Punishment for electoral offences to be enhanced (6.11), Restoring the cycle of biennial retirement in the Rajya Sabha/Legislative Councils (6.12), Expenditure ceiling for election to Council Constituencies (6.13), Misuse of religion for electoral gain by political parties (6.14), Totalizer for counting of votes (6.15), Re-examination of the provision of Teachers' and Graduates' Constituencies (6.16), Victimization of officers drafted for election duties (6.17), and Disqualification for failure to lodge election expenses (6.18).

4.1 The Background Paper deals with the issue of **irregularities in polling** (Item 6.1 in the Background Paper) in two parts: (a) Importance of electoral rolls, and (b) Rigging through muscle power and intimidation.

4.1.1 An accurate **electoral roll** is the *sine qua non* of a free and fair election. The enormity and complexity of maintaining a correct electoral in a country as vast as India, with increasing mobility of a large proportion of the population, cannot be overemphasised. But this is also one of the primary responsibilities of the Election Commission. Every citizen expects, and rightfully so, to be able to cast his/her vote without let or hindrance any where in the country that s/he happens to be on the day of polling as the Constitution guarantees every citizen a fundamental right to to move freely throughout the territory of India, and to reside and settle in any part of the territory of India; under Articles 19(1)(d) and (e).

In today's day and age, and with India being a world leader in information technology, it should be neither too much nor unfair to expect the Election Commission to make suitable arrangements for every citizen to be able to (a) register her/his vote at any place of his choosing and any time of the year, and (b) be able to cast one's voter wherever one happens to be on the date of polling. Whether this is done by using Post Offices as agencies for preparation and maintenance of electoral rolls (as suggested by the Goswami Committee in 1990), or through an automated online database to be created by the Election Commission or through an outside agency under the supervision of the Election Commission (as recommended by the NCRWC in 2001) should be left to the best judgment of the Election Commission.



**The government should empower the Election Commission to take whatever steps necessary to ensure (a) accurate, updated electoral rolls, (b) that every citizen to be able to (i) register her/his vote at any place of his choosing and any time of the year, and (ii) be able to cast one's voter wherever one happens to be on the date of polling.**

4.1.2 The NCRWC noted in one of its Consultation Papers that “political parties and influential persons manage large-scale registration of bogus voters, or large-scale deletion of names of ‘unfriendly’ voters.” The Goswami Committee on Electoral Reforms stated that irregularities in electoral rolls are exacerbated by purposeful tampering done by election officials who are bought by vested interests or have partisan attitudes. Election Commission should be empowered to take exemplary and deterrent action in such cases.

4.1.3 The use of different electoral rolls for elections to Parliament and State Assemblies (prepared and maintained by the Election Commission of India) and for elections to *panchayats* and local bodies (prepared and maintained by the respective State Election Commissions) is a totally unacceptable practice. It results in unnecessary duplication, extra expenditure, and tremendous confusion in the minds of the voters at the time of polling.

**The use of common electoral rolls for all elections has been recommended by the NCRWC in its 2001 report, and has also been agreed to by the Election Commission of India. What is needed is harmonizing the needs of the both these electoral rolls and processing the necessary legislation, in case it is needed. Both these should be immediately to make this a reality.**

4.1.4 **Rigging through muscle power and intimidation** continues to be a feature of the electoral system though on a lesser scale, primarily due to the use of EVMs and a number of steps taken by the Election Commission such as vulnerability mapping and much more stringent maintenance of law and order during the pre-polling and polling days.

ADR/NEW support the recommendations of the Goswami Committee (1990) to empower the **Election Commission should be empowered to take strong action on the report of returning officers, election observers, or civil society in regards to booth capture or the intimidation of voters**, and of the NCRWC (2001) that the **Election Commission should have the power under**

**Section 58A of the Representation of the People Act, 1951, to order a fresh election, void the election results, or order a re-poll in such cases.**

4.2 **Proliferation of candidates** (Item 6.2 in the Background Paper), due to the presence of non-serious and frivolous independent candidates, and surrogate candidates put up by political parties, create unnecessary and avoidable problems recognised by the Law Commission, and the NCRWC, and also acknowledged by the Election Commission.

4.2.1 Increasing the increasing the security deposit of candidates is one recommendation common to all their reports. This was done through an amendment of the Representation of the People Act in 2009, but its effect did not last too long. **The Election Commission has suggested that it be given the power to prescribe deposit amounts prior to each election** so that repeated amendments to the Representation of the People Act are not necessary. ADR/NEW support this recommendation of the Election Commission.

4.2.2 The NCRWC (2001) has also suggested that (a) **if any independent candidate fails to win five percent of the vote or more, he should be debarred from contesting as an independent for the same office for six years**, and (b) **an independent candidate who loses election three times consecutively for the same office as an independent should be permanently debarred from contesting election to that office**. ADR/NEW support these recommendations also.

4.3 **Measures for Election Commission** (Item 6.3 in the Background Paper), refer to measures required to enable the Election Commission to function even more effectively. The Background Paper mentions three items: (a) The same constitutional protection to all Election Commissioners as is available to the Chief Election Commissioner; (b) all such functions concerning the Secretariat of the Election Commission, consisting of officers and staff at various levels, such as their appointments, promotions, etc., be exclusively vested in the Election Commission on the lines of the Secretariats of the Lok Sabha, and Rajya Sabha, Registries of the Supreme Court and High Courts etc., and (c) that its budget be treated as “Charged” on the Consolidated Fund of India. **ADR/NEW support all the above three recommendations.**

4.3.1 **Other measures for the Election Commission**

In addition to the above that were mentioned in the Background Paper, there are some other recommendations by ADR/NEW.

4.3.1.1 **Appointment of the CEO from cadre of another state:**  
Chief Electoral Officers of states are currently appointed from

the IAS cadre of the state. Some such CEOs are sometimes not able to discharge their functions as CEO as they are apprehensive that after their his term is over, they will have to work under the same political authorities over which they exercised powers during elections as CEO. To enable a CEO to work fearlessly without these apprehensions, **CEOs should be deputed from a state different from the one the cadre of which they belong.**

4.3.1.2 **Prohibition of taking other offices after retirement of The Election Commissioners:** The Election Commissioners should not be eligible for any office after retirement for a period of at least 5 years. They should also not be allowed to join any political party for a further period of 5 years after retirement.

4.3.1.3 **Chief Election Commissioner, Election Commissioners, and State Election Commissioners to be appointed by multi-party committees:** The NCRWC has recommended, in Para 4.22 of their report, that **“the Chief Election Commissioner and the other Election Commissioners should be appointed on the recommendation of a body consisting of the Prime Minister, Leader of the Opposition in the Lok Sabha, Leader of the Opposition in the Rajya Sabha, the Speaker of the Lok Sabha and the Deputy Chairman of the Rajya Sabha. Similar procedure should be adopted in the case of appointment of State Election Commissioners.”**

The Second Administrative Reforms Commission has also recommended a similar procedure but with a slight variation, “A collegium headed by the Prime Minister with the Speaker of the Lok Sabha, the Leader of Opposition in the Lok Sabha, the Law Minister and the Deputy Chairman of the Rajya Sabha as members should make recommendations for the consideration of the President for appointment of the Chief Election Commissioner and the Election Commissioners” (Para 2.1.5.4).

ADR/NEW support the recommendation of the NCRWC.

4.1.3.4 **ADR/NEW recommend that the provisions for State Election Commissioners should be similar, if not the same, as those for the Election Commission of India, with the provision that variations should be done only, and only if**

**there are specific peculiarities of situation prevailing in a state that makes such variations unavoidable.**

- 4.4 **Restrictions on Government sponsored advertisements** (Item 6.4 in the Background Paper), refers to Central and State governments giving advertisements, ostensibly for providing information to the public but actually for influencing elections. This is done just before the election, using public money, thus giving the ruling party an undue advantage over other parties and candidates. The Election Commission has proposed that **where any general election is due on the expiration of the term of the House, advertisements of achievements of the governments, either Central or State, in any manner, should be prohibited for a period of six months prior to the date of expiry of the term of the House, and in case of premature dissolution, from the date of dissolution of the House. Here, advertisements / dissemination of information on poverty alleviation and health related schemes could be exempted from the purview of such a ban. The Commission has also recommended that there should be specific provisions that name or symbol of any political party or photograph of any of the leaders of the party should not appear on such hoardings/banners.**

ADR/NEW support the recommendation of the Election Commission.

- 4.5 **Restriction on the number of seats which one may contest** (Item 6.5 in the Background Paper), refers to the recommendation of the Election Commission that **a person should not be allowed to contest from more than one constituency at a time.**

ADR/NEW support the recommendation of the Election Commission.

- 4.6 **Amendment of law to provide for filing of election petition even against defeated candidates on the ground of corrupt practice** (Item 6.6 in the Background Paper), refers to the recommendation of the Election Commission, made in its letter dated April 24, 2009, that **there should be a provision for filing election petitions even against candidates who have lost the election, in instances where they have indulged in corrupt practices during the election.**

ADR/NEW support the recommendation of the Election Commission.

- 4.7 **Restrictions on opinion polls** (Item 6.7 in the Background Paper), refers to the possible influence of opinion polls on the outcome of elections, and therefore on the possibility of the manipulation of election results by manipulating opinion polls.

**ADR/NEW support the recent introduction of a new Section 126-A in the Representation of the People Act, 1951, prohibiting conducting of exit**

**polls and publishing results in any manner, during the period starting from 48 hours before the close of poll in an election, with the prohibition lasting till the close of poll in the last phase in case of a multi-phased election.**

**ADR/NEW recommend that the amendment should cover opinion polls also, and that Section-126 (1)(b) should be made applicable to all forms of media including print and electronic media.**

- 4.8 Prohibition of Campaign during the Last 48 Hours** (Item 6.8 in the Background Paper), refers to the fact that while (a) electioneering activities by way of public meetings, public performance, processions, advertisements through cinematograph, television or similar apparatus during the period of 48 hours before the time fixed for conclusion of poll, and (b) political advertisements in TV and Radio, are prohibited, there is no ban on advertising in the print media and door-to-door campaigning.

The Election Commission has recommended that **advertising in the print media should also be prohibited for 48 hours before the polling time, and that house-to-house campaigning through visits by candidates/supporters should also be specifically prohibited during the said 48-hour period.** The rationale for the latter is that the house-to-house visit/contact in the last hours provides that opportunity for indulging in malpractices such as trying to bribe electors with cash.

ADR/NEW support the recommendation of the Election Commission.

- 4.9 Ban on transfer of officers likely to serve elections** (Item 6.9 in the Background Paper), refers to the recommendation of the Election Commission, made as far back as in 1998, that **no officer associate with the election should be transferred without the concurrence of the Commission as soon as a general election/bye-election becomes due in any Parliamentary or Assembly Constituencies, and that in the case of a general election either to the Lok Sabha or to a State Assembly, the ban may come into operation for the period of six months prior to the date of expiry of the term of the House concerned, and in case of premature dissolution, from the date of dissolution of the House.**

ADR/NEW support the recommendation of the Election Commission.

- 4.10 False declaration in connection with elections to be an offence** (Item 6.10 in the Background Paper), refers to there being no real deterrent to candidates making false declarations in connection with elections and candidates continue to do that with immunity and misleading the voters.

The Election Commission has recommended that **there should be a provision for penal action against those making any false declarations in connection with an election.**

The Law Commission has also supported this recommendation in the following words: "...We also **reiterate the proposals to enhance the punishment for various electoral offences mentioned in the R.P. Act as well as in the Indian Penal Code.** All of them are electoral offences and seriously interfere with a fair electoral process. They foul the electoral stream by letting in all kinds of distortions and evils into the electoral system and finally into our body-politic. **The punishments at present provided are totally inadequate and are ridiculously low, hence need to be enhanced.**" [Para 5.4]

ADR/NEW support the recommendation of the Election Commission and the Law Commission, and further recommend that **all offences in connection with elections should be declared criminal offenses carrying a sentence of two years or more, and this should also include making wrong declarations or leaving columns blank in the affidavit.**

- 4.11 **Punishment for electoral offences to be enhanced** (Item 6.11 in the Background Paper), refers to the punishments for electoral offence under some sections of the Indian Penal Code (IPC) being so low as to have almost no effect at all. For example, **undue influence and bribery at elections** are electoral offences under **Sections 171B and 171C**, respectively, of the IPC but these offences are non-cognizable offences, with punishment provision of one year's imprisonment, or fine, or both. Similarly, under **Section 171G, publishing a false statement in connection with an election with intent to affect the result of the election** is only punishable with a fine. Also, **Section 171H** provides that **incurring or authorizing expenditure for promoting the election prospects of a candidate** is an offence. However, punishment for an offence under this Section is a small fine of Rs 500.

The Election Commission recommended, in 1992, that given the gravity of the offences under the above sections in the context of free and fair elections, the punishments under all the four sections should be enhanced.

ADR/NEW support the recommendation of the Election Commission and recommend that **offences under the three sections referred to above (a) be declared to be criminal offences, and (b) punishment for offences under all the three sections be imprisonment of at least two years or more.**

- 4.12 **Restoring the cycle of biennial retirement in the Rajya Sabha/Legislative Councils** (Item 6.12 in the Background Paper) refers to a recommendation by the Election Commission, made in 2004 in follow

up of a decision of the Patna High Court, suggesting necessary amendment in the law to ensure retirement of 1/3<sup>rd</sup> of the members in the Rajya Sabha and State legislative councils after every two years.

**ADR/NEW support the recommendation of the Election Commission.**

- 4.13 **Expenditure ceiling for election to Council Constituencies** (Item 6.13 in the Background Paper) refers to the fact that there is no limit for expenditure for election to the Legislative Council, and recommendations by the Election Commission, made in 2007 that (a) there should be such a limit, as in the case of Lok Sabha and State Assembly elections, and (b) the candidate should also be required to submit the account of election expenses just as candidates for Lok Sabha and State Assembly election.

**ADR/NEW support the recommendation of the Election Commission.**

- 4.14 **Misuse of religion for electoral gain by political parties** (Item 6.14 in the Background Paper) has been the subject for discussion from time to time. It was first mooted by the Goswami Committee on electoral reforms as far back as 1990, and was included in a Bill introduced in the Rajya Sabha in May 1990. The bill was withdrawn with the government saying that a revised Bill would be introduced. Nothing happened after that till the Liberhan Commission of Inquiry on Ayodhya recommended, in its report in June 2009, that complaints of misuse of religion for electoral gain should be speedily investigated into by the Election Commission. The Election Commission's response to the government, in its letter of January 29, 2010) was that such investigations are required to be carried out by the investigating agencies of the state concerned. However, the Election Commission invited the attention of the government to the Representation of the People (Second Amendment) Bill, 1994, whereby an amendment was proposed providing for provision to question acts of misuse of religion by political parties before a High Court, but nothing concrete has happened so far.

ADR/NEW recommend that the **use of religion, caste, community, tribe, and any other form of group identity for electoral gain or for gathering political support should not be allowed** and the Representation of the People Act, 1951, be suitably amended to **give the Election Commission powers to take deterrent actions against those candidates and political parties who resort to it, such actions should include, but not limited to, disqualifying candidates from contesting elections and de-registering the offending political parties. Political parties should also not be allowed to use overtly religious,**

**caste, community, tribe, and other such expressions and words in their names.**

- 4.15 **Totalizer for counting of votes** (Item 6.15 in the Background Paper) pertains to the suggestion by the Election Commission for amending the Conduct of Elections Rules to provide for the use of ‘totalizer’ for counting of votes cast at more than one polling station where EVMs are used, to prevent the trend of voting in individual polling station areas from being divulged, so that candidates and political parties cannot harass or victimize voters because of their getting less votes in a specific polling station.

**ADR/NEW support the recommendation of the Election Commission.**

- 4.16 **Re-examination of the provision of Teachers’ and Graduates’ Constituencies** (Item 6.16 in the Background Paper) is relevant only to State Legislative Councils where one-twelfth of the seats are to be filled up by graduates and another one-twelfth by teachers who have been engaged in teaching in educational institutions not lower in standard than that of a secondary school. This leaves out elementary school teachers.

The Election Commission has recommended that all teachers of specified institutions irrespective of the level of the school should be eligible to be electors for the Teachers’ constituency, if necessary, by amending the relevant provisions of the Constitution.

In view of the fact that Legislative Councils in several states are already non-functional, ADR/NEW recommend that **Legislative Councils in all states be abolished**. If, for whatever reason, that is not done, than ADR/NEW support the recommendation of the Election Commission to make all teachers of specified institutions irrespective of the level of the school eligible to be electors for the Teachers’ constituency.

- 4.17 **Victimization of officers drafted for election duties** (Item 6.17 in the Background Paper) is meant to prevent humiliation and victimization of government officials who are deputed on election duties.

ADR/NEW support the recommendation of the Election Commission that **in the case of the government officials performing statutory functions in connection with preparation of electoral rolls, or in the conduct of elections, consultation with the Election Commission and its concurrence should be compulsory before initiating any disciplinary/legal proceedings by the government. In the case of those officials who have ceased to hold election related positions, consultation with the Commission should be mandatory for initiating**



**any disciplinary/legal proceedings for a period of one year from the date on which the officer ceased to hold election related position.**

- 4.18 **Disqualification for failure to lodge election expenses** (Item 6.18 in the Background Paper) is meant to deal with instances of candidates, whether elected or defeated, do not file the details of their election expenditure or do not file them within the time stipulated. Section 10A of the Representation of the People Act, 1951, stipulated that a candidate who does not file details of his/her election expenses as required under law, can be disqualified for three years by the Election Commission. The period of disqualification, thus, ends by the time of the next election comes around. This provision, therefore, actually has no effect.

The Election Commission has recommended that **the period of disqualification under Section 10A of the Representation of the People Act, 1951, be increased to 5 years**, so that the disqualified person does not become a candidate at the next general election to the House concerned.

ADR/NEW support the recommendation of the Election Commission, and in addition recommend that **any candidate who fails to file his/her election expenses within the given time should face penalty, including not being allowed to take oath until they fulfill this obligation.**

## 5. Regulating Political Parties

This, item VII in the Core Committee Background Paper, seems to be limited only to “regulating” the *number* of political parties. There is no mention of THE most important issue of “regulating” the “functioning” of political parties.

This issue of “regulating the functioning of political parties” will be discussed in section 8 below, after the contents of the Background Paper have been commented upon.

The Background Paper quotes the 2001 report of the NCRWC, which says, “(I)t is a desirable objective to promote the progressive polarisation of political ideologies and to reduce less serious political activity,” and recommends that “the Election Commission should progressively increase the threshold criterion for eligibility for recognition so that the proliferation of smaller parties is discouraged. Only parties or a pre-poll alliance of political parties registered as national parties or alliances with the Election Commission be allotted a common symbol to contest elections for the Lok Sabha. State parties may be allotted symbols to contest elections for State Legislatures and the Council of States (Rajya Sabha).”

The Election Commission has pointed out that out of more than 1100 parties registered with it in 2009, only about 360 actually contested the general election that year. The problem, according to the Commission, is that there is no specific provision to de-register a party. The solution, again according the Election Commission, is amending Section 29A of the Representation of the People Act, 1951, to authorise the Election Commission to de-register of political parties.

Proliferation of political parties also attracted the attention of the Law Commission. Considering reduction of fragmentation of the polity to be a laudable goal, it concluded, in para 7.1.2 of its report, that “any political party which obtains less than 5% of the total valid votes cast in the parliamentary election or a Legislative Assembly election, shall not be entitled to hold any seats in the Lok Sabha or Legislative Assembly, as the case may be, even if it wins any seat or seats. Such a provision would lead to polarisation among the political parties and to formation of larger political parties by a process of integration or by formation of pre-election fronts. In such a situation, defection of a member of such constituent party of the pre-election front or of the constituent party as a whole from the pre-election front should be treated as defection attracting the provision of the Tenth Schedule to the Constitution.”

**ADR/NEW recommend that the Election Commission be given explicit powers to de-register political parties if they do not observe and fulfill the requirements of proposed legislation for the registration and the regulation of the functioning of political parties, described in Section 8 below.**

## 6. Auditing the Finances of Political Parties

This, item VIII in the Core Committee Background Paper, is one of the most critical areas of electoral reforms, and is inextricably related to **Financing of Elections**, item 3 above in this document. Starting with the Law Commission in 1999, all relevant committees/commissions have commented extensively on this issue.

The Law Commission, Part III, Chapter II, of its report, recommended the insertion of a new section 78A for maintenance, audit and publication of accounts by political parties in the Representation of the People Act, 1951. It said,

“Accordingly, the Law Commission reiterates that a new section as proposed in the working paper (section 78A) should be inserted in the R.P.Act of 1951. It is further recommended that the provision as suggested should be numbered as sub-section (1) and sub-sections (2), (3) and (4) as proposed hereinafter should also be inserted in the said section. Section 78A should now read as follows:

(1) Each recognized political party shall maintain accounts clearly and fully disclosing the sources of all amounts received by it and clearly and fully disclosing the expenditure incurred by it. The accounts shall be maintained according to the financial year. Within nine months of each financial year, each recognised political party shall submit its accounts, duly audited by an accountant (as defined in the Explanation below sub-section (2) of section 288 of the Income-tax Act, 1961), to the Election Commission. The Election Commission shall publish the said accounts in accordance with such general directions as may be issued by the Election Commission in this behalf. *The accounts shall also be open for inspection by the members of the public in the office of the Election Commission and they shall also be entitled to obtain copies of such accounts or any part thereof in accordance with such instructions as the Election Commission may issue in that behalf.*

(2) A political party which does not comply with any of the requirements of sub-section (1) shall be liable to pay a penalty of Rs.10,000/- for each day of non-compliance till the non-compliance continues. If such default continues beyond a period of 60 days, the Election Commission may de-recognize the political party after affording a reasonable opportunity of showing cause.

(3) If the Election Commission finds on verification undertaken whether *suo motu* or on information received, that the statement of accounts filed under sub-section (1) is false in any particular, the Election Commission shall levy such penalty upon the political party, as it may deem appropriate besides initiating criminal prosecution as provided under law.

(4) *Any orders passed under sub-sections (2) or (3) shall be directed to be published in the press and other media, for public information*" (Emphasis added) (Para 4.2.6).

The NCRWC has also supported this recommendation, in the following words:

*“The law should make it compulsory for the parties to maintain accounts of the receipt of funds and expenditure in a systematic and regular way. The form of accounts of receipt and expenditure and declaration about the sources of funds may be prescribed by an independent body of Accounts & Audit experts, created under the proposed Act. The accounts should also be compulsorily audited by the same independent body, created under the legislation which should also prepare a report on the financial status of the political party which along with the audited accounts should be open and available to public for study and inspection”* (Emphasis added) (Para 4.30.4).

The NCRWC continues, “Audited political party accounts like the accounts of a public limited company should be published yearly with full disclosures under predetermined account heads” (Emphasis added) (Para 4.35.4).

Possibly following the above recommendations, an attempt was made to introduce a new section (29D) in the Representation of the People Act, 1951, while introducing the Election and Other Related Laws (Amendment) Bill, 2002, in the Lok Sabha on 19<sup>th</sup> March, 2002. That particular section was however dropped from the Bill as desired by the Department-Related Parliamentary Standing Committee on Home Affairs after examining the Bill, this time despite the above recommendations.

The Election Commission also supported this in 2004, saying, “The Commission considers that the political parties have a responsibility to maintain proper accounts of their income and expenditure and get them audited by agencies specified by the Commission annually. While making this proposal in 1998, the Commission had mentioned that there was strong need for transparency in the matter of collection of funds by the political parties and also about the manner in which those funds are expended by them. Although in an amendment made last year, vide the Election and Other Related Laws (Amendment) Act, 2003, a provision has been made regarding preparation of a report of contributions received by political parties in excess of Rs.20,000/-, *this is not sufficient for ensuring transparency and accountability in the financial management of political parties. Therefore, the political parties must be required to publish their accounts (at least abridged version) annually for information and scrutiny of the general public and all concerned, for which purpose the maintenance of such accounts and their auditing to ensure their accuracy is a pre-requisite. The Commission reiterates these proposals with the modification that the auditing may be done by any firm of auditors approved by the Comptroller and Auditor General. The audited accounts should be available for information of the public*” (Emphasis in original).

The Second Administrative Reforms Commission reiterated this in 2007, saying, “Political parties have a responsibility to maintain proper accounts of their income and expenditure and get them audited annually. The steps taken in the Election and Other Related Laws (Amendment) Act, 2003, following various reports mentioned in para 2.1.3.1.4 will be strengthened if this is *made mandatory under law*. The Election Commission has reiterated this proposal. *This needs to be acted upon early. The audited accounts should be available for information of the public*” (Emphasis added) (Para 2.1.3.5.1).

Given such unanimity amongst all the commissions, it is surprising that it has still not been done.

As mentioned in Para 2.5.3 above the Election Commission has recently got the Institute of Chartered Accountants of India (ICAI) to draw up guidelines concerning the formats, frequency, scrutiny, etc. of the accounts to be maintained by political parties. ADR/NEW recommend that these guidelines should be made mandatory, and any failure to comply with these should lead to automatic de-registration of the party.

## **7. Adjudication of Election Disputes**

This, item IX in the Core Committee Background Paper, refers to disposal of election petitions in High Courts.

Section 80 and 80-A of the Representation of Peoples Act, 1951, provide that election petitions be filed only in the respective High Courts. Sections 86(6) and 86(7) of the Representation of the People Act, 1951, provide that the High Court shall make an endeavour to dispose of an election petition within six months from its presentation and also as far as practicably possible conduct proceedings of an election petition on a day to day basis.

The concern is that the High Courts, given their backlog of cases, take too long to deal with election petitions, final disposition often not happening till after the term of the elected representative is over. This phenomenon is so rampant that the Second Administrative Reforms Commission, in its report “Ethics in Governance” (2007) observed, “such petitions remain pending for years and in the meanwhile, even the full term of the house expires thus rendering the election petitions infructuous.”

The NCRWC, the Election Commission, and the Second Administrative Reforms Commission, all have recommended setting up of “Special Election Benches” (NCRWC), or “Special Election Tribunals” (Second ARC).

**ADR/NEW support the recommendation.**

## 8. Review of Anti-Defection Law

This, item X in the Core Committee Background Paper, refers to the anti-defection provisions put in place in 1985, along with the Tenth Schedule of the Constitution, which permits group defections (under certain, specified conditions) but does not permit individual defections, prompting some commentators to say that while individual trading in MPs and MLAs is not allowed, wholesale trading is allowed. Defying a party whip during voting is a common manifestation of defection.

The Law Commission made detailed observations on the issue of whips in its report of 1999. It said as follows:

**“Desirability of issuing the whip in specific situation only:** So far as the issuance of the whip is concerned, it is not governed by any law. Neither the Rules framed under the Tenth Schedule nor the Rules of Procedure and Conduct of Business in the Lok Sabha/Council of States provide for or regulate the issuance of whip. It appears to be a matter within the discretion and judgment of each political party. In such a situation, we can only point out the desirability aspect and nothing more. It is undoubtedly desirable that whip is issued only when the voting in the House affects the continuance of the government and not on each and every occasion. Such a course would safeguard both the party discipline and the freedom of speech and expression of the members” (Para 3.4.6).

In its conclusions regarding amendments to the Tenth Schedule, the Law Commission said, in para 3.4.7, “So far as the deletion of paragraph 4 (merger) is concerned, we are of the opinion that this paragraph should also go in the interest of maintenance of proper political standards in the Houses and also to minimise the complications arising on that account. Paragraph 4 says *inter alia* that a member of a House shall not be disqualified under paragraph 2(1) where his original political party merges with another political party but he and any other members of his original political party, have not accepted the merger and opted to function as a separate group. In such a case, it is provided that such group shall be deemed to be a political party to which he belongs for the purpose of paragraph 2(1) and it shall be deemed to be his original political party for the purpose of this sub-paragraph, this provision in sub-paragraph (1) of paragraph 4 is likely to lead to several complications and unnecessary disputes. Accordingly, we reiterate our proposal to delete paragraph 4 as well. The other allied provisions in Tenth Schedule, which become unnecessary as a result of deletion of paragraphs 3 and 4, have necessarily got to be deleted. Secondly, in view of the proposed deletion of paragraphs 3 and 4, the definition of the expression ‘original political party’ may be dropped and in its place, the following definition should be inserted:

- (c) ‘political party’ in relation to a member of a House, means the political party on whose ticket that member was elected and where such political party is a part of a front or a coalition formed before a general election for contesting such election, such front or coalition,

Provided that the Election Commission is informed in writing by all the constituent parties in the front/coalition before the commencement of the poll that such a front/coalition has been formed.

This definition is suggested in the interest of stability of government (see part VII of this report).”

There have also been controversies on decisions regarding disqualification because the authority to decide whether a member has defected and attracts the provisions of the Tenth Schedule or not, rests with the Speaker of the House. The NCRWC noted, in its report of 2001, that “some of the Speakers have tended to act in a partisan manner and without a proper appreciation – deliberate or otherwise – of the provisions of the Tenth Schedule.”

The same observation was echoed by the Election Commission, in 2004, when it said that “all political parties are aware of some of the decisions of the Hon’ble Speakers, leading to controversies and further litigation in courts of law.”

The Second Administrative Reforms Commission, in its 2007 report on “Ethics in Governance” also took note of the deleterious effects of defections, saying, “Defection has long been a malaise of Indian political life. It represents manipulation of the political system for furthering private interests, and has been a potent source of political corruption.”

The solution recommended by the NCRWC, the Election Commission, and the Second Administrative Reforms Commission, is to either (a) give the authority for deciding on disqualification on ground of defection should vest in the Election Commission instead of in the Chairman or Speaker of the House concerned, or (b) let this authority rest with the President/Governor who will take the decision under advice and on recommendation of the Election Commission.

**ADR/NEW support the recommendation at (a) above, i.e., the authority for deciding on disqualification on ground of defection should be vested in the Election Commission instead of in the Chairman or Speaker of the House concerned.**

There is the issue of when can or should a political party issue a whip. The Law Commission’s recommendation, as mentioned above, is that a whip should be issued only when “the voting in the House affects the continuance of the government” and not on any other occasion.

It is worth noting that a private member’s bill, introduced in the Lok Sabha recently, states that “a member shall incur loss of his membership only when he votes or abstains from voting in the House with regard to a Confidence Motion,



No-confidence Motion, Adjournment Motion, Money Bill or financial matters contrary to any direction issued in this behalf by the party to which he belongs to, and in no other case.”

Even the Dinesh Goswami Committee on electoral reforms in 1990 had also suggested that political parties should limit whips to instances only when the government is in danger.

In view of the above, ADR/NEW recommend that **whips should be issued only when the existence of the government is at stake and not otherwise.**

## 9. Deeper Democratic and Political Reforms

It needs to be understood that mere periodic holding of elections to Parliament and State Assemblies, and occasionally to Municipalities and Panchayats, is not enough for a really effective or a vibrant democracy, as we pride in calling ourselves. The experience of Germany during the Nazi regime, and our own during 1975-77 shows the fragility of a democracy that relies only on periodic elections without the underlying democratic foundations.

The underlying democratic foundations are severely lacking in the political system in India. As mentioned in the third paragraph of the opening part of this document, Core Committee seems to have overlooked the fact that no electoral system can provide real and effective representation for the larger societal aspirations unless the political system underlying it is not democratic in real terms.

The NCRWC has, rightly, observed, in para 4.25 of their 2001 report that, “Political parties are an essential concomitant of elections in a representative parliamentary democracy.” However, citing the expectations of the founding fathers, the members of the Constituent Assembly, the NCRWC go on to say that, “They (member of the Constituent Assembly) expected that *an ideologically oriented healthy party system* would soon evolve in independent India and that it would contribute to societal integration, nation building and strengthening the edifice of democracy. Unfortunately, this *did not happen*. The *source of many of our troubles during the post independence period has been our failure to evolve a healthy party system* based on a just and widely acceptable political-economic national agenda” (Emphasis added).

The NCRWC then go on to make a very incisive observation in para 4.29 of their report:

“Having regard to the prevailing political scenario in the country and *the hard fact that no electoral reforms can be effective without reforms in the political party system*, the Commission identified the following as some of the areas of immediate concern:

- Institutionalization of political parties: *Need for a comprehensive legislation to regulate party activities*, criteria for registration as a national or State party, de-recognition of parties.
- Structural and organizational reforms: Party organizations-- National, State and local levels; *Inner party democracy*--regular party elections, recruitment of party cadres,

socialization, development and training, research, thinking and policy planning activities of the party.

- Party system and governance: Mechanisms to make parties viable instruments of good governance” (Emphasis added).

In view of the above, the deeper political reforms can be presented in three inter-related but distinct parts: registration and de-registration of political parties, internal democracy in political parties, and comprehensive legislation for the regulation and functioning of political parties. These are discussed below and recommendations presented.

**9.1 Registration and de-registration of political parties:** This has been discussed briefly at item 4 above.

The NCRWC in its report of 2001 explicitly said that, “The authority for registration, de-registration, recognition and derecognition of parties and for appointing the body of auditors should be the Election Commission” (Para 4.30.6). It goes on to say that the decisions of the Election Commission should be final subject to review only by the Supreme Court, and only on points of law.

The proposal for giving the Election Commission powers to de-register political parties was first made by the Chief Election Commissioner in letter written to the Law Minister on July 15, 1998. The Election Commission reiterated the same in 2004, saying the following:

“Political parties are registered with the Commission under the provisions of Section 29A of the Representation of the People Act, 1951. *The Section, as it stands, suffers from certain looseness* by which just about any small group of persons, if they so desire, can be registered as a political party, by making a simple declaration under Section 29A(5). This has resulted in mushrooming and proliferation of a large number of non-serious parties, which causes a considerable systems load in the management of elections. By way of example, more than 650 parties are presently registered with the Election Commission, out of which only 150 or so contested in the general elections of 1998. The same trend was there in 1996 general elections as well as in 1991 general elections<sup>1</sup>. Since the lay public is not aware as to how easy it is to get a political party registered with the Election Commission, probably, the motivation for the non-serious parties to get registered is to give some sort of a distorted aura

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<sup>1</sup> These figures are from the letter the Chief Election Commissioner wrote to the Law Minister in 1998. The data in 2009 was that out of more than 1100 parties registered with it in 2009, only about 360 actually contested the general election that year, as mentioned in Para 4 above.

of their status and standing in their localities, particularly in rural and mofussil areas. The Commission feels that election is a serious process and *this tendency of small groups of individuals, who have no serious interest or desire to contest elections, should not easily be allowed to get the official stamp from the Commission as active political parties.*

In addition to there not being sufficient conditions under Section 29A to deny registration to a political party, *the Section also suffers from a serious infirmity that once registered, a political party would stay registered in perpetuity, even if, it does not contest any election over decades of its existence.* This is because *there is no specific provision to de-register a party.* Similarly, certain political parties, which have served their purpose and have presently become defunct, which is normal in the functioning of a democracy, also stay on the rolls of the Commission as functioning political parties. It can readily be seen that *the state of affairs is not a happy one.* The Commission, therefore, suggests that under the existing Section 29A of the Representation of the People Act, 1951, *another clause may be introduced authorising the Election Commission to issue necessary orders regulating registration and de-registration of political parties*” (Emphasis added) (Part II, Para 7).

ADR/NEW, therefore, reiterate the recommendation made in Section 4 above that **the Election Commission be given explicit powers to de-register political parties.**

**9.2 Internal democracy in political parties:** This is arguably *the* single most critical and important reform needed to make India a truly democratic society. It is absolutely beyond any doubt that political parties are *sine qua non* (political parties are an essential requirement) of a representative democracy that India has chosen for itself a representative democracy that India has chosen for itself. The critical issue is how do *they function* or *how should they function.* While it would be normally expected that political parties which function in a democracy, and claim to be defenders of democracy at every opportunity, would should function, in their own internal functioning, in a democratic manner but that, as the NCRWC has observed, “Unfortunately, this did not happen.”

This issue, of internal democracy in political parties, has attracted the attention of, and drawn comments from, various commissions. The most comprehensive study and analysis of this issue has been done by the 15<sup>th</sup> (to check) Law Commission of India, as groundwork for writing their 170<sup>th</sup> report that was titled Reform of the Electoral Laws, submitted in May of 1999.

The Law Commission had prepared a working paper on the issue that was widely circulated. The Law Commission received a lot of comments,

observations, and suggestions as a result of the wide circulation. The working paper was then discussed in three regional seminars (at New Delhi, Thiruvananthapuram, and Bangalore), followed by a national seminar, again at New Delhi. Taking all the responses and feedback into consideration, the Law Commission wrote a complete chapter (Chapter I of Part III) and titled it “Necessity for providing law relating to internal democracy within political parties.” This is what the Law Commission said, “On the parity of the above reasoning, *it must be said that if democracy and accountability constitute the core of our constitutional system, the same concepts must also apply to and bind the political parties which are integral to parliamentary democracy.* It is the political parties that form the government, man the Parliament and run the governance of the country. *It is therefore, necessary to introduce internal democracy, financial transparency and accountability in the working of the political parties. A political party which does not respect democratic principles in its internal working cannot be expected to respect those principles in the governance of the country. It cannot be dictatorship internally and democratic in its functioning outside*” (Emphasis added) (Para 3.1.2.1).

The NCRWC, in para 4.29 of its report, quoted above, made a special mention of “inner party democracy” as part of “structural and organizational reforms” along with “...regular party elections, recruitment of party cadres, socialization, development and training...”

Though the Second Administrative Reforms Commission did not comment directly on the need or otherwise of inner party democracy, it did make some very significant observations which can be interpreted or from which inferences can be drawn that have a bearing on this issue. Para 1.9 of the ARC’s report says, “A *factor which increases corruption is over-centralization. The more remotely power is exercised from the people, the greater is the distance between authority and accountability.* The large number of functionaries between the citizen and final decision-makers makes accountability diffused and the temptation to abuse authority strong. For a large democracy, India probably has the smallest number of final decision makers.” Lack of internal democracy makes any organization, and political parties are not an exception here, over-centralised. Also, in a party, which does not have internal democracy, power will be exercised more remotely from the people (members of the party), thereby increasing the distance between authority and accountability. And, in large political parties without internal democracy, there will be very few decision makers. As a matter of fact, it is no secret that in an overwhelming number of parties in India, there is usually only one decision maker.

In a similar vein, para 1.10 says that, “It is well recognized that every democracy requires the empowerment of citizens in order to hold those in

authority to account.” It is a moot point as to in how many political parties in India are ordinary members (equivalent of “citizens” in a democracy) empowered to hold the party leadership to account.

A very fundamental observation is made in para 1.12 of the ARC report; “Perhaps *the most important determinant of the integrity of a society* or the prevalence of corruption *is the quality of politics*. If politics attracts and rewards men and women of integrity, competence and passion for public good, then the society is safe and integrity is maintained. But *if honesty is incompatible with survival in politics*, and if public life attracts undesirable and corrupt elements seeking private gain, then abuse of authority and corruption become the norm. In such a political culture and climate, desirable initiatives will not yield adequate dividends. Competition and decentralization certainly reduce corruption in certain sectors. But *if the demand for corruption is fuelled by inexhaustible appetite for illegitimate funds in politics, then other avenues of corruption will be forcibly opened up.* As a result, even as corruption declines in certain areas, it shifts to other, sometimes more dangerous, areas in which competition cannot be introduced and the state exercises a natural monopoly. What is needed with liberalisation is corresponding political and governance reform to alter the incentives in politics and public office and to promote integrity and ethical conduct.”

The ARC has done yeoman service by highlighting the importance of “the quality of politics”, the need for “political reform”, and the need “to alter the incentives in politics.” Inner party democracy is a well-known way of working towards all these three laudable objectives.

**ADR/NEW therefore strongly recommend that provisions should be made to introduce inner-party democracy within the political parties. This should include mandatory secret ballot voting for all elections for all inner party posts and selection of candidates by the registered members, overseen by Election Commission of India.**

### 9.3 Financial transparency in political parties:

This is also one of the fundamental deeper political reforms that is a necessary pre-conditions that must be satisfied before any meaningful electoral reforms can actually take place on the ground. It has already been referred to in several items in this document earlier, in particular in Financing of Elections (Item 2 above) along with its sub-parts, particularly recommendation at 2.5.1; and Auditing the Finances of Political Parties (Item 5 above).

As on other issues, the first time serious attention was paid to this issue was in the Law Commission’s 170<sup>th</sup> report in 1999. In an attempt to put the issue in its proper perspective, the Law Commission made an incisive observation, “In the very scheme of things and as pointed out by the Supreme Court in its various decisions, the bulk of the funds contributed to political parties would

come only from business houses, corporate groups and companies. Such a situation sends a clear message from the political parties to big business houses and to powerful corporations that their future financial well being will depend upon the extent to which they extend financial support to the political party. Indeed most business houses already know where their interest lies and they make their contributions accordingly to that political party which is likely to advance their interest more. Indeed *not sure of knowing which party will come to power, they very often contribute to all the major political parties. Very often these payments are made in black money*” (Emphasis added) (Para 4.1.6.1).

In the working paper that it prepared for discussion, the Law Commission proposed the insertion of “Section 78A (Maintenance, audit and publication of accounts by political parties)” in the Representation of the People Act, 1951. The report says, in para 4.2.1, that, “*This proposal drew unanimous approval from all at the seminars as well as from several persons, parties and organisations which responded to the Law Commission's working paper. There was no dissenting voice*” (Emphasis added).

The Law Commission continues, “The necessity of such a requirement was indeed emphasised by the Supreme Court in its recent decision in Gajanan Bapat v. Dattaji Meghe (1995 (5) SCC 347) where it observed pertinently as under:

"We wish, however, to point out that though the practice followed by political parties in not maintaining accounts of receipts of the sale of coupons and donations as well as the expenditure incurred in connection with the election of its candidate appears to be a reality but it certainly is not a good practice. *It leaves a lot of scope for spoiling the purity of election by money influence.* Even if the traders and businessmen do not desire their names to be published in view of the explanation of the witnesses, nothing prevents the political party and particularly a national party from maintaining its own accounts to show total receipts and expenditure incurred, so that there could be some accountability. The practice being followed as per the evidence introduces the possibility of receipts of money from the candidate himself or his election agent for being spent for furtherance of his election, without getting directly exposed, thereby defeating the real intention behind Explanation 1 to section 77 of the Act. *It is, therefore, appropriate for the legislature or the Election Commission to intervene and prescribe by Rules the requirements of maintaining true and correct account of the receipt and expenditure by the political parties by disclosing the sources of receipts as well. Unless this is done, the possibility of purity of election being soiled by money influence cannot really be ruled out. The political parties must disclose as to how much amount was collected by it and from whom and the manner*

in which it was spent so that the court is in a position to determine "whose money was actually spent" through the hands of the party" (Emphasis added) (Para 4.2.3).

Para 4.2.5 of the report again reiterates, "Even in the responses received by various persons and organisations pursuant to the circulation of the 'working paper', there has been no dissenting voice."

In view of the unanimous support the proposal received, the Law Commission went on to actually give the draft of the new section to be inserted in the Representation of the People Act, 1951. The recommended draft is placed at Annexure B to this document. The last subsection of this proposed section, 78(A)(4) directly refers to financial transparency in political parties, when it says, "(4) Any orders passed under sub-sections (2) or (3) shall be directed to be published in the press and other media, for public information."<sup>2</sup>

The NCRWC also deliberated on the issue of financial transparency in political parties. While "identifying the Problem Areas", in Para 4.29, it says, "Having regard to the prevailing political scenario in the country and the hard fact that no electoral reforms can be effective without reforms in the political party system," two of the several problem area identified to be "of immediate concern" were:

- "Problems of party funding - need for a legislation to regulate party funds - distribution and spending of party funds during non-election and election times", and
- "Maintenance of regular accounts by the political parties - auditing and publishing - making audited accounts available for open inspection" (Emphasis added).

While commenting on the need for a law to regulate the functioning of political parties, the NCRWC has said, "The law should make it compulsory for the parties to maintain accounts of the receipt of funds and expenditure in a systematic and regular way. The form of accounts of receipt and expenditure and declaration about the sources of funds may be prescribed by an independent body of Accounts & Audit experts, created under the proposed Act. The accounts should also be compulsorily audited by the same independent body, created under the legislation which should also prepare a report on the financial status of the political party which along with the audited accounts should be open and available to public for study and inspection" (Emphasis added) (Para 4.30.4).

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<sup>2</sup> The recommendation of the Law Commission for inserting section 78A was not acted upon. Another section was added as section 78A with effect from September 11, 2003, which refers to "Free supply of electoral rolls."



The NCRWC has made extensive observations in a special section on the Funding Political Parties (Para 4.35). Relevant portions of these observations are reproduced below so that the full extent of the complexities and also the import of the recommendations can be adequately appreciated.

“The problem of political funding is a complex one and there are no panaceas. Political parties need hefty contributions from companies and from other less desirable sources. The greater the contribution, the greater the risk of dependence, corruption and lack of probity in public life. The demand for transparency must be conceived as a democratic value in itself, a tool designed to avoid any wrongful influences of money in politics...Consequently, any proposals for reforms concerning political funding should revolve, among other things, around the following four main objectives:

- (i) reducing the influence of money by diminishing its impact (by shortening campaigns, establishing ceilings on expenditure and limiting individual contributions);
- (ii) improving the use of money by investing it on more productive activities for the sake of democracy, and not just squandering it on propaganda and negative campaigns;
- (iii) stopping, or at least curtailing, as much as possible, current levels of influence peddling and political corruption; and
- (iv) strengthening public disclosure and transparency mechanisms with respect to both the origin and the use of funds” (Emphasis added) (Para 4.35.1).

“At present, different Acts regulate the flow of funds to political parties both from internal as well as external sources. The Commission recommends that a comprehensive legislation providing for regulation of contributions to the political parties and towards election expenses should be enacted by consolidating such laws. The new law should aim at bringing transparency into political funding” (Emphasis added) (Para 4.35.2).

“Audited political party accounts like the accounts of a public limited company should be published yearly with full disclosures under predetermined account heads” (Emphasis added) (Para 4.35.4).

It is in this context that the recent guidelines drawn up by the Institute of Chartered Accountants of India (ICAI) at the request of the Election Commission, mentioned at 2.5.3 above, become important.

The Election Commission first recommended the maintenance of accounts by political parties and audit of these accounts in 1998. It reiterated these in the

2004 Proposed Electoral Reforms. Item 9 of Part I of the Election Commission's recommendations says,

“The Commission considers that the political parties have a responsibility to maintain proper accounts of their income and expenditure and get them audited by agencies specified by the Commission annually. While making this proposal in 1998, the Commission had mentioned that *there was strong need for transparency in the matter of collection of funds by the political parties and also about the manner in which those funds are expended by them.* Although in an amendment made last year, vide the Election and Other Related Laws (Amendment) Act, 2003, a provision has been made regarding preparation of a report of contributions received by political parties in excess of Rs.20,000/-, *this is not sufficient for ensuring transparency and accountability in the financial management of political parties.* Therefore, the political parties must be required to publish their accounts (at least abridged version) annually for information and scrutiny of the general public and all concerned, for which purpose the maintenance of such accounts and their auditing to ensure their accuracy is a pre-requisite. The Commission reiterates these proposals with the modification that the auditing may be done by any firm of auditors approved by the Comptroller and Auditor General.

*The audited accounts should be available for information of the public*”(Emphasis added).

And the latest to make recommendations on this issue has been the **Second Administrative Reforms Commission**, Para 2.1.3.5.1 of whose report says, “*Political parties have a responsibility to maintain proper accounts of their income and expenditure and get them audited annually.* The steps taken in the Election and Other Related Laws (Amendment) Act, 2003, following various reports mentioned in para 2.1.3.1.4 will be strengthened if this is *made mandatory under law.* The Election Commission has reiterated this proposal. *This needs to be acted upon early. The audited accounts should be available for information of the public*” (Emphasis added).

As can be seen from the above, there is complete agreement amongst all commissions that (a) **political parties should be required to maintain proper accounts in predetermined account heads**, (b) **such accounts should be (i) audited by auditors recommended and approved by the Comptroller and Auditor General of India, and (ii) available for the information of the public.**

ADR/NEW have already recommended, at 3.5.3 above, that the guidelines soon to be issued by the Election Commission based on the recommendations made by the Institute of Chartered Accountants of India (ICAI), concerning the formats, frequency, scrutiny, etc. of the accounts to be maintained by political parties,

should be made mandatory, and any failure to comply with these should lead to automatic de-registration of the party. ADR/NEW reiterate that recommendation and further recommend that the accounts be audited by auditors recommended and approved by the Comptroller and Auditor General of India, and be available for the information of the public.

**There should be limit prescribed for the amount of donation that a political party can accept from an individual, company, organization, or any entity.**

This limit should specify the percentage of total funds raised by the political party that can be accepted from a single source. For example, if a political party gets more money from an individual at the start and is not able to raise the rest to come below the specified limit of 1.0 or 0.1%, then only that portion of the funds should be used that come under the limit. Specifying the limit in terms of an amount rupees does not work as it becomes ridiculously low in a decade due to inflation.

In case the above stipulation is violated, there should be penalty for both, the donor and the donee.

There should be complete ban on the use of foreign funds on behalf of a candidate or party by any other organization.

#### **9.4 Comprehensive legislation for the regulation and functioning of political parties:**

While there is general agreement at bringing in internal democracy in political parties (8.2 above), and financial transparency in political parties (8.3 above), the various commissions have also thought about how to bring that about.

Once again, the first recommendations on this issue were made by the Law Commission of India, in 1999. Following the thorough process outlined at 9.2 above, the Law Commission made the following observations:

3.1.1. “On a consideration of the various views expressed in the four seminars aforesaid and the vast number of responses received by us, *we have come to the conclusion* that for successful implementation of any of the aforesaid proposals, or for that matter *for bringing a sense of discipline and order into the working of our political system and in the conduct of elections, it is necessary to provide by law for the formation, functioning, income and expenditure and the internal working of the recognized political parties* both at the national and State level....

3.1.2. With a view to introduce and ensure internal democracy in the functioning of political parties, to make their working transparent and open and to ensure that the political parties become effective instruments of achieving the constitutional goals set out in the Preamble and Parts III and IV of the Constitution of India, it is

necessary to regulate by law their formation and functioning. In this connection, reference can be had to the law laid down in the nine-judge Constitution Bench of the Supreme Court in *S.R.Bommai v. Union of India* (1994 (3) SCC1). Explaining the concept of secularism implicit in the constitutional provisions, the Court made the following observations at page 236:

“inspired by the Indian tradition of tolerance and fraternity, for whose sake, the greatest son of Modern India, Mahatma Gandhi, laid down his life and seeking to redeem the promise of religious neutrality held forth by the Congress Party, the Founding Fathers proceeded to create a State, secular in its outlook and egalitarian in its action...if any party or organisation seeks to fight the elections on the basis of plank which has the proximate effect of eroding the secular philosophy of the Constitution it would certainly be guilty of following an unconstitutional course of action...if the Constitution requires the State to be secular in thought and action, the same requirement attaches to political parties as well.”

3.1.3 Conclusion: Keeping the aforesaid considerations in mind, we recommend that a new part, Part II-A, entitled 'Organisation of Political Parties and matters incidental thereto' be introduced/inserted in the Act, containing the undermentioned sections:...

What the Law Commission then goes on to do is to give the actual draft for amendments to be made to the Representation of the People Act, 1951, by repealing its section 11 and 11B, and inserting Section 11-A to 11-H, under Part II-A of the Act, to be titled “Organisation of Political Parties and matters incidental thereto”. The suggested amendments are at Annexure C.

The next commission to comment of this issue was the NCRWC in 2001. Its first observation was in Para 4.29 while identifying “some areas of immediate concern”. One of these areas identified was, “Institutionalization of political parties - need for a comprehensive legislation to regulate party activities, criteria for registration as a national or State party - de-recognition of parties.”

In a section titled “Law for Political Parties”, the NCRWC, said the following:

- “4.30.1 The Commission recommends that *there should be a comprehensive legislation* [may be named as the Political Parties (Registration and Regulation) Act], *regulating the registration and functioning of political parties or alliances of parties in India.*
- 4.30.2 The proposed legislation should provide for compulsory registration for every political party or pre-poll alliance. *It should lay down conditions for the constitution of a political party or alliance and for registration, recognition and de-registration and derecognition.*
- 4.30.3 The Commission recommends that every political party or alliance should, in its Memoranda of Association, Rules and Regulations provide for its doors being open to all citizens irrespective of any distinctions of caste, community or the like. It should swear allegiance to the provisions of the Constitution and to the sovereignty and integrity of the nation, regular elections at an interval of three years at its various levels of the party, reservation/representation of at least 30 percent of its organizational positions at various levels and the same percentage of party tickets for parliamentary and State legislature seats to women. Failure to do so should invite the penalty of the party losing recognition” (Emphasis added).

The Second Administrative Reforms Commission, in its Fourth Report, titled Ethics in Governance, 2007, makes a very incisive observation, “In the ultimate analysis, the state and *a system of laws exist in order to enforce compliance and promote desirable behaviour.* Therefore, enforcement of rule of law and deterrent punishment against corruption are critical to build an ethically sound society. A detailed analysis of our anti-corruption mechanisms and the causes of their failure is necessary in order to strengthen the forces of law and deter the corrupt public servants” (Emphasis added) (Para 1.11).

How can “desirable behaviour” among political parties be promoted in the absence of “any system of laws” concerning political parties? The above observation of ARC should alert the nation to the glaring gap in legislation, as a result of which **there is no law governing the functioning of political parties** in India, the need for which has been eloquently brought out by the recommendations of the Law Commission and the NCRWC, excerpted above.

**ADR/NEW, therefore, strongly recommend that a comprehensive law be enacted to regulate the functioning of political parties.** The draft for amending the Representation of the People Act, 1951, to regulate the

functioning of political parties, as given in Chapter I of Part III of the 170<sup>th</sup> report of the Law Commission of India, should be enacted, and consequently, clear and strict rules should be enforced through law for all the inner functioning of political parties, including elections of office bearers, selection of candidates for elections, etc.

A committee headed by the former Chief Justice of the Supreme Court of India, Justice M.N. Venkatachaliah, has drafted a bill to regulate the functioning of political parties. The draft of this bill is placed at Annexure D. It is recommended that this bill be part of the comprehensive legislation to be enacted to regulate the functioning of political parties.

**10. Other recommendations:**

- 10.1 The time provided for filing election expenses by contesting candidates should be reduced to 20 days so that the time available for filing election petition would increase to 25 days.
- 10.2 Any candidate who fails to file their election expenses within the given time should face penalty, including not being allowed to take oath until they fulfill this obligation.
- 10.3 There needs to be a legal sanction against losing candidates also for filing an election petition who are guilty of corrupt practice in terms of section 123 of the R.P. Act, 1951.
- 10.4 Electoral malpractices should be declared criminal offenses carrying a sentence of two years or more.
- 10.5 There should be a law against the use of excessive money in elections by candidates as excessive use of money in elections vitiates democracy.
- 10.6 The information given in the affidavits of the candidates on criminal charges, assets etc. should be verified by an independent central authority in a time bound manner.
- 10.7 Political parties should be declared as Public Authorities for the purposes of the Right to Information Act, 2005.
- 10.8 The information submitted in the affidavits by the candidates should be certified by Political Parties.
- 10.9 Elected MPs and MLAs should be required to give an annual report to their constituency giving details of their accomplishments for previous year and the plan for the next year.
- 10.10 There should be an independent body or commission that takes decisions on salaries and perks of elected representatives.
- 10.11 The list of polling agents should be made public well in advance of the elections.
- 10.12 There should be a mix of official and non-official observers during elections, selected by the Election Commission.
- 10.13 Election Expense statements of the candidates/winners should be made available on the website of Election Commission as soon as they are filed by the candidates for public scrutiny.
- 10.14 A separate body to decide the salaries and perks of elected representatives - There should be an independent body or commission that takes decisions on salaries and perks of elected representatives. It is a clear conflict of interest now where they fix their own remuneration.

10.15 Following changes should be incorporated in the existing format of the affidavit filed by the candidates contesting elections:

10.15.1 There should be a column in the affidavit wherein the candidates can declare any penalty levied on them with regard to taxes.

10.15.2 Affidavits should be certified by the Political Parties.



## **11. Summary of recommendations:**

- 11.1** The new format for affidavits to be filed by candidates contesting elections to Parliament and State Assemblies, introduced by the Election Commission by its letter of 25th February, 2011, should continue (Para 2.1 and Para 3.2).
- 11.2** Section 125A of the Representation of the People Act, 1951, should be amended to provide for more stringent punishment for concealing or providing wrong information on Form 26 of Conduct of Election Rules, 1961 to minimum two years imprisonment and removing the alternative punishment of assessing a fine upon the candidate, and (b) Form 26 should be amended to include all items from the additional affidavit prescribed by the Election Commission, and a column added requiring candidates to disclose their annual declared income for tax purpose as well as their profession (Para 2.1 and Para 3.2).
- 11.3** The new format of the affidavit should be supplemented by the same or similar information that is being asked from Rajya Sabha members as part of “Register of Interest”. The information should include details like name of companies with controlling shareholding interest, directorship in various trusts and companies, etc. This would be in addition to the source of income that is already asked for in the revised format of the affidavit (Para 3.2).
- 11.4** The information submitted in the affidavits by the candidates should be certified by Political Parties (Para 2.1).
- 11.5** The information given in the affidavits of the candidates on criminal charges, assets etc. should be verified by an independent central authority in a time bound manner (Para 2.1).
- 11.6** Any person against whom a charge has been framed by a court of law, in a criminal case for which the punishment is imprisonment of two years or more, should not be allowed to contest elections, and any political party that gives a ticket to such an individual should be “deregistered and derecognized forthwith” (Para 2.2).
- 11.7** EVMs should have an option or a button for “None-of-the-above” (Para 2.3).
- 11.8** Votes cast for the “None-of-the-above” option should also be counted (Para 2.3).
- 11.9** In case the “None-of-the-above” option gets more votes than any of the candidates, none of the candidates should be declared elected and a fresh election held in which all the candidates in this election are not allowed to contest (Para 2.3).

- 11.10** In the following elections, with fresh candidates and with a “None-of-the-above” option, only that candidate should be declared elected who gets at least 50%+1 of the votes cast (Para 2.3).
- 11.11** IF even in this round, the “None-of-the-above” option gets the highest number of votes cast or none of the candidate gets at least 50%+1 of the votes cast, then the process should be repeated (Para 2.3).
- 11.12** No worthwhile measures concerning financing of elections can even be contemplated till there is reliable data about the cost of elections. The largest proportion of election expenditure is presumably done by political parties. As of now, there is no reliable data about the financial affairs of political parties. The foremost requirement for getting a clear and comprehensible picture of financing of elections is to get financial transparency in the financial affairs of political parties (Para 3.5.1).
- 11.13** Political parties should be required to maintain proper accounts and these accounts should be available for public scrutiny (Para 3.5.2).
- 11.14** The Election Commission has recently got the Institute of Chartered Accountants of India (ICAI) to draw up guidelines concerning the formats, frequency, scrutiny, etc. of the accounts to be maintained by political parties. These guidelines should be made mandatory, and any failure to comply with these should lead to automatic de-registration of the party (Para 3.5.3).
- 11.15** These accounts should also be required to be audited periodically, which is an issue dealt in Section VIII of the Background Paper, under the heading “Auditing of finances of parties” (Para 3.5.4).
- 11.16** There should be a ceiling on the expenditure that a candidate can incur during the election. This ceiling should be fixed, and revised periodically, by the Election Commission of India, without the need of any reference or recommendation to the government (Para 3.5.5).
- 11.17** There should be a ceiling on expenses that can be incurred by political parties during the election period (Para 3.5.6).
- 11.18** All attempts at “Curbing the cost of campaigning” are going to be unrealistic and impossible to implement without the removal of the basic cause of constantly increasing expenditure on campaigning. That will happen only when political parties return to their traditional role, that of mobilizing public opinion and acting as a mediator between the public at large and the government, and cease to function as corporate enterprises engaged in the business of winning elections at any cost. This will require (a) selecting candidates democratically and NOT solely on the basis of “winnability”, which, in turn, will happen when (b) the internal functioning of political parties is really and effectively democratic. These will require regulating the functioning of political parties (3.5.7).

- 11.19** While on the whole ADR/NEW are not against the concept of state funding of elections but are NOT in favour of state funding being provided for elections *in any form* in the current situation till the functioning and finances of political parties are not made transparent and amenable to public scrutiny (3.5.8).
- 11.20** The government should empower the Election Commission to take whatever steps necessary to ensure (a) accurate, updated electoral rolls, (b) that every citizen to be able to (i) register her/his vote at any place of his choosing and any time of the year, and (ii) be able to cast one's voter wherever one happens to be on the date of polling (Para 4.1.1).
- 11.21** Common electoral rolls should be used for all elections. The needs of the electoral rolls to be used for parliamentary and state assembly elections on the one hand, and those for local bodies and panchayats on the other, should be harmonized; and necessary legislation, in case it is needed, should be done immediately (Para 4.1.3).
- 11.22** Election Commission should be empowered to take strong action on the report of returning officers, election observers, or civil society in regards to booth capture or the intimidation of voters. Election Commission should have the power under Section 58A of the Representation of the People Act, 1951, to order a fresh election, void the election results, or order a re-poll in such cases (Para 4.1.4).
- 11.23** The Election Commission has suggested that it be given the power to prescribe deposit amounts prior to each election (Para 4.2.1).
- 11.24** If any independent candidate fails to win five percent of the vote or more, he should be debarred from contesting as an independent for the same office for six years (Para 4.2.2).
- 11.25** An independent candidate who loses election three times consecutively for the same office as an independent should be permanently debarred from contesting election to that office (Para 4.2.2).
- 11.26** The same constitutional protection to all Election Commissioners as is available to the Chief Election Commissioner (Para 4.3).
- 11.27** All functions concerning the Secretariat of the Election Commission, consisting of officers and staff at various levels, such as their appointments, promotions, etc., be exclusively vested in the Election Commission on the lines of the Secretariats of the Lok Sabha, and Rajya Sabha, Registries of the Supreme Court and High Courts etc. (Para 4.3).
- 11.28** The budget of the Election Commission should be treated as "Charged" on the Consolidated Fund of India (Para 4.3).
- 11.29** CEOs should be deputed from a state different from the one the cadre of which they belong (4.3.1.1).

- 11.30** The Election Commissioners should not be eligible for any office after retirement for a period of at least 5 years. They should also not be allowed to join any political party for a further period of 5 years after retirement (Para 4.3.1.2).
- 11.31** The Chief Election Commissioner and the other Election Commissioners should be appointed on the recommendation of a body consisting of the Prime Minister, Leader of the Opposition in the Lok Sabha, Leader of the Opposition in the Rajya Sabha, the Speaker of the Lok Sabha and the Deputy Chairman of the Rajya Sabha. Similar procedure should be adopted in the case of appointment of State Election Commissioners (Para 4.3.1.3).
- 11.32** The provisions for State Election Commissioners should be similar, if not the same, as those for the Election Commission of India, with the provision that variations should be done only, and only if there are specific peculiarities of situation prevailing in a state that makes such variations unavoidable (Para 4.3.1.4).
- 11.33** Where any general election is due on the expiration of the term of the House, advertisements of achievements of the governments, either Central or State, in any manner, should be prohibited for a period of six months prior to the date of expiry of the term of the House, and in case of premature dissolution, from the date of dissolution of the House. Advertisements/dissemination of information on poverty alleviation and health related schemes could be exempted from the purview of such a ban. There should be specific provisions that name or symbol of any political party or photograph of any of the leaders of the party should not appear on such hoardings/banners (Para 4.4).
- 11.34** A person should not be allowed to contest from more than one constituency at a time (Para 4.5).
- 11.35** There should be a provision for filing election petitions even against candidates who have lost the election, in instances where they have indulged in corrupt practices during the election (Para 4.6).
- 11.36** A new Section 126-A should be introduced in the Representation of the People Act, 1951, prohibiting conducting of exit polls and publishing results in any manner, during the period starting from 48 hours before the close of poll in an election, with the prohibition lasting till the close of poll in the last phase in case of a multi-phased election. This amendment should cover opinion polls also, and that Section-126 (1)(b) should be made applicable to print media also (Para 4.7).
- 11.37** Section-126 (1)(b) should be made applicable to all forms of media including print and electronic media (Para 4.7).
- 11.38** Advertising in the print media should also be prohibited for 48 hours before the polling time, and house-to-house campaigning through visits by

candidates/supporters should also be specifically prohibited during the said 48-hour period (Para 4.8).

- 11.39** No officer associate with the election should be transferred without the concurrence of the Commission as soon as a general election/bye-election becomes due in any Parliamentary or Assembly Constituencies, and that in the case of a general election either to the Lok Sabha or to a State Assembly, the ban may come into operation for the period of six months prior to the date of expiry of the term of the House concerned, and in case of premature dissolution, from the date of dissolution of the House (Para 4.9).
- 11.40** There should be a provision for penal action against those making any false declarations in connection with an election. Punishment for various electoral offences mentioned in the R.P. Act as well as in the Indian Penal Code should be enhanced. “The punishments at present provided are totally inadequate and are ridiculously low, hence need to be enhanced” (Law Commission, 1999). All offences in connection with elections should be declared criminal offenses carrying a sentence of two years or more, and this should also include making wrong declarations or leaving columns blank in the affidavit (Para 4.10).
- 11.41** Offences of using undue influence and bribery at elections, electoral offences under Sections 171B and 171C respectively of the IPC; publishing a false statement in connection with an election with intent to affect the result of the election under Section 171G; and incurring or authorizing expenditure for promoting the election prospects of a candidate (Section 171H) (a) should be declared to be criminal offences, and (b) punishment for offences under all the three sections be a imprisonment of at least two years or more (Para 4.11).
- 11.42** Necessary amendment in the law should be made to ensure retirement of 1/3<sup>rd</sup> of the members in the Rajya Sabha and State legislative councils after every two years (Para 4.12).
- 11.43** There should be a limit on the expenditure that can be incurred in the Election to a Legislative Council, as in the case of Lok Sabha and State Assembly elections, and the candidates should also be required to submit the account of election expenses just as candidates for Lok Sabha and State Assembly election (4.13).
- 11.44** Use of religion, caste, community, tribe, and any other form of group identity for electoral gain or for gathering political support should not be allowed and the Representation of the People Act, 1951, be suitably amended to give the Election Commission powers to take deterrent actions against those candidates and political parties who resort to it, such actions should include, but not limited to, disqualifying candidates from contesting elections and de-registering the offending political parties. Political parties should also not be allowed to use overtly religious, caste,

community, tribe, and other such expressions and words in their names. (4.14).

- 11.45** The Conduct of Elections Rules should be amended, as recommended by the Election Commission, to provide for the use of 'totalizer' for counting of votes cast at more than one polling station where EVMs are used, to prevent the trend of voting in individual polling station areas from being divulged (Para 4.15).
- 11.46** Legislative Councils in all states be abolished (Para 4.16).
- 11.47** No disciplinary/legal proceedings by the government should be initiated against government officials performing statutory functions in connection with preparation of electoral rolls, or in the conduct of elections, without consultation with the Election Commission and its concurrence. In the case of those officials who have ceased to hold election related positions, consultation with the Commission should be mandatory for initiating any disciplinary/legal proceedings for a period of one year from the date on which the officer ceased to hold election related position (Para 4.17).
- 11.48** The period of disqualification under Section 10A of the Representation of the People Act, 1951, be increased to 5 years (Para 4.18).
- 11.49** Any candidate who fails to file his/her election expenses within the given time should face penalty, including not being allowed to take oath until they fulfill this obligation (Para 4.18).
- 11.50** Election Commission be given explicit powers to de-register political parties if they do not observe and fulfill the requirements of proposed legislation for the registration and the regulation of the functioning of political parties (Para 5). Also at Para 9.1.
- 11.51** Guidelines concerning the formats, frequency, scrutiny, etc. of the accounts to be maintained by political parties, prepared by the Institute of Chartered Accountants of India (ICAI) at the suggestion of the Election Commission should be made mandatory, and any failure to comply with these should lead to automatic de-registration of the party (Para 6).
- 11.52** Special Election Benches or Special Election Tribunals should be set up to expedite adjudication of election disputes within six months of its presentation (Para 7).
- 11.53** The authority for deciding on disqualification on ground of defection should vest in the Election Commission instead of in the Chairman or Speaker of the House concerned (Para 8).
- 11.54** Whips should be issued only when the existence of the government is at stake and not otherwise (Para 8).
- 11.55** Election Commission be given explicit powers to de-register political parties (Para 9.1). Also at Para 5.

- 11.56** Inner-party democracy within the political parties should be made compulsory by law. This should include mandatory secret ballot voting for all elections for all inner party posts and selection of candidates by the registered members, overseen by Election Commission of India (Para 9.2).
- 11.57** There should be limit prescribed for the amount of donation that a political party can accept from an individual, company, organization, or any entity (Para 9.3).
- 11.58** Political parties should maintain should be required to maintain proper accounts in predetermined account heads (Para 9.3).
- 11.59** Accounts of political parties should be audited by auditors recommended and approved by the Comptroller and Auditor General of India (Para 9.3).
- 11.60** Accounts of political parties should be available for the information of the public (Para 9.3).
- 11.61** A comprehensive law should be enacted to regulate the functioning of political parties (Para 9.4).

## Annexure A

### **DECLARATION OF INTERESTS BY MEMBERS OF RAJYA SABHA**

6. Under Rule 293 of the Rules of Procedure and Conduct of Business in the Council of States, Members of Rajya Sabha are required to furnish declaration regarding five pecuniary interests as per following details: —

#### **PECUNIARY INTERESTS**

##### **I. Remunerative Directorship**

- (i) Name and address of the Company
- (ii) Nature of Business of the Company
- (iii) Salary/fees/allowance/benefits or any other receipts which are taxable (per annum)

##### **II. Regular Remunerated Activity**

- (i) Name and address of the Establishment
- (ii) Nature of Business
- (iii) Position held
- (iv) Amount of Remuneration received (per annum)

##### **III. Shareholding of Controlling Nature**

- (i) Name and address of the Company
- (ii) Nature of Business of the Company
- (iii) Percentage of shares held

##### **IV. Paid Consultancy**

- (i) Nature of consultancy
- (ii) Business activity of the organization where engaged as Consultant
- (iii) Total value of benefits derived from the Consultancy

##### **V. Professional Engagement**

- (i) Description
- (ii) Fees/Remuneration earned there from (per annum)

6.2 Every Member shall notify the changes, if any, in the information so furnished by him/her as on the 31st March every year, within ninety days from the date.

6.3 Information furnished by Members has to be with respect to their pecuniary interests whether held within the country or outside it.

#### **FORM**

For Declaration of Interests by Members of Rajya Sabha

See Rule 293 of the Rules of Procedure and Conduct of Business in the Council of States  
(Use extra sheet signed by the Member if space is insufficient for making entries)



1. Name of the Member  
(in block letters)
2. Father's/Husband's name
3. State
4. Party affiliation
5. Date of Election/Nomination
6. Date of taking Oath/making affirmation

#### Pecuniary Interests

##### I Remunerative Directorship

1. Name and address of the Company
2. Nature of Company Business
3. Salary/fees/allowance/benefits or any other receipts which are taxable (per annum)

##### II Regular Remunerated Activity

1. Name and address of the Establishment
2. Nature of Business
3. Position held
4. Amount of Remuneration received (per annum)

##### III Shareholding of Controlling Nature

1. Name and address of the Company
2. Nature of Business of the Company
3. Percentage of shares held

##### IV Paid Consultancy

1. Nature of consultancy
2. Business activity of the organisation where engaged as Consultant
3. Total Value of Benefits derived from the Consultancy

##### V Professional Engagement

1. Description
2. Fees/Remuneration earned therefrom (per annum)

( )  
Signature of the Member  
Division No. \_\_\_\_\_

## Annexure B

### **Excerpts from Chapter II of Part IV of the 170<sup>th</sup> Report of the Law Commission of India**

#### **CONTROL OF ELECTION EXPENSES**

Insertion of Section 78A (Maintenance, audit and publication of accounts by political parties)

4.2.6. Accordingly, the Law Commission reiterates that a new section as proposed in the working paper (section 78A) should be inserted in the R.P.Act of 1951. It is further recommended that the provision as suggested should be numbered as sub-section (1) and sub-sections (2), (3) and (4) as proposed hereinafter should also be inserted in the said section.

- (2) A political party which does not comply with any of the requirements of sub-section (1) shall be liable to pay a penalty of Rs.10,000/- for each day of non-compliance and so long as the non-compliance continues.

If such default continues beyond the period of 60 days, the Election Commission may de-recognise the political party after affording a reasonable opportunity to show cause.

- (3) If the Election Commission finds on verification, undertaken whether *suo motu* or on information received, that the statement of accounts filed under sub-section (1) is false in any particular, the Election Commission shall levy such penalty upon the political party, as it may deem appropriate besides initiating criminal prosecution as provided under law.
- (4) Any orders passed under sub-sections (2) or (3) shall be directed to be published in the press and other media, for public information."

## Annexure C

### **Excerpts from Chapter I of Part III of the 170<sup>th</sup> Report of the Law Commission of India**

#### **Necessity for providing law relating to internal democracy within political parties**

#### **PART II-A**

#### **Organisation of Political Parties and matters incidental thereto**

“Section 11-A: (1) Political parties can be freely formed by the citizens of this country. The political parties shall form a constitutionally integral part of free and democratic system of Government.

(2) Each political party shall frame its constitution defining its aims and objects and providing for matters specified in section 11A. The aims and objects of a political party shall not be inconsistent with any of the provisions of the Constitution of India.

(3) A political party shall strive towards, and utilize its funds exclusively for, the fulfillment of its aims and objects and the goals and ideals set out in the Constitution of India.

(4) (a) A political party shall apply for registration with the Election Commission of India.

(b) Every such application shall be made, -

(i) if the association or body is in existence at the commencement of the Representation of the People and other Allied Laws (Amendment) Act, 1999 ( \_\_of 1999), within sixty days next following such commencement;

(ii) if the association or body is formed after such commencement, within thirty days next following the date of its formation.

(c) Every application under sub-section (4) shall be signed by the chief executive officer of the association or body (whether such chief executive officer is known as Secretary or by any other designation) and presented to the Secretary to the Commission or sent to such Secretary by registered post.

(d) Every such application shall contain the following particulars, namely:-

(i) the name of the association or body;

(ii) the State in which its head office is situated;

- (iii) the address to which letters and other communications meant for it should be sent;
  - (iv) the names of its president, secretary, treasurer and other office-bearers;
  - (v) the numerical strength of its members, and if there are categories of its members, the numerical strength in each category;
  - (vi) whether it has any local units; if so, at what levels;
  - (vii) whether it is represented by any member or members in either House of Parliament or of any State Legislature; if so, the number of such member or members.
  - (viii) a declaration that the applicant has complied with and shall continue to comply with the requirements of this chapter.
- (e) The application under sub-section (4) shall be accompanied by a copy of the memorandum or rules and regulations of the association or body, by whatever name called, and such memorandum or rules and regulations shall contain a specific provision that the association or body shall bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy, and would uphold the sovereignty, unity and integrity of India.
  - (f) The Commission may call for such other particulars as it may deem fit from the association or body.
  - (g) After considering all the particulars as aforesaid in its possession and any other necessary and relevant factors and after giving the representatives of the association or body reasonable opportunity of being heard, the Commission shall decide either to register the association or body as a political party for the purposes of this Part, or not so to register it; and the Commission shall communicate its decision to the association or body:

Provided that no association or body shall be registered as political party under this sub-section unless the memorandum or rules and regulations of such association or body conform to the provisions of clause (e).

- (h) The decision of the Commission shall be final.
- (i) After an association or body has been registered as a political party as aforesaid, any change in its name, head office, office bearers, address or in any other

material matters shall be communicated to the Commission without delay.

- (5) Only a political party registered with Election Commission of India, and whose registration is not cancelled under this Act, shall be entitled to contest elections whether to Lok Sabha or that of Legislative Assembly.

Section 11-B: (1) A political party may sue and may be sued in its own name. A political party shall be competent to hold and dispose of properties.

(2) The name of a political party must be clearly distinguishable from that of any existing political party and shall be subject to approval by the Election Commission. In election campaigns and in elections, only the registered name or its acronym, as may have been approved by the Election Commission, alone shall be used.

(3) Political parties can be formed both at the national level as well as at the State level.

Section 11-C: The constitution of a political party shall provide for the following matters:-

(a) name of the political party and acronym (if used) and the aims and objectives of the party;

(b) procedure for admission, expulsion and resignation by the members;

(c) rights, duties and obligations of the members;

(d) grounds on which and the procedure according to which disciplinary action can be taken against the members;

(e) the general organisation of the party including the formation of State, regional, district, block and village level units;

(f) composition and powers of the executive committee (by whatever name it is called) and other organs of the party;

(g) the manner in which the general body meetings can be requisitioned and conducted and the procedure for requisitioning and holding conventions to decide questions of continuance, merger and other such fundamental organizational matters;

(h) the form and content of the financial structure of the party consistent with the provisions of this part.

Section 11-D: The executive committee of a political party shall be elected. Its term shall not exceed three years. Well before the expiry of the term, steps shall be taken for electing a new executive committee. It shall be open to the executive committee to constitute a sub-committee (by whatever name called) to carry out the business of the executive committee and to carry on regular and urgent executive committee business. The members of the sub-committee shall be elected by the members of the executive committee.

Section 11-E: A political party and its organs shall adopt their resolutions on the basis of a simple majority vote. The voting shall be by secret ballot.

Section 11-F: The candidates for contesting elections to the Parliament or the Legislative Assembly of the States shall be selected by the executive committee of the political party on the basis of the recommendations and resolutions passed by the concerned local party units.

Section 11-G: (1) It shall be the duty of the executive committee to take appropriate steps to ensure compliance with the provisions of this chapter including holding of elections at all levels. The executive committee of a political party shall hold elections of national and State levels in the presence of the observers to be nominated by the Election Commission of India. Where considered necessary, the Election Commission may also send its observers at elections to be held at other national and state levels.

(2) The executive committee of a political party shall maintain regular accounts of the amounts received by the party, its income and expenditure, have them audited and submit the same to the Election Commission as required by section 78-A of this Act.

(3) A political party shall be entitled to accept donations except from the following sources:-

(a) donations from political foundations or foreign governments or organisations or associations registered outside the territory of India or non-governmental organizations which are in receipt of foreign funds or from any other association, organisation, group which is in receipt of foreign funds or from a foreign national.

(b) donations from corporate bodies and companies except in accordance with the provisions of the Companies Act, 1956.

Section 11-H: The Election Commission shall be competent to inquire, either suo motu or on information received into allegation of non-compliance of any of the

provisions of this chapter. If on due inquiry, the Election Commission is satisfied that there has been non-compliance of any of the provisions of this chapter by any political party, the Commission shall call upon the party to rectify the non-compliance within the period prescribed by the Election Commission. In case, the non-compliance continues even after the period so prescribed, it shall be open to the Election Commission to impose such punishment on the political party as it may deem appropriate in circumstances of the case including levy of the penalty of Rs.10,000/- per day for each day of non-compliance and withdrawal of registration of the party.

Section 11-I: Where a public authority provides facilities or offers public services for use to a political party, it must accord equal treatment to all. The scale of such facilities and services may be graduated to conform to the importance of the parties subject to the minimum extent needed for the achievement of their aims. The importance of a party shall be decided on the basis of the results of immediately previous election to Parliament or State Legislative Assembly, as the case may be. The granting of public services shall be only in connection with and for the duration of the election campaign period. For the purposes of this section, the election campaign period shall be deemed to commence 14 days prior to the commencement of the poll in a State.

(Rules made under the Act can provide the requisite details on the pattern of the provisions of the German Law on Political Parties, 1967).”

3.1.4. In view of the above provisions, Part IV-A of the Act, containing section 29-A shall be deleted. The substance of section 29-A has been incorporated in section 11-A.

## Annexure D

### Political Parties (Registration and Regulation of Affairs, etc.) Act, 2011

(Draft prepared by committee headed by Justice M.N. Venkatachaliah)

An Act to regulate the constitution, functioning, funding, accounts, audit, and other affairs of and concerning political parties participating in elections.

Whereas existence of political parties is implicit in a democratic form of Government which our country has adopted;

And whereas, it is necessary and expedient to provide for conduct of elections to the Houses of the Parliament and the Legislature of every State in a fair and efficient manner and to maintain purity of elections and for matters connected therewith;

Whereas corrupt electoral practices, high cost of elections, abuse of money power has resulted in denial of vitals of democracy and dynastic control of political parties;

Whereas it is necessary to make political parties democratic, transparent, accountable and open to scrutiny by regulating the conduct and affairs of political parties such as funding and finances of the parties, maintenance of regular accounts, regular auditing of accounts, regular election of its office bearers by legislation providing for de-recognition and preventing them from contesting elections for failure to adhere to prescribed norms etc. and thereby cleanse public life;

Whereas it is also necessary to impose certain restrictions on persons who contest in elections regarding their background, assets, so as to ensure election of suitable persons as legislators.

Be it enacted by the Parliament of India in the Sixty-second year of the Republic of India as follows:-

### **CHAPTER I**

#### **Preliminary**

#### **1. Short title, extent and commencement.**

**1.1** This Act may be called the Political Parties (Registration and Regulation of Affairs, etc.) Act, 2011.

**1.2** It extends to the whole of India other than the State of Jammu and Kashmir,

**1.3** It shall come into force on such date as may be notified by the Central Government.

#### **2. Definitions.**



In this Act unless the context requires otherwise:

- 2.1 “local authority” means a panchayat or municipality as defined in Parts IX and IXA of the Constitution;
- 2.2 “member” a member of the political party;
- 2.3 “political activity” includes any activity promoting or propagating, the aims or objects of a political party or any cause, issue or question of a political nature by organizing meetings, demonstrations, processions, collection or disbursement of funds, or by the issue of directions or decrees, or by any other means, and includes also such and similar activity by or on behalf of a person seeking election as a candidate for any election to Parliament, any State Legislature or any local authority;
- 2.4 “political party” means an association or a body of individual citizens of India who have attained the age of 18 years;
- 2.5 “Registrar” means the Registrar of Political Parties under section 3;
- 2.6 “religious institution” means an institution for the promotion of any religion or persuasion, and includes any place or premises used as a place of public religious worship, by whatever name or designation known;
- 2.7 Words and expressions used but not defined in this Act but defined in the Constitution of India or in the Representation of the People Act, 1950 (43 of 1950), or the rules made there under or in the Representation of the People Act, 1951 (43 of 1951), or the rules made there under shall have the meanings respectively assigned to them in those Acts and Rules.

## **CHAPTER II**

### **Political parties.**

#### **3. Registrar of Political Parties.**

**3.1** The Chief Election Commissioner of India appointed under article 324 of the Constitution shall be the Registrar of Political Parties. He will be assisted by the officers of the Commission both in the States and at the Centre.

#### **4. Formation of political parties.**

- 4.1** A citizen of India who has attained the age of 18 years may form and be a member of a political party;
  - 4.1.1** Provided that any of those mentioned below shall not be a member of a political party while in service,
    - 4.1.1.1** Members of armed forces of India,
    - 4.1.1.2** Members of the civil services, including judicial services and legal advisers, of the Union or a State.

- 4.2** No political party shall carry on any activity prejudicial to the sovereignty, unity and integrity of India.
- 4.3** Every political party shall have its constitution, by whatever name called, in writing defining its aims and objects and matters specified in this Act. The aims and objects of a political party shall not discriminate the members on the basis of race, caste, religion, creed, language or place of residence and inconsistent with any of the provisions of the Constitution of India;

## **5. Constitution of political parties.**

**5.1** The constitution of a political party shall provide for the following matters:

- 5.1.1** name of the political party and acronym (if used) and the aims and objectives of the party;
- 5.1.2** any person desiring to become member of a party shall subscribe to and abide by the objectives and ideals of the party as stated in the constitution and rules and regulations of the party;
- 5.1.3** conditions for membership of the party, procedure / requirements for admission including membership fee, expulsion and resignation of members;
- 5.1.4** rights, duties and obligations of the members;
- 5.1.5** grounds on which and by whom and the procedure according to which disciplinary action can be taken and punishment may be imposed against the members;
- 5.1.6** the general organization of the party including the formation of local units like State, district, taluk/tehsil and village level units and control over them;
- 5.1.7** composition and powers of the executive committee (by whatever name called) and other organs of the party;
- 5.1.8** the manner in which the general body meetings can be requisitioned and conducted and the procedure for requisitioning and holding conventions to decide questions of continuance, merger and other fundamental organization matters;
- 5.1.9** the form and content of financial structure of the party consistent with the provisions of this Act;
- 5.1.10** accounts of the funds of a party shall be maintained in such books and in such manner as may be specified by the Registrar;
- 5.1.11** principles for electing the office bearers.

**5.2** Every political party shall have following office bearers, a President, Secretary, Treasurer, Chief Executive Officer and such others as the party may deem necessary.

- 5.3** Every political party shall utilize its funds exclusively for, the fulfillment of its aims, objects or goals and ideals set out in the Constitution of India.
- 5.4** A political party shall be competent to hold and dispose of properties both movables and immovable within the territory of India.
- 5.5** A political party may sue or be sued in its own name. In all suits and legal and other proceedings by or against a political party the pleadings shall be signed and verified by and all communications of such suits and legal and other proceedings shall be issued to and be served on the Chief Executive Officer.
- 5.6** The name of a political party must be clearly distinguishable from that of any existing political party and shall be subject to approval by the Registrar. In election campaigns and in elections, only the registered name or its acronym, as may have been approved by the Registrar alone shall be used.

**6. Executive Committee and local committees.**

- 6.1** Every political party shall maintain a register of members of the party containing prescribed particulars. The local units of the party may enroll members and shall periodically send list of members enrolled by them to the State unit. An up-to-date register of members shall be maintained by the State unit of the party.
- 6.2** There shall be an Executive Committee for every political party. The members of the Executive Committee of a political party shall be elected by the members of the local committees of the State units of the party. The members of the Executive Committee shall elect the office – bearers of the party from among themselves. Practice of nominating members is prohibited.
- 6.3** There shall be a local committee for every local unit of the party. The members of the committee of a local unit shall be elected by the members of the local committees of the immediate lower local unit of the party i.e. members of a State unit shall be elected by the members of the district units in that State. The members of the lowest local unit of the party shall be elected by the members of the party in that local unit. The members of the local committee of a local unit shall elect its office –bearers from among themselves. Practice of nominating members is prohibited.
- 6.4** The term of the Executive Committee and local committees shall not exceed three years. Well before the expiry of the term, steps shall be taken for electing a new committee. Executive committee may, if necessary, constitute a sub-committee (by whatever name called) to carry on regular and urgent executive committee business delegated by the Executive Committee. The members of the sub-committee shall be elected by the members of the executive committee from among themselves.
- 6.5** Executive Committee and local committees shall take decisions and elect its office bearers on the basis of simple majority vote. The voting shall be

by secret ballot. Name, age, profession and address of each elected member and office bearer shall be communicated by registered post to the Registrar within ten days from the date of announcement of the results.

- 6.6** Party candidates for contesting elections to either House of Parliament shall be elected by the Executive Committee of the political party having due regard to the recommendations made by the State units of the constituency. Similarly candidates for contesting elections to either House of Legislature of a State shall be elected by the Executive Committee of the political party having due regard to the recommendations made by the concerned State unit and the district units of the constituency. Candidates for election to different constituencies in elections to local bodies shall be selected by the highest local units of the concerned constituency.
- 6.7** It shall be the duty of the Executive Committee to take appropriate steps to ensure compliance with the provisions of this Act including election of members of the Executive Committee and committees of all local units of the party well before the expiry of their term. Elections to the Executive Committee of a political party shall be held in the presence of observers nominated by the Registrar. The Registrar may send observers to watch elections of any State local unit of the party.
- 6.8** No office bearer of a political party shall be an office bearer of the party for more than six years. No person shall be eligible to become an office bearer of a party unless six years have elapsed after he or a member of his family was an office bearer of that party.
- 6.9** No political party shall use for promotion or propagation of any political activity.
- 6.9.1** any ceremony, festival, congregation, procession or assembly organised or held under the auspices of a religious institution;  
or
- 6.9.2** any property or premises belonging to or under the control of a religious institution.
- 6.10** No political party shall do anything, which promotes or attempts to promote disharmony or feeling of enmity, hatred or ill will between different religious, racial, language or groups or castes or communities.

## **7. Registration of political parties.**

- 7.1** A political party shall apply for registration to the Registrar.
- 7.2** Every such application shall be made,
- 7.2.1** if the association or body is in existence at the commencement of this Act, within sixty days from the date of commencement this Act.
- 7.2.2** if the association or body is formed after such commencement, within thirty days from the date of its formation.
- 7.3** Every application under sections 7.1 and 7.2 shall be signed by all the office bearers of the association or body and presented by the Chief

Executive Officer (by whatever name called) of the association or body to the Registrar or sent to the Registrar by registered post.

- 7.4** Every such application shall contain the following particulars, namely:
- 7.4.1** the name of the association or body;
  - 7.4.2** the State in which its head office is situated;
  - 7.4.3** the address to which letters and other communications meant for it may be sent;
  - 7.4.4** the name, age, profession and address of its president, secretary, treasurer, chief executive officer and other office-bearers;
  - 7.4.5** the numerical strength of its members, and if there is more than one category of members, the numerical strength in each such category;
  - 7.4.6** whether it has any local units; if so, at what levels and the address of such local units;
  - 7.4.7** whether it is represented by any member or members in either House of Parliament or of the Legislature of any State; if so, the number of such member or members.
  - 7.4.8** a declaration that the applicant has complied with and shall continue to comply with the requirements of this Act.
- 7.5** An application under clause (a) shall be accompanied by a copy of the constitution and memorandum or rules and regulations of the association or body, (by whatever name called) which shall contain a specific provision that the association or body shall shun violence for political gains, avoid discrimination or distinction based on race, caste, creed, language or place of residence for political mobilization and to select candidates for political offices, who bear true faith and allegiance to the Constitution of India as by law established, and to the principles of honesty, socialism, secularism and democratic values, and would uphold the sovereignty, unity and integrity of India.
- 7.6** The Registrar may call for such other particulars as he may deem fit from the association or body or direct modification of any provision of its constitution or the rules and regulations.
- 7.7** After considering all the particulars as aforesaid in its possession and any other necessary and relevant factors including reasonableness of membership fee and after giving the representatives of the association or body reasonable opportunity of being heard, the Registrar shall decide either to register the association or body as a political party for the purpose of this Act, or not so to register it; and the Registrar shall communicate his decision to the association or body. No association or body shall be registered as a political party unless the constitution or the rules and regulations thereof conform to the provisions of this Act. The decision of the Registrar shall be final.
- 7.8** After an association or body has been registered as a political party as aforesaid, any change in its name, head office, office-bearers, address or in

any other material particulars shall be communicated to the Registrar without delay.

- 7.9** No political party shall be eligible to set up candidates to contest elections to either House of Parliament or Legislature of a State or a local authority unless it is registered under this Act and such registration is subsisting.

### **CHAPTER III** **Finances**

#### **8. Finances of the party.**

- 8.1** A political party may accept donations or contributions voluntarily offered to it by any company, association, organization or person except from the following sources:

- 8.1.1** from foreign nationals or foreign governments,
- 8.1.2** organizations or associations registered outside the territory of India,
- 8.1.3** from any other association, organization or group which is in receipt of foreign funds from foreign nationals or from other sources,
- 8.1.4** donations from corporate bodies and companies except in accordance with the provisions of the Companies Act, 1956,
- 8.1.5** communal or anti-national sources,
- 8.1.6** Union Government or State Government including Government undertakings,
- 8.1.7** anonymous givers,
- 8.1.8** any other company which has been in existence for less than three financial years, and
- 8.1.9** such other sources as may be specified by the Registrar.

- 8.2** For every amount received by the party including membership fee receipt shall be issued by an office bearer of the party. Similarly every expenditure shall be supported by a voucher.

- 8.3** The amount or, as the case may be, the aggregate of the amounts which may be so contributed by a company in any financial year shall not exceed five per cent of its average net profits determined in accordance with the provisions of sections 349 and 350 of the Companies Act 1956 during the three immediately preceding financial years.

- 8.4** The Executive Committee of a political party shall cause to be maintained by itself and all the local units regular accounts clearly and fully disclosing the sources of all amounts received by it, and clearly and fully disclosing details of the expenditure incurred by it. The accounts shall be maintained according to the financial year in such books of account and registers as may be prescribed and have them audited by a Chartered Accountant approved by the Registrar every year and make the account books and the

report of the auditor available for inspection by the Registrar as and when demanded by him. The Registrar may direct a special audit of the accounts of any year of a party or of any local unit.

- 8.5** The accounts shall also be open for inspection by the members of the party and they shall also be entitled to obtain copies of such accounts or any part thereof.
- 8.6** The custody and control of the funds of a political party shall vest in the Treasurer of the party and he shall be solely responsible for it. If it is considered necessary the Executive Committee of a party may create an office of Assistant Treasurer to assist the Treasurer.
- 8.7** If the Registrar finds on verification undertaken whether suo motu or on information received, that the statement of accounts filed under sub-section (1) is false in any particular, the Registrar shall levy such penalty upon the political party, as it may deem appropriate besides initiating criminal prosecution as provided under law.
- 8.8** Any order passed under sub-section (7) may be directed by the Registrar to be published in the press and other media, for public information.

**9. Declaration of donation received by the political parties.**

- 9.1** The Treasurer of a political party shall, in each financial year, prepare or cause to be prepared a report in respect of the following namely:
  - 9.1.1** the contribution or donation of twenty thousand rupees or more received by the political party from a person or any other source in that financial year;
  - 9.1.2** the particulars of the contributions or donations of twenty thousand rupees or more made by companies to the party in that financial year.
- 9.2** The report under section 9.1 shall be in such form and contain such particulars as may be specified by the Registrar.
- 9.3** The report for a financial year under section 9.1 shall be submitted by the Treasurer of the party before the due date for furnishing a return of its income of that financial year under section 139 of the Income- tax Act 1961(43 of 1961) to the Election Commission.
- 9.4** Where the Treasurer of a party fails to submit a report under section 9.3 then notwithstanding anything contained in the Income- tax Act 1961(43 of 1961), such political party shall not be entitled to any tax relief under that Act.

**10. Facilities offered by public bodies.**

Where a public authority provides facilities or offers public services to a political party, it must accord equal treatment to all. The scale of such facilities and services may be graduated to conform to the importance of the parties subject to the minimum extent needed for the achievement of their aims. The importance of

a party shall be decided on the basis of the results of immediately previous election to House of People or Legislative Assembly of the State concerned, as the case may be. The granting of public services shall be only in connection with and for the duration of the election campaign period. For the purposes of this section, the election campaign period shall be deemed to commence 14 days prior to the commencement of poll in a State.

#### **CHAPTER IV Penalties**

**11. Inquiry by Registrar.**

**11.1** The Registrar shall be competent to inquire, either suo-motu or on information received, of non-compliance or violation of any of the provisions of this Act by a political party. If on due inquiry, the Registrar is satisfied that there has been non-compliance or violation of any of the provisions of this Act by a political party, the Registrar shall call upon the party, to rectify the non-compliance or violation within sixty days if the same could be rectified.

**11.2** If the non-compliance or violation is such that it cannot be rectified or if it could be rectified but not rectified and continues beyond the period of sixty days, the Registrar may impose such punishment on the political party as he may deem appropriate in the circumstances of the case including levy of the penalty of Rs. 10,000/- per day for each day of non-compliance or violation. He may also withdraw the registration of the party for a specified period after giving the party an opportunity to show cause.

**11.3** An office bearer or member of a political party who receives or accepts any contribution or donation in violation of any provision of section 8 shall be punishable with imprisonment for a term, which may extend to three years and shall also be liable to pay fine which may extend to three times the amount received.

**11.4** A political party which does not contest elections for more than one general election, or does not secure a prescribed minimum percentage of votes polled or does not take part in mainstream political activities shall be liable to be de-registered and made ineligible to contest elections for such period as the Registrar may specify.

#### **CHAPTER V Miscellaneous**

**12. Power to make rules.**



**12.1** The Central Government may, after consulting the Registrar, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

**12.2** Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

**13. Protection of action taken in good faith.**

No suit, prosecution or other legal proceedings shall lie against the Central Government, State Government, the Registrar or any person acting under the directions of the Central Government, State Government or the Registrar in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or order made there under.

**14. Act to override other enactments.**

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

**15. Repeal.**

Section 29A of the Representation of People Act 1951 (43 of 1951) is hereby repealed.

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## **Background on ADR and National Election Watch**

### **About ADR and NEW**

The **National Election Watch** (NEW) is a nationwide campaign comprising of more than 1200 NGO and other citizen led organizations working on electoral reforms, improving democracy and governance in India. The National Election Watch is active in almost all states of India and has done election watch for all states and Lok Sabha elections since 2002. ADR, along with couple other organizations, won the PIL in Supreme Court in 2002 to making disclosure of educational, financial and criminal background of electoral candidates mandatory.

**Association for Democratic Reforms** (ADR) is a non-political, non-partisan and a non-governmental Organization whose PIL filed in Dec 1999 culminated in a Supreme Court order on Mar 13, 2003 requiring disclosure of criminal, financial and educational background of all contesting candidates. Since then ADR has done Election Watches in almost all State Assembly and Lok Sabha elections. It continues to work towards strengthening democracy and governance in India by focusing on fair and transparent electoral and political processes. It is currently conducting election watch in all states going for assembly polls.

### **Brief background**

|                    |   |
|--------------------|---|
| Early 1999:        | 11 IIM-Ahmedabad professors get together to form Association for Democratic Reforms to work on electoral reforms.                                     |
| August 1999:       | ADR files PIL in Delhi High Court seeking disclosure of pending criminal cases by candidates contesting elections to parliament and state assemblies. |
| November 02, 2000: | Delhi High Court upholds above PIL.   |
| December 2000:     | Government of India appeals to Supreme Court against the judgment of Delhi High Court.  |
| May 02, 2002:      | Supreme Court rejects the appeal and upholds the High Court judgment.   |
| June 28, 2002:     | Election Commission issues orders to implement the Supreme Court judgment.  |
| July 08, 2002:     | All party meeting decides to amend Representation of People Act to prevent/dilute the Supreme Court's orders.   |
| August 22, 2002:   | Cabinet sends Ordinance for amending the Representation of People Act, to President for signature.  |
| August 23, 2002:   | President returns the Ordinance.  |
| August 24, 2002:   | Cabinet sends the Ordinance to the President a second time, the President signs, in keeping with the convention.                                      |

- October 2002: PILs filed in Supreme Court, including one by ADR, challenging the constitutional validity of the amendment to the Representation of People Act, done by above Ordinance.
- March 13, 2003: Supreme Court declares above amendment of the Representation of People Act as “illegal, null and void” and restores its May 02, 2002 judgment.
- March 27, 2003: Election Commission issues orders implementing the Supreme Court judgment.
- 2002-till date: First ADR, and now National Election Watch, conduct Election Watches in all Parliament and State Assembly elections, collecting copies of affidavits filed by candidates, and collating and summarizing the information given by candidate under oath.  
**Data for over 50,000 candidates, self-declared by the candidates themselves under the Supreme Court order, is now available.**
- 2007: Files RTI applications before Election Commission and the Tax authorities seeking information whether Political Parties file their contribution reports as per Sec 29(A) of RPA (Representation of Peoples’ Act) 1951 to get tax benefits under Sec 13A of Income Tax Act, 1961
- 21 Jun 2007: EC response contains details on 21 parties’ contribution report. Many parties are listed for not submitting the reports ever. Tax Authorities refuse to divulge the information
- 2008: CIC on 2<sup>nd</sup> appeal allows tax returns of political parties to be made public and directs the authorities to furnish copies of the IT returns of the parties to public
- 2008: Scrutiny of copies of the return reveals that all the parties have availed benefit under Sec 13 A of the Income Tax Act, even those who have not filed their statutorily mandated contribution reports before Election Commission.
- 2008: Files a PIL in Supreme Court to issue order to conduct an inquiry to examine all defaulting parties whom have been given benefit of section 13A of Income Tax Act and to take appropriate action against the defaulting political parties to recover the income tax due from them from the date of default till date
- Nov, 14 2008: Supreme Court sets the PIL aside saying that the time is not appropriate to take up the PIL.
- Jan 2009: Discussion with network partners to strategize on next steps.
- May 2009: Results of Lok Sabha Election Watch shows that majority of candidates with heinous criminal records lost elections.

Nov 2009: First ever report on election expenses released by ADR and NEW.

### **Few achievements of NEW and ADR**

- ADR won two milestone judgments on disclosure of candidate's criminal and financial records from the Supreme Court in May 2002 and March 2003 respectively. Since then, 1200 NGOs from all over the country are supporting ADR and ADR in partnership with its partners has organized Citizen Election Watch for all major elections and disclosed candidate's background information to the media and the public.
- After the Supreme Court's order, Members of Parliament (MPs) lined up to clear their outstanding dues to the Government for rent, electricity, phone bills and so on to avoid embarrassing disclosures while filing nomination papers.
- The Election Commission has completed a massive exercise based on the Gujarat Election Watch report to verify information filed by candidates in the nomination papers and affidavits, and has started proceedings against candidates with false declarations. They are now currently doing that for the subsequent elections as well.
- A Bill on Electoral Expenses passed in September 2003. The EC has taken it one-step forward and asked candidates to file a statement of expenses in every three days during the campaign. The EC has also made this information (in addition to the affidavits filed by candidates disclosing financial, criminal and educational background) available to citizens on request to Returning Officers, District Election Officers and the CEOs.
- Civil Society non-partisan Election Watches are springing up in different states. In the Lok Sabha 2004 Elections, 19 States and 5 Union Territories carried out Election Watches. In the Lok Sabha 2009 elections, Election Watches were held in all states and union territories in the country.
- Bihar Election Watch in October-November 2005 resulted in intense pressure on the Chief Minister Designate due to the extensive media coverage of candidate background. As a result, for the first time, Bihar has a Council of Ministers without any known criminal record.

- A national level political leader contacted ADR during the UP Election Watch in 2007 and wanted the list of candidates for his party with criminal details. Similarly, this also happened in the Karnataka Assembly Elections 2008.
- The Election Commission inaugurated Civil Society led National Conferences on Electoral Reforms in Ahmadabad, Bangalore, Patna, Lucknow and Mumbai. These Conferences were action oriented and resulted in successful Election Watch campaigns. The Election Commission has backed this work and the Chief Election Commissioner (CEC) has attended each year's Annual National Conference on Electoral and Political Reforms.
- The EC issued several very significant orders in the last one or two years relating to candidate disclosure, enforcing those affidavits are complete, taking action against false affidavits based on complaints, and disclosing electoral expenses.
- In April 2008, ADR obtained a landmark ruling from the Central Information Commission (CIC) saying that Income Tax Returns of Political Parties would now be available in the public domain along with the assessment orders.
- In the Karnataka Assembly Elections, 2008, there was a reduction in the number of candidates with serious offenses put by parties. There were 93 such cases against candidates in the 2008 elections, down from 217 in the 2004 assembly elections.
- Overall, the percentage of candidates with pending criminal cases came down from 20% to 14% in the assembly elections held in the country in 2008 for the states of Rajasthan, Chhattisgarh, Madhya Pradesh, NCT of Delhi and Mizoram.
- Mr. L.K. Advani, Leader of the BJP gave a press statement that the BJP would not file candidates with criminal records (October 2008). Mr. Rahul Gandhi, General Secretary of the Indian National Congress (INC), made similar announcement.
- A large number of candidates with serious pending cases that contested Lok Sabha 2009 elections like Pappu Yadav, Atiq Ahmed, Mukhtar Ansari, Akhilesh Singh, etc. lost.
- The number of total serious IPC sections against MPs decrease from 296 in Lok Sabha 2004 to 274 in Lok Sabha 2009.
- On Jan 25, 2010 both the Congress Chief Ms Sonia Gandhi and leader of opposition in Lok Sabha Ms Sushma Swaraj of BJP made public statements

calling for a consensus on barring candidates with criminal backgrounds from contesting elections.

- On Feb 3, 2010 Prime Minister Manmohan Singh asks his Cabinet colleagues to disclose details of their assets and liabilities and refrain from dealing with the government on immovable property.