

**Recommendations on Electoral and Political Reforms by
National Election Watch (NEW) & Association for Democratic Reforms (ADR)
to the Parliamentary Standing Committee on Personnel Public Grievances,
Law and Justice on May 26, 2017**

A: Recommendations for Electoral Reforms:

1. **Remove criminals from politics:** For upholding the highest traditions of probity and morality in public life, any person against whom charges have been framed by a Court of Law of offences punishable for two years or more should not be allowed to contest elections. In particular, any candidate charged with serious charges like murder, attempt to murder, rape, kidnapping, extortion, etc. should be banned from contesting any elections.
2. **Declaration of sources of income by candidates:** Along with the declaration of their assets and liabilities candidates should also declare their income and sources of income at the time of nominations. Form 26 should be amended accordingly.
3. **Register of Member's interest in Lok Sabha:** As Register of Member's interest was introduced in Rajya Sabha, there is a need to introduce the same in the Lok Sabha.
4. **Implement ceiling on expenses of political parties during election period:** To make the current laws on election expenses more effective, ceiling should be imposed on expenses during elections made by political parties. Political parties should start submitting a statement of election expenditure beginning one year before an election is due for the State Assembly or the Parliament. From one year before an election is due till the date of announcement of the election, political parties should submit the statement of election expenditure once a month. Thereafter from the date of announcement of elections till declaration of result, expenditure statements should be submitted every alternate day/bi-weekly, similar to what individual candidates are required to do.
5. **State funding of elections:** It is proposed that the expression "state funding" be replaced by "public funding". The 255th Law Commission Report has recommended partial State funding in-kind. As per the recommendations of various committees and Law Commission reports, introduction of state funding should be preceded by reforms such as the decriminalisation of politics, the introduction of inner party democracy, electoral finance reform, transparency and audit mechanisms and stricter implementation of anti-corruption laws so as to reduce the incentive to raise money and abuse power.
6. **The requirement for winning election should be "50% + 1 of the registered votes cast":** To stop candidates and parties from asking votes on caste, religion and regional basis and to help stop division in Indian society based on these parameters, a requirements should be

made to declare a candidate as winner only if the candidate gets more than 50%+1 vote. In the eventuality when no candidate gets required number of voters, there should be a runoff between the top two candidates getting maximum votes. It is worth noting that 50%+1 of the votes cast is an easier requirement for being declared elected, a more stringent requirement, and the ideal to ensure appropriate and proper representation.

7. **Provide “None of the Above” (NOTA) option in the EVMs:** After the Supreme Court decision of September 2013, NOTA option was introduced on EVMs. However, even if the maximum number of votes cast are for NOTA, the candidate getting the maximum votes would be declared winner. Hence, there is a requirement to strengthen NOTA and make it more effective.
 - I. If the NOTA votes polled are more than the votes polled in favour of any other candidate, then no candidate should be declared as elected.
 - II. Fresh election should be conducted, in which none of the earlier candidates should be allowed to contest, and
 - III. In the fresh elections, only a candidate who gets at least 50%+1 of the votes cast should be declared elected.
8. **Reduce the time provided for filing election expenses:** A candidate presently can file accounts of elections expenses within 30 days and time for filing of election petition is 45 days. This reduces the time given for filing election petition to 15 days. There is a need for amendments to sections 78, 81 and 84 of the R.P. Act, 1951 to reduce the period of filing accounts of elections expenses by contesting candidates to 20 days so that the time available for filing election petition would increase to 25 days.
9. **Action against candidates who fail to file their election expenses:** 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 fulfil this obligation.
10. **Legal sanction for filing election petition against candidates who lose elections:** There is no provision for election petitions or other actions against candidates who lose elections. A legal provision should be there for filing an election petition against losing candidates who are guilty of corrupt practice in terms of section 123 of the R.P. Act, 1951.
11. **Strict penalties against those involved in electoral malpractices:** The relevant sections of the Representation of People Act (RPA) pertaining to electoral malpractices need to be amended and stricter penalties imposed. Electoral malpractices should be declared criminal offences carrying a sentence of two years or more.
12. **Law against the use of excessive money in elections by candidates:** The excessive use of money in elections vitiates democracy. Candidates who break the law by giving money and gifts to voters, or exceeding the legal spending limits should have his/her election set aside.

13. **Provision for verifying the declarations in the affidavits of the candidates:** 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. Provision should be made for strong action on finding serious anomalies. If not for all candidates, verification of winner's affidavits should be done.
14. **Conduct and better management of electoral Rolls:** 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. The government should empower the Election Commission to take whatever steps necessary to ensure:
 - I. Accurate, updated electoral rolls.
 - II. Use of common electoral rolls for all elections
 - III. Every citizen to be able to register her/his vote at any place of his choosing and any time of the year. As millions are migrating yearly to urban and other areas, every voter should be able to cast his vote digitally wherever one happens to be on the date of polling.
 - IV. Electoral rolls should be linked with PAN/ Ration Card/Passport/Aadhar as there are huge errors in these rolls. This will remove the menace of same person having several voter ids.
 - V. Facility of electronic filing of nominations and affidavits with a one page summary that is accessible on a mobile phone. This would be in the spirit of digital cashless economy.
15. **Implement a multi-party system for appointments of the CEC and SEC:** CEC should be appointed through a multi-party system including the Prime Minister, Leader of the Opposition, the Speaker of the Lok Sabha, Deputy Chairperson of the Rajya Sabha and the Chief Justice. A similar process should be implemented for appointments of SEC.
16. **Prohibition of taking other offices after retirement of The Election Commissioners:** The Election Commissioners should not be eligible for any office/ join any political party after retirement for a period of at least 5 years.

B: Recommendations for political reforms:

1. **Introduce provisions for inner-party democracy within political parties:** Although India is a democratic country, our political parties which run this democracy are highly undemocratic in their functioning. 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 (as suggested by Law Commission Reports).

2. **Bring financial transparency in the accounts of political parties:** There is a great need to bring in financial transparency in the accounts of political parties. The accounts of political parties should be audited by a qualified and practicing Chartered Accountant from a panel of such accountants maintained for the purpose by the Comptroller and Auditor General.
3. **Electoral Bonds:** Electoral bonds as mooted in the recent amendments to Finance Bill, 2017 will ensure opacity instead of transparency. The amendments to the Income Tax Act mean that political parties will not be required to disclose information about the “electoral bonds” even to the Income Tax department as well as their contribution reports, and that they will continue to enjoy 100% exemption from income tax. The limit of 7.5 per cent contribution of the company’s average net profits in the last three financial years to political parties has been removed thereby opening the door for unlimited amount of donations to political parties.
4. **Reduction of donations from Rs 20,000 to Rs 2000:** By not reducing the limit of anonymity from Rs 20,000 to Rs 2,000, the transparency has not been brought about.
5. **Foreign funding to political parties:** The modification of the definition of “foreign source” under the Finance Act, 2016 would allow foreign companies to fund political parties through Indian companies, provided they follow the rules and regulations prescribed under FEMA 1999. ADR strongly feels that any political party registered in India should not be allowed to accept any financial contribution from any foreign source or company with a view to ensuring that parliamentary institutions, political associations as well as individuals working in the important areas of national life may function in a manner consistent with the values of a sovereign democratic republic.
6. **Regulate the registration and de-registration of political parties:** There is a requirement to amend Sec.29A of the R.P. Act, 1951 to empower the Election Commission of India to regulate registration and de-registration of political parties.
7. **Bring in a comprehensive bill to regulate working of political parties:** The draft Bill to regulate Political Parties, as given in the 170th Law Commission Report Part III: Chapter I should be passed by Parliament. Strict rules should be enacted to regulate the inner functioning of the political parties, including elections of office bearers, selection of candidates for elections, etc.
8. **Declare Political parties as Public Authorities:** A decision of a full bench of the Central Information Commission (CIC) in June, 2015 declared six national political parties (BJP, INC, NCP, BSP, CPM, and CPI) as public authorities under the RTI Act. None of the six parties have complied with the decision of the CIC nor explained reasons for non-compliance to the CIC. None of the parties even challenged the CIC’s decision in any court of law. ADR feels that in the light of larger public interest, the national parties should abide by the CIC’s decision.

9. **Affidavit information of candidates to be certified by Political Parties:** Since the candidates are given tickets largely by political parties without any public debate or involvement of their primary members, the contents of the affidavits should be certified by the political party's office bearer. In case the information furnished by the candidates is found incorrect, the political party office bearer should be held responsible.
10. **Annual report by MPs and MLAs:** 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. This report can be made available either at the Lok Sabha/Rajya Sabha website or at Election Commission's website.
11. **Fast tracking of cases for MLAs/MPs:** The Supreme Court in March, 2014 had ruled that trials of MLAs/MPs accused of serious crimes under Section 8(1), 8(2) and 8(3) should be time-bound and directed lower courts to conclude the proceedings within a year. If a trial court fails to complete the process within a year of framing charges, it will have to submit an explanation to the high court. ADR feels that the Supreme Court ruling should be strictly adhered to and status of fast tracking of such cases should be regularly put up in the public domain.
12. **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.

C: Recommendations for new rules by Election Commission of India

1. **Make public the list of polling agents in advance:** The list of polling agents should be made public well in advance of the elections.
2. **Include civil society representatives as observers during elections:** There should be a mix of official and non-official observers during elections, selected by the Election Commission. The same facilities and powers should be given to both categories of observers.
3. **Make election expense statements of the candidates/winners available through web:** 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. If the statement runs through several pages, at least their summaries should be put on the website.
4. **Appointment of the CEO from cadre of another state:** The Chief Electoral officer of a state is sometimes apprehensive that after his term is over, he will have to work under the same political authorities over which he exercised powers during elections as CEO. To enable a CEO to work fearlessly without these apprehensions, a CEO should be deputed from

another state.

5. **Changes required in the affidavits:** Following changes should be incorporated in the existing format of the affidavit filed by the candidates contesting elections:
- I. PAN declaration of candidates should be made mandatory in order to keep a continued check on their transactions and dealings. If PAN is not given, the nomination papers filed by the candidate should be rejected.
 - II. There should be a column in the affidavit wherein the candidates can declare any penalty levied on them with regard to taxes.
 - III. A column asking for the source of income of candidates should be provided in the affidavit.
 - IV. Candidates should attach their IT returns with the affidavits filed by them. Affidavits should be certified by the Political Parties.
 - V. Names of candidates contesting elections should be announced 6 months prior to elections and they should submit affidavits stating the expected and approximate amount to be spent in elections by them and of the source thereof.

Conclusion: Political parties provide the foundation on which governments are formed by democratic electoral process. However, political parties under the current legal framework are loosely governed, be it registration, funding, expenditure etc. Hence there is a requirement for a comprehensive law to 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 170th report of the Law Commission of India, should be enacted. Election financing should rest on the following four pillars. 1) Laying down the expenditure limit of candidates and also of political parties, 2) Disclosure requirements for more transparency, 3) Compliance of disclosure requirements and 4) Penalties for non- adherence. The above recommendations if implemented would go a long way in strengthening our democratic system and the electoral process.