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National Election Watch

The Political Parties

(Registration and Regulation of Affairs, etc.)

Bill 2011 (Draft)



ASSOCIATION FOR DEMOCRATIC REFORMS

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Introduction

The need for a comprehensive Bill to strengthen political parties has been felt for some time. The Law Commission headed by Justice Jeevan Reddy and the Working Committee to Review the Constitution headed by former Chief Justice, M.N. Venkatachaliah have addressed this issue. The Election Commission and various leaders, intellectuals and scholars have also gone into this question. National Election Watch (NEW) and the Association for Democratic Reforms (ADR: www.adrindia.org) have also reiterated the need for such a Bill.

The enclosed bill was drafted by a committee Chaired by Justice M.N. Venkatachaliah, former Chief Justice of India. The other members of the committee included Mr. Sudhish Pai, Advocate, Sri Kuriya Chamayya, former Law Secretary, Karnataka, Mr. Arakere Jayaram, Journalist, Sri B. Somashekara, former Minister, and Prof Trilochan Sastry, founder ADR. The draft is being put out for wider public discussion. It is up to the collective wisdom of all concerned people and Institutions to shape it into a form best suited for the country's needs.

The enclosed background note gives the reasons why such a Bill is required. The draft Bill itself is also enclosed. It is perhaps pertinent to recall that there are several countries that have such Bills, and some of them have even incorporated it into their Constitution. Two important issues stand out in all this. One is the need for inner party democracy. This includes a democratic process for electing or selecting party office bearers, and candidates for election. Some countries have also imposed term limits on the number of times a person can hold office. The second issue is transparency and accountability in funding of political parties and elections. There are several issues here related to limits on donations by individuals and corporations, penalties for non compliance on parties or donors, whether funding can be accepted by political parties from banned organizations, and the vexed question of how to deal with support groups that spend money but are officially not part of the candidate's election expenses. Within our own country, nearly all forms of organized activity are regulated by proper laws. These include companies, cooperatives, Banks, Charitable Trusts, Societies, Educational Institutions, Medical Institutions, religious trusts, temples, mosques, churches, Gurdwaras and so on. However, the word "political party" is rarely used in the Constitution, and there is no comprehensive law for political parties.

We hope the enclosed documents will enable a more informed debate and even lead to the passage of a suitable legislation.

BACKGROUND PAPER FOR ELECTORAL REFORMS

“Man’s capacity for justice makes democracy possible; but man’s inclination to injustice makes democracy necessary.” In the unforgettable words of Justice Felix Frankfurter, “Democracy involves hardship- the hardship of the unceasing responsibility of every citizen. Where the entire people do not take a continuous and considered part in public life, there can be no democracy in any meaningful sense of the term. Democracy is always a beckoning goal, not a safe harbour. For freedom is an unremitting endeavour, never a final achievement. That is why no office in the land is more important than that of being a citizen.”

Representative Democracy

It is not feasible in modern nation states to have the kind of democracies as in ancient Greece. In modern democracies people elect their representatives to rule and govern. It is a representative democracy. “Implicit in the idea of a representative democracy are the notions of a filter and a microcosm. In a mass society, it is regarded as not only a necessary but also a positive benefit that the volatile nature of raw public opinion should be refined through an electoral process that gives representatives the opportunity to deliberate and exercise their judgements free from factional interests or majority intolerance. By the same token, a representative democracy has to approximate closely to the society it seeks to represent, in order to maintain its legitimacy as a system of government.”

Democracy may not be the best form of government, but it is the least harmful. Elections are the only recognized mode of expression of the people’s will and of bringing about a smooth and peaceful change of government. Regular, free and fair elections are the fundamental, unmistakable indicia of democracy. They are indeed the heartbeats of democracy. But they should not be too frequent or erratic. We in India can really be proud that never before and nowhere else has such a large section of the human race lived as one political entity under conditions of freedom and successfully brought about successive changes of governments through the ballot. But a lot is left to be desired.

Rule of Law and Democracy

The inter-connection between rule of law and democracy can never be over emphasized or lost sight of. While the consent of the governed is a value basic to a free, democratic society, democracy in any real sense cannot exist without the rule of law. Democratic

institutions, to have legitimacy, must rest on legal foundation. But adherence to law alone will not be sufficient. A political system must possess legitimacy. It must be capable of reflecting the aspirations of the people. A functioning democracy requires a continuous process of discussion. It may be said that the Constitution prescribes government by democratic legislatures with the executive accountable to them, resting ultimately on public opinion. Constitutionalism and the rule of law facilitate and make possible a democratic political system by creating an orderly framework within which political decisions may be made.

Degeneration –Need for Reforms

Over the years the effacement of democratic values has resulted in a total lack of democratic representational legitimacy leading to disenchantment with institutions of democracy and demoralization of society. Constitutional democracy can work only under institutional safeguards. It is therefore very essential that institutions are strengthened and correct systems put in place. It may be said that the institution of Parliament is perhaps the greatest political invention of man-devised to see that his views are reflected in the body charged with the duty and responsibility of the country's governance. A parliamentary democracy requires representative government which will truly reflect the public opinion or what John Stuart Mill called the 'General Will' of the people. An ideal democracy is one which functions in consonance with the public opinion. In order to ensure these elections should be free, fair and meaningful.

In a passage that is classic, Mill told the lovers of liberty, "Of what avail is the most broadly popular representative system, if the electors do not care to choose the best member of Parliament, but choose him who will spend most money to be elected? How can a representative assembly work for good, if its members can be bought, or if their excitability of temperament uncorrected by public discipline or private self control, makes them incapable of calm deliberation and they resort to manual violence on the floor of the House, or shoot at one another with rifles?" We have seen how true all this is!

The most adverse impact on our constitutional democracy has been our electoral system and electoral politics. Corrupt electoral practices, the high cost of elections and abuse of money power and muscle power and lack of representational legitimacy have eaten into the vitals of our democracy.

People have become cynical and come to regard these vices as inevitable and hence remain indifferent to their prevalence. Sydney Harris' statement in this context is very apposite: "Once we assuage our conscience by calling something a "necessary evil", it

begins to look more and more necessary, and less and less evil.” Wrong becomes right by usage and convention. This is the bane of our age. The vices of corrupt practices cannot be controlled except by comprehensive systemic changes with emphasis on a national, political consensus to abide by norms- a consummation devoutly to be wished.

It is against the backdrop of all this that there is the imperative need for electoral reforms- to ensure free and fair elections in the real sense, to make elections more meaningful and reflective of the will of the people- and democracy also more meaningful and functional.

Representational Legitimacy

The multiplicity of political parties combined with the first past the post system results in a vast majority of parliamentarians and legislators getting elected on a minority vote. The percentage of polling is itself quite low and those who win usually obtain less than 50% of votes cast, i.e., more votes cast against them than in their favour and the votes secured by them being a fraction of the electorate. A candidate is returned even if he gets less than one-third of the votes polled. There are extreme cases of some candidates who won on the basis of 18% of the votes polled. On an average over 60% of the parliamentarians have won on a minority vote. It is said that the present Lok Sabha has 68% of its members elected on a minority vote. The votes secured by a successful candidate in the Assembly sectors on an average is 25% of the votes polled. On an average only 50%-55% of the voters turn up for voting. This means in effect a winning candidate gets about 6% of the votes of the electorate in the constituency.

The methods employed for getting votes are often unethical. Experience has shown that in our pluralistic society, political parties, or atleast some of them, have found it advantageous to develop a vested interest in progressively appealing to narrower and narrower loyalties- based on caste and community. This has to be totally avoided. Appealing to voters on the basis of caste, creed, language and religion is a corrupt practice and an electoral offence under the Representation of the People Act. It is strange and ironic that most people of a constituency do not vote for the candidate who becomes their representative. Whose representatives are these candidates when a majority of voters did not want them?

It is said that the system of first past the post has the merit of preponderance of ‘decisiveness’ over ‘representativeness.’ Proportional representation system though it may have some advantages of greater representational legitimacy is beset with the

problem of having more and more disparate coalitions providing unstable and not long lasting governments which has been the bane of countries like Italy.

50% + 1 vote-to be secured for being elected

The principle of representativeness will be realized to a great extent if a candidate is declared successful if he obtains 50% + 1 vote of the votes polled. Obtaining 50%+1 vote is however not an easy proposition. It therefore appears more feasible and appropriate in the circumstances that it be provided that for a candidate to be declared elected, he should secure atleast 40% of the votes polled and if the difference of votes between the candidate getting the highest number of votes (and not less than 40%) and the candidate getting the next highest is more than 5%, then the candidate with a minimum of 40% votes should be deemed to have obtained 50% +1 votes and declared the winner. If no candidate gets atleast 40% then there should be a run off contest between the top two candidates. This is broadly the French pattern. Such a system will give greater legitimacy to the elected representatives and our democratic process. This will also prevent a candidate from winning only on the basis of caste, community, religion and language and he will represent a more inclusive section of the electorate.

Negative Vote

There should be provision for negative voting- i.e. the voter indicates that he is not voting for any of the contesting candidates. That will not have any impact on those getting the maximum votes and prevent them from getting elected. It will, however, be a disincentive for parties to put up worthless candidates. And that may, to a large extent, help ensure that proper persons are put up as candidates to contest elections. This will also enthruse people to vote in as much as they can exercise their option not to vote for any of the contesting candidates.

Compulsory Voting

Another device of ensuring greater representational legitimacy is to see that there is a higher percentage of polling, that is, more number of voters exercise their franchise. One method of achieving this is to make voting compulsory for all citizens, subject to just exceptions like unavoidable circumstances. What sanctions must be prescribed for not voting is a matter to be considered. Compulsory voting should be provided for with such sanction as may be prescribed. Different countries have made voting compulsory and with different sanctions. It could even be giving some incentive for exercising one's franchise. That appears to be more appropriate and feasible in the Indian context. It is a matter for consideration.

Egalitarian Voting

Another suggestion, to ensure that a winning candidate is more representative, is to provide that in order to be declared elected a candidate should secure a minimum percentage of votes of the various groups and sections of the electorate as may be prescribed. It is true that this will promote greater inclusiveness. However the proposition is fraught with a lot of problems. In the Indian context on what basis are the various groups to be determined as their number is large and the diversities many. Such prescription may enable a small section of the electorate to veto an otherwise good and popular candidate. That has to be certainly avoided. It may require a re- engineering of the electoral process and the entire election system. It is a forward looking idea. But all this requires serious debate and consideration.

These suggested reforms will help ensure better participation of the electorate in the elections and confer greater legitimacy on elected representatives.

Criminal Background- Disqualification for Contesting

Politicisation of crime and criminalisation of politics take manifold forms and render the whole exercise of elections and democracy itself virtually meaningless and untenable. Persons with a criminal background need to be kept out of the system so as to ensure its purity. Under the existing law, only those actually convicted are debarred from contesting election. There is yet no time frame to accelerate the judicial proceedings against the chargesheeted to minimise, if not eliminate, the delay. The law needs to be amended to ensure that those against whom criminal charges have been framed are precluded from contesting. Apart from those who are convicted, persons who are chargesheeted for offences for which the punishment is imprisonment for a term of five years or more also need to be debarred from contesting. A grace period of one year may be allowed from the date of the chargesheet to enable the person chargesheeted to have it quashed or to obtain an interim order. A person convicted for any heinous offence/crime like murder, rape, dacoity, smuggling etc. should be permanently debarred from contesting for any political office.

Money Power- Ceiling on Election Expenditure

One of the most critical problems in the matter of electoral reforms is the scourge of money power. There is the hard reality that for contesting an election one needs a huge amount of money. The limits of expenditure prescribed are meaningless and almost never

adhered to. It has become difficult for the good and the honest to contest and enter the legislatures. A high degree of compulsion for corruption is created in the political arena which has progressively polluted the entire system. Corruption erodes performance and becomes a prime cause for non-performance and compromised governance. The big money spent on elections escalates the cost of everything in the country. Electoral compulsions for funds become the foundation for the whole superstructure of corruption.

Decades ago Rajaji wisely said that democracy must be freed from money power. Today it is well known that votes of the people are many a time virtually purchased. Unless the election process is freed of and rescued from money power and muscle power there can be no true and meaningful democracy. Today, can a common man, however popular and deserving, think of contesting elections? “If we desire freedom to replace authoritarian dictatorship in the field of political ambitions, if we desire to release merit from the entanglement of party funds, we should examine how we can make elections much less expensive than they are now,” said Rajaji.

To purify the election process, one of the important requirements is to have a ceiling on the election expenditure. The object of limiting the election expenditure is that it should be open and possible to any individual or party, howsoever small, to contest an election on the basis of equality. The availability of disproportionately large resources is likely to lend itself to misuse or abuse for securing to the political party or individual possessed of such resources, undue advantages over others. This can produce anti-democratic effects.

As the Supreme Court said in Kanwarlal Gupta’s case AIR 1975 SC 308, “Individuals with grievances, men and women with ideas and vision are the sources of any society’s power to improve itself. Government by consent means that such individuals must eventually be able to find groups that will work with them and must be able to make their voices heard in these groups.”

The other objective of limiting the election expenditure is to eliminate the influence of big money in the electoral process. The rich and the affluent constitute a small fraction of the electorate. The pernicious influence of big money would play a decisive role in controlling the democratic process and that would inevitably lead to the worst form of political corruption which in its wake is bound to produce all vices at all levels. There is also every possibility that pre-election donations would operate as post-election promises resulting ultimately in the common man’s interest being in jeopardy, “not so much ostensibly in the legislative process but more in the implementation of laws and administrative or policy decisions.”

Hence, the need for a ceiling on election expenditure. This is provided in Section 77 of the Representation of the People Act, 1951. The ceiling on expenditure has to be reasonable and realistic reflecting the increasing costs. This ceiling should be reviewed and fixed by the Election Commission from time to time and should include all expenses by the candidate as well as his political party, friends, well wishers, and any other expenses incurred for any political activity on his behalf by any individual or corporate entity. Such ceiling should be strictly enforced on pain of being disqualified for its breach.

Vigilance Committees

Another important step that can be taken to ensure the return of proper candidates to Parliament/Legislatures is the setting up of “People’s Committees” or “Vigilance Committees” as advocated by Loknayak Jayaprakash Narayan. Other democracies have such a procedure. In England every candidate has to be approved by what is known as the “Constituency Committee.” There is a similar provision in USA too where a candidate must have the backing of a minimum number of members of the electorate to contest the primaries. It would be worthwhile for us to consider having a provision that at least 25,000 voters must support the candidature of a person for contesting for Parliament and a candidate for the State Legislature should have the backing of at least 10,000 voters. This would also put a check on the number of contestants. This is again a matter for further debate.

Proposed Amendments

The suggestions made herein can be given effect to by suitable amendments to the Representation of the People Act, 1951 (the Act) and the Conduct of Election Rules, 1961 (the Rules)

Re: 50% + 1 vote for being elected- Appropriate amendment to Rule 64 of the Rules- Declaration of result of election and return of election.

Re: Negative Vote – Appropriate amendments to Form 13 D (Re: Rule 24), Form 13E (Re: Rule 27F), Rules 39(2)(b) and 49M(3)(b) of the Rules-Recording of vote and voting procedures; and appropriate amendments to Rules 22(2), 27D(2), 30(2), 49B(2)-Ballot paper/balloting unit.

Re: Criminal Background-Disqualification for contesting - Appropriate amendment to Section 8 of the Act- Disqualification on conviction or on being charge sheeted.

Re: Ceiling on election expenditure- Appropriate amendments to Section 77 of the Act- Account of election expenses and maximum thereof.

Our problem today is a combination of vast social and economic disparities and fragile political institutions on the one hand and loss of credibility of the political class and the apathy and indifference of the people on the other. The ‘contemplation and judgement of fellowmen’ should be strong and vigilant to ensure that there are only worthy people in public life. There is no substitute for national character; the success or failure of any system, even the best, would depend upon the men who work it. National character is the keystone of national affairs. It is the improvement of individual character that goes to make up the uplift of national character.

Our generation has to play its part and contribute its mite. It is believed that good systems can and do change men. When the basic duty of politics is fulfilled and the power of the Constitution and its institutions restored to their legitimate owners- the people, things will begin to change and the basic article of democratic faith-that all power and authority stems from the people and that all public institutions and systems are meant to serve public interest and achieve public good- will be realized. This may be a distant goal, but there has to be tireless striving and relentless efforts for its attainment.

SUGGESTED AMENDMENTS

I Re: 50% of 1 vote

Rule 64 Declaration of result of election and return of election

Amend Rule 64 (a) by adding the following

Provided that no candidate shall be declared elected unless he has secured 50%+1 of the votes polled;

Provided further that if the candidate securing the largest number of votes has not secured 50%+1 of the votes polled, then such candidate to be declared elected should have secured atleast 40% of the votes polled and if the difference of votes between the candidate securing the largest number of votes and not less than 40% and the candidate securing the second largest number of votes is more than 5% then the candidate securing a minimum of 40% of the votes polled shall be declared elected.

In the event of no candidate securing 40% of the votes polled there shall be a run off contest between the top two contestants /candidates and the winner as between them shall be declared elected; and

II Negative vote i.e. 'none of the above'

1. Amend Form 13 D (Re: recording of vote under Rule 24).
Second sentence in Form 13 D to read as- Record your vote by placing the figure 1 opposite the name of the candidate to whom you want to vote or opposite the words 'none of the above'
2. Amend Form 13 E (Re: recording of vote under Rule 27F) Second sentence in Form 13 E to read as- Record your vote by placing clearly a mark opposite the name of the candidate to whom you wish to vote or opposite the word none of the above.
3. Amend Rule 22 (2) as-The names of the candidates shall be arranged on the postal ballot paper in the order in which they appear in the

list of contesting candidates and the words 'none of the above' shall be mentioned at the end.

4. Amend Rule 27 D (2) as- The names of the candidates shall be arranged on the postal ballot paper in the order in which they appear in the list of contesting candidates and the words 'none of the above' shall be mentioned at the end.
5. Amend Rule 30 (2) as-The names of the candidates shall be arranged on the ballot paper in the same order in which they appear in the list of contesting candidates and the words 'none of the above' shall be mentioned at the end.
6. Amend Rule 39(2) (b) as-there make a mark on the ballot paper with the instrument supplied for the purpose on or near the symbol of the candidate for whom he intends to vote or on or near the words-'none of the above.
7. Amend Rule 49 B (2) as-The names of the candidates shall be arranged on the balloting unit in the same order in which they appear in the list of contesting candidates and the words 'none of the above' shall be mentioned at the end.
8. Amend Rule 49 (M) (3) (b) as- record his vote by pressing the button on the balloting unit against the name and symbol of the candidate for whom he intends to vote or against the words –'none of the above';
and

III Re: Disqualification to contest on being chargesheeted

Add Section 8(5)- Notwithstanding anything in the foregoing, every person charge sheeted for an offence for which the punishment is imprisonment for a term of 5 years or more shall be disqualified to contest for a period of ten years , provided that one year has elapsed form the date criminal charges were framed against him by any court.

IV Re: Election expenditure

1. Substitute Section 77(1)- Every candidate at an election shall, either by himself or by his election agent, have a Bank account for each election, keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent or by a political party or any person or association of persons, natural or juristic, between the date on which he has been nominated and the date of declaration of the result thereof, both dates inclusive and all such expenditure shall be from and traceable to that Bank account.

2. Amend Section 77(3)-

The total of the said expenditure shall not exceed such amounts as may be prescribed. In the event of the expenditure by any candidate exceeding the prescribed amount, such candidate shall be disqualified from contesting any election for a period of ten years.

Note: The changes/additions are indicated in underlined and italics font.

The Political Parties (Registration and Regulation of Affairs, etc.) Bill, 2011 (Draft)

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;

Whereas corrupt electoral practices, high cost of elections, abuse of money power and dynastic control of political parties has resulted in denudation of democracy and its essential values;

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 their office bearers by enacting legislation providing for their de-recognition and deregistration and preventing them from contesting elections for failure to adhere to prescribed norms and thereby cleanse public life;

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

(2) It extends to the whole of India other than the State of Jammu and Kashmir,

(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,-

(a) “local authority” means a panchayat or municipality as defined in Parts IX and IXA of the Constitution of India;

(b) “member” a member of a political party;

(c) “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, 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;

(d) “political party” means an association or a body of individual citizens of India who have attained the age of 18 years and have come together in pursuance of a common goal and political ideology and seek to contest elections to Parliament, State Legislatures and local authorities;

(e) “prescribed” means prescribed by rules made under the Act.

(f) “Registrar” means the Registrar of Political Parties under section 3;

(g) “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;

(h) 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 (Act 43 of 1950), or the Rules made thereunder or in the Representation of the People Act, 1951 (Act 43 of 1951), or the Rules made thereunder shall have the meanings respectively assigned to them in those Acts and Rules.

CHAPTER II

Political Parties.

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

4. Formation of political parties.-(1) A citizen of India who has attained the age of 18 years may form and be a member of a political party:

Provided that any of those mentioned below shall not be a member of a political party while in service, -

- (a) members of armed forces of India,
- (b) members of the civil services, including judicial services and legal advisors of the Union or a State.

(2) No political party shall carry on any activity prejudicial to the sovereignty, unity and integrity of India.

(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 against any member on grounds only of race, caste, religion, creed, language or place of residence. The ideology of a political party and its aims and objects shall not be inconsistent or at variance with any of the provisions of the Constitution of India. Every person before being admitted to a political party shall make a declaration that he subscribes to the sovereignty and integrity of India and will uphold the fundamental principles of the Constitution of India.

(4) No political party shall use for promotion or propagation of any political activity,-

(a) any ceremony, festival, congregation, procession or assembly organized or held under the auspices of a religious institution; or

(b) any property or premises belonging to or under the control of a religious institution.

(5) 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, or linguistic groups or castes or communities.

(6) Political parties may be formed both at the national level and the state level.

5. Constitution of political parties. - (1) 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) subscription to and a declaration by any person desirous of becoming member of a political party to abide by the objectives and ideals of the party as stated in the constitution and rules and regulations of the party;

(c) conditions for membership of the party, procedure / requirements for admission, including membership fee, expulsion and resignation of members;

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

(e) 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;

(f) the general organization of the party including the formation of local units like State, district, taluk and village level units and control over them ;

(g) principles and procedure for electing the office bearers;

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

(i) 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 organizational matters;

(j) the form and content of financial structure of the party consistent with the provisions of this Act;

(k) maintenance of accounts of the funds of the party in such books and in such manner as may be specified by the Registrar;

(l) such other matters as may be prescribed or specified by the Registrar.

(2) 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.

(3) Every political party shall have the following office bearers, a President, Secretary, Treasurer and such others as the party may deem necessary.

(4) Every political party shall utilize its funds exclusively for the fulfillment of its aims, objects or goals and ideals set out in its constitution and not being inconsistent with the Constitution of India.

(5) A political party shall be competent to hold and dispose of properties both movable and immovable within the territory of India.

(6) A political party may sue or be sued in its own name. In all legal and other proceedings by or against a political party the pleadings shall be signed and verified by and all communications of such legal and other proceedings shall be issued to and be served on the Secretary or such other office-bearer as the party may deem fit and designate and duly notify.

(7) 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, shall be used.

6. Registration of political parties. - (1) (a) A political party shall apply for registration to the Registrar.-

(b) Every such application shall be made,-

- (i) if the association or body is in existence at the commencement of this Act, within sixty days from the date of commencement this Act.
- (ii) if the association or body is formed after such commencement, within thirty days from the date of its formation.

(c) Every application under sub-section (1) shall be signed by all the office bearers of the association or body and presented by the Secretary of the association or body to the Registrar or sent to the Registrar 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 situate;
- (iii) the address to which letters and other communications meant for it may be sent;
- (iv) the name, age, profession and address of its President, Secretary, Treasurer, and other office-bearers;
- (v) the numerical strength of its members, and if there is more than one category of members, the numerical strength in each such category;
- (vi) whether it has any local units; if so, at what levels and the address of such local units;
- (vii) 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;
- (viii) a declaration that the applicant has complied with and shall continue to comply with the requirements of this Act.

(e) An application under clause (a) shall be accompanied by a copy of the constitution and the 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, 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.

(f) 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 the constitution or the rules and regulations.

(g) After considering all the particulars as aforesaid in his 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 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.

(h) 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.

(2) 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.

7. Executive Committee and local committees. - (1) 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 or by the party's general convention as its constitution may provide. The members of the Executive Committee shall elect the office – bearers of the party from among themselves. Practice of nominating members of the Executive Committee is prohibited.

(2) 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 and so on. 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 of the committee is prohibited.

(3) The term of office 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. The Executive Committee may, if necessary, constitute a sub-committee (by whatever name called) to carry on regular and urgent business delegated by the Executive Committee. The members of the sub-committee shall be chosen by the members of the Executive Committee from among themselves

(4) No office bearer of a political party shall be an office bearer of the party for more than two terms at a time. No person who was an office bearer of a party for more than one term shall be eligible to become again an office bearer of that party unless six years have elapsed. No person shall be declared to be an office bearer of a political party for life.

(5) The Executive Committee and local committees shall take decisions and elect their 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) 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. The Registrar may, on his own motion or on a complaint or request from a member of the party and for reasons to be recorded, send observers to watch elections to the Executive Committee and/or the local committees, if he so deems necessary.

8. Elections to Parliament etc. – (1) 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.

(2) In an election to fill a vacancy caused by resignation of a member of either House of Parliament or Legislature of a State, no political party shall select as its candidate the person by whose resignation the vacancy has occurred.

(3) No political party shall sponsor or provide ticket to a candidate for contesting election if he was convicted by any court for any offence punishable with imprisonment for a term of five years or more.

(4) No political party shall distribute or get distributed any private goods to the electorate or any section thereof during a period of three months immediately preceding the date when the term of the House/local authority is to expire and thereafter till elections are held.

9. 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 the 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 III

Finances

10. Finances of the party. - (1) Custody and control of the funds of a political party shall vest in the Treasurer of the party at the Central or State units as the case may be 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.

(2) The Executive Committee of a political party shall cause to be maintained by it 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. The Executive Committee shall have the accounts audited by a Chartered Accountant selected from a panel approved by the Registrar. The audited accounts shall be duly published every year and shall be filed with the Registrar. The Registrar may direct a special audit of the accounts of any year of a party or of any local unit.

(3) 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.

(4) The funds of a party shall be kept in a scheduled bank. The number of the account or accounts in banks shall be intimated to the Registrar within a month of opening the account or accounts.

11. Donations.- (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:-

- (a) from foreign nationals or foreign governments,
- (b) organizations or associations registered outside the territory of India,

- (c) from any other association, organization or group which is in receipt of foreign funds from foreign nationals or from other sources,
- (d) donations from corporate bodies and companies except in accordance with the provisions of the Companies Act, 1956,
- (e) communal or anti-national sources,
- (f) Union Government or State Government including companies, corporations and other organizations owned or controlled by or receiving grant-in-aid from, the Government ;
- (g) anonymous givers,
- (h) any company which has been in existence for less than three financial years, and
- (i) such other sources as may be specified by the Registrar.

(2) For every amount received by the party including membership fee receipt shall be issued by the Treasurer of the party. Similarly every expenditure shall be supported by a voucher. Receipt and voucher books shall be maintained.

(3) The amount or, as the case may be, the aggregate of the amounts which may be 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.

(4) Notwithstanding anything in the foregoing provisions, all donations and sources of funding to a political party shall be made public. All donors, whether the donations are by cheque, in cash or kind, shall disclose their Permanent Account Number (PAN).

(5) All gifts and donations to an office bearer or member of a political party given to him in his capacity as an office bearer or member shall be deemed to be gift or donation to the party and treated as such. It shall be handed over to the Treasurer by such office bearer or member within five days after receiving it

CHAPTER IV

Penalties

12. Inquiry by Registrar. (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 or rules made thereunder, including not holding elections to the Executive Committee and local committees in time, 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 or rules made thereunder 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.

(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.

(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 11 shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to pay fine which shall not be less than three times the amount received or accepted.

(4) A political party which does not contest elections to either House of Parliament or legislature for more than one general election, or does not secure a prescribed minimum percentage of votes polled shall be liable to be de-registered and made ineligible to contest elections for such period as the Registrar may specify and which may extend to 5 years.

(5) If the Registrar finds on verification undertaken whether suo motu or on information received that the statement of accounts filed under sub-section (2) of section 10 is false in any particular, the Registrar shall levy such penalty upon the political party, as he may deem appropriate besides initiating criminal prosecution as provided under law.

(6) Any order passed under sub-section (5) may be directed by the Registrar to be published in the press and other media, for public information.

(7) Where a political party fails to comply with the provisions of sub-section (2) of section (10) then notwithstanding anything contained in the Income-tax Act 1961 (Act 43 of 1961), such political party shall not be entitled to any tax relief under that Act.

CHAPTER V

Miscellaneous

13-Public authority- A political party shall be deemed to be a public authority for

the purposes of the Right to Information Act, 2005 (Act 22 of 2005).

14. Power to make rules. - (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.

(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.

15. 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. .

16. 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.

17. Transitional Provisions. - All political parties shall comply with the provisions of the Act regarding accounts and audit by 31st March following the Act coming into force and with all other provisions within 6 months of the Act coming into force.

18. Repeal. – Part IVA of the Representation of People Act 1951 (Act 43 of 1951) is hereby repealed.

*"No office in the land is
more important than that
of being a citizen"
-Felix Frankfurter*



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