

# PROPOSED ELECTORAL REFORMS



**Election Commission of India**





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भारत निर्वाचन आयोग



## FOREWORD

India's democratic setup is a paradigm for many countries in the world due to its remarkable success over the past six decades. The heart of India's democratic system witnesses regular elections with the participation of the largest electorate in the world. In order to safeguard the core values of fair and free elections in this dynamic scenario, it is important to have a just and unbiased electoral process with a greater citizen participation. Thus, in accordance to the responsibility bestowed upon by the Constitution of India, the Election Commission of India has always remained actively involved in finding out ways through which the purity and integrity of the election process is preserved.

However, there are certain challenges and issues that electoral system has faced over the years. Trust and confidence of citizens in electoral system can be affected if these challenges remain unattended. Thus, keeping in view these difficulties the Election Commission of India after conducting extensive study and research recommends certain changes that need to be taken up expeditiously to amend certain provisions of law. Taking forward a step in this direction, the Commission have made several electoral proposals to remove the glaring lacunae in the law. Many of these proposals have been already put forth by the Commission have remained unresolved. Some of the proposals pertain to areas which have not been taken up previously by the Commission but arose due to the implementation of certain laws or on the directions issued by the Supreme Court and the High Courts. Commission considers it necessary to put all proposals on electoral reforms in public domain for the benefit of people.

The Commission sincerely believes that these suggested reforms will prove to be extremely useful in addressing the existing issues and challenges and would go a long way in enhancing the quality of democracy in India.

December, 2016

**Dr. Nasim Zaidi**  
**Chief Election Commissioner**



## **FOREWORD**

One of the notable features for which India is known to the world is its electoral Democracy. However, in order to call a system truly Democratic, it is necessary that it must reflect the political and socio-economic aspirations of its people.

The issue of electoral reforms has been taken up by Parliament, the Government, the Judiciary, the Media and the Commission on numerous occasions. The Commission during all these times has striven to bring positive changes in the electoral system for better implementation. There have been various correspondence exchanged between the government and the Commission to ensure that the required electoral reforms are brought in place. However, for strengthening the existing system and removing the difficulties arising in ensuring free and fair elections the Commission stresses that various steps are required to be taken for the better practice in election related matters.

Maintaining the purity and transparency of election process is a very challenging job and involves a lot of inherent complexities. However, the Commission in its endeavour has always tried to ensure the fairness in elections by putting in tremendous efforts in line with all stakeholders. Therefore, these proposals besides giving a perspective on the challenges faced during the elections, seek to provide a comprehensive framework about the ways in which these challenges can be effectively dealt.

December, 2016

**A K Joti**  
**Election Commissioner**

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# CHAPTER I

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AMENDMENT TO THE  
CONSTITUTION OF INDIA





## 1. CONSTITUTIONAL PROTECTION FOR ALL MEMBERS OF THE ELECTION COMMISSION OF INDIA

### Background

The Election Commission of India established in the year 1950 is a permanent independent constitutional body vested with the powers of superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all Parliamentary and State elections and elections to the office of the President and Vice President in accordance to the Article 324 of the Constitution of India. Initially, the Commission had only a Chief Election Commissioner.

On October 16, 1989 for the first time two additional Commissioners were appointed but they had a very short tenure till January 1, 1990. Later, on October 1, 1993 two additional Election Commissioners were appointed. The concept of multi-member Commission has been in operation since then, with decision making power by majority vote. Presently, the Commission is a three-member body comprising of the Chief Election Commissioner (CEC) and two Election Commissioners (ECs).

Under Clause (2) of Article 324, the Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.

Article 324(5) of the Constitution was incorporated to ensure the independence of the Commission and free it from external, political interference and thus expressly provides that the removal of the Chief Election Commissioner from office shall be on "like manner and on the like grounds as a Judge of the Supreme Court". The Article 324(5) also specifies that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the "recommendation of the Chief Election Commissioner."

The Goswami Committee in its Report on Electoral Reforms in 1990 recommended that the "protection of salary and other allied matters relating to the Chief Election Commissioner and the Election Commissioners should be provided for in the Constitution itself on the analogy of the provisions in respect of the Chief Justice and Judges of the Supreme Court. Pending such Election measures being taken, a parliamentary law should be enacted for achieving the object."

The Commission time and again in its various correspondence and Reports has expressly opined that the current wording of Article 324(5) is "inadequate" and requires an amendment to bring the removal procedures of Election Commissioners on par with the CEC to provide them with the "same protection and safeguard[s]" as the Chief Election Commissioner.

Even the Supreme Court in 1995 in the case of T.N. Seshan, Chief Election Commissioner of India vs. Union of India (UOI) and Ors. 1995 (4) SCALE 285 has held that that the CEC is not superior to the Election Commissioners rather is at the same position as the other Election Commissioners by stating:



“As pointed out earlier, the scheme of Article 324 clearly envisages a multi-member body comprising the CEC and the ECs. The RCs may be appointed to assist the Commission. If that be so the ECs cannot be put on par with the RCs. As already pointed out, ECs form part of the Election Commission unlike the RCs. Their role is, therefore, higher than that of RCs. If they form part of the Commission it stands to reason to hold that they must have a say in decision-making. If the CEC is considered to be a superior in the sense that his word is final, he would render the ECs non-functional or ornamental. Such an intention is difficult to cull out from Article 324 nor can we attribute it to the Constitution-makers. We must reject the argument that the ECs' function is only to tender advise to the CEC.”

### **Reasons for proposed amendment**

Clause (5) of Article 324 of the Constitution provides that the Chief Election Commissioner shall not be removed from his office except in the same manner and on the same grounds as a Judge of the Supreme Court. The Chief Election Commissioner and the two Election Commissioners enjoy the same decision making powers which is suggestive of the fact that their powers are at par with each other. However, Clause (5) of Article 324 of the Constitution does not provide similar protection to the Election Commissioners and it merely says that they cannot be removed from office except on the recommendation of the Chief Election Commissioner.

The reason for giving protection to a Chief Election Commissioner as enjoyed by a Supreme Court Judge in matters of removability from office was in order to ensure the independence of Commission from external pulls and pressure. However, the rationale behind not affording similar protection to other Election Commissioners is not explicable. The element of 'independence' sought to be achieved under the Constitution is not exclusively for an individual alone but for the whole institution. Thus, the independence of the Commission can only be strengthened if the Election Commissioners are also provided with the same protection as that of the Chief Election Commissioner.

### **Proposed amendment**

The present constitutional guarantee is inadequate and requires an amendment to provide the same protection and safeguard in the matter of removability of Election Commissioners as is available to the Chief Election Commissioner.

### **Law Commission's Recommendation**

The Law Commission in its 255th Report (2015) endorsed the view of the Commission and suggested the following changes to be brought in Article 324:

- In sub-section (5), delete the words “the Election Commissioners and” appearing after the words “tenure of office of”.
- In the first proviso to sub-section (5), after the words “Chief Election Commissioner”



appearing before “shall not be removed”, add the following words, “and any other Election Commissioner”; also, after the words “conditions of service of the Chief Election Commissioner”, add the following words, “and any other Election Commissioner”.

- In the second proviso to sub-section (5), after the words “provided further that”, delete the words “any other Election Commissioner or” occurring before “a Regional Commissioner”.



## 1. BUDGET OF THE COMMISSION TO BE 'CHARGED'

### Background

Presently, the administrative expenditure of the Commission is a voted expenditure. However, the expenditure of other independent constitutional bodies similar to the Commission i.e. the Supreme Court, Comptroller & Auditor General, Union Public Service Commission are charged/ non-votable expenditure.

The Commission sent a proposal that the expenditure of the Commission should be charged on the Consolidated Fund of India. The Government moved The Election Commission (Charging of Expenses on the Consolidated Fund of India) Bill, 1994 in the 10th Lok Sabha with the objective of providing for the salaries, allowances and pension payable to the Chief Election Commissioner and other Election Commissioners and the administrative expenses including salaries, allowances and pension of the staff of the Election Commission to be expenditure charged upon the Consolidated Fund of India. This Bill lapsed without being passed, on the dissolution of that House in 1996.

### Reasons for proposed amendment

The Commission is of the opinion that a charged budget would be a symbol of the independence of the Commission and will secure its unconstrained functioning.

### Proposed amendment

The Commission recommends that the Bill, which lapsed with the dissolution of the 10th Lok Sabha in 1996, needs reconsideration and the expenditure of the Commission should be charged on the consolidated fund.



## 2. INDEPENDENT SECRETARIAT FOR THE COMMISSION

### Background and Reasons for proposed amendment

The Election Commission as a constitutional body was as an independent body to conduct free and fair elections in India. Currently, the Election Commission of India has a separate secretariat of its own, with the service conditions of its officers and staff being regulated by the rules made by the President under Article 309 of the Constitution which is similar to other departments and ministries of the Government of India in connection with union matters. The officers at the higher level, such as the level of Deputy Election Commissioner are normally appointed on a tenure basis on deputation from the national civil services. The lower level officers are permanent officers in the Election Commission of India secretariat, from its own ranks.

The independence of the Commission can be strengthened further if the Secretariat of the Election Commission consisting of officers and staff at various levels are also insulated from the interference of the Executive in the matters pertaining to their appointments, promotions, etc. and all such functions are exclusively vested in the Election Commission along the lines of the Secretariats of the Lok Sabha, and Rajya Sabha, Registries of the Supreme Court and High Courts etc.

The Goswami Committee on Electoral Reforms in 1990 agreed that regarding setting up of the secretariat of the Commission, Constitution should be amended to provide for similar provisions as Article 98(2) which relates to the Lok Sabha Secretariat and until such provision is made, a law of Parliament should be enacted. The government in 1990 introduced the Constitution (Seventieth Amendment) Bill, 1990 in the Rajya Sabha to give effect to the recommendation of the Goswami Committee however this Bill was subsequently withdrawn due to the changed composition of the Election Commission (becoming a multi-member body) and the Bill was never re-introduced. The Election Commission of India made this proposal of setting up an independent Secretariat for the Commission in the year 1998 and reiterated the same stand in the proposals of 2004.

Thus, in order to fully insulate the Commission from political pressure or executive interference, it is essential to set up an independent Secretariat for the independent functioning of the Election Commission.

### Proposed amendment

The Commission proposes that it should have an independent Secretariat along the lines of the Lok Sabha, Rajya Sabha and Registries of the Supreme Court and High Courts. An independent Secretariat will enable the Commission to choose and appoint officials considered suitable by the Commission without any interference from the executive.

### Law Commission's Recommendation

The Law Commission also in its 255th Report (2015) endorsed the Commission's view and recommended the insertion of Article 324(2A) after sub-section (2) of the Constitution along the following lines:

“(2A)(1): The Election Commission shall have a separate independent and permanent secretarial staff. (2) The Election Commission may, by rules prescribed by it, regulate the recruitment, and the conditions of service of persons appointed, to its permanent secretarial staff.”



# CHAPTER II

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ELECTORAL ROLL MATTERS





## 1. SECTION 20(6) OF THE REPRESENTATION OF THE PEOPLE ACT, 1950

### Background

Section 20 (6) of the Representation of the People Act, 1950 is as follows:

*“(6) The wife of any such person as is referred to in sub-section (3) or sub-section (4) shall if she be ordinarily residing with such person be deemed to be ordinarily resident on in the constituency specified by such person under sub-section (5).”*

### Reasons for proposed amendment

There is facility under section 20(6), allowed to a wife of a person, residing with the person mentioned in sub-section (3) & (4), for getting herself registered in the electoral roll of the constituency in which the person is enrolled as special voter/service voter. This particular facility is not provided to the husband of female office holder who resides with his wife where she holds the office. Whereas wife or a husband are covered under Sub section (4) as office holders, both are not covered under Sub section (6). This is problematic for not only for the husband, but also for adult children of such parents. As soon as these children reach 18 years of their age, they must be able to avail the facility of registration in their home constituencies along with their parents.

### Proposed amendment

The Commission proposes that sub- section (6) of section 20 of The Representation of the People Act, 1950 be amended so as to extend the facility of registration in the native constituency under the said sub-section for the husband of declared office holder and service voter also, provided the husband is ordinarily residing with the female office holder/ service voter at her place of posting.



## 2. SECTION 20(8) OF THE REPRESENTATION OF THE PEOPLE ACT, 1950

### Background

Section 20 (8) of The Representation of the People Act, 1950 is as follows:

*"(8) In sub-sections (3) and (5) "service qualification" means—*

- (a) being a member of the armed forces of the Union; or*
- (b) being a member of a force to which the provisions of the Army Act, 1950 (46 of 1950), have been made applicable whether with or without modifications; or*
- (c) being a member of an armed police force of a State, who is serving outside that State; or*
- (d) being a person who is employed under the Government of India, in a post outside India."*

Registration of a voter in the electoral roll of the constituency he lives in is a mandate of section 19 of The Representation of the People Act, 1950 whereby it is compulsory for the person to be an 'ordinarily resident'. Section 20 provides for a list of meaning with respect to 'ordinarily resident' in various circumstances whereby section 20(8) provides for meaning of 'service qualification' under sub-section (3) & (5) specially with respect to armed forces, forces to which the provisions of Army Act, 1950 apply, State police forces and an office of Government of India, which is outside India.

### Reasons for proposed amendment

Sub-section (8) (b) refers to the forces to which the provisions of Army Act, 1950 apply and here is no mention of the other forces to which Air force Act of 1950 or Navy Act of 1957 applies.

Section 2 of the Air Force Act, 1950 reads:

*"2. Persons subject to this Act. The following persons shall be subject to this Act wherever they may be, namely:-*

- (a) officers and warrant officers of the Air Force;*
- (b) persons enrolled under this Act;*
- (c) persons belonging to the Regular Air Force Reserve or the Air Defence Reserve or the Auxiliary Air Force, in the circumstances specified in section 26 of the Reserve and Auxiliary Air Forces Act, 1952;] (62 of 1952.)*
- (d) persons not otherwise subject to air force law, who on active service, in camp, on the march, or at any frontier post specified by the Central Government by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of the Air Force."*

Section 2 of the Navy Act of 1957 provides:

*"2. Persons subject to naval law.*

*(1) The following persons shall be subject to naval law wherever they may be, namely:-*

- (a) every person belonging to the Indian Navy during the time that he is liable for service under this Act;*
- (b) every person belonging to the Indian Naval Reserve Forces when he is- (i) on active service ; or (ii) in or on any property of the naval service including naval establishments, ships and other vessels, aircraft,*



vehicles and armories ; or (iii) called up for training or undergoing training in pursuance of regulations made under this Act, until he is duly released from his training ; or (iv) called up into actual service in the Indian Navy in pursuance of regulations made under this Act, until he is duly released there from; or (v) in uniform;

- (c) members of the regular Army and the Air Force when embarked on board any ship or aircraft of the Indian Navy, to such extent and subject to such conditions as may be prescribed;
- (d) every person not otherwise subject to naval law, who enters into an engagement with the Central Government under section 6;
- (e) every person belonging to any auxiliary forces raised under this Act, to such extent and subject to such conditions as may be prescribed; and
- (f) every person who, although he would not otherwise be subject to naval law, is by any other Act or during active service by regulations made under this Act in this behalf made subject to naval law, to such extent and subject to such conditions as may be prescribed."

### **Proposed amendment**

The Commission proposes to include the words "Air Force Act, 1950 and the Navy Act, 1957" apart from the aforesaid Army Act, 1950 under section 20(8) (b) of The Representation of the People Act, 1950.



### 3. USE OF COMMON ELECTORAL ROLLS

#### Background

Article 324(1) of the Constitution of India empowers the Election Commission to, inter alia, supervise, direct, and control the preparation and revision of electoral rolls for all the elections to Parliament and State Legislatures, which is done by the Commission by the virtue of powers under The Representation of the People Act, 1951. Similarly, under Articles 243K and 243ZA and the relevant State laws, the State Election Commission supervises, directs, and controls the preparation and revision of electoral rolls for elections to the local bodies. There is no uniform law or procedure for State Election Commission to prepare these electoral rolls. Some States adopt the rolls prepared by the Commission while some prepare their rolls separately for elections. A proposal has been made by the Commission in this regard to bring in a reform with respect to use of common electoral rolls prepared by the Commission.

#### Reasons for proposed amendment

There is a non-uniformity of practice amongst States which causes duplication of essentially the same task between two different constitutional bodies i.e. the Election Commission of India and the State Election Commissions that entails the same effort and expenditure again by the States. Further, it creates a confusion amongst the voters, since they may find their names present in one roll, but absent in another. Thus, the use of common electoral rolls will overcome the issue of duplication and confusion and will also save the unnecessary effort and wastage of money. By virtue of common electoral rolls, the Parliamentary and Assembly rolls can be used in the local body elections, saving time, effort and expenditure, with the requisite modifications based on the wards or polling areas of the local bodies.

#### Proposed amendment

In order to simplify the procedure of preparation of electoral rolls and to avoid unnecessary expenditure, the Commission on 22/11/1999 (reiterated in July 2004), proposed amending the State laws with respect to usage of electoral rolls prepared by the Commission for the election of local bodies.

#### Law Commissions' Recommendation

The Law Commission endorses the above suggestions of the Election Commission regarding introduction of common electoral rolls for Parliamentary, Assembly and local body elections. However, given that introducing common electoral rolls will require an amendment in the State laws pertaining to the conduct of local body elections, the Central Government should write to the various States in this regard.



### 4. SECTION 60 OF THE REPRESENTATION OF THE PEOPLE ACT, 1950

#### **Background**

Under section 20A of The Representation of the People Act, 1950, Indian citizens living abroad owing to employment, education or otherwise, and have not acquired citizenship of another country, are entitled to be enrolled as elector in the native constituency in India in which his/her home address falls. Persons enrolled in the electoral roll under this section are called 'overseas electors'. The overseas electors have not been given any special voting facility which means that they can vote in person in the polling station concerned in the constituency in which they are enrolled.

#### **Reasons for proposed amendment**

Voting in person is not a viable option for the overseas electors as they cannot be expected to travel to India for voting. A Committee appointed by the Commission to consider alternative voting options for the overseas electors recommended the facility of voting through proxy or voting through postal ballot paper with one-way electronic transmission of the postal ballot paper (from Returning Officer to elector) as alternative voting options for the overseas electors.

#### **Proposed amendment**

Section 60 of The Representation of the People Act, 1951 should be amended to provide overseas electors the alternative option of proxy voting or postal ballot voting. The electronic transmission of postal ballot can be provided by amendment of Rules as has been done in the case of service voters.



## 5. SECTION 14(B) OF THE REPRESENTATION OF THE PEOPLE ACT, 1950

### Background

Under section 14(b) of The Representation of the People Act, 1950, the qualifying date for eligibility for enrolment in the electoral roll of a particular year is 1st of January of that year. Thus a person who turns 18 after 1st January remains deprived of enrolment and becomes entitled only when the roll is revised next year.

### Section 14 (b) is as follows:

“(b) "qualifying date", in relation to the preparation or revision of every electoral roll under this Part, means the 1st day of January of the year in which it is so prepared or revised:] [Provided that "qualifying date", in relation to the preparation or revision of every electoral roll under this Part in the year 1989, shall be the 1st day of April, 1989.]”

### Reasons for proposed amendment

Having only one qualifying date means that a large number of young persons who complete 18 years after 1st January would have to wait for next year for enrolment and would not be able to participate in elections held in the meanwhile. The Commission suggested that the law may be amended so that a person can be enrolled in the roll the day he or she turns 18. By such amendment, the principle of universal adult franchise is also respected and no person is deprived from enrolment for a period of one year.

### Proposed amendment

The Commission on 04/11/2013 proposed to amend section 14(b) of The Representation of the People Act, 1950 and change the limitation of turning 18 on 1st January to turning 18 any day in the year. But the Law Ministry considered this proposal to be unacceptable. Thereafter, Commission proposed four dates in addition to 1st January, i.e. 1st January, 1st April, 1st July and 1st October. In response, the Law Ministry suggested two qualifying dates i.e. 1st January and 1st July; to which the Commission agreed and requested the government to amend section 14(b) accordingly.

# CHAPTER III

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## ELECTION MANAGEMENT ISSUES





## **1. MAKING OF ANY FALSE STATEMENT OR DECLARATION BEFORE AUTHORITIES PUNISHABLE**

### **Background**

Section 31 of The Representation of the People Act, 1950 makes a person who in connection with preparation, revision or correction of an electoral roll or in connection with inclusion or exclusion of an electoral roll makes a statement or declaration in writing which is false, be punishable with imprisonment extending to one year or with fine or with both.

However, there is no parallel provision in The Representation of the People Act, 1951, to penalise a person making a false declaration in connection with conduct of elections.

### **Reason for proposed amendment**

There would be several cases of false statements before election authorities in connection with conduct of elections. In order to discourage motivated false statements before the election authorities, it would be useful to have a provision in The Representation of the People Act, 1951, similar to section 31 of the 1950 Act.

### **Proposed amendment**

The Commission proposes that making of any false statement or declaration before the Election Commission, Chief Electoral Officer, District Election Officer, Presiding Officer or any authority appointed under The Representation of the People Act, 1951, in connection with any electoral matter should be an electoral offence under the said Act, along the lines of section 31 of The Representation of the People Act, 1950.



## 2. PROPOSAL REGARDING FILING OF FALSE AFFIDAVIT

### Background

Currently, a candidate to any National or State Assembly elections is required to furnish an affidavit, in the shape of Form 26 appended to The Conduct of Elections Rules, 1961, containing information regarding their criminal antecedents, if any, their assets, liabilities, and educational qualification. Section 125A of The Representation of the People Act, 1951 provides for the penalty for filing false affidavit. The offence is punishable by up to 6 months, or with fine, or with both.

### Reason for proposed amendment

The Commission time and again has stressed on the importance of filing of true information by the candidates standing for elections in their affidavits. The filing of false affidavits in matters of election can have extremely serious consequences as it affects the purity of elections. The elector in order to make an informed choice has the right to know the correct information of the candidates. This view was also taken in the case of *Krishnamoorthy v. Siva Kumar* (2009) 3 CTC 446 pertaining to panchayat elections where the Court held that failure to disclose complete information may amount to undue influence, and that incorrect or false information interferes with the free exercise of the electoral right of the voter.

Filing of false declaration about the background of the candidate undermines the very basic value of candidate disclosure, in turn affecting the right of the electors to know the antecedents of candidate. Therefore, it is necessary to enhance the punishment for filing false affidavit.

### Proposed amendment

The Commission has proposed that the punishment under section 125A should be increased to 2 years' imprisonment without the alternative clause of fine, and also that the offence should be included in the list of offences listed in sub-section (1) of section 8 which would attract disqualification on conviction irrespective of the term of sentence.

The Commission also proposed that furnishing of false affidavit or suspension of material information in the affidavit should also be specified as ground for challenging the election under section 100 (1) of The Representation of the People Act, 1951.

Under the section 36, the grounds for rejection of nomination papers do not include the case of a candidate who fails to submit the affidavit under section 33A in the prescribed manner. In order to remove any doubt, it has been recommended that in clause (b) of sub-section (2) of section 36, 'Section 33A' may also be inserted.

In order to provide effective deterrent against filing of false affidavit, it is also necessary to include this offence in the list of 'corrupt practices' under section 123 of The Representation of the People Act, 1951.

### Law Commission's Recommendation

The Law Commission in its 244th Report on 'Electoral Disqualifications' gave the following recommendations endorsing the view of the Election Commission:

- i. Introduce enhanced sentence of a minimum of two years under section 125A.
- ii. Include conviction under section 125A as a ground of disqualification under section 8(1) of The



Representation of the People Act, 1951.

- iii. Set up an independent method of verification of winners' affidavits to check the incidence of false disclosures in a speedy fashion.
- iv. Include the offence of filing false affidavit as a corrupt practice under section 123 of The Representation of the People Act, 1951.

The Sections proposed by the Law Commission on this issue are:-

- "8. Disqualification on conviction for certain offences. —(1) A person convicted of an offence punishable under—  
  
(a)...  
\*  
\*  
\*  
  
(i) section 125 (offence of promoting enmity between classes in connection with the election) or section 125A (penalty for filing false affidavit, etc.) or section 135 (offence of removal of ballot papers from polling stations) or section 135A (offence of booth capturing) or clause (a) of sub-section (2) of section 136 (offence of fraudulently defacing or fraudulently destroying any nomination paper) of this Act;  
  
\*  
\*  
\*"  
  
• "123. Corrupt practices.—The following shall be deemed to be corrupt practices for the purposes of this Act:  
  
(1)...  
\*  
\*  
\*  
  
(4A) failure by a candidate to furnish information relating to sub-section (1) of section 33A, or giving of false information which he knows or has reason to believe to be false, or concealment of any information in the nomination paper delivered under subsection (1) of section 33 or in the affidavit delivered under sub-section (2) of section 33A".



### 3. SECTION 126 OF THE REPRESENTATION OF THE PEOPLE ACT, 1951

#### Background and Reason for proposed amendment

Under the criminal jurisprudence any person can set the law into motion unless specifically excluded by an express provision under a statute. In The Representation of the People Act, 1951, section 32 clause (3) provides that no court shall take cognizance of any offence punishable under sub-section (1) unless there is a complaint made by order of or under authority from, the Election Commission or the Chief Electoral Officer of the State concerned. However, no such provision is found under section 126 of the 1951 Act.

#### Proposed amendment

The proposal of the Commission is that section 126 of The Representation of the People Act, 1951 may be given a relook and in particular, necessary amendments may be made by adding a clause in section 126 stating that “no court shall take cognizance of any offence under section 126(1)(b) unless there is a complaint made by order of or under the authority from the Commission or the CEO of the State concerned as in the case of section 32 of the 1951 Act. Another amendment that is required to be made in the Act is to include 'print media' under the present provision since the current framework only includes display by electronic media.

#### Law Commission's Recommendation

The Law Commission of India in its Report no. 255 (2015) had a similar view to that of the Election Commission of India and recommended to expand the scope of section 126 of The Representation of the People Act, 1951. The Law Commission also recommended that section 126(1) (b) be amended as follows:

126.(1) No person shall...

(a) ...

(b) Publish, publicise or disseminate any election matter by means of print or electronic media; or,

(c) ...

(2) ...

(2A) No court shall take cognizance of any offence punishable under sub-section (1) unless there is a complaint made by order of, or under authority from, the Election Commission or the Chief Electoral Officer of the State concerned.

Explanation. — For the purposes of this section, —

(a) “election matter” means any matter intended or calculated to influence or affect the result of an election.

(b) “electronic media” includes internet, radio and television including Internet Protocol Television, satellite, terrestrial or cable channels, mobile and such other media either owned by the Government or private person or by both;

(c) “print media” includes any newspaper, magazine or periodical, poster, placard, handbill or any other document;

(d) “disseminate” includes publication in any “print media” or broadcast or display on any electronic media.



## 4. RETIREMENT OF MEMBERS IN COUNCIL OF STATES AND LEGISLATIVE COUNCIL

### Background

Section 154 and section 156 provides for term of service of members of the Council of States and State Legislative Councils respectively. The term provided under both sections, other than a member chosen to fill a casual vacancy, is six years. Both the sections provide that upon consultation with the Council of States and State Legislative Councils, the President and the Governor, respectively, after consultation with the Election Commission, make by order such provision as they think fit for curtailing the term of office of some of the members then chosen in order that, as nearly as may be, one-third of the members holding seats of each class shall retire in every second year thereafter.

### Reason for proposed amendment

Biennial retirement of one third members in the Council of States and Legislative Councils is a constitutional mandate. In some cases vacancies of different retirement cycles have got clubbed with the result that the requirement of the biennial retirement is not met. The Commission in its letter dated 10/03/1981 recommended curtailment of the terms of then existing members for restoring the retirement cycle which was not considered by the Government as any curtailment in the terms of the members would infringe their right to hold the office for a full term of six years.

### Proposed amendment

The Commission on 25/07/1991 and 11/06/2010 has proposed amendments in sections 154 and 156 of The Representation of People Act, 1951 and suggested dividing the seats in the Council of States and State Legislative Councils into three categories and specifying the term for each category in such a way that biennial retirement of 1/3rd of the members would be ensured.



## 5. PROVIDING OPEN BALLOT SYSTEM IN CASE OF THE ELECTION TO FILL SEAT/ SEATS IN THE STATE LEGISLATIVE COUNCILS

### Background

The members of the Council of States are elected by the elected members of Legislative Assemblies of the States and Union Territories. In case of Legislative Councils of States where such Council exist, one third of the members of the Legislative Council are elected by the members of the Legislative Assembly of the State concerned. Section 59 of The Representation of People Act, 1951 provides the manner of elections and says at every election where a poll is taken, votes shall be given by ballot in such manner as may be prescribed, and, save as expressly provided by this Act, no votes shall be received by proxy. The proviso to this section provides that the votes at every election to fill a seat or seats in the Council of States shall be given by open ballot.

### Reason for proposed amendment

The voting procedure by members of Legislative Assembly in respect of these two upper Houses is similar, except for the system of voting by open ballot in the case of Council of States as clearly given in proviso to section 59 of The Representation of the People Act, 1951. However, in case the of the election to fill a seat or seats in the State Legislative Council by the Members of Legislative Assembly, no such provisions of open ballot is prescribed.

### Proposed amendment

The Commission is of the view that there should be uniformity in the procedure of voting system in the case of election of members of State Legislative Council and the Council of States by members of Legislative Assembly. The logic for providing open ballot system in the case of elections to Council of States would equally apply for elections to Legislative Councils also, and there is no reason to have separate system for the elections involving the same electorate.

In view of the above, the Commission recommends that the open ballot system may also be made applicable in case of the election to fill a seat or seats in the State Legislative Councils by the Members of Legislative Assembly by appropriately amending section 59 of The Representation of the People Act, 1951.



## 6. ADJOURNMENT OF POLL OR COUNTERMANDING OF ELECTION ON THE GROUND OF BRIBERY

### Background

Article 324 of the Constitution vests in the Election Commission the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of the President and Vice-President held under the Constitution. The powers conferred thereunder are of widest amplitude as held by the Hon'ble Supreme Court in *Mohinder Singh Gill v Chief Election Commissioner* (1978 SC 851).

It was observed in *M.S Gill's case* that the framers of the Constitution took care to leave the scope of residuary power to Commission, foreseeing the infinite variety of situations that may emerge from time to time in such a large democracy as ours. Section 58A was inserted in The Representation of the People Act, 1951 to empower the Commission to countermand an election in the event of booth capturing in the constituency.

In *S.Subramaniam Balaji vs Govt. Of T. Nadu & Ors* (2013) 9 SCC 659, the case relating to distribution of free gifts by the political parties (popularly known as 'freebies'), the Hon'ble Supreme Court observed that "although, the law is obvious that the promises in the election manifesto cannot be construed as 'corrupt practice' under section 123 of The Representation of the People Act, the reality cannot be ruled out that distribution of freebies of any kind, undoubtedly, influences all people. It shakes the root of free and fair elections to a large degree."

### Reason for proposed amendment

Over the period of time, especially in the recent years, money has played a key role in influencing the 'decision making' at the polls. There have been several instances of seizure of large amount of cash, liquor, gift items etc. from the candidates and their agents during the elections.

In some cases, following large scale instances of bribing of electors by candidates and workers of political parties, the Commission, using its plenary powers under Article 324 resorted to cancellation of the election process.

### Proposed amendment

On account of increasing incidents of misuse of money in elections, the Commission is of the considered view that there should be a provision in The Representation of the People Act, 1951 to deal with such cases.

Therefore, the commission proposes that on the lines of section 58A, there should be a specific provision enabling the Commission to take appropriate action including countermanding of election in the event of incidents of bribery of electors in a constituency, if in the opinion of the Commission such incidents are likely to vitiate the election.

The Commission has prepared a draft of the proposed provision on the following lines:

Section 58B. Adjournment of poll or countermanding of elections on the ground of bribery.-

- (1) If at any election, bribery is likely to take place or has taken place in a polling area or polling areas or at a place fixed for the poll (hereafter in this section referred to as polling area) which is likely to vitiate or has vitiated the conduct of free and fair elections, the Returning Officer shall forthwith report the matter to the Election Commission.



- (2) The Election Commission may on the receipt of the report from the Returning Officer under subsection (1) or otherwise, and after taking all material circumstances into account,-
- (a) Postpone the poll in the affected polling area or areas to such later date as the Commission may deem appropriate in the facts and circumstances of the case, appoint a fresh date, and fix afresh the hours, for taking poll in the said polling area or areas, and notify the date so appointed and hours so fixed in such manner as it may deem fit; or
  - (b) Where the poll has already taken place in the affected polling area or areas on the date previously appointed under clause (d) of section 30, declare the poll so taken as void, appoint a day, and fix the hours, for taking fresh poll in that polling area or areas and notify the date so appointed and hours so fixed in such manner as it deem fit; or
  - (c) If satisfied in view of the large number of polling areas involved in the incidents of bribery, the result of the election in the constituency is likely to be affected, countermand the election in that constituency.

Explanation.-(1) in this connection, 'bribery' shall have the same meaning as in clause (1) of section 123.

- (3) in this section and section 58A, the expression countermand the election” shall mean rescinding of the entire electoral process in the constituency ab initio so that the election in the constituency may be called anew in all respect.

# CHAPTER IV

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## ELECTION OFFICIALS AND LOGISTICS





## **1. SECTION 13CC OF THE REPRESENTATION OF THE PEOPLE ACT, 1950 AND SECTION 28A OF THE REPRESENTATION OF THE PEOPLE ACT, 1951**

### **Background**

Section 13CC of the Representation of the People Act, 1950 states that:

"13CC. Chief Electoral Officers, District Election Officers, etc., deemed to be on deputation to Election Commission- The officers referred to in this Part and any other officer or staff employed in connection with the preparation, revision and correction of the electoral rolls for, and the conduct of, all elections shall be deemed to be on deputation to the Election Commission for the period during which they are so employed and such officers and staff shall, during that period, be subject to the control, superintendence and discipline of the Election Commission."

Section 28A of the Representation of the People Act, 1951 states that:

"28A. Returning officer, presiding officer, etc., deemed to be on deputation to Election Commission- The returning officer, assistant returning officer, presiding officer, polling officer, and any other officer appointed under this Part, and any police officer designated for the time being by the State Government, for the conduct of any election shall be deemed to be on deputation to the Election Commission for the period commencing on and from the date of the notification calling for such election and ending with the date of declaration of the results of such election and accordingly, such officers shall, during that period, be subject to the control, superintendence and discipline of the Election Commission."

### **Reason for proposed amendment**

Transfer of election officials on the eve of elections can disturb the election preparedness.

### **Proposed amendment**

Section 13CC of the Representation of the People Act, 1950 and Section 28A of the Representation of the People Act, 1951 should be amended to provide a ban on the transfer of officers referred to in these sections during a period of 6 months before the expiry of the term of the House.



## 2. SECTION 160 OF THE REPRESENTATION OF THE PEOPLE ACT, 1951

### Background

Section 160(1)(a) of the Representation of the People Act, 1951 provides that a state government may, in connection with an election, requisition any premises that are needed or are likely to be needed for the purpose of being used as a polling station or for the storage of ballot boxes after a poll has been taken.

The Allahabad High Court in *MaaBhagwatiNirashritSamajSewaSansthan v. Election Commission of India*, 2014 (104) ALR 806 quashed an order passed by the District Election Officer, Kanpur Nagar, under section 160 for requisitioning a guest house for housing of paramilitary forces for the elections. The Court held that:

"4. Consequently, it is clear that the power to requisition under section 160(1)(a) of the Act covers 'any premises' which are needed or are likely to be needed for the purpose of being used as a polling station or for the storage of ballot boxes after a poll has been taken. Once Parliament has specified the grounds for requisitioning, it is not open to the Election Officer to requisition any premises for a purpose extraneous to, or for a purpose other than that which is covered by Clause (a) of section 160(1) of the Act."

### Reason for proposed amendment

The election process requires requisition of premises for purposes other than polling stations and storage of ballot boxes, such as for providing accommodation to employees, paramilitary forces and observers etc.

### Proposed amendment

Section 160 of The Representation of the People Act, 1951 should be amended to widen its scope such that requisition of premises for any election should not be restricted to the purpose of setting of a polling station or for storage of ballot boxes after a poll has been taken. Sub-section (1) (a) should be amended to read "any premises that are needed or are likely to be needed for any purpose related to conduct of election, or."



### 3. EMPOWERING THE DISTRICT ELECTION OFFICER TO REQUISITION

#### Background

Section 159(1) of The Representation of the People Act, 1951 states that:

"159. Staff of certain authorities to be made available for election work- (1) The authorities specified in subsection (2) shall, when so requested by a Regional Commissioner appointed under clause (4) of article 324 or the Chief Electoral Officer of the State, make available to any returning officer such staff as may be necessary for the performance of any duties in connection with an election."

#### Reason for proposed amendment

Section 26 of The Representation of the People Act, 1951 empowers the District Election Officers to appoint Presiding Officers and Polling Officers for polling stations falling in his district. Further, under section 20A of the 1951 Act, the District Election Officer is required to coordinate and supervise all work in the District in connection with conduct of elections. Therefore, for convenience, there should be express provisions empowering the District Election Officers to requisition staff for conduct of election under section 159 of the 1951 Act.

#### Proposed amendment

Section 159 of The Representation of the People Act, 1951 should be amended to empower the District Election Officer also, apart from the Chief Election Officer, to requisition of staff for election duties.



## 4. USE OF TOTALIZER FOR COUNTING OF VOTES

### Background

EVM totalizer can count votes of multiple Electronic Voting Machines (EVMs) simultaneously. This way the results of votes in a group of EVMs can be taken without ascertaining the result in individual EVM corresponding to polling booth. Totalizer is connected to EVMs via cable and it can do sum of all votes recorded for each of the candidates in 14 EVMs simultaneously.

### Reason for proposed amendment

As per the present provisions in The Conduct of Elections Rules, 1961, votes in the EVMs are to be counted polling station wise, which leads to situations where voting pattern in various localities/pockets become known to everyone. There is a view that this can result in victimization and/or discrimination and intimidation of electors of particular localities. This issue can be addressed by use of totalizer that can be used for taking out the results of voting in a group of 14 EVMs without revealing the votes in individual EVMs.

### Proposed amendment

Provisions for counting of votes of a group of EVMs taken together using Totaliser should be made in The Conduct of Elections Rules, 1961, and Form 20 appended to the said Rules should be suitably amended so as to suit the requirements of counting using Totaliser.

# CHAPTER V

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## NOMINATION OF CANDIDATES





## **1. SECTION 33(7) OF THE REPRESENTATION OF THE PEOPLE ACT, 1951– RESTRICTION ON THE NUMBER OF SEATS FROM WHICH ONE MAY CONTEST**

### **Background**

As per the law of India, as it stands today, a candidate is permitted to contest an election from two different constituencies in a general election or a group of bye-elections or biennial elections. Sub-section (7) of section 33 of The Representation of the People Act, 1951, allows a person to contest a general election or a group of bye-elections or biennial elections from a maximum of two constituencies whereas section 70 of the 1951 Act, specifies that if a person is elected to more than one seat in either House of Parliament or in the House or either House of the Legislature of a State (some states have a Legislative Council or Vidhan Parishad as well, along with the Vidhan Sabha), then he/she can only hold on to one of the seats that he/she won in the election. Sub-section (7) was introduced through a 1996 amendment, prior to which there was no bar on the number of constituencies from which a candidate could contest.

The Election Commission proposed amendment of section 33(7) in the year 2004 to provide that a person cannot contest from more than one constituency at a time. However, in case the existing provisions are to be retained, a candidate contesting from two seats should bear the cost of the bye-election to the seat that the contestant decides to vacate in the event of him/her winning both seats. The amount in such an event could be Rs. 5, 00,000/- for State Assembly and Council Election and Rs. 10, 00,000/- for election to the House of People (as proposed at that point of time).

In the year 2014, a writ petition was filed before the Hon'ble Supreme Court, by the 'Voter's Party' (a registered political party) challenging the constitutional validity of sub-sections (6) and (7) of section 33 and 70 of The Representation of the People Act, 1951. The petition is pending.

### **Reasons for proposed amendment**

When a candidate contests from two seats, it is imperative that he has to vacate one of the two seats should he win both. This, apart from the consequent unavoidable financial burden on the public exchequer and the manpower and other resources for holding bye- election against the resultant vacancy, would be an injustice to the voters of the constituency which the candidate is quitting from.

### **Proposed amendment**

The Commission recommends that the law must be amended to provide that a person cannot contest from more than one constituency at a time for conduct and better management of elections.

In case the provision needs to be retained, then there is a need for an express provision in law requiring person who contests and wins election from two seats, resulting in bye-elections from one of the two constituencies, to deposit in the government account an appropriate amount of money being an expenditure for holding the bye-election.



The recommendations made by the Election Commission of India in 2004 as to the amount to be deposited in the government account for being used as the expenditure for holding the bye-elections has to be increased from Rs. 5 lakhs and Rs. 10 lakhs to something more appropriate for serving as deterrence to the candidates.

### **Law Commission's Recommendation**

The Law Commission has agreed with the Commission's 2004 proposal that The Representation of the People Act, 1951 should be amended to provide that a person cannot contest from more than one seat at a time. The Goswami Committee Report in 1990 and the 170th Law Commission Report in 1999, also contain recommendation for restricting contest of one person to one seat. However, the Law Commission has not endorsed the Commission's alternative proposal to require winning candidates to deposit an appropriate amount of money being the expenditure for conducting the elections. The Law Commission gave the following recommendation in sub-section 7 of section 33:

- In sub-clause (a), delete the words "two Parliamentary constituencies" after the words "from more than" and insert the words "one Parliamentary constituency" instead.
- In sub-clause (b), delete the words "two Assembly constituencies" after "from more than" and insert the words "one Assembly constituency" instead.
- In sub-clause (c), delete the words "two Council constituencies" after the words "from more than" and insert the words "one Council constituency" instead.
- At the end of sub-clause (d), delete the words "two such seats" and insert the words "one such seat" instead.
- In sub-clause (e), delete the words "two such Parliamentary constituencies" appearing after "from more than" and insert the words "one such Parliament constituency" in its place.
- In sub-clause (f), delete the words "two such Assembly constituencies" after "from more than", and insert "one such Assembly constituency" in its place.
- In sub-clause (g), delete the words "two such seats" appearing after "filling more than" and insert the words "one such seat" in its place.
- In sub-clause (h), delete the words "two such Council constituencies" after "from more than" and add the word "one such Council constituency" in its place.



## **2. SECTION 33 OF THE REPRESENTATION OF THE PEOPLE ACT, 1951 – SAME NUMBER OF PROPOSER**

### **Background**

As per section 33 (1) of The Representation of the People Act, 1951, the nomination of a candidate shall not be deemed to be duly nominated for election from a constituency unless the nomination paper is subscribed by one proposer who should be an elector of the constituency in case of a candidate set up by a recognised political party and ten in case of other candidates.

### **Reasons for proposed amendment**

The provision as existing today, was amended in August, 1996. However, the amended provision instead of being helpful to the recognised political parties has resulted in disadvantage to them. In the case of candidate of a recognised party, if there is any problem with the notice of nomination given by the Party, and if the candidate has filed nomination although he may not be treated as candidate of the Party in the list of contesting candidates, etc.

### **Proposed amendment**

In order to remove confusions, it is proposed that the provisions of the said section 33 (1) may be made uniform for all candidates and the number of proposers may be fixed as (10) ten in all cases. It will not cause any inconvenience to the recognised parties and, on the contrary will be greatly beneficial to them.



### 3. DISQUALIFICATIONS UNDER CHAPTER III OF THE REPRESENTATION OF THE PEOPLE ACT, 1951

#### Background

In the judgement dated 07/08/2015, the Hon'ble Delhi Court has directed the Election Commission to consider the possibility, if any, of putting an impediment on a defaulter of public dues contesting election in order to ensure quick recovery of the said dues. In pursuance of the said judgement, the Commission has recommended amending provisions for disqualifications laid down in Chapter III of The Representation of the People Act, 1951 so as to provide for disqualification in the event of default in clearing public dues.

#### Direction of the Delhi High Court

The High Court made the following observations in its judgment:

- According to the report by India Today, the politicians and political parties in occupation of government accommodation allotted to them were in default of payment of electricity, water and telephone charges with respect thereto and no steps were being taken by the municipal and other governmental agencies for recovery of the said public dues. It was further reported that some politicians and political parties also owed monies to five star hotels run by India Tourism Development Corporation Ltd. (ITDC), a Public Sector Corporation, for events, functions held therein or for use thereof and that the ITDC, run and managed by bureaucrats under the control of the said politicians had also not taken any action for recovery of the said dues which were again public monies.
- The zeal with which the public bodies try to recover dues from ordinary citizens was found to be totally missing in case of politicians and political parties and which in fact had resulted in the accumulating arrears. There is a total lack of will on the part of governmental agencies to whom dues are owed, to recover the same from the politicians and political parties.
- The possibility of having the recoveries effected through the Lok Sabha and Rajya Sabha Secretariats by virtue of Rule 23 of the Members of Parliament (Travelling and Daily Allowances) Rule, 1957 also proved to be futile since the amounts due being very huge could not be recovered by way of deduction from the salaries.
- Neither the persuasion by the Supreme Court of the governmental agencies to whom dues are owed could prompt them for recovery nor did the different avenues explored by the Court for recovery have any substantial success due to the reluctance on the part of the governmental agencies to treat the political masters equally, as they treat other citizens.
- The defaulter politicians and political parties are found to have misused their position of power for their own benefit and gain which is against the simple premise of law that the public offices shall not be the workshops of personal gain.
- This calls for issue of directions to ensure that the MPs, MLAs and the political parties, taking advantage of the clout enjoyed by them over the officials of the municipal, electricity, water, telephone and other facilities agencies, are not able to escape paying the dues.

Thus, the High Court under Paragraph 13 (reproduced below) issued, among others, the following directions:

“H. The ECI to, as directed in the earlier orders in this petition, continue to insist upon the candidates



desirous of contesting an election to Parliament or to Legislative Assembly, along with their nomination form furnishing an affidavit of their being not in arrears of any public dues and if such candidate is in occupation of or in the past ten years been in occupation of any government accommodation to furnish a No Dues Certificate from the agency providing electricity, water and telephone to the said accommodation.

I. The ECI to also within six months consider the possibility if any of putting any impediment to a defaulter of public dues contesting election, to ensure quick recovery of the said dues.”

### **Proposed amendment**

In pursuance of the second direction quoted above, the Commission has recommended that the provisions for disqualification laid down in Chapter III of The Representation of the People Act, 1951 must be amended by inserting appropriate clause for disqualification on the ground of pending public dues.



# CHAPTER VI

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DE - CRIMINALISATION  
OF POLITICS





## 1. DE - CRIMINALISATION OF POLITICS

### Background

Section 8 of the Representation of the People Act, 1951 deals with disqualification on conviction for certain offences. Under this Section, disqualification arises only on conviction and there is no disqualification prior to conviction even if a person is facing several serious charges.

The Election Commission proposed in its set of proposals of 1998 and 2004 that Section 8 of the Representation of the People Act, 1951 should be amended to disqualify those persons from contesting election who are accused of an offence punishable by an imprisonment of 5 years or more even when trial is pending, given that the Court has framed charges against the person. To prevent misuse of the provision by the ruling party, the Commission suggested a compromise whereas only cases filed prior to six months before an election would lead to disqualification of a candidate. In addition, the Commission proposed that Candidates found guilty by a Commission of Enquiry should stand disqualified.

### Some Important Judgements

In 2002, the Hon'ble Supreme Court gave a historic ruling in *Union of India (UOI) v. Association for Democratic Reforms and Anr. With People's Union for Civil Liberties (PUCL) and Anr. v. Union of India (UOI) and Anr.* (2002) 5 SCC 294 that every candidate, contesting an election to the Parliament, State Legislatures or Municipal Corporation, has to declare their criminal records, financial records and educational qualifications along with their nomination paper.

In 2005, the Supreme Court in *Ramesh Dalal vs. Union of India* held that a sitting Member of Parliament (MP) or Member of State Legislature (MLA) shall also be subject to disqualification from contesting elections if he is convicted and sentenced to not less than 2 years of imprisonment by a court of law.

In *Lily Thomas v. Union of India* 2000 (4) SCALE 176, the Court held that Section 8(4) of The Representation of the People Act, 1951 is unconstitutional which allows MPs and MLAs who are convicted to continue in office till an appeal against such conviction is disposed of.

Further in 2013, the Hon'ble Supreme Court has requested the 20th Law Commission of India vide letter dated 16th January, 2013 to consider the matter again under two grounds, viz. disqualifications on the ground of framing of charges by the court or upon the presentation of the report by the investigating officer under Section 173 of Code of Criminal Procedure Code and disqualification on the ground of filing false affidavit under Section 125A of the Act of 1951. As per the concerns of the court the Law Commission has suggested recommendations titled "Electoral disqualifications" in its 244th report on Electoral Reforms.

The Hon'ble Supreme Court in *Krishnamoorthy v. Sivakumar&Ors.* (2015), while observing that the crucial recognised ideal which is required to be realised is eradication of criminalisation of politics and corruption in public life decided that "disclosure of criminal antecedents of a candidate, especially, pertaining to heinous or serious offence or offences relating to corruption or moral turpitude at the time of filing of nomination paper as mandated by law is a categorical imperative and Concealment



or suppression of this nature deprives the voters to make an informed and advised choice as a consequence of which it would come within the compartment of direct or indirect interference or attempt to interfere with the free exercise of the right to vote by the electorate, on the part of the candidate.”

### **Reason for proposed amendment moved by the Commission.**

Persons with Criminal background, accused of serious offences contesting election sends very negative signals about our electoral process. Many of such persons facing charges of grave nature end up winning election and entering our temple of democracy namely the Houses of Parliament and State Legislature which is highly undesirable and the issue needs to be addressed.

The Commission while making the proposal is fully conscious of the general principles of criminal jurisprudence that a person is deemed to be innocent until proven guilty. But the proposed amendment will be in the larger national interest which should take precedence over the interests of the individuals.

### **Proposed amendment**

Persons charged with cognisable offences shall be de-barred from contesting in the elections, at the stage when the charges are framed by the competent court provided the offence is punishable by imprisonment of at least 5 years, and the case is filed at least 6 months prior to the election in question.

### **Recommendation by Law Commission**

Expediting trials in relevant courts where a case is filed against a sitting MP/MLA and to conduct the trial on a day-to-day basis with an outer limit of completing the trial in one year. If the trial cannot be completed within the said time period or the charge is not quashed in the said period, the trial judge shall give reasons in writing to the relevant High Court.

Once the said period expires, two consequences may ensue: (i) The person may be automatically disqualified at the end of the said time period (ii) The right to vote, remuneration and perquisites of office shall be suspended at the end of the said period up to the expiry of the House.

Retroactive application- from the date the proposed amendments come into effect, all persons with criminal charges (punishable by more than five years) pending on that date are liable to be disqualified subject to certain safeguards.

The punishment for filing false affidavits under Section 125A be increased to a minimum of two years, and that the alternate clause for fine be removed.

Conviction under Section 125A should be made a ground for disqualification under Section 8(1) of the RPA, 1951.

The filing of false affidavits should be made a corrupt practice under Section 123 of the RPA.



## 2. MISUSE OF RELIGION FOR ELECTORAL GAIN

### Background

Elections are the manifestations of popular consent in a democratic society. History assents that it has significant repercussions on the making of a nation's governance and the nature of its policies. The framers of the Indian Constitution were concerned about the control that religion might exercise over the selection of government. A lot of dialogue and debate was made in the Constitutional assembly debates regarding the inclusion of word "secularism". The Forty-second Amendment of the Constitution of India, officially known as The Constitution (Forty-second amendment) Act, 1976 was in the following lines "The democratic institutions provided in the Constitution are basically sound and the path for progress does not lie in denigrating any of these institutions. However, there could be no denial that these institutions have been subjected to considerable stresses and strains and that vested interests have been trying to promote their selfish ends to the great detriment of public good. It is, therefore, proposed to amend the Constitution to spell out expressly the high ideals of socialism, secularism and the integrity of the nation, to make the directive principles more comprehensive and give them precedence over those fundamental rights which have been allowed to be relied upon to frustrate socio-economic reforms for implementing the directive principles..... In the Preamble to the Constitution, -(a) for the words "SOVEREIGN DEMOCRATIC REPUBLIC" the words "SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC" shall be substituted; and (b) for the words "unity of the Nation", the words "unity and integrity of the Nation" shall be substituted."

An Amendment Bill, [Representation of the People (Second Amendment) Bill, 1994] was introduced in the Lok Sabha to provide provision(s) to question the acts misuse of religion by political parties before the Hon'ble High Court. However the same lapsed in 1996 with the dissolution of 10th Lok Sabha. The Commission has forwarded the recommendation again on 2010.

Earlier Goswami Committee in its report in 1990 on Electoral Reforms had suggested parallel recommendation, which read as follows: "Election Commission shall have the power to make recommendations to the appropriate authority (a) to refer any matter for investigation to any agency specified by the Commission (b) Prosecute any person who has committed an electoral offence under this Act or (c) appoint any special court for the trial of any offence or offences under this Act (RP Act 1951)."

The above recommendations were included in the Representation of the People (Amendment) Bill, 1990 introduced in the Rajya Sabha. However, the said Bill was withdrawn by the Govt. in December, 1993, stating the Govt. would come up with a revised Bill.

In the 255th report of the Law Commission on Electoral Reforms, recommendations were made to maintain internal democracy in the political parties, drawing a comparative study of electoral regulations in Germany, Portugal and Spain.

### Reason for the proposed amendment

The Ministry of Home affairs referred to the Commission the relevant part of the Report of the Liberhans Ayodhya Commission of Inquiry, in 2010, for action on some recommendations for action by the Election Commission against the parties which misuse religious sentiments.

The proposal was to initiate swift action against those persons who attempt to misuse religious sentiments or



making appeals to voters through the mode of their piety by holding disguised religious rallies in places of worship as political supplication, to strengthen the existing provisions in the Codes of Conduct and other election related laws.

Under the existing law i.e. section 123(3) and (3A) of the Representation of the People Act, 1951 appeal on grounds of religion, race etc. And promotions of feelings of enmity between different classes of religion constitute corrupt practice and the same can be questioned only by way of an election petition. Further the same cannot be a subject of enquiry before the Commission when the election is in progress. Ironically these provisions will have application only during the period of election and there is no provision to challenge the corrupt practise of the candidate who lost the election.

### **Proposed amendment**

The Commission proposed that for giving effect to the recommendations in the Liberhan Commission Report, the law should be amended as was proposed in the Bills of 1990 and 1994 referred to above.



### 3. MAKING BRIBERY IN ELECTIONS A COGNIZABLE OFFENCE

#### Background

The phenomenon of bribing of voters with money and essential commodities and buying out local representatives has always plagued Indian elections. Section 123(1) of The Representation of the People Act 1951 defines "Bribery" as any gift, offer or promise by a candidate or his agent or any other person with the consent of a Candidate or his election agent giving gratification, to any person whomsoever, with the object, directly or indirectly of inducing—

- (a) A person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election,
- (b) An elector to vote or refrain from voting at an election
- (c) An elector for having voted or refrained from voting... etc.

Section 171B of IPC also describes Bribery broadly in the lines that, if a person advances a gratification to any person with the object of inducing him or any other person to exercise their electoral right or of rewarding any person for having exercised any such right or accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right; commits the offence of bribery.

Section 171C of IPC talks about undue influence at elections (1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election by threatening any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or by inducing a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure.

In 2012 the Election Commission recommended to the Home Ministry to amend the existing law to make bribery during elections (both cash and kind) a cognisable offence, enabling police to arrest the violators without a warrant and to enhance the punishment up to two years. The Home Ministry has conveyed to the Election Commission that it has initiated the process to amend the Sections 171B and 171E of the Code of Criminal Procedure (Cr.P.C), 1973 for the same.

#### Reason for proposed amendment

The change in law have become necessary as there have been increasing incidents of bribery being detected in all elections, from local body polls to Lok Sabha elections. This is because, currently, bribery is a bailable offence attracting only minimal punishment.

Moreover, the experience on the ground has shown that the law enforcing authorities feel handicapped in apprehending the culprits because they cannot proceed without a warrant issued by a competent Magistrate under Section 200 of the Code of Criminal Procedure Code, 1973 on being moved under section 155 of the said Act, to search or arrest any person even on specific information about the corruptive practice. These provide the violators an opportunity to evade legal action.

#### Proposed amendment

The proposal of the Commission is that Section 171B and 171E of the Code of Criminal Procedure (Cr.P.C), 1973, shall be amended immediately to include bribery as a cognisable offence with minimum 2 years of Imprisonment.



# CHAPTER VII

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REFORMS RELATING TO  
POLITICAL PARTIES





## 1. DE - REGISTRATION OF POLITICAL PARTIES

### Background

Section 29A of The Representation of the People Act, 1951 empowers the Election Commission of India to register associations and bodies as political parties. However, there is no constitutional or statutory provision that gives power to the Election Commission to de-register political parties.

The Supreme Court held in *Indian National Congress (I) v. Institute of Social Welfare and Ors.*, (2002) 5 SCC 685 held that the law does not empower the Commission to de-register a political party on the grounds of violation of any provisions of constitution or any undertaking given to the Commission. It was further held:

- “34. However, there are three exceptions where the Commission can review its order registering a political party. One is where in political party obtained its registration by playing fraud on the Commission, secondly it arises out of Sub-section (9) of Section 29A of the Act and thirdly, any like ground where no enquiry is called for on the part of the Election Commission, for example, where the political party concerned is declared unlawful by the Central Government under the provision of the Unlawful Activities (Prevention) Act, 1967 or any other similar law.
35. Coming to the first exception, it is almost settled law that fraud vitiates any act or order passed by any quasi-judicial authority even if no power of review is conferred upon it. In fact, fraud vitiates all actions. In *Smith v. East Ellis Rural Distt. Council* - (1956) 1 All E.R. 855 it was stated that the effect of fraud would normally be to vitiate all acts and order. In *Indian Bank v. Satyam Fibres (India) Pvt. Ltd.* - MANU/SC/0657/1996 : AIR1996SC2592, it was held that a power to cancel/recall an order which has been obtained by forgery or fraud applies not only to courts of law, but also statutory tribunals which do not have power of review. Thus, fraud or forgery practised by a political party while obtaining a registration, if comes to the notice of the Election Commission, it is open to the Commission to de-register such a political party.
36. The second exception is where a political party changes its nomenclature of association, rules and regulation abrogating the provisions therein conforming to the provisions of Section 29A(5) or intimating the Commission that it has ceased to have faith and allegiance to the Constitution of India or to the principles of socialism, secularism and democracy, or it would not uphold the sovereignty, unity and integrity of India so as to comply the provisions of Section 29A(5). In such case, the very substratum on which the party obtained registration is knocked of and the Commission in its ancillary power can undo the registration of a political party. Similar case is in respect of any like ground where no enquiry is called for on the part of the Commission. In this category of cases, the case would be where a registered political party is declared unlawful by the Central Government under the provisions of Unlawful Activities (Prevention) Act, 1967 or any other similar law. In such cases, power of the 'Commission to



cancel the registration of a political party is sustainable on the settled legal principle that when a statutory authority is conferred with a power, all incidental and ancillary powers to effectuate such power are within the conferment of the power, although not expressly conferred. But such an ancillary and incidental power of the Commission is not an implied power of revocation. The ancillary and incidental power of the Commission cannot be extended to a case where a registered political party admits that it has faith in the Constitution and principles of socialism, secularism and democracy, but some people repudiate such admission and call for an enquiry by the Election Commission. Reason being, an incidental and ancillary power of a statutory authority is not the substitute of an express power of review.

41. It may be noted that the Parliament deliberately omitted to vest the Election Commission of India with the power to de-register a political party for non-compliance with the conditions for the grant of such registration. This may be for the reason that under the Constitution the Election Commission of India is required to function independently and ensure free and fair elections. An enquiry into non-compliance with the conditions for the grant of registration might involve the Commission in matters of a political nature and could mean monitoring by the Commission of the political activities, programmes and ideologies of political parties. This position gets strengthened by the fact that on 30th June, 1994 the Representation of the People (Second Amendment) Bill, 1994 was introduced in the Lok Sabha proposing to introduce Section 29-B whereunder a complaint to be made to the High Court within whose jurisdiction the main office of a political party is situated for cancelling the registration of the party on the ground that it bears a religious name or that its memorandum or rules and regulations no longer conforming the provisions of Section 29-A(5) or that the activities are not in accordance with the said memorandum or rules and regulations. However, this bill lapsed on the dissolution of the Lok Sabha in 1996."

The recommendation by Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice in 61st Report on Electoral Reforms-Code of Conduct for Political Parties & Anti Defection Law states:

"Under Section 29 (A) Representation of People Act, 1951, the Election Commission of India has been given power to register Political Parties but the power of de-registration of Political Parties has not been given to Election Commission of India under that law. However, the Election Commission of India has assumed the power under para 16 A of the Election Symbol (Reservation and Allotment) Order, 1968 to de-recognize the Political Parties in the event of violation of Model Code of Conduct. The net effect of de-recognition of political party makes that party almost dysfunctional as its symbol is taken away. The Committee, therefore, recommends that the power to de-recognize Political Parties on account of violation of Model Code of Conduct may be incorporated in the Representation of People Act, 1951 itself."



### **Reason for proposed amendment**

Many political parties get registered, but never contest election. Such parties exist only on paper. The possibility of forming political parties with an eye on availing the benefit of income tax exemption also cannot be ruled out. It would only be logical that the Commission which has the power to register political parties is also empowered to de-register in appropriate cases

### **Proposed amendment**

The Election Commission of India should be given powers to de-register a political party should be authorised to issue necessary orders regulating registration and de-registration of political parties.

### **Recommendation of the Law Commission**

Law Commission of India report on Electoral Reforms, Report No. 255 (March 12, 2015) endorsing the view of the Election Commission stated the following:

“3.12 Consequently, there is no mechanism to review a party's practice against the principles enshrined in the Constitution or against the requirements of the ECI's Guidelines and Application Format for the Registration of Political Parties under Section 29A. A party can only be deregistered if its registration was obtained by fraud; if it is declared illegal by the Central Government; or if a party amends its internal Constitution and notified the ECI that it can no longer abide by the Indian Constitution.140 Moreover, there is no power of de-registration if parties having registered under section 29A of the RPA continue to avail of tax benefits under section 13A of the IT Act, without contesting elections. The RPA thus needs to be amended to empower the ECI to act.

3.13 Even otherwise, these situations only deal with cases of deregistration, and not disbarment of any party from contesting elections. It is clear that any party can contest elections, even if their Constitution contravenes the provisions and ideals of the Constitution or does not provide for internal elections.”

Further, the National Commission to Review the Working of the Constitution Report, Ministry of Law, Justice and Company Affairs Department of Legal Affairs (2002):

“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 de recognition.

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.

- 4.30.6. The authority for registration, de-registration, recognition and de-recognition of parties and for appointing the body of auditors should be the Election Commission whose decisions should be final subject to review by the Supreme Court on points of law.
- 4.32. The rules and by-laws of the parties seeking registration should include provisions for:
- i. a declaration of adherence to democratic values and norms of the Constitution in their inner party organizations,
  - ii. a declaration to shun violence for political gains,
  - iii. a declaration not to resort to casteism and communalism for political mobilisation, but to adhere to the principles of secularism in the achievement of their objectives,
  - iv. a provision for party conventions to nominate and select candidates for political offices at the grass root and State levels,
  - v. a code of conduct (which each political party should evolve for itself),
  - vi. some institutional mechanism for planning, thinking and research on crucial socio-economic issues facing the nation and educational cells for socializing their party cadres and preparing them for responsibilities of governance,
  - vii. Implementation of legal provisions regarding representation to women and weaker sections of society in party offices and in candidacy for elections to Houses of Legislatures."



## 2. TAX RELIEF FOR POLITICAL PARTIES

### Background

Section 13A of the Income-tax Act, 1961 confers tax-exemption to political parties for income from house property, income by way of voluntary contributions, income from capital gains and income from other sources. In other words, only income under the head salaries and income from business or profession are chargeable to tax in the hands of political parties in India. Political parties registered with the Election Commission of India are exempt from paying Income Tax under section 13A of Income Tax Act, 1961 as long as the political parties comply with the proviso to section 13A, that is, if they file their Income Tax Returns every Assessment Year along with their audited accounts, Income/ Expenditure details and balance sheet.

In 2003, sections 29B and 29C were inserted in The Representation of the People Act, 1951 making provisions regarding receiving of donations/contributions by political parties from individuals and companies (other than govt. companies). Section 29C provides that for contribution in excess of Rs. 20,000/- in a year, the treasurer/authorised person of the party shall prepare a report of such contributions. The report is required to be submitted on an annual basis to the Commission before the due date for furnishing the return of its income, and failure to do so would render the party ineligible for any tax relief under the Income Tax Act notwithstanding any provisions therein.

### Reason for proposed amendment

There could be cases where political parties could be formed merely for availing of provisions of income tax exemption if the facility, that are at the expense of the public exchequer, is provided to all political parties.

### Proposed Reform

Provisions for exemption of Income Tax should be made applicable only to political parties that contest elections and win seat(s) in the Parliament or Legislative Assemblies.



### 3. COMPULSORY MAINTENANCE OF ACCOUNTS BY POLITICAL PARTIES

#### Background

Section 13A(a) of the Income Tax Act, 1961 requires the political parties to keep and maintain “such books of account and other documents as would enable the Assessing Officer to properly deduce its income therefrom.” Section 13A(a) of the Income Tax Act, 1961 states that the accounts of such political party must be audited by an accountant as defined in the Explanation below sub-section (2) of section 288.

Section 29C of The Representation of the People Act, 1951 states that the treasurer of a political party or any other person authorised by the political party in its behalf shall, in each financial year, prepare a report declaring the donations received from persons or non-government companies in that financial year. Section 29C (3) states that the said report must be submitted before the due date for furnishing a return of its income of that financial year under section 139 of the Income Tax Act, 1961 to the Election Commission. Section 29C (4) provides that tax exemption under section 13A of the Income Tax Act will not be availed to a political party which fails to submit the said report.

The “Guidelines and Application Format for Registration of Political Parties under section 29A of The Representation of the People Act” by the Election Commission of India requires the parties seeking registration to maintain their accounts on accrual system and to be annually audited by Auditor on the panel of Comptroller and Auditor General of India. It further states that the audited annual accounts should be submitted to the Election Commission within 6 months of the end of financial year.

#### Reason for proposed amendment

Political parties are major stakeholders in a democracy and they should be accountable to the public. This will ensure transparency and empower people to make informed decisions about electing their representatives.

#### Proposed Reform

Sections 29C, 29D, 29E, as recommended by the Law Commission in Report 255, should be inserted in The Representation of the People Act, 1951.

#### Recommendation by the Law Commission

Law Commission of India report on Electoral Reforms, Report No. 255 (March 12, 2015) endorsing the view of the Election Commission stated that:

“5. Section 29C of the RPA has to be deleted. In its place, a new section 29C has to be inserted mandating political parties to maintain audited accounts, along the line of the 170th Report’s recommended section 78A:

“29C. Maintenance, audit, publication of accounts by political parties

- (1) Each recognised political party shall maintain accounts clearly and fully disclosing all the amounts received by it and clearly and fully disclosing the expenditure incurred by it. The account shall be maintained according to the financial year. Within six months of the close of each financial year, each recognised political party shall submit to the Election Commission, its accounts, duly audited by a qualified and practicing chartered accountant from a panel of such accountants maintained for the



purpose by the Comptroller and Auditor General.

- (2) The Election Commission shall make publicly available, on its website, the audited accounts submitted by all political parties under sub-section (1).
  - (3) The Election Commission shall also keep these accounts on file for three years after their submission and shall make them available for public inspection on the payment of a prescribed fee.”
6. The existing section 29C of the RPA has to be modified and recast as section 29D to first, include aggregate contributions from a single donor amounting to Rs. 20,000 within its scope; second, require parties to disclose the names, addresses and PAN card numbers (if applicable) of donors along with the amount of each donations; third, require parties to disclose such particulars even for contributions less than Rs. 20,000 if such contributions exceed Rs. 20 crore of the party's total contributions or twenty per cent of total contributions, whichever is lesser. Consequential amendments will need to be made to the Election Rules and the IT Act. The proposed section 29D reads as:

“29D. Declaration of contribution received by the political parties.—

- (1) The treasurer of a political party or any other person authorised by the political party in this behalf shall, in each financial year, prepare a report in respect of the following, namely:—
  - (a) the contribution in excess of twenty thousand rupees, including an aggregate of contributions in excess of twenty thousand rupees, received by such political party from any person in that financial year;
  - (b) the contribution in excess of twenty thousand rupees, including an aggregate of contributions in excess of twenty thousand rupees received by such political party from any company, other than a Government company, in that financial year.
- (2) Notwithstanding anything contained in sub-section (1), the treasurer of a political party or any other person authorised by the political party in this behalf shall, in the report referred to in sub-section (1), disclose the particulars of such contributions received from a person or company, other than a Government company, even if the contributions are below twenty thousand rupees, in case such contributions exceeds twenty crore rupees, or twenty per cent of total contributions, whichever is lesser, as received by the political party in that financial year.

Illustration: A political party, 'P', receives a total of hundred crore rupees, in cash or cheque, in a financial year. Out of this amount, fifty crore rupees are received from undisclosed sources, by way of contributions less than twenty thousand rupees (in cash or multiple cheques). P shall be liable to disclose the particulars of all donors beyond twenty crores, even if they have contributed less than twenty thousand rupees each.

- (3) The report under sub-section (1) shall be in such form as may be prescribed.
- (4) The report for a financial year under sub-section (1) shall be submitted by the treasurer of a political party or any other person authorised by the political party in this behalf 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.

Explanation: For the avoidance of doubt, it is hereby clarified that the term “particulars” mentioned in this



section shall include the amount donated; the names and addresses, and PAN card number if applicable, of such person or company referred to in this section.”

7. A new section 29E to be inserted in the RPA requiring the ECI to make publicly available, on its website, all the contribution reports submitted by all political parties under section 29D. Section 29E shall read as:

“29E. Disclosure of contribution reports submitted by political parties.–

- (1) The Election Commission shall make publicly available, on its website, the contribution reports submitted by all political parties under section 29D.
- (2) The Election Commission shall also keep these reports on file for three years after their submission and shall make them available for public inspection on the payment of a prescribed fee.”



### 4. ACCOUNTING AND AUDITING REPORT OF POLITICAL PARTIES

#### Background

There is no legislation or regulation or rule which prescribes either (a) standard financial accounting and reporting framework, or (b) auditing framework for financial statements of political parties in India.

#### Reason for proposed amendment

Accounting and auditing standards would help political parties to maintain uniformity in presentation of financial statements, proper disclosure and transparency of their accounts.

#### Proposed amendment

On the request of Election Commission, the Institute of Chartered Accountants of India made certain recommendations in February 2010 under its "Guidance Note on Accounting & Auditing of Political Parties" to the Election Commission for improving the system of accounting followed by political parties in India. Important recommendations of ICAI include:

- a) Political parties should maintain their books of account on accrual basis;
- b) Elements of financial statements basically comprising income, expenses, assets and liabilities;
- c) Principles for recognition of income, expenses, assets and liabilities;
- d) Political parties, irrespective of the fact that no part of the activities is commercial, industrial or business in nature that all political parties should follow Accounting Standards;
- e) A Political Party should not recognise a contingent liability on the face of financial statements, but it should make the following disclosures, for each class of contingent liability, in the notes to financial statements;
- f) Books of account format was provided;
- g) Schedule 13 of the Guidance Note states that collection from issuance of coupons/ sale of publications should be classified and disclosed.

The ECI issued transparency guidelines under Article 324 of the Constitution of India bearing No. 76/PPEMS/Transparency/2013 dated 29/08/2014 with effect from 01/10/2014 stating that the accounts maintained by the treasurer of the political party shall conform to the "Guidance Note on Accounting and Auditing of political parties" issued by the ICAI. Although Election Commission in its guidelines date 29/08/2014 required political parties to conform to the "Guidance Note on Accounting & Auditing of Political Parties" by ICAI, the Guidance Note should be mandated by an act of the legislature as presently these guidelines are mere recommendations.



## 5. FORM 24A UNDER RULE 85B OF THE CONDUCT OF ELECTIONS RULES, 1961

### Background

Rule 85B of The Conduct of Elections Rules, 1961 provides:

“85B. Form of contributions report: The report for a financial year under sub-section (1) of section 29C shall be submitted in form 24A by the treasurer of a political party or any other person authorised by the political party in this behalf, 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.”

### Reason for proposed amendment

The present Form 24A does not incorporate the contributions amounting to a sum below Rs. 20,000/-. Form 24A needs to be amended by including a column for mentioning the total contributions received is amounts less than Rs. 20,000/-. This will be in the interest of transparency.

### Proposed amendment

Form 24A should be amended for including the clause as mentioned above. Proposed new Form 24A is enclosed.

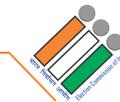
### FORM 24A

(Under Rule 85B of The Conduct of Elections Rules, 1961)

[This form should be filed with the Election Commission before the due date for furnishing a return of the Political Party's income of the concerned financial year under section 139 of the Income-tax Act, 1961 (43 of 1961) and a certificate to this effect should be attached with the Income-tax return to claim exemption under the Income-tax Act, 1961 (43 of 1961).]

### PART A

1	Name of Political Party	: _____
2	Status of the Political Party (recognised/unrecognised)	: _____
3	Address of the headquarters of the Political Party	: _____
4	Date of registration of Political Party with Election Commission	: _____
5	Permanent Account Number (PAN)	: _____
6	Income-tax Ward/Circle where return of the political party is filed	: _____
7	Financial year for which contribution report is submitted	: _____
8	Details of contribution receipts is produced below	: _____



Sl. No.	Description	Total amount (in Rupees) for the FY as mentioned in PART 1 (6)			Total amount (in Rupees) for the last FY 20__ - 20__
		Cash	Cheque/DD/RTGS/NEFT/IMPS	Total	
1	Total contribution received from all sources permissible under section 29B of Representation of People Act, 1951				
2	Out of (1), total contribution received in excess of Rs. 20,000/- from a person or company				
3	Out of (1), total contribution received below Rs. 20,000/- from a person or company				

9. Where the contributor is a company, the conditions laid down under section 182 of the Companies Act, 2013 (18 of 2013) has been complied with by each company and a certificate to that effect has been obtained from each company and annexed as per enclosed list of such companies.
10. Where the contributor is an electoral trust, the conditions laid down under section 13B of the Income Tax Act, 1961 has been complied with by each electoral trust and a certificate to that effect has been obtained from each electoral trust and annexed as per enclosed list of such trusts.
11. Details of the contributions received in excess of Rupees twenty thousand, from a person or a company under section 29C of the Representation of People Act (1951), during the Financial Year 20\_\_ to 20\_\_ are as under:



	Name of person/ company	Complete Address	PAN (if any) and Income -Tax Ward/ Circle	Amount of contribution (in Rupees)	Date of receipt (DD/MM/ YYYY)	Mode of contribution (Cheque/DD/RTGS/NEFT/IMPS/cash)			Remarks
						Cash	Cheque/DD/ RTGS/ NEFT/ IMPS	Name of Bank and its branch on which cheque/ DD is drawn or money is transferred from	
Total contribution in Cash				Total Contribution through Cheque /DD/RTGS/NEFT/IMPS			Grand Total		

**Note:**

- Where a person or company has made contributions on more than one occasion, entries of each contribution should be made separately.
- Where a person or company has made contributions on more than one occasion and the sum total of contribution exceeds Rs. 20,000/- in the financial year under reference, details of such contribution should be given separately in the format given under clause 11 of this Form, even if individual contribution was less than Rs. 20,000/-.
- Where a person or company has made contributions on more than one occasion and the sum total of contribution is below Rs. 20,000/- in the financial year under reference, details of such contribution should be given separately in the format given under clause 10 of this Form.



**PART C**

Verification

I, \_\_\_\_\_ (Full Name in BLOCK LETTERS),  
son/ daughter of \_\_\_\_\_ solemnly  
declare that:

- a) No contribution has been received directly or indirectly from any foreign source as defined under clause (e) of section 2 of the Foreign Contribution (Regulation) Act, 1976 (49 of 1976);
- b) No contribution has been received from a government company or local authority or artificial juridical person wholly or partly funded by the government, as prohibited under section 29B of the Representation of People Act, 1951;
- c) The figures shown in Item 7 of Part A are as per the audited annual accounts of the political party for the financial year under reference;
- d) The information given in this report is correct, complete and truly states, to the best of my knowledge.

I, further declare that I am verifying this report in my capacity as \_\_\_\_\_  
on behalf of the political party named above and I am competent to do so.

(Signature of the Treasurer/ Authorised person)

Name: \_\_\_\_\_

Designation: \_\_\_\_\_

Date: \_\_\_/\_\_\_/\_\_\_

Place: \_\_\_\_\_



Form 24A with all enclosures and completely filled with all details should be submitted in a soft copy on a CD readable in scanned and pdf format. Form 24A should be duly filled and enclosed with the following:

1. Certificates under Section 182 of the Companies Act, 2013 from each company making contribution to the political party and the list of such companies.
2. Certificates from each electoral trust making contribution to the political party and approval order of CBDT along with the list of electoral trusts.

**Notes:**

1. If any political party has not raised any contribution in excess of Rs. 20,000/- during the financial year under reference, every such party is also required to file NIL report.
2. If the report in Form 24A is not filed by any political party for any financial year before its due date of filing of the Annual Income Tax Return under section 139 of Income Tax Act (1961), the party shall not be entitled to any tax relief under that Act, as laid down in section 29C of the Representation of People Act, 1951.



## 6. PROHIBITION ON ANONYMOUS DONATIONS

### Background

There is no constitutional or statutory prohibition on receipt of anonymous donations by political parties in India. But there is an indirect partial ban on anonymous donations through the requirement of declaration of donations under section 29C of The Representation of the People Act, 1951.

### Reason for Proposed Amendment

Although section 29C of The Representation of the People Act, 1951 requires the political parties to declare their donations, however such declaration is mandated only for contributions above Rs 20,000.

### Proposed amendment

Anonymous contributions above or equal to the amount of Rupees two thousand should be prohibited.

### Recommendations by the Law Commission

Law Commission of India report on Electoral Reforms, Report No. 255 (March 12, 2015):

“Finally, separate provisions should be inserted, along the lines of the comparative practice discussed above, requiring: (a) All parties to submit the names and addresses of all their donors (regardless of the amounts or source of funding) for contributions greater than Rs. 20,000 through a new section 29D, RPA. A maximum of up to Rs. 20 crore or 20% of the party's entire collection, whichever is lower, can be anonymous;”



## 7. SALE OF COUPONS

### Background

Coupons are one of the ways devised by the political parties for collecting donations and hence are printed by the party itself. There is no cap or limit as to how many coupons can be printed or the total quantum (that is the total amount or worth of coupons).

The Supreme Court in *Common Cause A Registered Society v. Union of India and others*, (1996) 2 SCC 752 held as under:

1. That the political parties are under a statutory obligation to file return of income in respect of each assessment year in accordance with the provisions of the IT Act. The political parties referred to by us in the judgment, who have not been filing returns of income for several years, have, prima facie, violated the statutory provisions of the IT act as indicated by us in the judgment.
2. That the IT authorities have been wholly remiss in the performance of their statutory duties under law. The said authorities have for a long period failed to take appropriate action against the defaulter political parties.
3. The Secretary, Ministry of Finance, Department of Revenue, Government of India, shall have an investigation/inquiry conducted against each of the defaulter political parties and initiate necessary action in accordance with law including penal action under s. 276CC of the IT Act.
4. The Secretary, Ministry of Finance, Department of Revenue, Government of India, shall appoint an inquiring body to find out why and in what circumstances the mandatory provisions of the IT act regarding filing of return of income by the political parties were not enforced. Any officer/officers found responsible and remiss in the inquiry be suitably dealt with in accordance with the rules.
5. A political party which is not maintaining audited and authenticated accounts and has not filed the return of income for the relevant period, cannot, ordinarily, be permitted to say that it has incurred or authorised expenditure in connection with the election of its candidates in terms of Explan. 1 to s. 77 of the RP Act."

### Reason for Amendment

Currently, the details of donors is not required for coupons with small amounts such as for Rs. 10 or 20. These smaller sums aggregate into a bigger amount and hence, they need to be accounted for, to ensure transparency.

### Proposed amendment

The political parties should be mandated to register details of donors for coupons of all amounts on the basis of Supreme Court's decision in *Common Cause A Registered Society v. Union of India and others*, (1996) 2 SCC 752.

The Institute of Chartered Accountants of India made certain recommendations, upon Election Commission's request, in February 2010 under its "Guidance Note on Accounting & Auditing of Political Parties" for improving the system of accounting followed by political parties in India. One such recommendation relates to the coupons:

- Schedule 13 of the Guidance Note states that collection from issuance of coupons/ sale of publications should be classified and disclosed.



## 8. MAINTENANCE OF SEPARATE BANK ACCOUNTS BY EACH CONTESTING CANDIDATE FOR POLL EXPENSES

### Background

Section 77 of the Representation of People Act, 1951

“77. Account of election expenses and maximum thereof.

- (1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date on which he has been nominated and the date of declaration of the result thereof, both dates inclusive.”

The Supreme Court in the case of *Shri Kanwar Lal Gupta v. Amar Nath Chawla and Ors.*, (1975) 3 SCC 646 held that:

- “11. Now, if a candidate were to be subject to the limitation of the ceiling, but the political party sponsoring him or his friends and supporters were to be free to spend as much as they like in connection with his election, the object of imposing the ceiling would be completely frustrated and the beneficent provision enacted in the interest of purity and genuineness of the democratic process would be wholly emasculated (emphasis added). The mischief sought to be remedied and the evil sought to be suppressed would enter the political arena with redoubled force and vitiate the political life of the country. The great democratic ideal of social, economic and political justice and equality of status and opportunity enshrined in the Preamble of our Constitution would remain merely a distant dream eluding our grasp. The legislators could never have intended that what the individual candidate cannot do, the political party sponsoring him or his friends and supporters should be free to do. That is why the legislature wisely interdicted not only the incurring but also the authorising of excessive expenditure by a candidate. When the political party sponsoring a candidate incurs expenditure in connection with his election, as distinguished from expenditure on general party propaganda, and the candidate knowingly takes advantage of it or participates in the programme or activity or fails to disavow the expenditure or consents to it or acquiesces in it, it would be reasonable to infer, save in special circumstances, that he impliedly authorised the political party to incur such expenditure and he cannot escape the rigour of the ceiling by saying that he has not incurred the expenditure, but his political party has done so. A party candidate does not stand apart from his political party and if the political party does not want the candidate to incur the disqualification, it must exercise control over the expenditure which may be incurred by it directly to promote the poll prospects of the candidate (emphasis added). The same proposition must also hold good in case of expenditure incurred by friends and supporters directly in connection with the election of the candidate. This is the only reasonable interpretation of the provision which would carry out its object and intendment and suppress the mischief and advance the remedy by purifying our election process and ridding it of the pernicious and baneful influence of big money. This is in fact what the law in England has achieved. There, every person, on pain of criminal penalty, is required to obtain authority from the candidate before incurring any political expenditure on his behalf. The candidate is given complete discretion in authorising expenditure upto his limit. If expenditure made with the knowledge and approval of the candidate exceeds the limit or if the candidate makes a false report of the expenditure after the election, he is subject not only to criminal penalties, but also to having his election voided. It may be



contended that this would considerably inhibit the electoral campaign of political parties. But we do not think so. In the first place, a political party is free to incur any expenditure it likes on its general party propaganda though, of course, in this area also some limitative ceiling is eminently desirable coupled with filing of return of expenses and an independent machinery to investigate and take action. It is only where expenditure is incurred which can be identified with the election of a given candidate that it would be liable to be added to the expenditure of that candidate as being impliedly authorised by him (emphasis added)."

Law Commission of India report on Electoral Reforms, Report No. 255 (March 12, 2015):

"2.20.3 Thus, the Court believed that the object of imposing individual expenditure limits would be frustrated if parties or other supporters were free to spend without any limits. Nevertheless, the RPA was amended in 1974 to nullify the effect of the above judgment by inserting an explanation to Section 77(1) to the effect that any third party expenditure in connection with a candidate's election shall not be deemed to be expenditure incurred or authorised by a candidate."

Explanation 1, inserted vide the Representation of People (Amendment) Act, 1974 read as follows:

"Explanation 1. - Notwithstanding any judgment, order or decision of any court to the contrary, any expenditure incurred or authorized in connection with the election of a candidate by a political party or by any other association or body of persons or by any individual (other than the candidate or his election agent) shall not be deemed to be, and shall not ever be deemed to have been, expenditure in connection with the election incurred or authorized by the candidate or by his election agent for the purposes of this sub-section."

Law Commission of India report on Electoral Reforms, Report No. 255 (March 12, 2015):

"2.20.4 The constitutionality of the 1974 amendment was challenged in *P. NallaThampyTerah v Union of India*, (1985) Supp. SCC 189 on the grounds that it sanctioned discrimination between candidates and parties based on money power, and hence contravened Article 14. Rejecting this contention, albeit reluctantly, the Supreme Court held that it was not for the court to lay down policies in matters pertaining to elections and that:

"Election laws are not designed to produce economic equality amongst citizens. They can, at best, provide an equal opportunity to all sections of society to project their respective points of view on the occasion of elections. The method, somewhat unfortunate, by which law has achieved that purpose, is by freeing all others except the candidate and his election agent from the restriction on spending, so long as the expenditure is incurred or authorised by those others."

2.20.5 Subsequently, later benches criticised this decision and the position of law laid out in the 1974 amendment, noting that Section 123(6) of the RPA had become "nugatory and redundant", and that the practice of parties in not maintaining accounts of donations and expenses incurred in regard a candidate's election made it too difficult to determine "whose money was actually spent through the hands of the party". Eventually in the seminal case of *Common Cause, a Registered Society v. Union of India*, (1996) 2 SCC 752, the Supreme Court reversed the burden of proof on the candidate claiming the benefit of the exception created by the Explanation to Section 77, holding that even when expenses are claimed by a party, the (rebuttable) presumption shall be that they have been incurred or authorised by the candidate. The Court noted:



“The expenditure (including that for which the candidate is seeking protection under Explanation I to Section 77 of R.P. Act) in connection with the election of a candidate - to the knowledge of the candidate or his election agent - shall be presumed to have been authorised by the candidate or his election agent. It shall, however, be open to the candidate to rebut the presumption in accordance with law.....”

2.20.6 Finally, owing to much criticism of the Explanation appended to Section 77(1) by the 1974 Amendment Act, the said Explanation was deleted by the Election and Other Related Laws (Amendment) Act 2003 and replaced with the current Explanation, referred to above. Outside spending by parties and independent supporters must now be reported by the candidate, and counted towards the expenditure ceiling.

2.20.7 Thus, the current position is that the expenditure incurred by (a) the leaders of political party on account of travel by air or by any other means of transport for propagating the party's programme and (b) the political parties or their supporters for generally propagating the party's programme shall not be deemed to be expenditure in connection with the election incurred or authorised by a candidate of that political party under Section 77, RPA.”

### **Reason for proposed amendment**

To ensure better accountability, laws relating to election expenditure need to be amended.

### **Proposed amendment**

The expenditure incurred by a political party on advertisements, in connection with any election could be categorized into the following:

- i. Expenditure on general party propaganda seeking support for the party and its candidates in general, but, without any reference to any particular candidate or any particular class/group of candidates;
- ii. Expenditure incurred by the party, in advertisements etc. directly seeking support and/or vote for any particular candidate or group of candidates;
- iii. Expenditure incurred by the party which can be related to the expenditure for promoting the prospects of any particular candidate or group of candidates.

Applying the ratio of the judgment in Kanwar Lal Gupta's case, it is clarified that in the case of any advertisement by political parties, whether in print or electronic or any other media, falling in category (i) above, which is not relatable to the election of any particular candidate or a given group of candidates, the expenditure may be treated as expenditure of the political party on general party propaganda. In the cases of expenditure falling in categories (ii) and (iii) above, i.e. cases where the expenditure is relatable to the election of a particular candidate or a group of candidates, the expenditure shall be treated as expenditure authorized by the candidates concerned and such expenditure shall be accounted for in the election expenses accounts of the candidates concerned. In those cases where the expenditure is incurred by the party for the benefit of a given group of candidates, the expenditure is to be apportioned equally among the candidates.

Thus, maintenance of separate bank accounts by each contesting candidate for meeting poll expenses should be made mandatory and any transaction above Rs 20,000 not done through dedicated bank account should be treated as not shown in books of accounts. Hence, a suitable sub-section should be inserted under section 77 of The Representation of People Act 1951 and in Rule 86 of The Conduct of Elections Rules, 1961.



## 9. CAP ON EXPENDITURE BY POLITICAL PARTY ON A CANDIDATE FOR ELECTION CAMPAIGN

### Background

The ECI issued transparency guidelines under Article 324 of the Constitution of India bearing No. 76/PPEMS/Transparency/2013 dated 29/08/2014 with effect from 01/10/2014 stating that although there is no cap on expenditure by political parties for propagating their program, parties are required to adhere to the cap prescribed in section 77(3) of The Representation of the People Act, 1951 and Rule 90 of the Election Rules while providing “financial assistance” to candidates in their election campaigns. These amounts should be paid only by a crossed account payee cheque or draft or bank transfer, and not by cash.

### Reason for proposed amendment

This amendment will ensure accountability and place a check on election expenditure by candidates.

### Proposed amendment

A suitable sub-section should be inserted in section 77 of The Representation of People Act, 1951 stating that amount of financial assistance given to a candidate by a political party should not exceed the limit prescribed under section 77(3) of the 1951 Act.



## 10. CEILING OF CAMPAIGN EXPENDITURE BY POLITICAL PARTIES

### Background

There is no limit on the campaign expenditure by political parties.

Law Commission of India report on Electoral Reforms, Report No. 255 (March 12, 2015) observed:

- "2.28.3 Furthermore, Section 77 of the RPA only regulates the election expenses of candidates. Political parties are free to spend any amount as long as it is for the general party propaganda, and not towards an independent candidate. Thus, there is no ceiling on party expenditure. It is recommended that the law on this point does not change, namely that there are no caps on party expenditure under the RPA given that it would be very difficult to fix an actual, viable limit of such a cap and then implement such a cap. In any event, as the experience with section 77(1) discussed above reveals, in the 2009 Lok Sabha elections, on average candidates showed election expenditures of 59% of the total expenses limit. There is no reason why the same phenomenon of under-reporting will not transpire amongst parties.
- 2.28.4 Placing legislative ceilings on party expenditure or contributions will not automatically solve the problem, especially without putting in place a viable alternative of complete state funding of elections (which in itself is next to impossible right now). Our previous experience in prohibiting corporate donations in 1969 did not lead to a reduction in corporate donations. Instead, in the absence of any alternative model for raising funds, it greatly increased illegal, under the table and black money donations.
- 2.28.5 Although the problem of black money and under-reporting will remain under the existing regime of no caps on individual contribution and party expenses, it has to be tackled through a stricter implementation of the anti-corruption laws and RTI and improved disclosure norms. It might be desirable to regularly re-examine the 7.5% profit cap on company's contributions in light of the intended rationale, since the former can become a meaningless limit in the context of big companies."

### Reason for proposed amendment

The limit on campaign expenditure will ensure level-playing field for all political parties and curb the menace of unaccounted money in elections. Further it will also control the money power used during election by political parties and their allies.

### Proposed amendment

The ceiling on campaign expenditure made by political parties towards Parliamentary or Assembly elections should be provided. It should be either 50% of or not more than the expenditure ceiling limit provided for the candidate multiplied by the number of candidates of the party contesting the election. Hence, The Representation of the People Act and Rule 90 of The Conduct of Elections Rules, 1961 should be amended accordingly.



## 11. LIMIT THE NUMBER OF STAR CAMPAIGNERS

### Background

As per section 77 of The Representation of the People Act, 1951, the expenditure incurred by the leaders of a political party on account of travel by air or by any other means shall not be deemed to be expenditure in connection with the election incurred or authorized by a candidate. Explanation (2) of the section defines political leaders to include 40 persons of a recognized political party and 20 persons of a party other than the recognized political party, i.e., registered unrecognized parties, whose names have been communicated to the Chief Electoral Officer and Election Commission of India within a period of 7 days from the date of notification. Such political leaders as communicated to the CEO and the Election Commission are known as Star Campaigners.

There is no prescribed number of star campaigners for bye-elections.

### Reason for proposed amendment

The maximum number of star campaigners should be prescribed for bye-elections to ensure level playing field and for smoother election management.

### Proposed amendment

The number of star campaigners for bye-election may be limited to two.



## **12. TIME PERIOD FOR MAINTAINING BOOKS OF ACCOUNT UNDER SECTION 77 OF THE REPRESENTATION OF THE PEOPLE ACT, 1951**

### **Background**

Section 77 of The Representation of the People Act, 1951 provides that:

“77.Account of election expenses and maximum thereof- (1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date on which he has been nominated and the date of declaration of the result thereof, both dates inclusive.”

### **Reason for proposed amendment**

Election expenses in true sense are incurred by candidates after date of notification of elections.

### **Proposed amendment**

Section 77(1) of the Representation of the People Act, 1951 may be amended to provide that a candidate contesting at an election should be required to maintain the accounts from the date of notification of the election till the date of declaration of result of the election.



# CHAPTER VIII

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## ELECTION CAMPAIGN AND ADVERTISEMENTS





## 1. BAN ON EXIT POLLS AND OPINION POLLS

### Background

Opinion poll, sometimes simply referred to as a poll, is a kind of human research survey which is conducted to find out the public opinion before the elections. It is a way in which through a scientific survey the views of a particular group of people can be ascertained. Unlike Opinion Poll, Exit Poll is a post-election poll which is conducted just after a candidate walks out after casting his or her vote. These kinds of polls aim at predicting the actual result on the basis of the information collected from the voters.

The Representation of the People Act under section 126A bans conducting and disseminating results of exit polls during the period starting from commencement of polls till the completion of polls in all phases. According to the present scheme of The Representation of the People Act, 1951, section 126(1) (b) which prohibits the display of any election matter during the period of forty-eight hours before the hour fixed for conclusion of poll, is only limited to display by means of “cinematograph, television or other similar apparatus”; and does not deal with the independence and robustness of the opinion polls themselves. However, there exists a lacuna as a ban on publishing such election matters in electronic media does not extend itself to print media. New sections 126A and 126B for the restriction on publication and dissemination of result of exit polls. However, in the present framework there is no restriction on conducting opinion polls or disseminating results of opinion polls even in phased elections.

The Commission has been of the view that there should be some restriction or regulation on the publishing / dissemination of the results of opinion polls also. The Commission had issued certain guidelines in this regard in 1998 which were subsequently challenged before the Courts. Later, on the observation of the Hon'ble Supreme Court that the Commission did not have the power to enforce these guidelines, the same were withdrawn.

### Proposed amendment

The Commission recommends that there should be a restriction on publishing the results of such poll surveys before the elections and reiterates its view that like the Exit Polls, there should also be some restriction on conducting and disseminating the results of Opinion Polls right from the day of the first notification of an election till the completion of the poll in all the phases where a general election is held at different phases.

### Law Commission's Recommendation

The Law Commission in its Report in the year 2015 endorsed the view of the Commission and has called for the regulation of opinion polls so as to ensure that first, the credentials of the organisations conducting the poll is made known to the public; second, the public has a chance to assess the validity of the methods used in conducting the opinion polls; and third, the public is made



adequately aware that opinion polls are in the nature of forecasts or predictions, and as such are liable to error. Consequently, new sections 126C and 126D should be inserted in The Representation of the People Act, 1951.

**126C. Disclosures relating to opinion polls. –**

- (1) No person shall publish or broadcast the results of an opinion poll without providing the following together with the results:
  - (a) the name of the sponsor of the survey;
  - (b) the name of the person or organization that conducted the survey;
  - (c) the date on which or the period during which the survey was conducted;
  - (d) the population from which the sample of respondents was drawn;
  - (e) the number of people who were contacted to participate in the survey; and
  - (f) if applicable, the margin of error in respect of the data obtained.
  - (g) A declaration that the results are in the nature of predictions, to be displayed prominently, in the manner prescribed by the Election Commission
  - (h) Any other information as may be notified by the Election Commission
- (2) In addition to the information under sub-section (1), the publisher or broadcaster of an opinion poll shall, within a period of twenty-four hours after the publication or broadcast of the opinion poll, publish on its website a copy of a written report on the results of the survey referred to in sub-section (1).
- (3) The report referred to in sub-section (2) shall include the following, as applicable:
  - (a) the name and address of the sponsor of the survey;
  - (b) the name and address of the person or organization that conducted the survey;
  - (c) the date on which or the period during which the survey was conducted;
  - (d) information about the method used to collect the data from which the survey results are derived, including
    - (i) the sampling method,
    - (ii) the population from which the sample was drawn,
    - (iii) the size of the initial sample,
    - (iv) the number of individuals who were asked to participate in the survey and the numbers



and respective percentages of them who participated in the survey, refused to participate in the survey, and were ineligible to participate in the survey,

- (v) the dates and time of day of the interviews,
  - (vi) the method used to recalculate data to take into account in the survey the results of participants who expressed no opinion, were undecided or failed to respond to any or all of the survey questions, and
  - (vii) any weighting factors or normalization procedures used in deriving the results of the survey; and
- (e) the wording of the survey questions and, if applicable, the margins of error in respect of the data obtained.
- (f) a copy of the poll as published along with the copy of the disclosure under sub-section (1).
- (4) The Election Commission may issue further notifications regarding the manner in which the disclosures under sub-sections (1) and (2) are to be made.
- (5) Any person who contravenes the provisions of this section shall be punished, on first conviction, with fine which may extend to five lakh rupees, and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine. (6) No court shall take cognisance of any offence punishable under this section unless there is a complaint made by order of, or under authority from, the Election Commission or the Chief Electoral Officer of the State concerned.

Explanation.—For the purposes of this section, “opinion poll” means a survey of how electors will vote at an election or of the preferences of electors respecting any candidate, group of candidates, or political party.

**126D. Offences by companies.—**

- (1) Where an offence under subsection (1) of Section 126C has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the



consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section,— (a) “company” means any body corporate, and includes a firm or other association of individuals; and (b) “director”, in relation to a firm, means a partner in the firm



## 2. BAN ON GOVERNMENT SPONSORED ADVERTISEMENT BEFORE ELECTIONS

### Background

In politics, there exists use of advertising campaigns to influence political debate, and ultimately the voters. Presently, there is a trend wherein the Central and various State Governments embark upon 'election advertising' in the guise of providing information to the public. Such kind of an advertising released with an eye on the election contain material intended or likely to affect voting in an upcoming election.

### Reasons for proposed amendment

The advertisements highlighting the achievements made by the government are understandably incurred from the public exchequer and are given or created with a view to influence the electorate in favour of the ruling party.

The Item VII clause (iv) of the Model Code of Conduct for the Guidance of Political Parties and Candidates, prohibits the issue of advertisement at the cost of public exchequer in the newspapers and other media. The misuse of official mass media during the election period for partisan coverage of political news and publicity regarding achievements with a view to furthering the prospects of the party in power is also prohibited under the said Item VII. However, the problem arises as the Model Code of Conduct comes into operation only from the date on which the Commission announces an election and the advertisements released prior to the announcement of elections are not prohibited under the Model Code of Conduct.

### Proposed amendment

The Commission proposes that whenever 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, the date of dissolution of the House. Nevertheless, in cases of advertisements for educating the general public on matters of public health etc. which are unavoidable, provision/ exception could be made for the same, but in any case there should not be a display of political personalities in the said advertisements. The practice of putting up banners and hoardings in public places, depicting achievements of governments should be banned, if possible. Otherwise, there should be specific provisions that a name or symbol of any political party or photograph of any of the leaders of the party should not appear on such hoardings/banners. Such steps would help in ensuring that the ruling party or candidate does not get an undue advantage over another in the spirit of free and fair elections.

### Law Commission's Recommendation

The Law Commission of India in its Report no. 255 on Electoral Reforms submitted to the Ministry of



Law & Justice on March 12, 2015 also made certain recommendations similar to that of the Election Commission of India in respect to Government Sponsored Advertisements. The Law Commission has recommended the regulation and restriction on government sponsored advertisements six months prior to the date of expiry of the House/Assembly. These recommendations were made so that the purity of elections is maintained and the public money is not used for partisan interests inter alia, highlighting the government's achievements. According to the Law Commission this can be achieved by inserting a new Chapter VIIB in Part V of The Representation of the People Act, 1951 prohibiting State/Central government sponsored advertisements in the print or electronic media or by way of banners and hoarders, six months prior to date of expiry of the term of the Lok Sabha/Vidhan Sabha. However, an exception has been carved out for advertisements highlighting the government's poverty alleviation programmes or any health related schemes.



### 3. SECTION 126 OF THE REPRESENTATION OF THE PEOPLE ACT, 1951

#### Background

The section 126 of The Representation of People Act, 1951 prohibits electioneering activities by way of public meetings, public performance, processions, advertisements through cinematograph, television or similar apparatus during the period of 48 hours, the time fixed for conclusion of poll. The advertisements in TV and Radio are also prohibited during these 48 hours under the above mentioned provision. However, due to the existing gap in the Act, the political parties and candidates issue advertisements in the newspapers during this period including on the day of polling and also indulge in house to house visits.

A distorted advertisement in print media on the poll day leaves the other candidates with no remedy to undo the damage.

#### Proposed amendment

The Commission is of the view that such activities need to be prohibited and therefore, proposes that section. 126 must be amended in the interest of fair and free elections to prohibit publication of advertisements by political parties in print media also (as in electronic media) during the period of 48 hours before the close of poll to allow the voters to arrive at an unprejudiced opinion

#### Law Commission's Recommendation

The Law Commission of India in its Report no. 255 on Electoral Reforms submitted to the Ministry of Law & Justice on March 12, 2015 also had a similar view to that of the Election Commission of India and recommended to expand the scope of section 126 of The Representation of the People Act, 1951. According to the Report, in the present age of technology where digital and print media are closely interconnected such an anomaly in the applicability in the law needs to be rectified. The Law Commission also recommended that section 126(1) (b) be amended as follows:

126. (1) *No person shall...*

(a) ...

(b) *Publish, publicise or disseminate any election matter by means of print or electronic media; or,*

(c) ...

(2) ...

(2A) *No court shall take cognisance of any offence punishable under sub-section (1) unless there is a complaint made by order of, or under authority from, the Election Commission or the Chief Electoral Officer of the State concerned.*

*Explanation. — For the purposes of this section, —*



- (a) *“election matter” means any matter intended or calculated to influence or affect the result of an election.*
- (b) *“electronic media” includes internet, radio and television including Internet Protocol Television, satellite, terrestrial or cable channels, mobile and such other media either owned by the Government or private person or by both;*
- (c) *“print media” includes any newspaper, magazine or periodical, poster, placard, handbill or any other document;*
- (d) *“disseminate” includes publication in any “print media” or broadcast or display on any electronic media.*



## 4. PAID NEWS IN CONNECTION WITH ELECTIONS

### Background

Free and fair elections is the foundation of any democracy and this can only be achieved when there is an absence of influence by money in corrupting the electoral process. According to a study conducted by the Commission, during the assembly elections held in the period 2011-2013 there have been 1987 cases where a notice for paid news were issued to the candidates and 1727 cases where the practice of paid news were confirmed by the District/State Level Committees appointed for the purpose.

The problem of 'paid news' especially during election campaign is a widespread phenomenon. This phenomena of paid news and its equivalent, political advertising being presented as news, are issues that cannot be treated separately. The Press Council of India also, in its report regarding paid news cases had recommended that paid news may be made a corrupt practice.

### Reasons for proposed amendment

The general public attaches great value in news report as distinguished from advertisements by political parties and candidates. This makes the news items a very important source of information concerning the political parties or candidates. On the contrary, paid news is masquerading as news and publishes advertisements in the garb of news items, totally misleading the electors. This raises potential concerns relating to the truth or falsity of claims and the possible defamatory effects of such news items and advertisements. The right to know i.e. right to have accurate information is a necessity to make an informed choice for the electors however, paid news have a tendency to influence this choice in a negative manner.

To make the matter worse, the whole exercise of publishing paid news involves use of unaccounted money and under reporting of election expenses of the candidates indulging in the malpractice. The influence of money also has the potential in resulting in uneven elections between people with dissimilar financial statures. Thus, in order to have 'fair' election in a democracy, a level playing field is paramount. This can only be achieved by mitigating the influence of money in elections.

### Proposed amendment

The Commission is of the view that 'paid news' plays a vitiating role in the context of free and fair elections and proposes that an amendment should be made in The Representation of People Act, 1951, to provide therein publishing and abetting the publishing of 'paid news' for furthering the prospect of election of any candidate or for prejudicially affecting the prospects of election of any candidate as an electoral offence under Chapter III Part VII of The Representation of the People Act, 1951 with exemplary punishment of a minimum of two years imprisonment.

### Law Commission's Recommendation



The Law Commission in its 255th Report (2014) relating to 'Electoral Disqualifications' recommends the following:

- Introducing definitions of paid news and political advertising;
- Laying down the consequences attached to those indulging in such practices by introducing a new Section 127B for a 'person' and Section 126-D if the offence is committed by a 'company'. Not only the paying for news would be an offence but the person doing this offence would also be disqualified pursuant to Section 8(3) of the RPA. Section 127B should be in the following words:-  
*"127B. Paying for, and receiving payment for news (1) Any person who is found paying for news, or receiving payment for news shall be punished with imprisonment for a term which may extend to three years, and with fine, which may extend to twentyfive lakh rupees. (2) Nothing contained in sub-section (1) shall apply to payments made by registered political parties for the management of official publications (print, radio, television and all other electronic) owned or controlled by them. (3) To avail of the exemption under sub-section (2) all registered political parties must disclose their interests in any publication in the form and manner notified by the ECI in this regard. (4) An attempt to commit an act punishable under sub-section (1) shall be punished with imprisonment for a term, which may extend to two years, or with fine, which may extend to ten lakh rupees, or with both. (5) No court shall take cognisance of any offence punishable under this section unless there is a complaint made by order of, or under authority from, the ECI or the Chief Electoral Officer of the State concerned."*
- It is also essential that an election be liable to be declared void by the High Court if it is found that paid news has vitiated it. For this purpose, in accordance with section 100 of The Representation of the People Act, it is necessary to make paying for news a 'corrupt practice' under section 123 of the 1951 Act.



## 5. SECTION 125A OF THE REPRESENTATION OF THE PEOPLE ACT, 1951

### Background

Section 125A of The Representation of the People Act, 1951 have been inserted in the statute book in the year 2002 after the 170th Report of the Law Commission of 1999 in order to deter the candidates from filing false affidavits before the Returning Officer. The above mentioned section provides with punishment with imprisonment for a term which may extend to six months, or with fine, or with both.

### Reasons for proposed amendment

Despite the introduction of section 125A to the 1951 Act, there are several complaints about false affidavits filed by candidates. The wilful concealment of information and furnishing of false information needs to be curbed in the interest of free and fair elections.

Thus, for the purpose of effectively dealing with this issue and to tackle the menace of wilful concealment of information or furnishing of false information and to protect the right to information of the electors, the Commission recommended that the punishment under section 125A must be made more stringent.

### Proposed amendment

The Commission is of the view that in the interest of free and fair elections the punishment under section 125A should be made more severe by providing for imprisonment of a minimum term of two years and doing away with the alternative clause for fine.

### Law Commission's Recommendation

One of the changes suggested in The Representation of the People Act, 1951 by the Law Commission in its 244th Report (2014) relating to 'Electoral Disqualifications' was the introduction of enhanced sentence of minimum two years under section 125A on filing false affidavits.

The Law Commission recommended that Section 126(1) (b) be amended as follows:

125A. Penalty for filing false affidavit, etc.—A candidate who himself or through his proposer, with intent to be elected in an election,—

- (i) fails to furnish information relating to sub-section (1) of section 33A; or
- (ii) give false information which he knows or has reason to believe to be false; or
- (iii) conceals any information, in his nomination paper delivered under sub-section (1) of section 33 or in his affidavit which is required to be delivered under sub-section (2) of section 33A, as the case may be, shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which shall not be less than two years, and shall also be liable to fine.



# CHAPTER IX

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ELECTION EXPENSES AND  
ELECTION PETITIONS





## 1. SECTION 78, 81 AND 84 OF THE REPRESENTATION OF THE PEOPLE ACT, 1951

### Background

Section 78 of The Representation of the People Act, 1951:

“Lodging of account with the district election officer: (1) Every contesting candidate at an election shall, within thirty days from the date of election of the returned candidate or, if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates, lodge with the district election officer an account of his election expenses which shall be a true copy of the account kept by him or by his election agent under section 77.”

Section 123(6) of The Representation of the People Act, 1951 provides that incurring or authorizing of expenditure in contravention of section 77 is a corrupt practice.

As per section 80 read with section 81 of the 1951 Act, no election can be called into question except by way of election petition filed before the High Court within 45 days from the date of election of the returned candidate.

### Reason for proposed amendment

The period of filing election petition is 45 days and the time period of filing accounts is 30 days. This leaves only a small period for a person to analyse expenditure statement of candidates and decide whether an election petition needs to be filed. Hence, the time period for filing of accounts needs to be reduced. So that more time is available to analyse the accounts.

Further, there is no provision for filing an election petition against a candidate who has lost the election but is guilty of corrupt practice under section 123 of the 1951 Act.

### Proposed amendment

Section 78 of the 1951 Act should be amended such that the time period for filing of accounts is 20 days, instead of 30 days, from the date of election of the returned candidate or, if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates.

Section 81 of the 1951 Act should be amended to add after “An election petition calling in question any election”, the words “or seeking a declaration that any candidate is guilty of corrupt practice under section 123 of the Act.”

Section 84 of the 1951 Act may be amended to include a sub-section stating that “a petitioner may seek a declaration that a candidate, even if he is not the returned candidate, has indulged in corrupt practice as defined under section 123 of the Act.”



## 2. CEILING ON ELECTION EXPENDITURE TO LEGISLATURE FROM LOCAL AUTHORITIES' GRADUATES' AND TEACHERS' CONSTITUENCIES

### Background

Section 77 of The Representation of the People Act, 1951 along with Rule 90 of The Conduct of Elections Rules, 1961 prescribe the limit for expenditure in connection with an election incurred or authorised by a candidate. However, this limit is restricted to the elections from the Parliamentary and Assembly constituencies.

### Reason for proposed amendment

There is a lacunae in the law as there is no limit prescribed on expenditure during an election from local authorities', graduates' and teachers' constituencies.

### Proposed amendment

Rule 90 of The Conduct of Elections Rules, 1961 should be amended to place a ceiling on election expenditure by a candidate when contesting from local authorities', graduates' and teachers' constituencies. The expenditure limit for these elections could be half of the limit for the Assembly election in the state concerned.



### **3. ELECTION EXPENDITURE IN CASE OF ADJOURNMENT OF POLL UNDER SECTION 52 OF THE REPRESENTATION OF THE PEOPLE ACT, 1951**

#### **Background**

Section 52 of the Representation of the People Act, 1951 provides for adjournment of poll in case of death of a candidate of a recognized political party.

#### **Reason for proposed amendment**

Subsequent to the death of a candidate of a recognized party, the Election Commission calls upon the recognized political party, whose candidate has died, to nominate another candidate for the said poll within seven days of issue of such notice to such recognized political party. In order to ensure parity between the new candidate and the other contesting candidates, latter should be permitted to further incur election expenditure.

#### **Proposed amendment**

In case of adjournment of poll under section 52 of the Representation of the People Act, 1951 the contesting candidates should be allowed to spend additionally the full amount as prescribed under Rule 90 of The Conduct of the Election Rules, 1961, from the date of adjournment of poll if the adjournment takes place within first week from the date of scrutiny of nominations. In cases of adjournment after one week of scrutiny, such candidates may be permitted to incur additional expense amounting to 60% of the ceiling from the date of adjournment.



## 4. APPOINTMENT OF ADDITIONAL JUDGES IN THE HIGH COURTS

### Background

Article 224 of the Constitution of India provides:

"(1) If by reason of any temporary increase in the business of a High Court or by reason of arrears of work therein, it appears to the President that the number of the Judges of that Court should be for the time being increased, the President may appoint duly qualified persons to be additional Judges of the Court for such period not exceeding two years as he may specify."

The judges to people ratio is low in India and there is a need to appoint additional judges to clear the backlog of cases.

### Proposal

The Commission has proposed that appointment of additional Judges in High Courts for trying election petitions to ensure their speedy disposal should be considered.

# CHAPTER X

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OTHER ISSUES





## 1. FORM 26 UNDER RULE 4A OF THE CONDUCT OF ELECTIONS RULES, 1961

### Background

Presently, the existing Form 26 (the format in which the candidates are required to submit affidavit) does not contain any clause requiring information with respect to the sources of income of the candidate, his/ her.

Reason for proposed amendment

Declaring the source of income of the candidate and spouse would serve the interests of transparency and the right of electors to obtain information about their candidates for them to make an informed choice of their representative.

### Proposed Amendment

The Commission has proposed that Form 26 be amended by adding a new column for declaring the source of income of the candidate and spouse.



## 2. RULE MAKING AUTHORITY TO BE VESTED IN ELECTION COMMISSION

### Background

The present framework of The Representation of the People Act 1950 and 1951 under Section 28 and 169 respectively empowers the Central Government to make rules after consultation of the Election Commission. However, the Central Government is not bound to accept such views or recommendations of the Commission.

### Reasons for proposed amendment

Since the Central Government is not bound to accept the views and recommendations of the Commission there are instances when rules opposed to the specific recommendations of the Commission have been framed. On several other occasions, rules framed or amended have not been in line with the recommendations of the Election Commission.

### Proposed amendment

The Commission recommends that the rule making authority under the above-referred sections must be conferred on the Election Commission instead of the Central Government and the new framework must empower the Election Commission to make rules after consultation with the Central Government



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