IN THE HON'BLE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)
{PUBLIC INTEREST LITIGATION}

WRIT PETITION (CIVIL) NO. _____ OF 2024
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

ASSOCIATION FOR DEMOCRATIC REFORMS ….PETITIONER

VERSUS

UNION OF INDIA ….RESPONDENTS

PAPERBOOK

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WITH
I.A. NO. _____ OF 2024
(APPLICATION FOR STAY)

COUNSEL FOR PETITIONERS**: PRASHANT BHUSHAN**

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SECTION: PIL

PROFORMA FOR FIRST LISTING

The case pertains to (Please tick/check the correct box):

☐	*Central Act: (Title)*	***CONSTITUTION OF INDIA***
☐	*Section*	***UNDER ARTICLE 14***
☐	*Central Rule : (Title)*	**-NA-**
☐	*Rule No(s):*	**- NA -**
☐	*State Act: (Title)*	**- NA -**
☐	*Section :*	**- NA -**
☐	*State Rule : (Title)*	**- NA -**
☐	*Rule No(s):*	**- NA -**
☐	Impugned Interim Order: (Date)	**- NA -**
☐	Impugned Final Order/Decree: (Date)	**-NA-**
☐	*High Court : (Name)*	**-NA-**
☐	*Names of Judges:*	**-NA-**
☐	Tribunal/Authority ; (Name)	**- NA -**

1. *Nature of matter :* ☑ *Civil* ☐ *Criminal*
2. *(a) Petitioner/appellant No.1 :* ***ASSOCIATION FOR DEMOCRATIC REFORMS***
   (b) e-mail ID: ***-NA-***
   (c) Mobile Phone Number: ***-NA-***
3. *(a) Respondent No.1:* ***UNION OF INDIA***
   (b) e-mail ID: ***- NA -***
   (c) Mobile Phone Number: ***- NA -***
4. *(a) Main category classification:* ***08 (0812)***
   (b) Sub classification: ***OTHER PIL MATTER***
5. *Not to be listed before:* ***- NA –***
6. *(a) Similar disposed of matter with citation, if any & case details:* 2023 (6) SCC-161 {WP (CIVIL) NO. 104 OF 2015}
   (b) Similar Pending matter with case details: NO SIMILAR PENDING MATTER

7. **Criminal Matters:**

(a) Whether accused/convict has surrendered: Yes ☐ No ☑

(b) FIR No. **–NA-** **Date:** **-NA-**

(c) Police Station: **-NA-**

(d) Sentence Awarded: **- NA -**

(e) Period of sentence undergone including period of Detention/ Custody Undergone: **- NA -**

8. Land Acquisition Matters: **- NA -**

(a) Date of Section 4 notification: **- NA -**

(b) Date of Section 6 notification: **- NA -**

© Date of Section 17 notification: **- NA -**

9. Tax Matters: State the tax effect: **- NA -**

10. Special Category (first Petitioner/ appellant only): **- NA -**

☐ Senior citizen > 65 years ☐ SC/ST ☐ Woman/child

☐ Disabled ☐ Legal Aid case ☐ In custody

11. Vehicle Number (in case of Motor Accident Claim matters): **- NA -**

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New Delhi
Dated: 05.01.2024

SYNOPSIS

The instant Writ Petition has been filed in public interest under Article 32 of the Constitution of India challenging the constitutional validity of The Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act,2023 particularly its Section 7 as being violative of Article 14 of the Constiution of India, basic features of the Constitution and for overruling the Constitution Bench decision of this Hon'ble Court in *Anoop Baranwal v. Union of India (2023) 6 SCC 161* without altering the basis.

Article 324(2) of the Constitution of India states:

> *"324(2): 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 other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President."*

However, the Constituent Assembly debates clearly suggest that the Parliament was expected to make the law and did not intend that the appointment of the members of Election Commission should be left in the hands of the executive. No such law was made leaving the appointment to the executive.

On 02.03.2023, the Constitution Bench of this Hon'ble Court in ***Anoop Baranwal (Supra)*** held that leaving appointment of the members of Election Commission (who are critical for our electoral democracy) in the hands of the executive would be seriously detrimental to the health of our democracy and for the conduct of free and fair election. This Hon'ble Court held that the Election Commission should be fearlessly and robustly independent and such independence would be undermined if the selection

process is done by an executive who has a critical stake in the electoral process. It thus directed that in order to fill the vacuum (in absence of a legislation), the appointment to the posts of the Chief Election Commissioner and the Election Commissioners shall be done by the President of India on the basis of the advice tendered by a Committee consisting of the Prime Minister of India, the Leader of the Opposition in the Lok Sabha and, in case, there is no such Leader, the Leader of the largest party in the Opposition in the Lok Sabha having the largest numerical strength, and the Chief Justice of India.

This was on the lines on the recommendation of the Law Commission in its 255th report dated 12.03.2015 and in the lines with the Selection Committee provided under Delhi Special Police Establishment Act, 1946 for appointment of Director ,Central Bureau of Investigation.

However, soon after the judgment, the Parliament has passed a legislation i.e. The Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023 to virtually overrule ***Anoop Baranwal (supra)*** by providing for a Selection Committee dominated by executive.

Section 7 of the The Chief Election Commissioner and other Election Commissioner (Appointment, Conditions of Service and Term of Office) Act, 2023 states:

> *"7. (1) The Chief Election Commissioner and other Election Commissioners shall be appointed by the President on the recommendation of a Selection Committee consisting of—*
> *(a) the Prime Minister—Chairperson;*
> *(b) the Leader of Opposition in the House of the People—Member;*

(c) a Union Cabinet Minister to be nominated by the Prime Minister—Member.
Explanation.—For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the House of the People has not been recognised as such, the leader of the single largest party in opposition of the 5 10 15 20 25 30 35 40 3 Government in the House of the People shall be deemed to be the Leader of Opposition.
(2) The appointment of Chief Election Commissioner and other Election Commissioners shall not be invalid merely by reason of any vacancy in or any defect in the constitution of, the Selection Committee."

The Chief Justice of India has been removed and cabinet minister (to be nominated by the Prime Minister) has been added thereby restoring the previous law i.e. selection by executive thereby undermining the rule of law and threatening democracy.

Apart from this, the Act was passed in Lok Sabha at a time when the majority of the opposition Members of Parliament were suspended by the speaker of Lok Sabha. Such an important legislation has been passed without any debate or discussion which was the important and critical forum to raise issues about the autonomy of the Election Commission. Moreover, these Members of Parliament were suspended without any purported sufficient cause and only for asking the home minister to make a statement about a security breach which happened in the Parliament

The instant Writ Petition has been filed challenging the constitutional validity particularly of Section 7 of The Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023 on the following grounds:

A. Democracy is a facet of the basic structure of the Constitution and in order to ensure free and fair elections and to maintain healthy democracy in our country, the Election Commission should be insulated from executive interference.

B. The composition of the Selection Committee under the Act amounts to excessive interference of the executive in the appointment of the Election Commission and is detrimental to the independence of the Election Commission.

C. It was the true intent of the Constituent Assembly that elections must be conducted by an independent commission and that the appointment to the Election Commission not to be made by executive**.**

D. Further, the Election Commission is not only responsible for conducting free and fair elections but it also renders a quasi judicial function between the various political parties including the ruling government and other parties. In such circumstances, the Selection Committee which is ex facie dominated and controlled by the members from executive i.e. Prime Minister and Union Cabinet Minister (to be nominated by the Prime Minister) renders the selection process vulnerable to manipulation as it gives unfettered discretion to the ruling party to choose someone whose loyalty to it is ensured. The fundamental right to equality before law and equal protection of laws guaranteed by Article 14 of the Constitution, clearly includes a right to have the person's rights adjudicated by a

forum which exercises its power in an impartial and independent manner. Thus, the impugned section violates Article 14 of the Constitution of India and is incompatible with free and fair elections.

E. This Hon'ble Court in *Anoop Baranwal(Supra)* after considering functions and power of Election Commission and particularly *maintaining the neutrality and independence of the office of the Election Commission to hold free and fair election which is a sine qua non for upholding the democracy as enshrined in our Constitution,* held that the appointment of the Election, should be insulated from any sort of executive interference. This Hon'ble Court also held that the Election Commissioners including Chief Election Commissioner who have infinite power and have to uphold fundamental rights and rule of law should not be chosen solely by the executive**.**

F. It is a settled law that it is impermissible for the legislature to simply overrule a decision of this Hon'ble Court - it is only permissible for it to remove or alter the basis of a judicial decision, such that the decision would not have been rendered in that altered background. *(See People's Union for Civil Liberties (PUCL) v. Union of India,* (2003) 4 SCC 399; *Madras Bar Assn. v. Union of India, (2022) 12 SCC 455*; *Bakhtawar Trust vs. M.D. Narayan,* (2003) 5 SCC 298)

G. The impugned section restores the earlier position of law i.e. appointment of Chief Election Commissioner and Election Commissioner would be done solely by the executive. This is because Selection Committee is ex facie dominated and controlled by the members from executive i.e. Prime Minister and Union Cabinet Minister (to be nominated by the Prime Minister). In such circumstances, the legislature, by impugned section, has not removed the defect which the court had found in the previous law in

Anoop Baranwal (supra), and as such, the impugned provision is liable to be struck down by this Hon'ble Court.

This Hon'ble Court in ***Union of India v. Assn. for Democratic Reforms*****, (2002) 5 SCC 294** directed the Election Commission to obtain and disclose to the public background information relating to candidates running for office, including information on their assets, criminal records, and educational background on the ground that voters have right to know under Article 19(1)(a) of the Constitution of India. Thereafter, in order to nullify the judgment of this Hon'ble Court, Section 33-B was added in the Representation of the People Act, 1951. This Hon'ble Court in ***People's Union for Civil Liberties (PUCL) v. Union of India*****, (2003) 4 SCC 399** struck down Section 33-B mainly on the ground that legislature cannot enact a law in violation of fundamental right and the legislature can only remove the basis of a decision rendered by a competent court,thereby, rendering that decision ineffective but the legislature has no power to ask the instrumentalities of the State to disobey or disregard the decisions given by the court.

The Petitioner is also challenging the The Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023 on the ground that the Act was passed in absence of the opposition Members of Parliament and debate.

For all the reasons as aforestated, the impugned section deserves to be set aside for violating Article 14, basic features of the Constitution and overruling a decision of this Hon'ble Court without altering the basis.

Hence, the present writ petition.

LIST OF DATES

15.06.1949	Article 324 was introduced as article 289 by Dr. B. R. Ambedkar before the Constituent assembly. Originally Article 324(2) read as follows: *"(2) 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 appoint, and when any other Election Commissioner is so appointed, the Chief Election Commissioner shall act as the Chairman of the Commission."* However, there were various reservations about the proposed Article as it gave unfettered power to the executive to appoint anyone to be a member of the Election Commission. The most prominent reservation was proposed by the eminent Constitution maker namely Prof. Shibban Lal Saksena, in the Constituent Assembly Debate, who, while proposing an amendment that the appointment of the Chief Election Commissioner should be "*subject to confirmation by a two-thirds majority in a joint session of both Houses of Parliament*", argued that appointment by the President would really mean appointment by the Government under the decision of the Prime Minister. Further, On 16-6-1949, Shri H.V. Pataskar also showed his reservation in following terms: *"... As I said, so far as I can see, Article 289(2) is quite enough for the purpose.*

	Even under Article 289(2) we can appoint not merely some officials of the Government as Election Commissioners, but people of the position of High Court Judges; we can make them permanent; we can make them as Independent as we are trying to make them in the case of the Central Commission." Pandit Hirday Nath Kunzru addressed the aforementioned concerns and suggested as follows: *"Here two things are noticeable: the first is that it is only the Chief Election Commissioner that can feel that he can discharge his duties without the slightest fear of incurring the displeasure of the executive, and the second is that the removal of the other Election Commissioners will depend on the recommendations of one man only, namely, the Chief Election Commissioner. However responsible he may be, it seems to me very undesirable that the removal of his colleagues who will occupy positions as responsible as those of Judges of the Supreme Court should depend on the opinion of one man. We are anxious, Sir, that the preparation of the electoral rolls and the conduct of elections should be entrusted to people who are free from political bias and whose impartiality can be relied upon in all circumstances. But, by leaving a great deal of power in the hands of the President we have given room for the exercise of political influence in the appointment of the Chief Election Commissioner and the other Election Commissioners and officers by the Central Government. The Chief Election Commissioners will have to be appointed on the advice of the Prime Minister, and, if the Prime Minister*

	suggests the appointment of a party-man the President will have no option but to accept the Prime Minister's nominee, however unsuitable he may be on public grounds. (Interruption). Somebody asked me why it should be so. … *My remedy for the defects that I have pointed out is that Parliament should be authorised to make provision for these matters by law. Again, Sir, this article does not lay down the qualifications of persons who are chosen as Chief Election Commissioners or as Election Commissioners. And, as I have already pointed out, in the matter of removal, the Election Commissioners are not on the same footing as the Chief Election Commissioner."* Dr B.R. Ambedkar addressed the criticism and conceded to the fact that his provision i.e. appointment of election of Election Commission by president **"***does not contain anything to provide against nomination of an unfit person to the post of the Chief Election Commissioner or the other Election Commissioners."* In order to overcome the objections of Dr. Sakesna, Dr. Ambedkar added "subject to the law made by parliament" in Article 289 while observing: "*because as I said it is going, to be one of our greatest headaches and as a via media it was thought that if this Assembly would give or enact what is called an Instrument of Instructions to the President and provide therein some machinery which it would be obligatory on the President to consult before making any appointment, I think the*

	*difficulties which are felt as resulting from the American Constitution may be obviated and the advantage which is contained therein may be secured. At this stage it is impossible for me to see or anticipate what attitude this House will take when the particular draft Instructions come before the House. If the House rejects the proposal of the Drafting Committee that there should be an Instrument of Instructions to the President regard to the making of appointments, this problem would then be solved by that method. But, as I said, it is quite difficult for me to anticipate what may happe*n." Thereafter, he introduced an amendment which was subsequently approved by the assembly. The said amendment was introduced with the hope that in due course of time the Government will take an initiative to make fair, just and reasonable law for the appointment of the members of Election Commission to ensure its independence and integrity. The law as it stands today is: *"324(2): 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 other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President."*
May, 1990	The Committee on Electoral Reforms under the chairmanship of the then Law Minister namely, Mr. Dinesh Goswami, appointed by the Central

	Government, made several recommendations on the issue of electoral reforms. In para no. 1.2 of its report, Mr. The Dinesh Goswami Committee recommended for the effective consultation with neutral authorities like Chief Justice of India and the Leader of the Opposition for the appointment in Election Commission.
2002	The National Commission to Review the Working of the Constitution, 2002 under the Chairmanship of the former Chief Justice of India, M.N. Venkatachaliah, made recommendations in relation to electoral processes and political parties. One of the recommendations, which is of relevance to the cases before us is as follows: *"The Chief Election Commissioner and the other Election Commissioners should be appointed on the recommendation of a body consisting of the Prime Minister, Leader of the Opposition in the Lok Sabha, the Leader of the Opposition in the Rajya Sabha, the Speaker of the Lok Sabha and the Deputy Chairman of the Rajya Sabha. It was further recommended that similar procedure should be adopted in the case of appointment of the State Election Commissioners."*
January, 2007	The Second Administrative Reforms Commission, in it fourth report made in January, 2007, also recommended for the constitution of a neutral and independent collegium headed by the Prime Minister with the Speaker of the Lok Sabha, the Leader of Opposition in the Lok Sabha, the Law Minister and

	the Deputy Chairman of the Rajya Sabha as is members for making recommendations for consideration of the President for appointment of the Chief Election Commissioner and the Election Commissioners.
13.01.2015	A Writ Petition titled as *Anoop Baranwal v. Union of India (Writ Petition (C) No. 104 of 2015)* was filed before this Hon'ble Court praying for a issue a writ of mandamus or an appropriate writ, order or direction, commanding the Respondent to make a law for ensuring a fair, just and transparent process of selection by constituting a neutral and independent collegium/ selection committee to recommend the name for the appointment of the member of the Election Commission under Article 324(2) of the Constitution of India, etc.
12.03.2015	The Law Commission of India made it Report no. 255 on Electoral Reform. In para no. 6.12.1 and 6.12.2 of report, the Law Commission made recommendation that the appointment of all the Election Commissioner should be made by the President in consultation with a three-member collegium or selection committee, consisting of the Prime Minister, the Leader of the Opposition of the Lok Sabha and the Chief Justice of India.
13.07.2015	This Hon'ble Court was pleased to issue notice in the aforesaid Petition.

23.10.2018	This Hon'ble Court was pleased to refer the matter to the constitution bench. The relevant extract of the order is as follows: *"The matter relates to what the petitioner perceives to be a requirement of having a full-proof and better system of appointment of members of the Election Commission. Having heard the learned counsel for the petitioner and the learned Attorney General for India we are of the view that the matter may require a close look and interpretation of the provisions of Article 324 of the Constitution of India. The issue has not been debated and answered by this Court earlier. Article 145 (3) of the Constitution of India would, therefore, require the Court to refer the matter to a Constitution Bench. We, accordingly, refer the question arising in the present proceedings to a Constitution Bench for an authoritative pronouncement."*
02.03.2023	The Constitution Bench of this Hon'ble Court in ***Anoop Baranwal v. Union of India*** **(2023) 6 SCC 161** after observing "*in the unique nature of the provision, we are concerned with and the devastating effect of continuing to leave appointments in the sole hands of the executive on fundamental values, as also the fundamental rights, we are of the considered view that the time is ripe for the Court to lay down norm"* held: I. All the members of the Constituent Assembly, Fundamental Rights Sub Committee, and the Drafting Committee were of clear view that elections must be conducted by an independent commission and that the

	appointment to the Election Commission not to be made by executive**. Para 38, Para 301** II. The founding fathers inserted the words *"subject to the provisions of any law to be made by parliament"* as they wanted the Parliament to make law under Article 324(2) of the Constitution of India. **Para 39** III. There is a vacuum as no law has been made by parliament under Article 324. Political Parties have not come up with the law as there is a crucial link between independence of the Election Commission and the pursuit of power. **Para 298, 301-303, 309** IV. The Election Commission of India has been charged with extraordinary power to hold elections to both Parliament and State Legislature. The power under Article 324 is plenary and Election Commission also discharges quasi judicial function. **204-206, 213-221,240-241, 297** V. The Election Commissioners including Chief Election Commissioner who have infinite power and have to uphold fundamental rights and rule of law should not be chosen solely by the executive**. Para 222**

	VI.	An independent person and not a yes person should be appointed as a member of the Election Commission. **Para 253**
	VII.	It is necessary that the Election Commission should be insulated from the executive interference for the purpose of independence in the functioning of the Election Commission. **Para 456,462**
	VIII.	This Hon'ble Court has power to fill vacuum under Article 142 of the Constitution of India and therefore directed the appointment to the posts of the Chief Election Commissioner and the Election Commissioners shall be done by the President of India on the basis of the advice tendered by a Committee consisting of the Prime Minister of India, the Leader of the Opposition in the Lok Sabha and, in case, there is no such Leader, the Leader of the largest party in the Opposition in the Lok Sabha having the largest numerical strength, and the Chief Justice of India. The said direction was valid until *Parliament made a law in consonance with Article 324(2) of the Constitution. Para 463*

12.12.2023- 28.12.2023	In order to nullify the judgment of this Hon'ble Court in ***Anoop Baranwal* (*supra*),** Rajya Sabha on 12.12.2023 passed The Chief Election Commissioner and other Election Commissioner (Appointment, Conditions of Service and Term of Office) Act, 2023. Thereafter, the Act was passed in Lok Sabha on 21.12.023 at a time when the majority of the opposition Members of Parliament were suspended by the speaker/chairman of Lok Sabha. These members of parliament were suspended without any sufficient cause and only for asking the home minister to make a statement about a security breach which happened in the Parliament. Thus this legislation was passed when opposition members were illegally suspended and in absence of any debate. Parliament passed the said act and on 28.12.2023, the assent was given by the President . Section 7 of the The Chief Election Commissioner and other Election Commissioner (Appointment, Conditions of Service and Term of Office) Act, 2023 states: *"7. (1) The Chief Election Commissioner and other Election Commissioners shall be appointed by the President on the recommendation of a Selection Committee consisting of—* *(a) the Prime Minister—Chairperson;* *(b) the Leader of Opposition in the House of the People—Member;* *(c) a Union Cabinet Minister to be nominated by the Prime Minister—Member.*

	Explanation.—For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the House of the People has not been recognised as such, the leader of the single largest party in opposition of the 5 10 15 20 25 30 35 40 3 Government in the House of the People shall be deemed to be the Leader of Opposition. *(2) The appointment of Chief Election Commissioner and other Election Commissioners shall not be invalid merely by reason of any vacancy in or any defect in the constitution of, the Selection Committee."* The said Act has been passed in order to fill the vacuum under Article 324(2) of The Constitution of India. However, the impugned section restores the earlier position of law i.e. appointment of Chief Election Commissioner and Election Commissioner would be done solely by the executive. The Selection Committee is dominated by the members from executive i.e. Prime Minister and Union Cabinet Minister to be nominated by the Prime Minister. The said section deserves to be set aside for violating Article 14 of the Constitution of India, basic features of the Constitution and overruling a decision of this Hon'ble Court without altering the basis.
05.01.2024	Hence, the present writ petition.

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL WRIT PETITION)

{PUBLIC INTEREST LITIGATION}

WRIT PETITION (CIVIL) NO. _____/2024

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

ASSOCIATION FOR DEMOCRATIC REFORMS
THRU SH. JAGDEEP CHHOKAR
ADDRESS: T-95, CL HOUSE, 2ND FLOOR,
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PHONE NUMBER-9999620944
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VERSUS

UNION OF INDIA
THROUGH ITS SECRETARY,
MINISTRY OF LAW AND JUSTICE,
SHASTRI BHAWAN, NEW DELHI-11000 ….RESPONDENT

WRIT PETITION CHALLENGING THE CONSTITUTIONAL VALIDITY OF THE CHIEF ELECTION COMMISSIONER AND OTHER ELECTION COMMISSIONERS (APPOINTMENT, CONDITIONS OF SERVICE AND TERM OF OFFICE) ACT,2023

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION JUDGES OF THE HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
PETITIONER ABOVE-NAMED

MOST RESPECTFULLY SHOWETH:

1. The instant Writ Petition has been filed in public interest under Article 32 of the Constitution of India challenging the constitutional validity of The Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act,2023 (hereinafter to be referred as "*Act, 2023*") particularly its Section 7 as being violative of Article 14, basic features of the Constitution and for overruling the Constitution Bench decision of this Hon'ble Court in *Anoop Baranwal v. Union of India (2023) 6 SCC 161* without altering the basis.

1A. ABOUT THE PETITIONER

Petitioner i.e. Association for Democratic Reforms (ADR), a registered Society under the Societies Registration Act XXI of 1860, has been in the vanguard of electoral and political reforms in the country. Its activities comprise advocacy for transparent functioning of political parties, conducting a detailed analysis of candidates in every election, and researching the financial records of political parties. In 1999, ADR filed a PIL in the Delhi High Court seeking disclosure of criminal, financial and educational background of candidates contesting elections. Based on this, the Supreme Court in 2002 and subsequently in 2003 made it mandatory for the candidates to disclose their criminal, financial and educational background prior to the polls by filing an affidavit with the Election Commission. ADR, along with National Election Watch, has conducted election watches for the 2009 Lok Sabha Elections, RajyaSabha Elections and almost all the State Assembly elections since 2002.ADR is striving to bring about transparency

and accountability in the functioning of political parties. In April 2008, ADR obtained a landmark order from the Central Information Commission holding that the Income Tax Returns of political parties and the assessment orders passed on them will be available to the citizens. ADR is now working to extend this dispensation to members of Parliament and to bring political parties under the ambit of the RTI Act. Under the practice followed by ADR, the Founder-Trustee Prof. Jagdeep S Chhokar is authorised to institute proceedings on behalf of Petitioner. The Registration Certificate of Petitioner and authority letter are being filed along with the vakalatnama. The petitioner organization's annual income is Rs. 75'27,929 (FY/13-14) (PAN No. AAAAA2503P). Petitioner not being an natural person does not have a National UID number.

The Petitioner has no personal interest, or private/oblique motive in filing the instant Petition. There is no civil, criminal, revenue or any litigation involving the Petitioner, which has or could have a legal nexus with the issues involved in the PIL.

The Petitioner has not made any representation to the Respondent in this regard because of the urgency in the matter in issue.

That the instant Writ Petition is based on the information/documents which are in public domain.

FACTS OF THE CASE

2. That Article 324 was introduced as Article 289 by Dr. B. R. Ambedkar before the Constituent assembly. Originally Article 324(2) read as follows:

> *"(2) 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 appoint, and when any other Election Commissioner is so appointed, the Chief Election Commissioner shall act as the Chairman of the Commission."*

Honourable Dr. B. R. Ambedkar while presenting the amendment said:

> *"The House will remember that in a very early stage in the proceedings of the Constituent Assembly, a Committee was appointed to deal with what are called Fundamental Rights. That Committee made a report that it should be recognised that the independence of the elections and the avoidance of any interference by the executive in the elections to the Legislature should be regarded as a fundamental right and provided for in the chapter dealing with Fundamental Rights. When the matter came up before the House, it was the wish of the House that while there was no objection to regard this matter as of fundamental importance, it should be provided for in some other part of the Constitution and not in the Chapter dealing with Fundamental Rights. But the House affirmed without any kind of dissent that in the interests of purity and freedom of elections to the legislative bodies, it was of the utmost importance that they should be freed from any kind of interference from the executive of the day. In pursuance of the decision of the House, the Drafting Committee removed this question from the category of Fundamental Rights and put it in a separate part containing articles 289, 290 and so on. Therefore, so far as the fundamental question is concerned that the election machinery should be outside the control of the executive Government, there has been no dispute. What article 289 does is to carry out that part*

> *of the decision of the Constituent Assembly. It transfers the superintendence, direction and control of the preparation of the electoral rolls and of all elections to Parliament and the Legislatures of States to a body outside the executive to be called the Election Commission. That is the provision contained in sub-clause (1).*

Prof. Shibban Lal Saxena raised reservations about appointment of election commission by the President and proposed that election commission should be appointed by ⅔ majority of both the houses. So that the even opposition doesn't even have anything to say against the Commission and the person appointed enjoys the confidence of the house and not only of one party

Further, On 16-6-1949, Shri H.V. Pataskar also showed his reservation in following terms:

> *"… As I said, so far as I can see, Article 289(2) is quite enough for the purpose. Even under Article 289(2) we can appoint not merely some officials of the Government as Election Commissioners, but people of the position of High Court Judges; we can make them permanent; we can make them as Independent as we are trying to make them in the case of the Central Commission."*

Pandit Hirday Nath Kunzru addressed the aforementioned concerns and suggested as follows:

> *"Here two things are noticeable: the first is that it is only the Chief Election Commissioner that can feel that he can discharge his duties without the slightest fear of incurring the displeasure of the executive, and the second is that the removal of the other Election Commissioners will depend on the recommendations of one man only, namely, the Chief Election Commissioner. However responsible he may be, it seems to me very undesirable that the removal of his colleagues who will occupy*

positions as responsible as those of Judges of the Supreme Court should depend on the opinion of one man. We are anxious, Sir, that the preparation of the electoral rolls and the conduct of elections should be entrusted to people who are free from political bias and whose impartiality can be relied upon in all circumstances. But, by leaving a great deal of power in the hands of the President we have given room for the exercise of political influence in the appointment of the Chief Election Commissioner and the other Election Commissioners and officers by the Central Government. The Chief Election Commissioners will have to be appointed on the advice of the Prime Minister, and, if the Prime Minister suggests the appointment of a party-man the President will have no option but to accept the Prime Minister's nominee, however unsuitable he may be on public grounds. (Interruption). Somebody asked me why it should be so. …

My remedy for the defects that I have pointed out is that Parliament should be authorised to make provision for these matters by law. Again, Sir, this article does not lay down the qualifications of persons who are chosen as Chief Election Commissioners or as Election Commissioners. And, as I have already pointed out, in the matter of removal, the Election Commissioners are not on the same footing as the Chief Election Commissioner."

Dr B.R. Ambedkar addressed the criticism and conceded to the fact that his provision i.e. appointment of election of Election Commission by president **"***does not contain anything to provide against nomination of an unfit person to the post of the Chief Election Commissioner or the other Election Commissioners."*

In order to overcome the objections of Dr. Sakesna, Dr. Ambedkar added "subject to the law made by parliament" in Article 289 while observing:

"*because as I said it is going, to be one of our greatest headaches and as a via media it was thought that if this Assembly would give or enact what is called an*

*Instrument of Instructions to the President and provide therein some machinery which it would be obligatory on the President to consult before making any appointment, I think the difficulties which are felt as resulting from the American Constitution may be obviated and the advantage which is contained therein may be secured. At this stage it is impossible for me to see or anticipate what attitude this House will take when the particular draft Instructions come before the House. If the House rejects the proposal of the Drafting Committee that there should be an Instrument of Instructions to the President which might include, among other things, a provision with regard to the making of appointments, this problem would then be solved by that method. But, as I said, it is quite difficult for me to anticipate what may happe*n."

That in the Constitution of India, Article 324 as of now stands as follows:

"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 other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President"

No draft instructions were ever prepared or presented before the House. Therefore, till 02.03.2023, the appointments were made by the executive.

A true copy of the relevant part of Constituent Assembly debate is as annexed and marked as **ANNEXURE P-1 (Pages** 36 **to** 119 **).**

2. That there have been several commissions who have examined the issue of appointment of members of Election Commissions.

The Commissions after observing the *importance of maintaining neutrality and to shield the Chief Election Commissioners and Election Commissioners from executive interference,* have suggested that the appointment should be done by a collegium consisting of various members. The details of the Commissions and their recommendations are tabulated herein below:

S. No.	Name of the Commission	Suggestions
1.	Law Commission 255th report dated 12.03.2015	Appointment should be made by a Committee consisting of: 1. Prime Minister of India 2. Leader of Opposition 3. Chief Justice of India
2.	Dinesh Goswami Report 1990	Appointment of Chief Election Commissioner should be made by a Committee consisting of: 1. Chief Justice of India 2. Leader of Opposition and in absence of Leader of Opposition then the consultation with the largest opposition group Appointment of Election Commissioner should be made on the recommendation of in consultation with the Chief Justice of India, Leader of the Opposition (in case the Leader of the opposition is not available, the consultation should be with the leader of the largest opposition group in the Lok Sabha) and the Chief Election Commissioner.

3.	Report of the National ommission to review the working of the Constitution, 2002	Appointment should be made by a Committee consisting of: 1. Prime Minister 2. Leader of Opposition in Lok Sabha 3. Leader of Opposition in Rajya Sabha 4. Speaker of Lok Sabha 5. Deputy Chairman of Rajya Sabha .
4.	Second Administrative Reform Commission, January 2007	Appointment should be made by a Committee of consisting of: I. Prime Minister II. Speaker of Lok Sabha III. Leader of Opposition. IV. Law Minister V. Deputy Chairman of Rajya Sabha

A true copy of the Law Commission 255th report dated 12.03.2015 is annexed and marked as **ANNEXURE P-2 (Pages** 120 **to** 388 **).**

A true copy of the Dinesh Goswami Report 1990 is annexed and marked as **ANNEXURE P-3 (Pages** 389 **to** 468 **).**

A true copy of the Report of the National Commission to review the working of the Constitution is annexed and marked as **ANNEXURE P-4 (Pages** 469 **to** 518 **).**

A true copy of the **Administrative** Reform Commission, the Report of January 2007 is annexed and marked as **ANNEXURE P-5 (Pages** 519 **to** 658 **).**

3. That a Writ Petition (Civil) No. 104 of 2015 titled *Anoop Baranwal v. Union of India* was filed before this Hon'ble Court challenging the appointment of members of Election Commission by executive as being violative of Article 324(2) and also sought direction of this Hon'ble Court to issue a writ of mandamus or an appropriate writ, order or direction, commanding the Respondent to make law for ensuring a fair, just and transparent process of selection by constituting a neutral and independent collegium/ selection committee to recommend the name for the appointment of the member of the Election Commission under Article 324(2) of the Constitution of India. This Hon'ble Court while referring the issue to a constitution bench passed the following order:

> *"The matter relates to what the petitioner perceives to be a requirement of having a full-proof and better system of appointment of members of the Election Commission. Having heard the learned counsel for the petitioner and the learned Attorney General for India we are of the view that the matter may require a close look and interpretation of the provisions of Article 324 of the Constitution of India. The issue has not been debated and answered by this Court earlier. Article 145 (3) of the Constitution of India would, therefore, require the Court to refer the matter to a Constitution Bench. We, accordingly, refer the question arising in the present proceedings to a Constitution Bench for an authoritative pronouncement."*

The Petitioner also filed a Writ Petition (Civil) No. 569 of 2021 before this Hon'ble Court.

4. The Constitution Bench of this Hon'ble Court in ***Anoop Baranwal v. Union of India (Supra)*** after observing "*in the unique nature of the provision, we are concerned with and the devastating effect of continuing to leave appointments in the sole hands of the executive on fundamental values, as also the fundamental rights, we are of the considered view that the time is ripe for the Court to lay down norm"* held:

I. All the members of the Constituent Assembly, Fundamental Rights Sub Committee, and the Drafting Committee were of clear view that elections must be conducted by an independent commission and that the appointment to the Election Commission not to be made by executive**. (Para 38, Para 301)**

II. The founding fathers inserted the words *"subject to the provisions of any law to be made by parliament"* as they wanted the Parliament to make law under Article 324(2) of the Constitution of India. (**Para 39)**

III. There is a vacuum as no law has been made by parliament under Article 324. Political Parties have not come up with the law as there is a crucial link between independence of the Election Commission and the pursuit of power. (**Para 298, 301-303, 309)**

IV. The Election Commission of India has been charged with extraordinary power to hold elections to both Parliament and State Legislature. The power under Article 324 is plenary and Election Commission also discharges quasi judicial function. (**204-206, 213-221,240-241, 297)**

V. The Election Commissioners including Chief Election Commissioner who have infinite power and have to uphold fundamental rights and rule of law should not be chosen solely by the executive**. (Para 222, 297, 308-309)**

VI. An independent person and not a yes person should be appointed as a member of the Election Commission. (**Para 248-253)**

VII. It is necessary that the Election Commission should be insulated from the executive interference for the purpose of independence in the functioning of the Election Commission. (**Para 456, 461, 462)**

VIII. This Hon'ble Court has power to fill vacuum under Article 142 of the Constitution of India and therefore directed the appointment to the posts of the Chief Election Commissioner and the Election Commissioners shall be done by the President of India on the basis of the advice tendered by a Committee consisting of the Prime Minister of India, the Leader of the Opposition in the Lok Sabha and, in case, there is no such Leader, the Leader of the largest party in the Opposition in the Lok Sabha having the largest numerical strength, and the Chief Justice of India. The said direction was valid until *Parliament made a law in consonance with Article 324(2) of the Constitution.* **(Para 326, 463)**

The relevant extract of the Constitution bench judgment in **Anoop Baranwal (Supra)** are as follows:

> ***38.*** *We understand the historical perspective, and the deliberations of the Fundamental Rights Sub-Committee, the Drafting Committee and the other Sub-Committees*

and, finally, of the Constituent Assembly itself, to be as follows:

38.1. *A golden thread runs through these proceedings.*

38.2. *All the members were of the clear view that elections must be conducted by an independent Commission. It was a radical departure from the regime prevailing under the Government of India Act, 1935. The members very well understood that providing for appointment of Members of the Election Commission by the President would mean that the President would be bound to appoint the Election Commissioner solely on the advice of the executive, which, in a sense, was understood as on the advice of the Prime Minister. The model of appointment prevailing in the United States was deliberated and not approved. Though, Shri K.M. Munshi was not in favor of giving complete independence to the Election Commission and felt that it should be an ally of the Government, it clearly did not represent the views of the predominant majority of the members.*

38.3. *Right to vote was, to begin with, considered so sacrosanct that it was originally contemplated as a fundamental right. However, finally, as we have already noticed, it was found more appropriate that it should be contained in a separate part of the Constitution, which is the position obtaining under the Constitution. It is equally clear that the members of the Committees, including the Constituent Assembly, wanted the appointment to the Election Commission not to be made by the executive. The uncertain prospect of an instrument of instructions, finally led the Assembly to adopt the amendment suggested by Dr Ambedkar, which, as we have noticed, was initially the suggestion made by Pandit Kunzru, and what is more, even seconded by Shri K.M. Munshi.*

38.4. *In short, what the Founding Fathers clearly contemplated and intended was, that Parliament would step in and provide norms, which would govern the appointment to such a uniquely important post as the post of Chief Election Commissioner and the Election Commissioners. In this regard, we notice the final words of Dr Ambedkar in regard to the debate surrounding Article 324, were that he felt sorry that he did not have time to circul*ate the amendments.

39. *It is important that we understand that when the Founding Fathers, therefore, inserted the words "subject to the provisions of any law to be made by Parliament", it was intended that Parliament would make a law.* …

…

204. *The Election Commission has power to issue directions for the conduct of elections requiring the political parties to submit the details of the expenditure incurred or authorised by them for the purpose of the election of their respective candidates. This power was traced to the words "conduct of elections" [see Common Cause v. Union of India [Common Cause v. Union of India, (1996) 2 SCC 752]].*

205. *All powers though not specifically provided but necessary for effectively holding the elections are available to the Election Commission. [See Election Commission of India v. Ashok Kumar [Election Commission of India v. Ashok Kumar, (2000) 8 SCC 216] .]*

206. *Article 324 is a reservoir of power to be used for holding free and fair elections. The Commission as a creature of the Constitution may exercise it in an infinite variety of situations. In a democracy, the electoral process plays a strategic role. The Commission can fill up the vacuum by issuing directions until there is a law made. This was laid down in the context of directions aimed at securing information about the candidates [see Union of India v. Assn. for Democratic Reforms [Union of India v. Assn. for Democratic Reforms, (2002) 5 SCC 294]].*

…

213. *We would, therefore, find that the Election Commission of India has been charged with the duty and blessed with extraordinary powers to hold elections to both Parliament and State Legislatures from time to time. This is an enormous task. The power it possesses under Article 324 is plenary. It is only subject to any law which may be made by Parliament or by the State Legislature. Undoubtedly, the Election Commission is duty-bound to act in a fair and legal manner. It must observe the provisions of the Constitution and abide by the directions of the Court. The same being done, it can draw upon a nearly infinite reservoir of power. Once the poll is notified,*

[which again is a call to be taken by the Election Commission itself, and indeed capable of being misused and the subject of considerable controversy, if bias or subservience to the powers that be, is betrayed], it assumes unusual powers. Its writ lies across Governments over the length and breadth of the country. Officers of the Government who come under its charge become subject to the superintendence of the Commission. The fate of the political parties and its candidates, and therefore, of democracy itself to a great measure is allowed to rest in the hands of the Election Commission. While there may be officers who assist the Commission, vitally important decisions have to be taken by those at the helm of the affairs. It is the Chief Election Commissioner and the Election Commissioners at whose table the buck must stop.

214. *It is in this scenario, we bear in mind that when a decision is taken in the process of the holding of the poll, that subject to proceedings which are initiated in courts which conduce to the effective holding of the poll, any proceeding which seeks to bring the election process under a shadow is tabooed. The significance of this aspect is that it adds to the enormity of the powers and responsibilities of the Election Commission. Awaiting the outcome of the poll to question the election before the tribunal may result in many illegal, unfair and mala fide decisions by the Election Commission passing muster for the day. Once the election results are out, the matter is largely reduced to a fait accompli. In fact, many times an omission or a delay in taking a decision can itself be fatal to the holding of a free and fair poll. The relief vouchsafed in an election petition may not by itself provide a just solution to the conduct of election in an illegal, mala fide or unfair manner. These observations have a direct connection with the question with which we are concerned with, namely, the need to take the appointment of the members of the Election Commission out of the exclusive hands of the executive, namely, the party which not unnaturally has an interest in perpetuating.*

…

220. *Equally, the sterling qualities which we have described which must be possessed by an Election*

Commission are indispensable for an unquestionable adherence to the guarantee of equality in Article 14. In the wide spectrum of powers, if the Election Commission exercises them unfairly or illegally as much as it refuses to exercise power when such exercise becomes a duty it has a telling and chilling effect on the fortunes of the political parties. Inequality in the matter of treatment of political parties who are otherwise similarly circumstanced unquestionably breaches the mandate of Article 14.

221. *Political parties must be viewed as organisations representing the hopes and aspirations of its constituents, who are citizens. The electorate are ordinarily, supporters or adherents of one or the other political parties. We may note that the recognition of NOTA, by this Court [People's Union for Civil Liberties v. Union of India, (2013) 10 SCC 1 : (2013) 4 SCC (Civ) 587 : (2013) 3 SCC (Cri) 769 : (2014) 2 SCC (L&S) 648] enabling a voter to express his distrust for all the candidates exposes the disenchantment with the electoral process which hardly augurs well for a democracy. Therefore, any action or omission by the Election Commission in holding the poll which treats political parties with an uneven hand, and what is more, in an unfair or arbitrary manner would be anathema to the mandate of Article 14, and therefore, cause its breach. There is an aspect of a citizen's right to vote being imbued with the fundamental freedom under Article 19(1)(a). The right of the citizen to seek and receive information about the candidates who should be chosen by him as his representative has been recognised as a fundamental right [see Public Interest Foundation [Public Interest Foundation v. Union of India, (2019) 3 SCC 224]].*

222. *The Election Commissioners including the Chief Election Commissioner blessed with nearly infinite powers and who are to abide by the fundamental rights must be chosen not by the executive exclusively and particularly without any objective yardstick.*

....

Z. Independence; A sterling and indispensable attribute

The concept of legitimate power of reciprocity

248. *What is independence? Independence is a value, which is only one of the elements in the amalgam of virtues that a person should possess. The competence of a man is not to be conflated with fierce independence. A person may be excellent i.e. at his chosen vocation. He may be an excellent administrator. He may be honest but the quality of independence transcends the contours of the qualities of professional excellence, as also the dictates of honesty.*

249. *We may, no doubt, clarify that, ordinarily, honesty would embrace the quality of courage of conviction, flowing from the perception of what is right and what is wrong. Irrespective of consequences to the individual, an honest person would, ordinarily, unrelentingly take on the high and mighty and persevere in the righteous path. An Election Commissioner is answerable to the Nation. The people of the country look forward to him so that democracy is always preserved and fostered. We may qualify the above observations by stating that true independence of a body of persons is not to be confused with sheer unilateralism. This means that the Election Commission must act within the constitutional framework and the laws. It cannot transgress the mandate of either and still claim to be independent. Riding on the horse of independence, it cannot act in an unfair manner either.*

250. *Independence must be related, finally, to the question of "what is right and what is wrong". A person, who is weak-kneed before the powers that be, cannot be appointed as an Election Commissioner. A person, who is in a state of obligation or feels indebted to the one who appointed him, fails the nation and can have no place in the conduct of elections, forming the very foundation of the democracy. An independent person cannot be biased. Holding the scales evenly, even in the stormiest of times, not being servile to the powerful, but coming to the rescue of the weak and the wronged, who are otherwise in the right, would qualify as true independence.*

251. *Upholding the constitutional values, which are, in fact, a part of the basic structure, and which includes, democracy, the Rule of Law, the right to equality, secularism and the purity of elections otherwise, would, indeed, proclaim the presence of independence. Independence must embrace the ability to be firm, even*

as against the highest. Not unnaturally, uncompromising fearlessness will mark an independent person from those who put all they hold dear before their Karma.

252. *It is in this context that we feel advised to refer to the following discussion in Supreme Court Advocates-on-Record Assn. v. Union of India [Supreme Court Advocates-on-Record Assn. v. Union of India, (2016) 5 SCC 1] : (SCC p. 423, para 310)*

"310. A little personal research resulted in the revelation of the concept of the "legitimate power of reciprocity" debated by Bertram Raven in his article — "The Bases of Power and the Power/Interaction Model of Interpersonal Influence" (this article appeared in Analyses of Social Issues and Public Policy, Vol. 8, No. 1, 2008, pp. 1-22). In addition to having dealt with various psychological reasons which influenced the personality of an individual, reference was also made to the "legitimate power of reciprocity". It was pointed out that the reciprocity norm envisaged that if someone does something beneficial for another, the recipient would feel an obligation to reciprocate ("I helped you when you needed it, so you should feel obliged to do this for me." — Goranson and Berkowitz, 1966; Gouldner, 1960). In the view expressed by the author, the inherent need of power is universally available in the subconscious of the individual. On the satisfaction and achievement of the desired power, there is a similar unconscious desire to reciprocate the favour."

253. *It is important that the appointment must not be overshadowed by even a perception, that a "yes man" will decide the fate of democracy and all that it promises. Certainly, the darkest apprehensions of the Founding Fathers as buttressed by the reports and other materials, unerringly point to the imperative need to act.*

…

297. *We have set down the legislative history of Article 324, which includes reference to what transpired, which, in turn, includes the views formed by the members of the Sub-Committees, and members of the Constituent Assembly. They unerringly point to one conclusion. The power of appointment of the Members of the Election Commission, which was charged with the highest duties and with nearly infinite powers, and what is more, to hold elections, not only to the Central Legislature but to all the*

State Legislatures, was not to be lodged exclusively with the executive. It is, accordingly that the words "subject to any law to be made by Parliament" were, undoubtedly, incorporated.

298. *No law, however, came to be enacted by Parliament. We have elaborately referred to the noises and voices eloquently and without a discordant note being struck, which points to an overpowering symphony, which calls for the immediate need to fulfil the intention of the Founding Fathers, starting with the Goswami Committee in the year 1990, more than three decades ago, the Two Hundred and Fifty-Fifth Central Law Commission Report in 2015 and the reports, both in the press and other materials.*

…

301. *However, it is equally clear that Article 324 has a unique background. The Founding Fathers clearly contemplated a law by Parliament and did not intend the executive exclusively calling the shots in the matter of appointments to the Election Commission. Seven decades have passed by. Political dispensations of varying hues, which have held the reigns of power have not unnaturally introduced a law. A law could not be one to perpetuate what is already permitted, namely, appointment at the absolute and sole discretion of the executive. A law, as Gopal Sankaranarayanan points out, would have to be necessarily different. The absence of such a law does create a void or vacuum. This is despite a chorus of voices even cutting across the political divide urging divesting of the exclusive power of appointment from the executive.*

….

303. *Political parties undoubtedly would appear to betray a special interest in not being forthcoming with the law. The reasons are not far to seek. There is a crucially vital link between the independence of the Election Commission and the pursuit of power, its consolidation and perpetuation.*

304. *As long as the party that is voted into power is concerned, there is, not unnaturally a near insatiable quest to continue in the saddle. A pliable Election Commission, an unfair and biased overseer of the foundational exercise of adult franchise, which lies at the heart of democracy, who obliges the powers that be,*

perhaps offers the surest gateway to acquisition and retention of power.

305. *The values that animated the Freedom Struggle had to be brought home to a new generation through the insertion of the provision relating to fundamental duties. Criminalisation of politics, a huge surge in the influence of money power, the role of certain sections of the media where they appear to have forgotten their invaluable role and have turned unashamedly partisan, call for the unavoidable and unpostponable filling up of the vacuum. Even as it is said that justice must not only be done but seen to be done, the outpouring of demands for an impartial mode of appointment of the Members requires, at the least, the banishing of the impression, that the Election Commission is appointed by less than fair means.*

306. *We bear in mind the fact that the demand for putting in place safeguards to end the pernicious effects of the exclusive power being vested with the executive to make appointment to the Election Commission, has been the demand of political parties across the board. Once power is assumed, however, the fact of the matter is that, despite the concerns of the Founding Fathers and the availability of power, successive governments have, irrespective of their colour, shied away, from undertaking, what again we find was considered would be done by Parliament, by the Founding Fathers.*

….

308. *While this Court is neither invited nor if it is invited, would issue a mandamus to the legislature to make a law, as contemplated in Article 324(2), it may not be the end of the duty of this Court in the context of the provision in question. We have already elaborated and found that core values of the Constitution, including democracy, and Rule of Law, are being undermined. It is also intricately interlinked with the transgression of Articles 14 and 19. Each time, on account of a "knave", in the words of Dr Ambedkar, or again in his words, "a person under the thumb of the executive", calls the shots in the matter of holding the elections, which constitutes the very heart of democracy, even formal democracy, which is indispensable for a body polity to answer the description of the word "democracy", is not realised.*

309. *In the unique nature of the provision, we are concerned with and the devastating effect of continuing to leave appointments in the sole hands of the executive on fundamental values, as also the fundamental rights, we are of the considered view that the time is ripe for the Court to lay down norms. In other words, the vacuum exists on the basis that unlike other appointments, it was intended all throughout that appointment exclusively by the executive was to be a mere transient or stopgap arrangement and it was to be replaced by a law made by Parliament taking away the exclusive power of the executive. This conclusion is clear and inevitable and the absence of law even after seven decades points to the vacuum.*

…

326. *The writ petitions are partly allowed and they are disposed of as follows:*

326.1. *We declare that as far as appointment to the posts of the Chief Election Commissioner and the Election Commissioners are concerned, the same shall be done by the President of India on the basis of the advice tendered by a Committee consisting of the Prime Minister of India, the Leader of the Opposition in the Lok Sabha and, in case, there is no such Leader, the Leader of the largest party in the Opposition in the Lok Sabha having the largest numerical strength, and the Chief Justice of India. This norm will continue to hold good till a law is made by Parliament*

…

456. *In order to allow independence in the functioning of the Election Commission as a constitutional body, the office of Chief Election Commissioners as well as the Election Commissioners have to be insulated from the executive interference. This is envisaged under the proviso to Article 324(5) which reads:*

"Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment:

Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner."

....

461. *Article 324(5) of the Constitution is intended to ensure the independence of the Election Commission free from all external political interference and, thus, expressly provides that the removal of the Chief Election Commission from office shall be in like manner as on the grounds as of a Judge of the Supreme Court. Nevertheless, a similar procedure has not been provided for other Election Commissioners under the second proviso to Article 324(5) of the Constitution. The other conditions of the service of the Chief Election Commissioner/other Election Commissioners have been protected by the legislature by the 1991 Act.*

462. *In the facts and circumstances, keeping in view the importance of maintaining the neutrality and independence of the office of the Election Commission to hold free and fair election which is a sine qua non for upholding the democracy as enshrined in our Constitution, it becomes imperative to shield the appointment of the Election Commissioners and to be insulated from the executive interference. …"*

A true copy of the judgment of this Hon'ble Court in A***noop Baranwal v. Union of India*** (2023) 6 SCC 161 is annexed and marked as **ANNEXURE P-**6**(Pages** 659 **to** 888**).**

5. In order to nullify the judgment of this Hon'ble Court in *A**noop Baranwal* (***supra***),* Rajya Sabha on 12.12.2023 passed Act, 2023. Thereafter, the Act was passed in Lok Sabha on 21.12.023 at a time when the majority of the opposition Members of Parliament were suspended by the speaker/chairman of Lok Sabha. These members of parliament were suspended without any sufficient cause and only for

asking the home minister to make a statement about a security breach which happened in the Parliament. Thus this legislation was passed when opposition members were illegally suspended and in absence of any debate.

Section 7 of the Act,2023 states:

> *"7. (1) The Chief Election Commissioner and other Election Commissioners shall be appointed by the President on the recommendation of a Selection Committee consisting of—*
> *(a) the Prime Minister—Chairperson;*
> *(b) the Leader of Opposition in the House of the People—Member;*
> *(c) a Union Cabinet Minister to be nominated by the Prime Minister—Member.*
> *Explanation.—For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the House of the People has not been recognised as such, the leader of the single largest party in opposition of the 5 10 15 20 25 30 35 40 3 Government in the House of the People shall be deemed to be the Leader of Opposition.*
> *(2) The appointment of Chief Election Commissioner and other Election Commissioners shall not be invalid merely by reason of any vacancy in or any defect in the constitution of, the Selection Committee."*

A true copy of the news report titled *List of MPs suspended so far in Parliament's Winter Session of The Hindu* is annexed and marked as **ANNEXURE P-7 (Pages 889 to 890).**
A true copy of the news report titled *Lok Sabha Passes Bill to Appoint Election Commissioners In Absence of Opposition of The Wire is* annexed and marked as **ANNEXURE P-8 (Pages 891 to 893).**

A true copy of the news report titled *Winter session of Parliament: Mass suspension of opposition MPs, smoke bomb attack and passage of landmark laws* of The Times of India is annexed and marks as **ANNEXURE P-9 (Pages 894 to 895).**

A true copy of *The Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act,2023* is annexed and marked as **ANNEXURE P-10 (Pages 896 to 900).**

6. The said Act, 2023 has been passed in order to fill the vacuum under Article 324(2) of The Constitution of India. However, the impugned section restores the earlier position of law i.e. appointment of Chief Election Commissioner and Election Commissioner would be done solely by the executive. The Selection Committee is dominated by the members from executive i.e. Prime Minister and Union Cabinet Minister to be nominated by the Prime Minister.

7. The Petitioner has not filed any other similar petition before this Hon'ble Court or any High Court or any other court. The Petitioner has no better remedy available.

GROUNDS

5. The reliefs claimed and the direction and orders sought in the instant Petition are on the grounds set out herein-below and each of the grounds may be treated as being cumulative as well as being in the alternative and without prejudice to one another.

A. BECAUSE, the Constitution Bench of this Hon'ble Court in ***Anoop Baranwal v. Union of India*** **(Supra)** after observing "*in the unique nature of the provision, we are concerned with and the devastating effect of continuing to leave appointments in the sole hands of the executive on fundamental values, as also the fundamental rights, we are of the considered view that the time is ripe for the Court to lay down norm"* held:

I. All the members of the Constituent Assembly, Fundamental Rights Sub Committee, and the Drafting Committee were of clear view that elections must be conducted by an independent commission and that the appointment to the Election Commission not to be made by executive**. (Para 38, Para 301)**

II. The founding fathers inserted the words *"subject to the provisions of any law to be made by parliament"* as they wanted the Parliament to make law under Article 324(2) of the Constitution of India. (**Para 39)**

III. There is a vacuum as no law has been made by parliament under Article 324. Political Parties have not come up with the law as there is a crucial link between independence of the Election Commission and the pursuit of power. (**Para 298, 301-303, 309)**

IV. The Election Commission of India has been charged with extraordinary power to hold elections to both Parliament and State Legislature. The power under Article 324 is plenary and Election Commission also discharges quasi judicial function. (**204-206, 213-221,240-241, 297)**

V. The Election Commissioners including Chief Election Commissioner who have infinite power and have to uphold fundamental rights and rule of law should not be chosen solely by the executive**. (Para 222, 297, 308-309)**

VI. An independent person and not a yes person should be appointed as a member of the Election Commission. (**Para 248-253)**

VII. It is necessary that the Election Commission should be insulated from the executive interference for the purpose of independence in the functioning of the Election Commission. (**Para 456, 461, 462)**

VIII. This Hon'ble Court has power to fill vacuum under Article 142 of the Constitution of India and therefore directed the appointment to the posts of the Chief Election Commissioner and the Election Commissioners shall be done by the President of India on the basis of the advice tendered by a Committee consisting of the Prime Minister of India, the Leader of the Opposition in the Lok Sabha and, in case, there is no such Leader, the Leader of the largest party in the Opposition in the Lok Sabha having the largest numerical strength, and the Chief Justice of India. The said direction was valid until *Parliament made a law in consonance with Article 324(2) of the Constitution.* **(Para 326, 463)**

B. **BECAUSE,** it is a settled law that it is impermissible for the legislature to simply overrule a decision of this Hon'ble Court -

it is only permissible for it to remove or alter the basis of a judicial decision, such that the decision would not have been rendered in that altered background. **(See *People's Union for Civil Liberties (PUCL) v. Union of India, (2003) 4 SCC 399*; *Madras Bar Assn. v. Union of India*, (2022) 12 SCC 455; *Bakhtawar Trust vs. M.D. Narayan,* (2003) 5 SCC 298)**

C. **BECAUSE**, this Hon'ble Court in ***Anoop Baranwal (Supra)*** directed that the appointment to the posts of the Chief Election Commissioner and the Election Commissioners shall be done by the President of India on the basis of the advice tendered by a Committee consisting of (i) the Prime Minister of India, (ii) the Leader of the Opposition in the Lok Sabha and, in case, there is no such Leader, the Leader of the largest party in the Opposition in the Lok Sabha having the largest numerical strength, and (iii) the Chief Justice of India. The said direction was valid until Parliament made a law in consonance with Article 324(2) of the Constitution. The said direction was passed mainly on two grounds:

I. There is a vacuum as no law has been made by parliament under Article 324(2) of Constitution of India despite the phrase "subject to the provisions of any law made in that behalf by Parliament".

II. Considering the functions and powers of the Election Commission, it is necessary that the appointment of members of the Election Commission should not be in the exclusive hands of the executive.

It is submitted that though by way of the impugned section the vacuum under Article 324(2) of Constitution of India has been filled, however, the impugned section does not alter the second basis i.e. the appointment of members of Election Commission should not be in the exclusive hands of the executive. The impugned section restores the earlier position of law i.e. appointment of Chief Election Commissioner and Election Commissioner would be done solely by the executive. This is because Selection Committee is ex facie dominated and controlled by the members from executive i.e. Prime Minister and Union Cabinet Minister (to be nominated by the Prime Minister). In such circumstances, the legislature, by impugned section, has not removed the defect which the court had found in the previous law, and as such, the impugned provision is liable to be struck down by this Hon'ble Court.

D. **BECAUSE,** as per impugned section the Selection Committee is dominated by the members from executive i.e. Prime Minister and Union Cabinet Minister to be nominated by the Prime Minister. This Hon'ble Court in ***Rojer Mathew v. South Indian Bank Ltd., (2020) 6 SCC 1*** while declaring the composition of Search-cum-Selection Committee, which was dominated by the members from central government in Column 4 of the Schedule to the Tribunal, Appellate Tribunal and Other Authorities (Qualification, experience and other conditions of service of members) Rules, 2017, as unconstitutional observed:

> ***"153.*** *We are of the view that the Search-cum-Selection Committee as formulated under the Rules is an attempt to keep the judiciary away from the process of selection and appointment of Members, Vice-Chairman and*

Chairman of Tribunals. This Court has been lucid in its ruling in Supreme Court Advocates-on-Record Assn. v. Union of India [Supreme Court Advocates-on-Record Assn. v. Union of India, (2016) 5 SCC 1] (Fourth Judges case), wherein it was held that primacy of judiciary is imperative in selection and appointment of judicial officers including Judges of the High Court and the Supreme Court. Cognizant of the doctrine of separation of powers, it is important that judicial appointments take place without any influence or control of any other limb of the sovereign. Independence of judiciary is the only means to maintain a system of checks and balances on the working of the legislature and the executive. The executive is a litigating party in most of the litigation and hence cannot be allowed to be a dominant participant in judicial appointments."

Similarly, in the present case the Election Commission is not only responsible for conducting free and fair elections, but it also renders a quasi-judicial function between the various political parties including the ruling government and other parties. Therefore, in such circumstances the Selection Committee cannot be dominated by the members of executive as it gives unfettered discretion to the ruling party to choose someone whose loyalty to it is ensured and thereby renders the selection process vulnerable to manipulation.

E. **BECAUSE,** This Hon'ble Court in ***Union of India v. Assn. for Democratic Reforms*****,** (2002) 5 SCC 294 directed the Election Commission to obtain and disclose to the public background information relating to candidates running for office, including information on their assets, criminal records, and educational background on the ground that voters have right to know under Article 19(1)(a) of The Constitution of India. Thereafter,

in order to nullify the judgment of this Hon'ble Court, Section 33-B was added in the Representation of the People Act, 1951. This Hon'ble Court in *People's Union for Civil Liberties (PUCL) v. Union of India*, (2003) 4 SCC 399 (*A*) mainly on the ground that legislature cannot enact a law in violation of fundamental right and the legislature can remove the basis of a decision rendered by a competent court thereby rendering that decision ineffective but the legislature has no power to ask the instrumentalities of the State to disobey or disregard the decisions given by the court.

F. **BECAUSE,** the power of the Election Commission involved in being an independent and impartial arbiter of elections, especially holding political parties to uphold Constitutional mandates and the Model Code of Conduct during the elections as well as adjudicate fairly when the same are violated. Therefore, in such circumstances the Selection Committee cannot be dominated by the members of the executive. This Hon'ble Court in ***Supreme Court Advocates-on-Record Assn. v. Union of India*, (1993) 4 SCC 441** while interpreting the word "consultation" in Article 124 of the Constitution of India has held that it is not the security of tenure which alone is a source of independence of judiciary as an institution but there has to be an independent judiciary as an institution and independence cannot be achieved when the power of appointment of judges vests with executive. In ***Supreme Court Advocates-on-Record Assn. v. Union of India*, (2016) 5 SCC 1,** this Hon'ble Court while declaring National Judicial Appointment Commission unconstitutional

held that if primacy is not vested in the judiciary, then executive even after appointment could exert pressure through the psychological mechanism of *Power of Reciprocity* and *Loyalty to Appointer*. The principle of Power of Reciprocity has been accepted by this Hon'ble Court in **Anoop Baranwal (Supra**). Further, in both ***Supreme Court Advocates-on-Record Assn (Supra)*** aforementioned cases, this Hon'ble Court has held that the fact that executive is by far the biggest litigant in the judicial process, therefore there should be primacy of the Chief Justices in the case of appointment of judges in Higher Judiciary.

G. **BECAUSE**, Democracy is a facet of the basic structure of the Constitution and in order to ensure free and fair elections and to maintain healthy democracy in our country, the Election Commission should be insulated from political and/or executive interference. The composition of the Selection Committee under the Act amounts to excessive interference of the executive in the appointment of the Election Commission and is detrimental to the independence of the Election Commission.

H. **BECAUSE,** it was the true intent of the Constituent Assembly that elections must be conducted by an independent commission and that the appointment to the Election Commission not to be made by executive**.**

I. **BECAUSE**, 'Integrity and Independence of Election Commission' is the basic feature of the Constitution of India in view of the fact that its functioning greatly determines the quality of governance and strength of democracy and adopting

the process of appointment of the member to the Election Commission solely on the recommendation of a Selection Committee dominated by executive without evolving fair and reasonable selection process, is undermining the 'Integrity and Independence of Election Commission'.

J. **BECAUSE,** Act,2023 was passed in Lok Sabha on 21.12.023 at a time when the majority of the opposition Members of Parliament were suspended by the speaker/chairman of Lok Sabha. These members of parliament were suspended without any sufficient cause and only for asking the home minister to make a statement about a security breach which happened in the Parliament. Thus this legislation was passed when opposition members were illegally suspended and in absence of any debate.

PRAYER

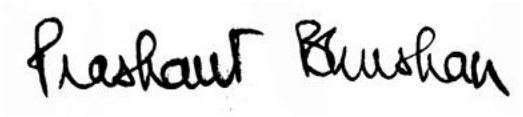
In view of the facts and circumstances aforementioned, it is humbly prayed that this Hon'ble Court may be pleased to: -

A. Pass a direction, order, or appropriate writ declaring and quashing Section 7 of The Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023 as unconstitutional;
B. Pass a direction, order, or appropriate writ declaring and quashing The Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023 as unconstitutional;

C. Pass any other order or direction that this Hon'ble Court may deem fit and appropriate in the interest of justice.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER, AS DUTY BOUND, SHALL EVER PRAY TO THEIR LORDSHIPS.

PETITIONER THROUGH:



(PRASHANT BHUSHAN)
COUNSEL FOR THE PETITIONER

DRAWN BY: ALICE RAJ ADVOCATE
DRAWN ON: 03.01.2024

NEW DELHI
DATED: 05.01.2024

IN THE HON'BLE SUPREME COURT OF INDIA
(CIVIL ORIGINAL WRIT JURISDICTION)
WRIT PETITION (CIVIL) NO. _____ OF 2023
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

ASSOCIATION FOR DEMOCRATIC REFORMS & ORS. ....PETITIONER

VERSUS

ELECTION COMMISSION OF INDIA & ANR. ....RESPONDENTS

AFFIDAVIT

I, Jagdeep Chhokar, aged about 79 years, S/o Late Mr. Raghbir S. Chhokar, R/o A-278, New Friends Colony. New Delhi-110025, do hereby solemnly affirm and state on oath as under:-

1. That I am petitioner in the above mentioned Writ Petition and being well conversant with the facts and records of the case, I am competent to swear this affidavit on behalf of the Petitioner.

2. That I have read and understood the contents of the Synopsis and List of dates **(Pages B to** R **)**, Writ Petition **(Pages 1 to** 33 and **para 1 to** 8 **)** and accompanying Applications. The contents of the same are true and correct to my knowledge, based on documentary evidence and records of the case, and nothing material has been concealed therefrom.

3. That this petition is only motivated by public interest and Petitioner does not have any personal interest or any personal gain or private motive or any other oblique reason in filing this Writ Petition in Public Interest.

4. The sources of information are official documents, news reports, studies and information available in public domain.

The Seal of the Oath Commissioner
Sl. No. 64/2023
B.P. YADAV
App. By Delhi High Court
Period: 15.07.2023 to
14.07.2025

3. I further state that all the Annexures to this Writ Petition are true copies of their respective originals.

Association for Democratic Reforms ADR New Delhi

DEPONENT

VERIFICATION:

I the above named deponent do hereby verify that the contents of the aforesaid affidavit from para __ to __ .are true and correct to the best of my knowledge and belief, no part of it is false nothing material has been concealed there from. Verified at New Delhi on this the 3rd day of Jan 2024

Association for Democratic Reforms ADR New Delhi

DEPONENT

IDENTITY THE EXECUTANT/DEPONENT WHO WAS SIGNED IN THE PRESENCE OF

The Seal of the Oath Commissioner Sl. No. 64/2023 B.P. YADAV App. By Delhi High Court Period 15.07.2023 to 14.07.2025 Supreme Court of India, New Delhi-1

CERTIFIED THAT THE DEPONENT Shri/Smt./Km. Jagdish Chhokar S/o W/o D/o ... R/o ... As to affidavit engaged about ... identified by Shri/Smt. ... has solemnly affirmed before me at New Delhi on 3/1/24 as Sl. No. ... that the contents of the affidavit which have been read & explained & are true & Correct to his/her Knowledge. Oath Commissioner, New Delhi 3/1/24

ANNEXURE-P1

CONSTITUENT ASSEMBLY
OF INDIA

DRAFT CONSTITUTION
OF INDIA

PREPARED BY THE DRAFTING COMMITTEE

PRINTED IN INDIA BY THE MANAGER
GOVT OF INDIA PRESS NEW DELHI
1948

PART XIII

Elections

Superintendence, direction and control of elections to be vested in an Election Commission.

289. (1) The superintendence, direction and control of all elections to Parliament and of elections to the offices of President and Vice-President held under this Constitution, including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with the elections to Parliament, shall be vested in a Commission to be appointed by the President.

(2) The superintendence, direction and control of all elections to the Legislature of a State for the time being specified in Part I of the First Schedule and of elections to the office of Governor of the State *elections to constitute a panel for the purpose of the appointment of a Governor of the State held under this Constitution including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections to the Legislature of such State shall be vested in a Commission to be appointed by the Governor of the State.**

Elections to Parliament.

290. Subject to the provisions of this Constitution, Parliament may, from time to time, by law, make provision with respect to all matters relating to or in connection with elections to either House of Parliament including matters necessary for securing the due constitution of the two Houses of Parliament and the delimitation of constituencies.

Elections to the Legislatures of States.

291. Subject to the provisions of this Constitution, the Legislature of a State for the time being specified in Part I of the First Schedule may, from time to time, by law, make provision with respect to all matters relating to or in connection with elections to the House or Houses of the Legislature of the State including matters necessary for securing the due constitution of such House or Houses and the delimitation of constituencies.

* The words "elections to constitute a panel for the purpose of the appointment of a Governor of the State" will have to be used in this clause in place of the words "elections to the office of Governor of the State" if the second alternative is adopted in article 131.

** The Committee is of opinion that the Election Commission to superintend, direct and control elections to the Legislature of a State in Part I of the First Schedule should be appointed by the Governor of the State.

CONSTITUENT ASSEMBLY DEBATES
Volume 8
Wednesday, the 15th June, 1949

———

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

———

Article 203 [COI Article 227]

The Honourable Dr. B. R. Ambedkar : (Bombay : General) : Mr. President, Sir, I move :

"That in article 203, for the marginal heading, the following be substituted :—

'Power of superintendence over all courts by the High Court' ".

I also move :

"That in clause (2) of article 203, before the words 'The High Court may', the words 'Without prejudice to the generality of the foregoing provisions', be inserted."

I further move :

"That with reference to amendment No. 2664 of the List of Amendments—

(i) in clause (1) of article 203, after the words 'all courts' the words 'and tribunals' be inserted;

(ii) in clause (2) of article 203, sub-clause (b) be omitted."

(Amendment No. 2665 was not moved.)

Shri H. V. Kamath (C.P. & Berar : General) : Mr. President, I move :

"That in clause (2) of article 203, before the words 'Every High Court' the words 'In particular' be inserted."

If the House reads the article with all the clauses together it will see that clause (1) specifies certain general powers with which every High Court is sought to be invested under this article. To my mind therefore it appears that so far as clause (2) of this article is concerned, which provides for certain specific powers or invests the High Court with powers in certain cases, it is necessary that this clause should particularise these specific provisions. Clause (1) has certain general provisions. Clause (2) which follows clause (1) and which specifies certain particular things must provide that the High Court may in particular do this and do that.

As regards amendment No. 2664 moved by Dr. Ambedkar which relates to the marginal heading of this article, a point was raised in this very House the other day with regard to marginal headings and Dr. Ambedkar himself told the House that marginal headings are by some deemed part and by others not deemed part of the Constitution. I do not know therefore whether a formal amendment in this connection is necessary. Apart from that, I am not quite sure whether the amendment moved by him in this regard in quite happily worded. The amendment reads "Power of superintendence over all courts by the High Court". What the article provides is certain powers of superintendence and cognate matters". I do not think it is quite necessary to insert the words "over all courts". The article provides for powers of superintendence. Even if the phrase "over all courts" is not included in the marginal heading it will be quite clear that powers of superintendence are meant to be included in this article. It is enough to say "Powers of superintendence by the High Court" and the article will mention "over all courts" and such other matters. What is intended by the article is to provide the High Court with powers of superintendence. As to over

what courts, can follow in the article itself. The marginal heading originally read, "Administrative functions of High Courts". Following the spirit of that marginal heading I think the words "Powers of superintendence by the High Court" are enough and we may leave out the words "over all courts". Sir I move.

Prof. Shibban Lal Saksena (United Provinces : General) : Mr. President, Sir, with respect to the amendment moved by my honourable Friend Mr. Kamath think it has now become superfluous after amendment No. 2666 which says "Without prejudice to the generality of the foregoing provisions the High Court may." This is better than the wording contained in Mr. Kamath's amendment, namely "In particular etc." Therefore I think Mr. Kamath will not press his amendment.

I am very happy at the amendment moved by Dr. Ambedkar—No. 209 by which he has stated that "every High Court shall have superintendence over all courts and tribunals". I wanted to draw the attention of the Honourable Doctor to labour tribunals. Every day labour tribunals are getting more and more important. Our experience of these tribunals is very bad. They yet have to copy the traditions of the judicial courts. I hope now, when the High Court has powers over them, they will also be brought under its supervision and control so that we can have better justice in labour tribunals and also the right procedure.

I am also glad that sub-clause (b) of clause (2) has been omitted. In this way its power has been widened. Originally it had power only to withdraw suits and appeals confined to civil cases. Now it can call any cases that it may like. I therefore support the amendment strongly.

Mr. President : The question is :

"That in article 203, for the marginal heading, the following be substituted :—

'Power of superintendence over all courts by the High Court'."

The amendment was adopted.

Mr. President : The question is :

"That in clause (2) of article 203, before the words 'The High Court may', the words 'Without prejudice to the generality of the forgoing provision' be inserted."

The amendment was adopted.

Mr. President : The question is :

"That in clause (2) of article 203, before the words 'Every High Court' the words 'In particular' be inserted."

The amendment was negatived.

Mr. President : The question is :

"That with reference to amendment No. 2664 of the List of Amendments—

(i) in clause (1) of article 203, after the words 'all courts' the words 'and tribunals' be inserted;

(ii) in clause (2) of article 203, sub-clause (b) be omitted."

The amendment was adopted.

Mr. President : The question is :

"That article 203, as amended, stand part of the Constitution."

The motion was adopted.

Article 203, as ameded, was added to the Consitution.

———

Shri T. T. Krishnamachari (Madras : General) : Sir, articles 209-A, 209-B, 209-C, 210 and 211 may be held over. We are still not ready with our alternative drafts.

Honourable Members : Yes, they may be held over.

———

Article 270 [COI Article 294]

Mr. President : Then we go to article 270.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Mr. President, Sir, I beg to move :

"That in article 270, the words 'the Dominion of' be deleted."

The word 'Dominion' is applicable to India as it is constituted today. In the new set-up of things which is being drawn by this Consititution the word 'Dominion' or the idea of any Dominion would be repugnant to our Constitution. That is why I have sought the deletion of this. If the deletion is accepted the passage will run thus namely "the Government of India" and not "the Government of the Dominion of India".

(Amendment No. 2976 was not moved.)

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That with reference to amendments Nos. 2975 and 2976 of the List of Amendments, in article 270, for the words 'assets and liabilities' the words 'assets, liabilities and obligations' be substituted."

Now, as regards the amendment moved by Mr. Naziruddin Ahmad, may I say that he has evidently forgotten that we are using the words "Government of India" to indicate the Government that will come into existence under the new Constitution, while the "Government of the Dominion of India" is a term which is being used to indicate the Government at the present moment? Consequently, if his amendment is accepted is accepted it would mean that the Government of India is succeeding to the liabilities, obligations and assets of the Government of India. It would make absurd reading. Therefore the words as they are there are very appropriate and ought to be retained.

The Honourable Shri K. Santhanam (Madras : General) : I am afraid we are passing this article in a hurry. As it has been our attempt to bring the Indian States into line with the provinces, we are here simply providing that the old provinces will be continued while no such provision is made for the States.

The Honourable Dr. B. R. Ambedkar : What is your amendment?

The Honourable Shri K. Santhanam : I am not moving any amendment. I am only commenting on the article as it is. I think that both the articles 270 and 271 are subject to the same disabilities as the other articles which are concerned only with the Provinces and not with the States and therefore probably it will be better for the future Constitution if these two are brought in line and the article made more comprehensive so as to include the States also. Wherever the States are continued as States they should be deemed to be the successors of the old States and where they have been amalgamated or merged into the provinces they should also be mentioned appropriately. For instance, Baroda has been merged with Bombay. If you pass article 270 as if is, it will mean that the old Bombay province, without Baroda, will be a State as given in the Schedule. I think proper provison should be made. Now it simply says "…shall respectively be the successors of the Government of India or the provinces." Under the Government of India Act, Bombay was a province without the Baroda State. Today it is a province with the Baroda State included. So, I would like to know what is the implication of passing article 270, as it is. Also, in the future Bombay may be construed not to include Baroda or Kolhapur. All these things have to be considered. I think it is desirable that consideration of article 270 also may be postponed so that it may be brought into line with the other provisions which may be made.

Shri H. V. Kamath : This article raises a number of issues. My Friend Mr. Santhanam has just observed that this article ought not to be passed in a hurry. I agree with him for the following reasons : Firstly, as Mr. Santhanam said, the provinces specified in Part I of the First Schedule have undergone vast changes and

are perhaps still undergoing considerable changes. We cannot at the present stage say what exactly the position will be when the Constitution commences. The example of the Bombay province has been cited. This article itself mentions at the tail-end of it West Bengal and East Punjab. It takes cognizance of the creation of these new provinces. Does it not stand to reason therefore that we should take notice of the various States that have merged into what were known as Governors' Provinces? Not merely Bombay, but Madras, Central Provinces and I believe Bihar have all undergone changes. There have been tacked on to these provinces several States. Because of these mergers, etc. there have been substantial changes made requiring changes to be made in Part I of Schedule I and in Part III of the First Schedule. Several States mentioned in Part III have disappeared from the Indian scene. For instance if you take Part III of the First Schedule you will find that Baroda is not in the picture. It has merged with Bombay. Kolhapur too has gone out of the picture and joined Bombay. So, unless the Schedule itself is recast and Part I and III re-adjusted, I do not think it will be wise on our part to mention here the assets, liabilities and obligations obtaining at the time of the commencement of the Constitution. We must be clear in our own minds what the provinces specified in Part I and the States specified in Part III of the First Schedule were and what they are today.

Mr. President : Has the Schedule been adopted?

Shri H. V. Kamath : Not yet. That is why I say that this article may be held over till we adopt the Schedule.

Secondly, I am not quite sure in my own mind whether it would be adequate to say "the Government of India" in line 2 of this article, because further on in the same article we say "the Government of the Dominion of India". In order to draw a clear distinction between this and that, I suggest that we might as well as say, "the Government of the Indian Republic" in line 2 of this article or "the Government of the Union of India." As the House will recollect, article 1 of the Constitution is to the effect that India shall be a Union of States.

To make a distinction between the Dominion of India and the future Government of India, we must either say the Government of the Republic of India or the Government of the Union of India. Merely to say, "Government of India" will not do.

As regards the use of the phrase "the Dominion of India", I am not quite sure in my own mind what exactly the constitutional position is. If I remember aright, at the opening of this session, the Honourable Shri Jawaharlal Nehru moved a resolution before this House on our future relations with the Commonwealth. The resolution as drafted originally said the Dominion Prime Ministers' Conference in London, etc. etc., but later the Honourable Shri Jawaharlal Nehru himself changed it to "the Commonwealth Prime Ministers' Conference." Press reports which emanated at that time said that the Conference had decided to drop the words "Dominion". I do not know when exactly this change will take effect. This will perhaps continue till we proclaim ourselves a Republic. Then the question does not arise. But after what transpired at the Commonwealth Prime Ministers' Conference in London last April, we can even today, if we will, drop the word 'Dominion'. As regards the title of the Commonwealth, there are different opinions. Mr. Attlee said, "you can call it what you will," and Mr. Chiefley, the Prime Minister of Australia, the other day speaking in the House of Representatives in Australia said that he would continue to call it the British Commonwealth, would prefer the prefix "British". It is up to us in India to call ourselves what we like, and if the British Government and the Commonwealth do not insist on calling ourselves the Dominion of India, certainly I do not see any reason why we should not drop the word 'Dominion' at once. Mr. Attlee said at the Conference that the Commonwealth Countries can call themselves what they like. I therefore think that it is left to us to call our country what we will. I think that even today we can stop

calling ourselves a Dominion, and call ourselves the Union of India or whatever we may decide about it. After all there is no constitution obligation to call ourselves a Dominion and if I have understood correctly the proceedings of the Commonwealth Prime Ministers' Conference and also what was told by our own Prime Minister in this House. I therefore think, Sir, that this article could be amended very usefully, very wisely, with a view to precision, constitutional or otherwise. It should be amended in the light of the proceedings of the Commonwealth Conference. We can even today call ourselves either India or some other term that the House may decide. Therefore considering all the various aspects of the matter, I feel that this article bristles with difficulties and I think it will be wise for this House to hold it over for a more suitable day when we can delliberate over this in greater detail. I therefore move, Sir, that the amendment as well as the article may be held over for a later date.

Prof. Shibban Lal Saksena : Mr. President, Sir, I am unable to understand whether this article is essential for our Constitution. It says that the new Government of India and the Governments of the States shall be the successors of the Government of the Dominion of India. Sir, in the Preamble we say that we, the people of India, are giving ourselves this Constitution. That being the case, I do not see why it is necessary to say that we are the successors of the Government of the Dominion of India. I do not think that this article is necessary in the Constitution. Besides this, as my Friends pointed out, the wording of the article needs to be changed and the article needs to be reconsidered. As Mr. Santhanam has pointed out, the provinces have changed a lot and there must be some provision to take into account the changes that have taken place. I am also not able to understand the purpose of the last five lines of this article "subject to any adjustment made or to be made, etc." I do not know whether this confers any extra legal right. I want Dr. Ambedkar to tell us what will happen if this clause is deleted. Will that mean that the new Government under this Constitution will have no property and will not be the successor of the present Government of the Dominion of India? I want that the purpose of this article should be properly explained. I feel personally that it is not necessary and need not be incorporated.

Shri R. K. Sidhva (C.P. & Berar : General) : Mr. President, Sir, I would like to understand the objections raised to this article by my Friends Mr. Kamath and Professor Shibban Lal Saksena, but I cannot follow exactly what they meant, when they objected to the enactment of this article. The article is very clear, that is to say, it says that the coming Government of India will be the successor of the present Government of the Dominion of India. My Friend, Mr. Kamath, does not want the word "Dominion" to be used and instead the word "Commonwealth" to be introduced.

Shri H. V. Kamath : I wanted to say " the Government of the Republic or Union of India." My Friend, Mr. Sidhva, has not heard me correctly.

Shri R. K. Sidhva : But you were talking of the Commonwealth all along and of what Pandit Jawaharlal Nehru said in his speech on the Commonwealth resolution. Whatever may happen later on, today we are the Dominion of India. That cannot be denied. Therefore the article says that whatever property is there of the present Government will automatically go to the new Government. It is necessary that that should be mentioned; otherwise technical objections may arise. Similarly with regard to the last few lines. The matter has been made very clear. Whether it is necessary to have such an article or not is a different matter. I personally feel that to strengthen our hands it is necessary that such an article should be embodied. I therefore support this article.

Shri Mahavir Tyagi (United Provinces : General) : Sir, we have agreed to remain in the Commonwealth and I do not see there should be any reason to object to the word "Dominion". My honourable Friend, Mr. Kamath, wants to behave like a woman who

has married a man and still insists on calling herself a maiden. Once you are in the Commonwealth, what is the good of your getting away from the name "Dominion" I think, I would under these circumstances prefer to be a Dominion in right earnest. That would have been a better decision. Anyway now, whatever decision we have adopted, once we are in the Commonwealth, we should not fight shy of calling ourselves a Dominion. It would be much better for us to call ourselves a Dominion than neither to remain a Dominion nor to remain independent. So, I think the wording should not be objected to.

Shri Alladi Krishnaswami Ayyar (Madras : General) : Mr. President, in principle there can be no objection either to article 270 or to the amendment that has been proposed. All the liabilities of the previous Government will have to be taken over by the successor Government but I just want to point out that it may be when what are referred to as the merged States are incorporated with each province or unit-state, then certain modifications may be necessary in regard to article 270 in the mutual adjustments of rights and obligations, because in the case of a unit the successor Government will not be merely the old province, but the province *plus* the merged State. Therefore, in regard to previous, obligations, necessary adjustments may have to be made later on. There can be no exception to the general principle enunciated in article 270 though article 270 may require certain modifications when that scheme materialises or when we are able to come to a definite conclusion as to the position of the merged States *vis-à-vis* the units. With these words, I support the article 270 with the amendment.

Shri S.V. Krishnamoorthy Rao (Mysore State) : Mr. President, Sir, I see no reason to hold up this article on the ground that the position of the States is not yet clarified. In fact the provision is "for the time being specified in Part I of the First Schedule" and the House has not accepted the First Schedule and at the time of accepting the First Schedule, it could be clarified as to what each particular State means and as Shri Alladi Krishnaswami Ayyar put it, there is no justification for holding up this article on that one ground and therefore, I support this article.

Shri T. T. Krishnamachari : Mr. President, Sir, I have listened with attention to the objections raised to passing this article at this stage and in the manner it has emerged, by honourable Friends in this House. I am afraid, Sir, though their objections were logical. I feel we cannot give in to those objections and postpone the consideration of this article for the reason that the provisions which they want to bring into this article, namely, that the succession with regard to assets, debts, rights and liabilities of what are now called Indian States which have already merged or which are likely to be merged hereafter in the provinces and Statese which are likely to accede or come into the scheme of Federation in the same manner as the provinces, as the whole position is so nebulous at the moment. It may be that on examination it would not be worthwhile undertaking the assets and liabilities of some States that are coming in as units of the Federation. It also may be that the position of Governments of the States which have got merged into the Provinces are such that we would not like to take over their liabilities, because we do not know what they are; we cannot take over the assets and liabilities of an administration, which is not carried on approved lines, in which we do not know exactly where we stand. So the whole position will have to be reviewed at the time when we bring in the Indian States into the picture. Also, Sir, it is possible that between now and the time when this Constitution is to be promulgated, there might be more States merging into what are now called Provinces. In the present state of things as they are in India, there is no point in saying that we shall not proceed to act in matters where we have definite information, where we can prescribe certain methods by which we can complete this taking over of the administration of the past along with the assets and liabilities, merely because in the case of certain other States, we have not got full information. I

would at the same time like to tell honourable Members of this House that the problem of the States is one of the headaches that we have to face today as Constitution-makers. It may be that we will have to leave a Chapter relating to States in part III of the First Schedule without being filled in until the last week or last fortnight before finalising the Constitution when we will incorporate in that Chapter the state of things as they are at that time, make regulations for States which have come into the Federation on the same lines as the Provinces, make arrangements for States which have merged in the Provinces and all the incidental and consequential provisions that have to be found in a Constitution of this nature, and even then, it may be that some States might have to be left out. There is no point in my trying to explain at length the difficulties that we have to face, because the difficulties will be apparent to anybody who looks into the various covenants and the exact position of the States from the documents issued from time to time by the States Ministry; but I do not think that it is any justification for postponing indefinitey consideration of articles which are in themselves complete in so far as the territories they deal with. Any further changes—changes are occurring day after day and there may be quite a lot of changes before the Constitution is complete—can only be brought in by special provisions and in a special Chapter. I have no doubt that Dr. Ambedkar is very grateful to the article which I have no doubt he has also got in mind. The position will be adequately met before the Constitution is finalised and I think, Sir, in the meantime, the article may be passed as it is.

Mr. Mahboob Ali Baig Sahib (Madras : Muslim) : Mr. President, the central question is whether this article will entitle the future Government of India and the provinces to the assets and liabilities not only of British India under the old Constitution, that is the 1935 Constitution, but also to become successors of the States, the Native States as they were called.

Sir, the wording here is that the future Government of India and the Government of the States shall be the successors of the Dominion of India and of the Governors' provinces as mentioned in the Government of India Act of 1935. Under the Government of India Act, 1935, the States were kept apart and the Dominion of India or the Governors Provinces did not include the Native States at all. Therefore, if you are confining this article 270 and say that the future Government of India and of the States shall be the successors of the Dominion of India and of the Governors' provinces, clearly, the future Government of India and of the States will not at all be the successors of the States that have merged or that are going to be merged. That is the clear interpretation that could be put upon this article 270. Therefore, you must introduce in this article 270 some other sentences or phrases in order to enable the future Government of India and of the States to be the successors not only of British India of the past, under the 1935 Act, but also of the State or States that may be merged. Otherwise, the Government of India and the future provinces will not be the successors of the States. Therefore, a suitable amendment is necessary and unless that is made, I think it would be a great defect.

Shri B. Das (Orissa : General) : Sir, we are dealing with the chapter which deals with property, contracts, liabilities and suits of the former Government of India, the present Government of India and the future Government of India that this Constitution is creating. Therefore I felt a little nettled when my honourable Friend Mr. Kamath brought in the word 'Commonwealth'. As far as I am concerned, Sir, I do not like the Commonwealth. But, as far as I understood the interpretation of the Commonwealth, it does not exist, it does not own any property, it has no secretariat; it has an imaginary, vague head, the King of the United Kingdom. Therefore, the question of the Commonwealth does not arise.

Under the Independence Act, the present Government is the Dominion Government

of India and naturally it has inherited all the properties from the old British Government and the Governor-General has been given certain discretionary powers over the properties and assets. But, one thing I do not find here mentioned, that is, our relations with the United Kingdom Government. The United Kingdom Government has not yet fully handed over the properties to the Dominion Government of India. It may be said that a Committee is sitting and trying to separate the assets belonging to the old India Office; but the financial aspect of the contract is not there. Will India Office building be handed over to India? The United Kingdom through the Bank of England owes 600 million sterling to India. It may be said that we may get it any day. But, I am not so sure. If we want to get the full value of the 600 million sterling that England owes us, I do not see why this Constitution does not make any mention of it. There are strong views expressed in the United States of America and even in England that sterling will be devalued. If the sterling gets devalued, we will lose part of our money. Why should we not introduce an article in the Constitution regarding the assets that England owes to India? Is there any contract between the United Kingdom and India over these moneys which England has almost forcibly taken and which the United Kingdom wants to misappropriate by some means? Somehow, the world situation does not permit the United Kingdom to declare a moratorium. This is a lacuna which the Drafting Committee should examine. I do not see why they should fight shy of the United Kingdom because the so-called His Majesty's Government ruled over India some time in the past and because accidentally we happen to be a Dominion till the next January. I think somehow that aspect of the question regarding the 600 million sterling that the United Kingdom owes us, should be defined in Rupees and should be introduced in the Constitution. If the sterling is devalued by 20 per cent., we will lose 120 million sterling. Therefore, I say whatever England owes to us should be mentioned somewhere in this Constitution, not necessarily in articles 270 to 274. We need not fight shy, nor need we fear the United Kingdom because of its aggressiveness in the past and in future.

Shri V. S. Sarwate (Madhya Bharat) : Mr. President, it seems to me that the difficulty regarding the States which have merged in the Provinces does not exist. The wording is this : "As from the commencement of this Constitution." Suppose for instance, the Constitution comes into existence on the 26th January, 1950, then, the provinces will be constituted on that date as the Governors' provinces *plus* the Indian States which have merged. The succeeding provinces would be the successors of the provinces as they stood on 26th January, 1950 : in the case of Bombay, it would be Bombay *plus* Baroda. Therefore, there would be no difficulty as regards the States which have merged before the date of the commencement of the Constitution.

To my mind, there seems to be another difficulty. This article gives legalistic expression to a *de facto* thing. As soon as India was declared independent, it did succeed to the properties, assets and liabilities of the previous Government. That was a fact. My question is whether it is necessary to give legalistic expression to that fact? Why I raise this question is because the wording is, it would succeed to all liabilities and also assets. Supposing the previous, Government has given some pension or some reward in the form of grant of land to a person who served them in the disturbances of 1942, and the succeeding Government thinks that that grant was not proper or was against the national interests and therefore does not want to continue that grant, would the succeeding Government be bound to continue the grant by virtue of this section? I want to know whether the succeeding Governments would be bound by having this clause to continue all those things which were against our national interests. That is the difficulty which I would like the Mover of this clause to explain to the House. There may be many things which on a closer scrutiny would not deserve to be continued because they would be found to be against the national interests. So I would like to know whether this specific enumeration of this liability will bind the

succeeding Government in a more particular manner. Supposing this article is omitted, what would be the effect? I think there would be no detraction from the present position of the Government except in the minds of legal persons; otherwise the fact is there that the present government has succeeded the previous government. The other sections stand in a different position. Supposing a property becomes an Estate. It is not necessary that the *de facto* circumstance that the Government has succeeded the previous Government must be stated in the Constitution itself.

The other point of view which I wish to bring before the House is that the Constitution is to include all the principles underlying the Constitution. This is something which is more in the form of a legal technicality. Is it necessary to include it in the Constitution itself? By a separate law which Parliament may pass, it may say that it takes upon itself the liabilities of the previous Government. I wish further to be made clear on this point—what is the difference between liability and obligations? To a layman it appears that liabilities do include obligations also. So where is the propriety of having the word 'obligation' therein? These are some of the points which I wish to bring to the notice of the House for clarification.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I did not think that this article would raise so much debate as it has in fact done, and I therefore feel it necessary to say a few words in order to remove any misapprehension or doubts and difficulties to which reference has been made.

The first question that is asked is, why is it necessary to have article 270 at all in the Constitution? The reply to that is a very simple one. Honourable Members will remember that before the Act of 1935 the assets and liabilities and the properties belonging to the Government of India were vested in a Corporation called the Secretary of State-in-Council. It was the Secretary of State-in-Council which held all the revenues of India, the properties of India and was liable to all the obligations that were contracted on behalf of the Government of India. The Government of India before 1935 was a unitary Government. There was no such thing as properties belonging to the Government of India and properties belonging to the provinces. They were all held by that single Corporation which was called the Secretary of State-in-Council which was liable to be used and had the right to sue. The Government of India Act, 1935 made a very significant change, *viz.*, it divided the assets and liabilities held by the Secretary of State-in-Council on behalf of the Government of India into two parts—assets and liabilities, which were apportioned and set apart for the Government of India and the assets and liabilities and properties which were set apart for the provinces. It is true that as the Secretary of State had not completely relinquished his control over the Government of India, the properties so divided between the Government of India on the one hand and the different provinces on the other were said in the Government of India Act, Section 172 which is the relevant section, that they shall be held by His Ministry for the Government if India and they shall also be held by His Majesty for the different provinces. But apart from that the fact is this, that the liabilities, assets and properties were divided and assigned to the different units and to the Government of India at the Centre. Now let us understand what we are doing by the passing of this Constitution. What we are doing by the passing of this Constitution is to abrogate and repeal the Government of India Act, 1935. As you will see in the Schedule of Acts repealed, the Government of India Act, 1935 is mentioned, Obviously when you are repealing the Government of India Act which makes a provision with regard to assets and liabilities and properties, you must say somewhere in this Constitution that notwithstanding the repeal of the Government of India Act such assets as belong to the different Provinces do belong notwithstanding the repeal of the Government of India Act to those Provinces. Otherwise what would happen is this, that there would be no provision at all with regard to the assets and liabilities once the Government of India Act, 1935 is repealed. In fact we are doing no more

than what we commonly do when we repeal an Act that notwithstanding the repeal of certain Acts, the acts done will remain therein. It is the same sort of thing. What this article 270 practically says in that notwithstanding the repeal of the Government of India Act, 1935, the assets and liabilities of the different units and the Central Government will continue as before. In other words they will be the successor of the former Government of India and the former Provinces as existed and constituted by the Act of 1935. I hope the House will now understand why it is necessary to have this clause.

Now I come to the other question which has been raised that this article 270 does not make any reference to the liabilities and assets and properties of the Indian States. Now, there are two matters to be distinguished. First, we must distinguish the case of Indian States which are going to be incorporated into the Constitution as integral entities without any kind of modification with regard to their territory or any other matter. For instance, take Mysore, which is an independent State today and will come into the Constitution as an integral State without perhaps and kind of modifications. The other case relates to States which have been merged together with neighbouring India Provinces; and the third case relates to those States that are united together to form a larger union but have not been merged in any of the Indian Provinces. Now in regard to a State like Mysore there is no doubt that the constitution of Mysore will contain a similar provision with regard to article 270 that the assets and liabilities and properties of the existing Government of Mysore shall continue to be the properties, assets and liabilities of the new Government. Therefore it is not necessary to make any provision for a case of the kind in article 270. Similarly about States which have been united together and integrated, their Covenant will undoubtedly provide for a case which is contemplated in article 270. Their Covenant may well state that the assets and liabilities of the various States which have joined together to form a new State will continue to be the assets and liabilities of the new integrated State which has come into being by the joining together of the various States.

Then we come to the last case of States which have been merged with the Provinces. With regard to that I see no difficulty whatever about article 270. Take a concrete case. If a State has been merged in an Indian province obviously there must have been some agreement between that State which has been merged in the neighbouring Province and that neighbouring province as to how the assets and liabilities of that merged State are to be carried over-—whether they are to vanish, whether the merged State is to take its own obligations, or whether the obligations are to be taken by the Indian Province in which the State is merged. In any case what the article says in that from the commencement of this Constitution—these words are important and I will for the moment take it that it will commence on 26th January—any agreement arrived at before that date between the Indian Province and the State that has merged into it will be the liability of the Province at the commencement of the Constitution. If, for instance, no agreement has been reached before the commencement of the Constitution, then the Central Government as well as the Provincial Governments would be perfectly free to create any new obligations upon themselves as between them and the unit or merged State or any other unit that you may conceive of. Therefore, with regard to any transaction that is to take place after the commencement of the Constitution it will be regulated by the agreement which the Provinces will be perfectly free under the Constitution to make, and we need therefore make no provision at all. With regard to the other class of States, as I said, in a case like Mysore it will be independent to make its own arrangement. When that arrangement is made we shall undoubtedly incorporate that in the special part which we propose to enact dealing with the special provisions relating to States in Part III. Therefore, so far as article 270 is concerned, I think there can be no difficulty in regard to it and I think it should be passed as it stands.

Shri Mahavir Tyagi : May I know if the agreement mentioned here relates only to financial agreement or does it relate to territorial agreement also?

The Honourable Dr. B. R. Ambedkar : It speaks of assets and liabilities and obligations. If, for instance, a Province has admitted a certain State and has undertaken an obligation to pay the Ruler a certain pension that will be an obligation within the meaning of article 270. The transfer of territory will be governed by other provisions.

Shri H. V. Kamath : May I know why the word "rights" mentioned in the marginal sub-head is omitted in the article?

The Honourable Dr. B. R. Ambedkar : The Drafting Committee will look into it.

Shri B. Das : With regard to properties possessed by India in foreign countries, specially in the U.K., may I know why those are not included among properties in article 270?

The Honourable Dr. B. R. Ambedkar : I think that property is subject to partition between India and Pakistan, *e.g.*, the India Office Library, etc., I understand that is being discussed.

Shri B. Das : What about the Sterling Balances?

The Honourable Dr. B. R. Ambedkar : My honourable Friend knows more about it than I do.

Mr. President : The question is :

"That with reference to amendments Nos. 2975 and 2976 of the List of Amendments, in article 270, for the words 'assets and liabilities' the words 'assets, liabilities and obligations' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That article 270, as amended, stand part of the Constitution."

The motion was adopted.

Article 270, as amended, was added to the Constitution.

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Article 271 [COI Article 296]

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in article 271—

(i) the words 'for the purposes of the Government of that State', in the two places where they occur, be omitted;

(ii) the words 'for the purposes of the Government of India', in the two places where they occur, be omitted."

Shri H. V. Kamath : Sir, I wish to raise what may be thought a minor point but I hope Dr. Ambedkar and his team of wise men will give some consideration to it when it comes to final drafting. The article with the present amendment refers to properties in the territory of India except the States for the time being specified in Part III of the First Schedule. The point I raised earlier applies to this article as well; that is why I suggest that they may be held over till we have debated the First Schedule. It is no use adopting these articles and then making changes in the Schedule later on. In the First Schedule we see what States are comprised in Part III of that Schedule. Many of the States, as I said before, have disappeared from the Indian horizon and are no longer integral entities within the territory of India. Baroda, Kolhapur and Mayurbhanj are no longer comprised in Part II of the First Schedule. Now if we pass the article today, as it is, about the various States mentioned in the Schedule without saying "subject to any modifications in the Schedule", etc., what will happen to property that belongs to States like Baroda, Kolhapur and Mayurbhanj which are merged in the

provinces? I therefore suggest that the article should be held over until the First Schedule together with the various amendments comes before us for consideration.

Prof. Shibban Lal Saksena : Sir, I do not agree with the point of view put forward by Mr. Kamath. We are passing these articles in the hope that in the Schedules we shall put only those things to which we want these articles to apply. These Schedules can be framed according to our choice and they will contain only those matters which we want to be subject to these articles we are passing. I therefore think that after we have accepted article 270 as an essential part of the Constitution, this article is also important. Formerly the country was divided into a number of States and now in this Constitution every portion will come into the new Government. Therefore I do not think this article should be held over merely because there is to be a change in the Schedule.

Mr. President : The question is :

"That in article 271—

(i) the words 'for the purposes of the Government of that State', in the two places where they occur, be omitted;

(ii) the words 'for the purposes of the Government of India', in the two places where they occur, be omitted.' "

The amendment was adopted.

Mr. President : The question is :

"That article 271, as amended, stand part of the Constitution."

The motion was adopted.

Article 271, as amended, was added to the Constitution.

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New Article 271-A [COI Article 297]

The Honourable Dr. B. R. Ambedkar : Sir, I beg to move :

"That the following new article be added after article 271—

271-A. *All lands, minerals and other things of value lying within territorial waters vest in the Union*.—All lands, minerals and other things of value underlying the ocean within the territorial waters of India shall vest in the Union and be held for the purposes of the Union."

This is a very important article. We are going to have integrated into the territory of Indian several States which are for the time being maritime States and it may be quite possible for such States to raise the issue that anything underlying the ocean within the territorial waters of such States will vest in them. In order to negative any such contention being raised hereafter it is necessary to incorporate this article.

Shri H. V. Kamath : Sir, I wish my honourable Friend had clarified this article a little further and explained its significance and import. The construction of the article, to my untrained mind at least is not very clear. It speaks of "lands, minerals, and other things of value", etc. The point is whether besides minerals, what are referred to as things of value underlying the ocean are all things within Indian territorial waters included?

Mr. President : This has reference only to whatever is found on land within territorial waters.

Shri H. V. Kamath : The reference is to lands, minerals and other things of value. The point arises, what these 'other things of value' are? What these 'things of value are' has to be defined. Was this expression borrowed from some other Constitution or has it been newly incorporated in our Constitution without bestowing much thought on it? If it is left vague, the matter would have to be decided by the Supreme Court. What one considers as a thing of value, another may not consider as of value. Does the

expression mean precious stones or minerals or whatever is found under the surface such as fish, etc.? Some may consider even fish as of value, whereas vegetarians may not consider fish as a thing of value. The article may be re-drafted clearly indicating what the 'things of value' are, which, when found in the Indian territorial waters, shall vest in the Union. If you leave the article as it is at present worded, you will be providing a happy hunting ground for lawyers again.

Then again, the article says "All lands, minerals and other things of value underlying the ocean within the territorial waters of India". In Schedule I we have defined the States and the territories of India. But nowhere in this Constitution have we defined what the 'Indian territorial waters' are. The Constitution is silent on this point.

Mr. President : It is a well-understood expression in International Law.

The Honourable Dr. B. R. Ambedkar : It is unnecessary to define it separately.

Shri H. V. Kamath : When you think it necessary to define in the Schedule the territories of India, why should you not define in the Constitution what our territorial waters are? Under International Law, some three miles of sea from a nation's coastline is considered to be territorial waters. As stated in the four parts of the Schedule our territory comprises certain areas. There will be a demarcation of the territorial waters on the east coast and again a limit of the waters on the west. Some three miles beyond our coast will not be territorial waters. If you take the Andamans and the Nicobars as the territories of India, the waters to a distance of 3 to 5 miles from those islands will be our territorial waters. It will be wise on our part to specifically define in the Constitution what our territorial waters will be. In these days new lands are being discovered in different parts of the globe. As such discoveries might lead to complications we must define our territorial waters.

As I stated earlier, nobody knows what "other things of value are". It is better now to put down clearly what they are. Otherwise everything underlying the ocean will be claimed as vested in the Union. It will be wiser and straighter and more honest to say 'everything that is found in the bed of the ocean'.

Pandit Thakur Das Bhargava (East Punjab : General) : All other things are there.

Shri H. V. Kamath : What is of value to one may not be of value to another. I do not attach any value even to precious stones. I submit that this thing may be clarified.

Lastly, I would ask Dr. Ambedkar and his wise men whether the phrase 'underlying the ocean' connotes whatever underlies the surface of the ocean or ocean-bed or whatever is discovered beneath the bed of the ocean. Probably the existing expression is clear to lawyers. As I am not a lawyer I plead guilty to ignorance of what 'underlying the ocean' means. I hope Dr. Ambedkar will clarify the position before the House proceeds to vote on this article.

Shri A. Thanu Pillai (Travancore States) : Mr. President, Sir, I wish to say a word about this article. It says : "All lands, minerals and other things of value underlying the ocean within the territorial waters of India shall vest in the Union." I can understand that a certain amount of control in respect of territorial waters should vest in the Union, but beyond that why should all property and things of value within the territorial waters vest in the Union? Why should the respective States be divested of the right to minerals etc. in territorial waters I fail to see. The States now enjoy rights over these waters and derive some revenue. For instance my State of Travancore collects Shank (shank) from the sea. There are minerals there to which the State is entitled. Why should that right be taken away, I cannot understand. This matter requires fuller consideration and I hope Dr. Ambedkar will enlighten the House as to the necessity for this provision in the form in which it is worded.

Then again, there are the words 'other things of value'.

The Honourable Dr. B. R. Ambedkar : May I ask what exactly I have to explain?

Shri A. Thanu Pillai : Fish is a thing of value. "All lands, minerals and other things of value' is the expression used in the article. Travancore as a maritime State gets good catches of fish. If fish is a thing of value underlying the ocean within the territorial waters of India, this article will deprive the State of the right to catch fish. On the whole this requires better consideration. I hope that the States will in no way be deprived of their existing rights except to the extent necessary for the safety of the Union so far as territorial waters are concerned.

Prof. Shibban Lal Saksena : Mr. President, Sir, when we were discussing article 31, clause (ii) ran as follows :—

> "(*ii*) that the ownership and control of the material resources of the community are so distributed as to best subserve the common good."

My Friend, Professor K. T. Shah, had then moved an amendment saying that the control and ownership of the natural resources of the country in the shape of mines and mineral wealth, forests, rivers and flowing waters as well as in the shape of the seas along the cost of the country shall be vested and belong to the country collectively etc. At that time it was not accepted. I am glad therefore that Dr. Ambedkar has thought fit to provide in the Constitution that all lands, minerals and other things of value underlying the ocean within the territorial waters of India shall vest in the Union and be held for the purposes of the Union. But I would like to know from Dr. Ambedkar whether it is not necessary to mention about the skies. Now in international communications the sky also is important, *e.g.*, who shall fly over our skies, etc. I would like to know from Dr. Ambedkar whether it is not also necessary to mention about the skies in the Constitution.

Shri Alladi Krishnaswami Ayyar : Mr. President, Sir, I think that article 271-A is a very important article and Dr. Ambedkar deserves our congratulations for putting in this article. There are two points to be noticed : One is the criticism that there is no definition as to the extent of territorial waters. In fact, that is the merit, I should think, of the article, because it is one of the moot points of international law what exactly is the extent of territorial waters. The extent will depend not merely on the assertion of a particular State but upon the principle being accepted by the comity of nations. Even today, while England and America take one view, the other nations of the world take a different view as to the extent of territorial waters. Therefore it is a good thing that the extent of the territorial waters is not mentioned in article 271-A.

The second point is whether in general terms it is right to vest territorial waters in the Union. Even in America, the Supreme Court of the United States, when the question came up with regard to the State of California, held that even though the State originally exercised rights in the territorial waters, the correct view is that the territorial waters vested in the Federal Government. Therefore this article, in so far as it provides for the territorial waters vesting in the Union, is in consonance with advanced thought in the most federal of Constitutions, namely the American Constitution. The question as to the extent of jurisdiction by the States and the courts in the States may have to be separately dealt with.

The next point to be considered is the expression "shall be held for the purposes of the Union." The apprehension has been expressed that it might mean that every kind of advantage that will accrue from it will go to the Union and therefore the Coastal States might suffer. I should think that the expression "be held for the purposes of the Union" is more elastic than the first part which says "shall vest in the Union". The expression "shall be held for the purposes of the Union" does not necessarily mean the Union Government as such. "For purposes of the Union" is a wider term than the expression "shall vest in the Union". Recently in Australia the question arose and it has been held that the expression "for purposes of the Commonwealth" is a wider expression than the expression "Commonwealth" itself. Therefore I should think that

the expression "for purposes of the Union" does not militate against some of the benefits being allotted to coastal States and should allay their apprehension that their present existing rights might be invaded.

Lastly, the words "all lands, mineral and other things of value underlying the ocean" are very important. One of the moot points in international law is as to whether there is any difference between what may be called surface rights and mineral rights and soil rights, and I am glad that this assertion is made here that all lands, minerals and other things of value underlying the ocean shall vest in the Union.

On all these grounds I support the amendment incorporating article 271-A.

Shri V. S. Sarwate : Mr. President, Sir, as the previous speaker has expressed, this new article raises a very fundamental question. It raises the question of the relation of the Union Government and the States which have acceded and which are Coastal. Before the House accepts this article, the Covenants which these States have entered into with the Government of India will have to be examined. It will entirely depend upon the rights which have been given by virtue of the Covenant with the Government of India. I do not know whether these covenants have been examined and then as a result of that scrutiny this article has been added. A curious position will arise if, by virtue of the Covenant, these rights have not been given to the Government of India. Assuming for the moment that such a right is not given by the Covenant, the question is whether by virtue of this article in the Constitution, that right, would be created. I am afraid that the mere incorporation of this article would not create that right if that right does not already exist. To my mind it appears that the inclusion of this clause would only have this effect that if the right is already there, it has been expressed and specifically mentioned in this Constitution. If the right is not there, it would not be so vested or created in favour of the Government of India. So, I submit that unless and until the Covenants have been closely examined and it had been found that the right has been vested in the Government of India, this article should not be accepted.

Shri A. Karunakara Menon (Madras : General) : Mr. President, Sir, my object in speaking on this new article 271-A is just to point out the difference that exists between the wording that is found in the marginal note and the wording that is found in the article itself. The wording in the marginal note is : "all lands, minerals and other things of value lying within territorial waters vest in the Union". This implies that all things of value lying within territorial waters belong to the Union. So, every thing of value, suspended even if it were within the territorial waters, are properties of the Union according to the marginal note; but what do we find in the article? There the wording is different. It says : "all lands, minerals and other things of value underlying the ocean within the territorial waters of India shall vest in the Union." My understanding of the words "underlying the ocean within the territorial waters" connotes altogether a different meaning from "things of value lying within territorial waters." Things of value underlying the ocean mean things left underneath the earth of the ocean and so the meaning is restricted. The things of value are restricted by the use of the words "underlying the ocean" whereas it is more wide when we say "things of value lying within territorial waters." I want to bring the words of the marginal note quite in agreement with the words that are found in the article; otherwise it might lead to complication in the future.

Shri M. Ananthasayanam Ayyanagar (Madras : General) : Sir, I desire only to make a small suggestion. What about the territorial waters themselves? Under this new article 271-A all lands, minerals and other things underlying the ocean within the territorial waters belong to the Union. All territorial waters shall belong to the Union. You say "all lands, minerals and other things." So far as territorial waters are concerned, apart from the question as to whether any particular country has got only jurisdiction over the territorial waters or the territorial waters belong to that particular

country by way of ownership, and apart from the internal question whether it belongs to a province which abuts the territorial waters or to the Union, we must make it clear. Therefore, I think it is necessary to add that the territorial waters themselves belong or shall vest in the Union and be held for the purposes of the Union. I think other things of value underlying the ocean will cover fish and other things. If they do not, it must also be made clear by saying "all the produce inside the ocean, apart from minerals and the land underlying the ocean besides these two other things also vest in the Union." This must be made clear to avoid a conflict between the provincial claim for territorial waters and the Union, and also to make sure that we lay a claim for territorial waters and the Union, and also to make sure that we lay a claim for territorial waters in our own country, whatever the International Law may be. There is a difference of opinion in the International Law regarding that matter. To give a quietus to such doubts, we must lay down a definite article that the territorial waters including all the produce available in any shape or form which might be there shall vest in the Union and be held for the purposes of the Union.

Shri A. Thanu Pillai : What about the water itself?

Shri M. Ananthasayanam Ayyangar : The territorial waters themselves must belong to the Union. We must have the waters, the right to water itself, ownership of the water itself and also the fish and other things.

Shri A. Thanu Pillai : What has my honourable Friend to say about the manufacture of salt by the States?

Shri M. Ananthasayanam Ayyangar : The water itself must belong to the Union. The ownership of territorial waters must be claimed by us.

Shri Mahavir Tyagi : Why not make the "water" also a part of this article?

Shri M. Ananthasayanam Ayyangar : I would say "all lands, minerals and other things of value underlying the ocean within the territorial waters and the territorial waters of India shall vest in the Union and be held for the purposes of the Union."

An Honourable Member : What about the air?

Another Honourable Member : What about the heavens?

The Honourable Dr. B. R. Ambedkar : Sir, I gave in my speech when I moved the amendment the reasons why we thought such an article was necessary. There seems to be some doubt raised by my honourable Friend Mr. Pillai that this might also include the right to fisheries. Now I should like to draw his attention to the fact that fisheries are included List II-entry No. 29.

Shri A. Thanu Pillai : My objection related to other matters as well.

The Honourable Dr. B. R. Ambedkar : I will come to that. I am just dealing with this for the moment. Therefore this entry of fisheries being included expressly in List No. II means that whatever jurisdiction of the Central Government would get over the territorial waters would be subject to Entry 29 in List No. II. Therefore, fisheries would continue to be a provincial subject even within the territorial waters of India. That I think must be quite clear to my honourable Friend, Mr. Pillai, now.

With regard to the first question, the position is this. In the United States, as my honourable Friend, Shri Alladi Krishnaswami Ayyar said, there has been a question as to whether the territorial waters belong to the United States Government or whether they belong to several States, because you know under the American Constitution, the Central Government gets only such powers as have been expressly given to them. Therefore, in the United States it is a moot question as yet, I think, whether the territorial waters belong to the States or they belong to the Centre. We thought that this is such an important matter that we ought not to leave it either to speculation or to future litigation or to future claims, that we ought right now to settle this question, and therefore this article is introduced. Ordinarily it is always understood that the

territorial limits of a State are not confined to the actual physical territory but extent beyond that for three miles in the sea. That is a general proposition which has been accepted by international law. Now the fear is—I do not want to hide this fact—that if certain maritime State such as, for instance, Cochin, Travancore or Cutch came into the Indian Union, unless there was a specific provision in the Constitution such as the one we are trying to introduce, it would be still open to them to say : "Our accession gives jurisdiction to the Central Government over the physical territory of the original States; but our territory which includes territorial waters is free from the jurisdiction of the Central Government and we will still continue to exercise our jurisdiction not only on the physical territory, but also on the territorial waters, which according to the International Law and according to our original status before accession belong to us." We therefore want to state expressly in the Constitution that when any maritime States join the Indian Union, the territorial waters of that Maritime State will go to the Central Government. That kind of question shall never be subject to any kind of dispute or adjudication. That is the reason why we want to make this provision in article 271-A.

Shri M. Ananthasayanam Ayyangar : What about the ownership of the waters themselves?

The Honourable Dr. B. R. Ambedkar : What do you want to own water for? You may then want to own the sky above.

Shri M. Ananthasayanam Ayyangar : For the manufacture of salt, etc.

The Honourable Dr. B. R. Ambedkar : Your laws will prevail over that area. Whatever law you make will have its operation over the area of three miles from the physical territory that is what is wanted and that you get by this.

Shri Mahavir Tyagi : Waters have not been included.

The Honourable Dr. B. R. Ambedkar : According to the International Law, the territory of a State not only includes its physical territory, but also three miles beyond. Any law that you make will operate over that area.

Shri Mahavir Tyagi : What about the rest of the waters?

The Honourable Dr. B. R. Ambedkar : Anything below the air you get.

Shri Mahavir Tyagi : What about waters beyond three miles?

Shri M. Ananthasayanam Ayyangar : May I ask Dr. Ambedkar if he is not aware that water is as much a property as anything else, if not better property, and disputes over water have arisen in plenty? To avoid dispute between a Province and the Union, is it not desirable to include waters also in the property of the Indian Union?

Mr. President : He has answered that; he thinks it is not necessary to say that.

The Honourable Dr. B. R. Ambedkar : Anything above the land goes with the land. If there is a tree above the land, the tree goes with the land. Water is above the land and it goes with the land.

An Honourable Member : Sir. . . . . .

Mr. President : I think we have sufficiently discussed and Dr. Ambedkar has replied to the debate. We need have no further discussion. I will put the article to vote.

Shri K. Hanumanthaiya (Mysore State) : I want one clarification, Sir. As Dr. Ambedkar says if territorial waters, that is, land three miles beyond the coast-line, belongs to the Union, where is the necessity for this section at all?

Mr. President : That is the question which he has answered.

Shri K. Hanumanthiya : If the interpretation of Dr. Ambedkar holds good. . . . .

Mr. President : No more discussion about it. Dr. Ambedkar has said what he has to say. Members have to take it.

I shall now put the article to vote.

The question is :

"That the following new article be added, after article 271 :—

271-A. *All lands, minerals and other things of value lying within territorial waters vest in the Union*.—All lands, minerals and other things of value underlying the ocean within the territorial waters of India shall vest in the Union and be held for the purposes of the Union."

The motion was adopted.

Article 271-A was added to the Constitution.

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Article 272 [COI Article 298]

Mr. President : The motion is :

"That article 272 form part of the Constitution."

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in article 272, after the word and figure 'Part I' in the two places where they occur, the words and figures 'or Part III' be inserted."

Shri H. V. Kamath : Mr. President, there is only one point that I want to raise in connection with this article which is before this House. The article seeks to extend the executive power of the Union and of each State for the time being specified in Part I or Part III of the First Schedule, not merely to the grant, sale, disposition or mortgage of any property held for the purposes of the Union or of such State, as the case may be, but also to the making of contracts. I wonder whether it is wise on our part to invest the executive with power to make contracts without any reference to or subsequent confirmation by the sovereign Parliament at the Centre. On a reference to articles 2 and 3, the House will see that Parliament has been invested with very wide powers of a fundamental character. This article, if adopted as it is, without any sort of clarification or without any authoritative exposition of the same—this has been moved before us without any speech by Dr. Ambedkar or any of his wise colleagues-seeks to invest the executive with the power or privilege of making contracts.

Mr. President : "Subject to any Act of the appropriate legislature."

Shri H. V. Kamath : Yes Sir. The first part says, "subject to any Act of the appropriate Legislature." But, the second part says, "as the case may be, and to the purchase or acquisition of property for those purposes respectively, and to the making of contracts." We should lay down specifically in the article that the right to make contracts should be subject to the right of Parliament or the appropriate Legislature to rescind it. Otherwise, I am afraid that some Ministry, either in the State or at the Centre may enter into some undesirable contract; and Parliament or the Legislature therefore should be invested with the power to rescind it. The article only says, 'subject to any Act.' I do not know whether Act means any Act already on the Statute Book or any subsequent right of the Legislature to rescind. I want this right to be conferred on Parliament and the Legislature specifically that both of them have got the power to rescind any contract that may be entered into by the executive at the Centre or in the States with regard to any property. If that safeguard were not provided for in this article, I fear we might land ourselves in trouble. I therefore think that clarification is necessary on this point to the effect that Parliament or the Legislature in the State has not merely the right to lay down the provisions with regard to disposition of property in various ways, an making of contracts but also has got the right to rescind any such contract made by a State or the Union.

Prof. Shibban Lal Saksena : Sir, I do not think the observations of the Mr. Kamath and his apprehensions have any foundation because the article clearly says :

"(1) The executive power of the Union and of each State for the time being specified

in Part I of the First Schedule shall extend, to any Act of the appropriate Legislature, to the grant, sale, disposition or mortgage of any property held for the purposes of the Union or of such State, as the case may be, and to the purchase or acquisition of property for those purposes respectively, and to the making of contracts.

(2) All property acquired for the purposes of the Union or of a State for the time being specified in Part I of the First Schedule shall vest in the Union or any such State, as the case may be."

So it means that this article applies to all contracts as well. There is no apprehension that contracts shall be made without reference to acts of legislature but I was wondering whether this article was necessary at all and whether this power does not vest in the Parliament without this article being in the Constitution. The Parliament can always pass laws for disposing of properties of the Union or purchasing of properties or mortgaging them. Why should there be an article of this sort in the Constitution itself? Parliament is all powerful and it can pass laws for purchase and disposal of properties of the Union. I do not see the necessity of this article at all in the Constitution.

Shri K. M. Munshi (Bombay :General) : Mr. President, Sir, if my honourable Friend Mr. Kamath had considered the article fully, he would have found that the rights of the Parliament are fully protected. All the transactions which are mentioned there, grant, sale, disposal or mortgage are not legislative acts but executive act and therefore appropriately vested in the Executive; they are subject to any Act of the appropriate legislature. Therefore the Parliament or the legislature of the State will pass laws and thereby the manner in which these transactions are to be entered into, the authority which is vested with the power to enter into these transactions, will be properly defined. It would bring down the whole Government if Parliament or Legislature is invested with executive power mentioned here. For instance, take the question of sale of a property. A screw in a distant military Cantonment belongs to the Government and some official wants to dispose it off; should the matter go to Parliament for this purpose? The whole idea of having two organs of State Executive and Legislature is that all executive action has to be done by the Executive but under the qualifications, the authority and the manner prescribed by Legislature. So Parliament cannot have any executive power over these transactions and I think the clause as it is which has been really reproduced from the Government of India Act is a well-advised article and should be maintained.

Mr. President : Would you like to speak, Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar : I think Mr. Munshi has clearly explained and I do not like to add anything to it.

Mr. President : The question is :

"That in article 272, after the words and figure 'Part I' in the two places where they occur, the words and figures 'or Part III' be inserted."

The amendment was adopted.

Mr. President : The question is :

"That article 272, as amended, stand part of the Constitution."

The motion was adopted.

Article 272, as amended, was added to the Constitution.

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Article 273 [COI Article 299]

Mr. President : We take up 273. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I beg to move :

"That in clause (1) of article 273, after the word and figure 'Part I' the words and

figures 'or Part III' be inserted.

That with reference to amendment No. 201 above, in clause (1) of article 273, after the word 'Governor' in the two places where it occurs, the words 'or the Ruler' be inserted.

That with reference to amendment No. 201 above, in clause (2) of article 273, for the word 'the governor of a State' the words 'the Governor nor the Ruler' be substituted."

Shri Mahavir Tyagi : Sir, reading the whole article as it is, one is at a loss to understand as to who will ultimately be responsible for the wrong transactions if there are any. The article reads :

"All contracts made in the exercise of the executive power of the Union or of a State for the time being specified in Part I of the First Schedule shall be expressed to be made by the President, or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise."

From the words "shall be executed on behalf etc." I understand that the emphasis is not on the word 'executed' but on the use of the name of the Governor-General. I want to make it sure that in future it may not be construed that the meaning of the article is that whatever has been agreed upon by the Governor or the persons above shall essentially be executed. I can understand that it shall be executed in the name of the Governor but the question is; is it also the meaning that whatever has been agreed upon by the Governor or those who do it in the name of the Governor, whether it is in our interest or not, shall at all costs be executed? For instance there may be occasions just as only lately the Ministers of the Dominion of India or Cabinet just issued a statement and announced that with regard to Kashmir they will have a referendum and that referendum will decide. . . . .

Mr. President : This is the case of the contract and it has nothing to do with a political act like that.

Shri Mahavir Tyagi : Yes in contracts also, suppose the assets of the Government are contracted away by the men at the helm of affairs, will there be no check? Will the Parliament's ratification be necessary or they will be executed only because the commitments have been made by a person at the helm? Will the Parliament have a hand in confirming it or not? Political commitments also have their repercussions financially. I do not want to mention Kashmir but then there are so many other transactions—I do not want to quote instances of the previous or present Government—I am just inventing instances. There may be occasions when some big financial deals are made which go against the interests of the country but this article says :

> "All contracts and assurances of property made in the exercise of that power shall be executed on behalf of the President."

If the meaning is only this that the execution will always be on behalf of the President, I do not mind. But if it means that it shall have to be executed at all costs I object to that.

Shri T. T. Krishnamachari : The liability is there.

Shri Mahavir Tyagi : Are you going to have the liability without defining the nature of the liability? If it were only a case of your defining that the liability shall always be executed in the name of the Governor or such other persons I can understand, because he is the head of the State and all executive action has to be taken in his name. But in clause (2) you say "Neither the President, nor the Governor of a State—nor the Ruler now—shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution. This also I can

understand in the case of the Governor whose name has been used only, formally but I cannot pardon the officers or the Ministers who do wrong things in his name. Such an officer shall be personally and even morally responsible for his wrong action. A carte-balanche is sought to be given here that whatever is done, no personal liability will rest either on the man in whose name it is done, or on the person who does it. Unless a liability has been ratified by Parliament, somebody must be responsible for it. So I want a clarification of this issue, for, there may be big commitments made of a nature with which the nation might not agree. The commitments are to be executed and then nobody is to be liable for it. I think, in matters of State everybody who works must be liable and responsible—even personally for all what he does. I deprecate the notion given to us by foreign rule here that a man who in the exercise of his official duties does wrong will not be responsible for that personally—as if an officer can do no wrong just as the king can do no wrong. This is a notion to which I do not agree. I feel that if a man commits an error or plays wrong with the finances of the State or does anything which injures the cause of the nation he must always know that the liability lies on his head and that he will be responsible to answer for it and also have to pay the liability. After all the liability must be located somewhere. Otherwise the officers will be free from all liabilities, and contracts and agreements and commitments will be made generally freely without having any regard to their propriety. If the Governors are not responsible, those who have committed themselves on his behalf or committed the nation must be responsible. It is only a question I have put to Dr. Ambedkar and I hope he will clarify the position.

Shri H. V. Kamath : Mr. President, I do not think that my Friend Mr. Tyagi's objection is valid. If he would take the trouble of turning to article 64(1) and also the corresponding article for the Governors in the relevant part he will find that all executive action of the Government of India or of a State shall be expressed to be taken in the name of the President or of the Governor. Here also this article follows article 64 very closely. This article lays down that all contracts made in the exercise of the executive powers of the Union shall be expressed to be made—the words used are "expressed to be made"—by the President etc. Neither the President nor the Governor nor, in the light of the new amendment, the Ruler of the State actually makes the contract. Whatever contract is entered into or made by the Union or the State is expressed as having been made in the name of the President or the Governor or the Ruler.

Shri Mahavir Tyagi : Who actually does it?

Shri H. V. Kamath : The Union or the State does it.

Shri Mahavir Tyagi : It is the people.

Shri H. V. Kamath : If my Friend thinks the sovereign authority is vested in the people then the people are responsible for everything that happens in the Union or the State. That depends upon the connotation that my Friend wants to give to the vesting of the authority of the Union or the State. If it vests in the people then the people are responsible. Everything is done in the name of the people because it is a democratic Constitution, and everything done in the Union or the State is done for the people or by the people. But certainly whatever is done is expressed as having been done by the President or the Governor or the Ruler, whatever the case may be. It is only a constitutional or a legal formula for enabling certain contracts to be made effective or to be given effect to. Otherwise, if every contract is signed by the people of the Union or the people of the State then I suppose in constitutional law, before the High Court or the Supreme Court it will make no meaning whatsoever. Somebody will have to sign it. For instance, treaties are signed by the Foreign Minister or the Prime Minister here.

Shri Mahavir Tyagi : I do not object to the name of the Governor being used but

to the immunity given to those persons who execute those undertakings and commit the country.

Shri H. V. Kamath : I am coming to that. Clause (2) lays down that "neither the President nor the Governor etc. shall be *personally* liable." Certainly it stands to reason, to logic and to the sense of law which I am sure the House possesses in abundant measure, that for anything that the President or the Governor or the Ruler does not actually do but that is expressed to be done in his name—the Cabinet at the Centre or the State will make the contract and the titular head of the Union or the State will sign the contract—he cannot be made personally liable. That is all that is meant by the article.

There is, however, another point which I would like Dr. Ambedkar to clarify in his reply, if at all he replies. That relates to the language of this article. I suppose this has been lifted bodily from the Government of India Act, as has been done in the case of various other articles. The article begins with "all contracts made in the exercise of the executive power of the Union or the State", but proceeding further the article refers to "all such contracts and all assurances of property". Suddenly these words "assurances of property" are pitchforked into the article. What exactly in constitutional terminology or legal parlance it means I do not know, because I am not a lawyer. "Contracts" I know; I am fairly well aware of its connotation. But what exactly is meant by "assurance of property" I do not know. What are the assurances, verbal or written, and what sort of assurances will be given with regard to property I do not know. Since the article starts with "contracts" is it not enough to say "contracts" later on too? I think it will be wiser to stick to that. I think this will create confusion and will not lead to any clearer understanding of this article. Then the amendment of Dr. Ambedkar refers to the word "ruler". I do not know whether we are in future going to be saddled or burdened with a distinction between Governors and rulers. Today we have this distinction of course and that is why I suggested postponement of the consideration of these articles. We have been assured by Sardar Patel and the Prime Minister that they are trying—and I dare-say they will succeed—to bring the States into line with the States mentioned in Part I of the First Schedule that is to say, Governors' provinces. I do not think that when this Constitution comes into force there will still be this distinction between Parts I and III; I think there will be only one category, and the distinction between ruler and Governor will vanish. With regard to terminology I think the ruler is not referred to as ruler but as Raja, Rajparamukh, etc.

Mr. President : The question was raised yesterday and Dr. Ambedkar said that he would consider any other expression which might be more suitable.

Shri H. V. Kamath : I am sorry; I was not here yesterday. It therefore struck me that the expression "ruler of a State" would not be quite appropriate for the executive head of the State. I hope they will all be called Governor and the word "ruler" will not be used any longer. I hope these points will be clarified by Dr. Ambedkar.

Prof. Shibban Lal Saksena : Sir, I think the point raised by my honourable Friend Shri Mahavir Tyagi is due to his not having read article 272 carefully. The power to make contracts has been given there and it will be subject to Acts of the legislatures. He cited the case of Pakistan and contracts with them about property, etc. I am sure whatever has been done was done with the consent of Parliament. So all contracts made under this article will be in accordance with the laws of the legislature, and no one can make any contract in contravention of those laws.

I however do not see the necessity of the second clause of article 273. It is well known that the President or Governor acts in the name of Governor and is not personally liable. So why make this provision specifically?

Shri Mahavir Tyagi : I would point out that in article 272 the "grant, sale, disposition or mortgage of any property" is mentioned; article 273 is different and

refers to "contracts and assurances" etc.

Prof. Shibban Lal Saksena : The article says that contracts can only be made subject to laws made by the legislature. But I do not see the purpose of the exemption made in article 273(2). If the President or Governor contravenes the laws he may be impeached and any other officer doing so will be punished. I should like to know the reason for the special exemption made in this subsection.

The Honourable Dr. B. R. Ambedkar : Sir, my honourable Friend Mr. Kamath had something to say about the use of the word "assurances", and I think his argument was that we were using the word "contracts" in one place and "assurances" in another. "Assurance" is a very old word in English conveyancing; it was used and is being used to cover all kinds of transfers and therefore the word "assurance" includes the word "contract". So there is no difficulty if both these words are used because assurance as a transfer of property has the significance of a contract.

Shri H. V. Kamath : My difficulty was about the language. The article starts with "all contracts" and then we have "all such contracts and all assurances of property", etc.

The Honourable Dr. B. R. Ambedkar : If there is any difficulty about the language it will be looked into by the Drafting Committee; I was explaining the technical difference between assurance and contract.

Then Mr. Tyagi asked why a person should be freed on liability if he signs a contract. I think much of the objection raised by Mr. Tyagi would fully disappear if he were made a member of the Cabinet; I should like him to answer the question whether any contract that he has made on behalf of the Government of India should impose a personal liability on him. I am sure he knows the ordinary commercial procedure. A principal appoints an agent to do certain things on his behalf. Unless the agent has acted outside the scope of the authority conferred upon him by the principal, the agent has not personal liability in regard to any contract that he has made for the benefit of the principal. It is the same principle here. My honourable Friend Mr. Tyagi does not know that there is a well establish system in the Government of India whereby it is laid down that it is only a document or letter issued by an officer of a certain status that binds the Government of India; a document or letter issued by any other officer does not bind the Government of India. We have therefore by rule specifically to say whether it is the Under-Secretary who would have the power to bind the Government of India, or the Joint Secretary or the Additional Secretary or the Secretary alone. Therefore I do not see why the person who is acting merely on behalf of the Government of India as a signing agency should be fastened upon for personal liability, because he is acting on the authority of the Government of India or within the authority of the Government of India. If the Government of India approves of any particular transaction to which the legislature raises any objection as being unnecessary, unprofitable or outside the scope of the legislative authority conferred by Parliament upon the executive Government, it is a matter between the Government and the Parliament. Parliament may either remove the Government or repudiate the contract or do anything it likes. But I do not understand how a personal liability can be fixed upon a men who is merely appointed as an agent to assure the other party that he is signing in the name of the Government of India. There is no substance in the objection raised by my Friend Mr. Tyagi.

Mr. President : I will now put the various amendments to vote.

The question is :

"That in clause (1) of article 273, after the word and figure 'Part I' the words and figures 'or Part III' be inserted."

The amendment was adopted.

Mr. President : The question is :

"That with reference to amendment No. 201 above, in clause (1) of article 273 after the word 'Governor' in the two places where it occurs, the words 'or the Ruler' be inserted."

The amendment was adopted.

Mr. President : The question is :

"That with reference to amendment No. 201 above, clause (2) of article 273, for the words 'the Governor of a State' the words 'the Governor nor the Ruler' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That article 273, as amended, stand part of the Constitution."

The amendment was adopted.

Article 237, as amended, was added to the Constitution.

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Article 274 [COI Article 300]

Mr. President : Article 274 is now for the discussion.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in clause (1) of article 274, for the words 'Government of India', in the second place where they occur, the words 'Union of India' be substituted."

Sir, with your permission I will also move my other amendments to this article now.

I move :

"That in sub-clause (a) of clause (2) of article 274, for the words 'Government of India' the words 'Union of India' be substituted."

I move :

"That with reference to amendment No. 2980 of the List of Amendments, in clause (1) of article 274, after the word and figure 'Part I' the words and figures 'or Part III' be inserted."

I move :

"That with reference to amendment Nos. 2980 and 2981 of the List of Amendments, in clause (1) of article 274, for the words 'by the Legislature' the words 'of the Legislature' be substituted."

I move :

"That with reference to amendment No. 204 above, in clause (1) of article 274, after the words 'corresponding Provinces' the words 'or the corresponding Indian States' be inserted."

I move :

"That with reference to amendment No. 206 above, in sub-clause (2) of article 274—

(i) after the words 'a Province', the words 'or an Indian State' be inserted; and

(ii) after the words 'the Province' the words 'or the Indian State' be inserted."

Shri Jaspat Roy Kapoor (United Provinces : General) : I am not moving my amendments Nos. 2981 and 2984. They may well be referred to the Drafting Committee for consideration.

(Amendment No. 2982 was not moved.)

Mr. President : Does any one wish to speak on this article?

Shri H. V. Kamath : Mr. President, amendment No. 2980 seeks to substitute the words 'Union of India' for the words "Government of India" so far as suing or being sued is concerned. I do not know exactly what is the change that is sought to be effected by the substitution. Article 270 refer to the Government of India as being the successor Government to the Dominion of India. When I suggested that this might be

changed to either "Union of India" or "Republic of India", that was not accepted by the House. So under article 270 we recognise the Government of India as succeeding the Dominion of India so far as assets, liabilities and obligations are concerned. But when we come to article 274 we are told that for the purpose of suing or being sued it will not be the Government of India but the Union of India. So long as the Government of India Act was in force, whenever the India Government was sued or had to sue it was the Secretary of State for India that came into the picture. I do not know exactly why a suit may be filed against the Union and not against the Government of India. After all, what is the Union of India? Article 2 tells us that India shall be a Union of States. In law what is sued or may be sued is the whole body, the whole corporate body of the Union Government. The Union as such in law is not a corporation may sure or be sued. It is only the Union Government that may sue or be sued. In the light of article 1, if we want to precise and exact so far as law is concerned, we should state in this article "the Government of the Indian Union". As it is, however the sense is quite clear and therefore it will be wise to retain the phrase "the Government of India" instead of "the Union of India" as suggested in amendment No. 2980.

As regards the other amendments moved by Dr. Ambedkar, there are certain points which are obscure. If Dr. Ambedkar will turn to article 270 he will see that it refers to Governors' provinces. In this article we refer to provinces. I think this is rather incorrect. So far as legal terminology is concerned, I think the provinces must be referred to as Governors' provinces, not merely as provinces. If we turn to the First Schedule, Part I, the provinces are referred to as Governor's provinces.

Then, Sir, about clause (2) of this article. The amendment in relation to this clause is No. 207. We do not know exactly what picture will emerge before us at the time of the commencement of this Constitution. Sub-clause (b) of clause (2) refers to Governors' provinces and, by reason of this amendment of Dr. Ambedkar, to Indian States as well. It is purely a hypothetical case, but if for instance as regards an Indian State which is an integral part of the Indian Union at the time this Constitution comes into being, some legal proceedings are pending to which this Indian State is a party. Suppose subsequently Parliament by law, under article 3 or by some other means, provides for the merger of this State with some province. According to sub-clause (b) the effect will be that the corresponding Indian State shall be substituted, but what will happen if that State disappears, if it is merged into an adjoining province? There is no such corresponding State at all left.

All these things are obscure at this stage and that why I feel that the consideration of this Chapter, when there are so many obscure points of which we have not got a clear picture, may very wisely be held over till the entire picture comes before our eyes and the relationship between the various States and the Union is clarified. But some articles have already been moved and adopted by this House. I submit that this article has got some obscure points and I hope Dr. Ambedkar or any of his colleagues will come before the House to clarify these points before we adopt this article.

The Honourable Shri K. Santhanam : Sir, I have just a single point to make. In 274 (1) the words "enacted by virtue of the powers conferred by this Constitution" are wholly superfluous and the meaningless because neither the Parliament nor the Legislature of any State can act except by virtue of the powers conferred by this Constitution. Therefore I suggest that these words may be dropped.

The Honourable Dr. B. R. Ambedkar : Sir, perhaps it might be desirable if I read to the House how the article would stand if the various amendments which I have moved were incorporated in the article. The article would read thus :

"The Government of India may sue or be sued in the name of the Union of India, and the Government of a State for the time being specified in Part I or Part III of the First Schedule may sue or be sued in the name of the State and may, subject to any

provisions which may be made by Act of Parliament or by the Legislature of such State, enacted by virtue of the powers conferred by this Constitution, sue or be sued in relation to their respective spheres in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted.

(2) If at the date of commencement of this Constitution—

(a) any legal proceedings are pending to which the Dominion of India is a party, the Union of India—"

that is new thing—

"shall be deemed to be substituted for the Dominion in those Proceedings; and

(b) any legal proceedings are pending to which a Province or an Indian State is a party, the corresponding State shall be deemed to be substituted for the province or the Indian State in those proceedings."

Now, this article, as it will be seen, merely prescribes the way in which suits and proceedings shall be started. This has no other significance at all. The original wording was that it shall be sued in the name of the Government of India. Obviously the Government of India, that is to say, the executive government, is a fleeting body, being there at one time and then disappearing and some other people coming in and taking charge of the executive.

Shri H. V. Kamath : The Government is not fleeting; the personnel of the government may be fleeting.

The Honourable Dr. B. R. Ambedkar : There is a difference between the Government of India and the Union of India. The Government of India is not a legal entity; the Union of India is not a legal entity, a sovereign body which possesses rights and obligations and therefore it is only right that any suit brought by or against the Central Government should be in the name of the Union or against the Union.

Now, with regard to the term "corresponding States" some difficulty was expressed. It may no doubt be quite difficult to say which State corresponds to the old State. In order to meet this difficulty, provision has been made in article 303(1)(g), which you will find on page 145 of the Draft Constitution, where it has been provided that a corresponding Province or corresponding State means in cases of doubt such Province or State as may be determined by the President to be the corresponding Province or, as the case may be, the corresponding State for the particular purpose in question. Therefore this difficulty—since the exact equivalent of an old Province or State is difficult to judge as there are bound to be some variations as to territory and so on—can be solved only by giving power to the President to determine which new particular State corresponds to which particular old State. So that provision has been made.

Sub-clause (2) deals with pending proceedings and all that sub-clause (2) suggests is this : that when any proceedings are pending, where the entities to sue or to be sued are different from what we are providing in sub-clause (1), the Union of India or the corresponding State shall be inserted in the old proceedings, so that the States may be sued in accordance with 274 (1). With regard to the objection taken by my honourable Friend, Mr. Santhanam that the words "enacted by virtue of powers conferred by this Constitution" as being superfluous, all I can say is I disagree with him and I think these are very necessary.

Mr. President : The question is :

"That in clause (1) of article 274, for the words 'Government of India', in the second place where they occur, the words 'Union of India' be substituted. "

The amendment was adopted.

Mr. President : The question is :

"That in sub-clause (a) of clause (2) of article 274, for the words 'Government of

India' the words 'Union of India' be substituted. "

The amendment was adopted.

Mr. President : The question is :

"That with reference to amendment No. 2980 of the List of Amendments, in clause (1) of article 274, after the word and figure 'Part I', the words and figures 'or Part III' be inserted."

The amendment was adopted.

Mr. President : The question is :

"That with reference to amendments Nos. 2980 and 2981 of the List of Amendments, in clause (1) of article 274, for the words 'by the Legislature' the words 'of the Legislature' be substituted. "

The amendment was adopted.

Mr. President : The question is :

"That with reference to amendment No. 204 above, in clause (1) of article 274, after the words 'corresponding provinces' the words 'or the corresponding Indian States' be inserted. "

The amendment was adopted.

Mr. President : The question is :

"That with reference to amendment No. 206 above, in sub-clause (b) of clause (2) of article 274—

(i) after the words 'a Province' the words ' or an Indian State' be inserted; and

(ii) after the words 'the Province' the words 'or the Indian State' be inserted.

The amendment was adopted.

Mr. President : the question is :

"That article 274, as amended, stand part of the Constitution. "

The motion was adopted.

Article 274, as amended, was added to the Constitution.

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New Article 274-A [COI Article 301]

The Honourable Dr. B. R. Ambedkar : Sir, I would like this article to be held over.

Mr. President : Then there is a long amendment, a new part to be added by Mr. Sidhva.

Shri T. T. Krishnamachari : May I suggest that the House may take up Part XIII-the election chapter, article 289 and onwards as put in the Order Paper?

Shri R. K. Sidhva : Sir, this new article which I seek to move relates to the delimitation in local areas, urban and rural of the entire territory of India.

The Honourable Dr. B. R. Ambedkar : This is to be held over.

Shri R. K. Sidhva : Therefore, Sir, with your permission, I shall move it when that article comes in.

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Article 289 [COI Article 324]

Mr. President : We shall now take up Part XIII-article 289.

Shri T. T. Krishnamachari : May I suggest that amendment No. 99 may be taken up as it substantially replaces the whole article? all the other amendments may be discussed thereafter.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I move :

"That for article 289, the following article be substituted :—

289. *Superintendence, directions and control of elections to be vested in an election commission*.—(1) 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 President and Vice-President held under this Constitution, including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections to Parliament and to the Legislatures of States shall be vested in a Commission (referred to in his Constitution as the Election Commission) to be appointed by the President.

(2) 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 appoint, and when any other Election Commissioner is so appointed, the Chief Election Commissioner shall act as the Chairman of the Commission.

(3) Before each general election to the House of the People and to the Legislative Assembly of each State and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President shall also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on it by clause (1) of this article.

(4) The conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine :

Provided that the Chief Election Commissioner shall not be removed from the office except in like manner and on the like grounds as a judge of the Supreme Court and the conditions of the service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment :

Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

(5) The President or the Governor or Ruler of a State shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1) of this article."

Mr. President : I have notice of a number of amendments, some in substitution of the articles 289, 290 and 291 and some amendments to the amendments which are going to be moved. I think I had better take the amendments which are in the nature of substitution of these articles. Dr. Ambedkar has moved one. There is another amendment in the name of Pandit Thakur Das Bhargava.

Pandit Hirday Nath Kunzru (United Provinces : General) : May I ask, Sir, whether Dr. Ambedkar is not going to say anything in support of the proposition that he has moved? It concerns a very important matter. Is it not desirable that Dr. Ambedkar who has put forward an amendment to article 289 should say something in support of his amendment. I think he would be proceeding on sound lines if he took the trouble of explaining to the House the reasons for asking it to replace the old article 289 by a new article. The matter is of the greatest importance and it is great pity that Dr. Ambedkar has not considered it worth his while to make a few remarks on this proposition.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I did not make any observation in support of the motion for two reasons. One reason was that if a debate took place on this article,—it is quite likely that a debate would undoubtedly take place—there would be certain points that will be raised in the debate, which it would be profitable for me to reply to at the close so as to avoid a duplication of any speech

on my part. That is one reason.

The second reason was that I thought that everybody must have read my amendment; it is so simple that they must have understood what it meant. Evidently, my honourable Friend Pandit Kunzru in a hurry has not read my new Draft.

Pandit Hirday Nath Kunzru : I have read every line of it; I only want that honourable Member should treat the House with some respect.

The Honourable Dr. B. R. Ambedkar : The House will remember that in a very early stage in the proceedings of the Constituent Assembly, a Committee was appointed to deal with what are called Fundamental Rights. That Committee made a report that it should be recognised that the independence of the elections and the avoidance of any interference by the executive in the elections to the Legislature should be regarded as a fundamental right and provided for in the chapter dealing with Fundamental Rights. When the matter came up before the House, it was the wish of the House that while there was no objection to regard this matter as of fundamental importance, it should be provided for in some other part of the Constitution and not in the Chapter dealing with Fundamental Rights. But the House affirmed without any kind of dissent that in the interests of purity and freedom of elections to the legislative bodies, it was of the utmost importance that they should be freed from any kind of interference from the executive of the day. In pursuance of the decision of the House, the Drafting Committee removed this question from the category of Fundamental Rights and put it in a separate part containing articles 289, 290 and so on. Therefore, so far as the fundamental question is concerned that the election machinery should be outside the control of the executive Government, there has been no dispute. What article 289 does is to carry out that part of the decision of the Constituent Assembly. It transfers the superintendence, direction and control of the preparation of the electoral rolls and of all elections to Parliament and the Legislatures of States to a body outside the executive to be called the Election Commission. That is the provision contained in sub-clause (1).

Sub-clause (2) says that there shall be a Chief Election Commissioner and such other Election Commissioners as the President may, from time to time appoint. There were two alternatives before the Drafting Committee, namely, either to have a permanent body consisting of four or five members of the Election Commission who would continue in office throughout without any break, or to permit the President to have an *ad hoc* body appointed at the time when there is an election on the anvil. The Committee, has steered a middle course. What the Drafting Committee proposes by sub-clause (2) is to have permanently in office one man called the Chief Election Commissioner, so that the skeleton machinery would always be available. Election no doubt will generally take place at the end of five years; but there is this question, namely that a bye-election may take place at any time. The Assembly may be dissolved before its period of five years has expired. Consequently, the electoral rolls will have to be kept up to date all the time so that the new election may take place without any difficulty. It was therefore felt that having regard to these exigencies, it would be sufficient if there was permanently in session one officer to be called the Chief Election Commissioner, while when the elections are coming up, the President may further add to the machinery by appointing other members to the Election Commission.

Now, Sir, the original proposal under article 289 was that there should be one Commission to deal with the elections to the Central Legislature, both the Upper and the Lower House, and that there should be a separate Election Commission for each province and each State, to be appointed by the Governor or the Ruler of the State. Comparing that with the present article 289, there is undoubtedly, a radical change. This article proposes to centralize the election machinery in the hands of a single

Commission to be assisted by regional Commissioners, not working under the provincial Government, but working under the superintendence and control of the central Election Commission. As I said, this is undoubtedly a radical change. But, this change has become necessary because today we find that in some of the provinces of India, the population is a mixture. There are what may be called original inhabitants, so to say, the native people of a particular province. Along with them, there are other people residing there, who are either racially, linguistically or culturally different from the dominant people who are the occupants of that particular Province. It has been brought to the notice both of the Drafting Committee as well as of the Central Government that in these provinces the executive Government is instructing or managing things in such a manner that those people who do not belong to them either racially, culturally or linguistically, are being excluded from being brought on the electoral rolls. The House will realise that franchise is a most fundamental thing in a democracy. No person who is entitled to be brought into the electoral rolls on the grounds which we have already mentioned in our Constitution, namely, an adult of 21 years of age, should be excluded merely as a result of the prejudice of a local Government, or the whim of an officer. That would cut at the very root of democratic Government. In order, therefore, to prevent injustice being done by provincial Governments to people other than those who belong to the province racially, linguistically and culturally, it is felt desirable to depart from the original proposal of having a separate Election Commission for each province under the guidance of the Governor and the local Government. Therefore, this new change has been brought about, namely, that the whole of the election machinery should be in the hands of a Central Election Commission which alone would be entitled to issue directives to returning officers, polling officers and others engaged in the preparation and revision of electoral rolls so that no injustice may be done to any citizen in India, who under this Constitution is entitled to be brought on the electoral rolls. That alone is, if I may say so, a radical and fundamental departure from the existing provisions of the Draft Constitution.

So far as clause (4) is concerned, we have left the matter to the President to determine the conditions of service and the tenure of office of the members of the Election Commission, subject to one or two conditions, that the Chief Election Commissioner, shall not be liable to be removed except in the same manner as a Judge of the Supreme Court. If the object of this House is that all matters relating to Elections should be outside the control of the Executive Government of the day, it is absolutely necessary that the new machinery which we are setting up, namely, the Election Commission should be irremovable by the executive by a mere *fiat*. We have therefore given the Chief Election Commissioner the same status so far as removability is concerned as we have given to the Judges of the Supreme Court. We, of course, do not propose to give the same status to the other members of the Election Commission. We have left the matter to the President as to the circumstances under which he would deem fit to remove any other member of the Election Commission, subject to one condition that the Chief Election Commissioner must recommend that the removal is just and proper.

Then the question was whether the Electoral Commission should have authority to have an independent staff of its own to carry on the work which has been entrusted to it. It was felt that to allow the Election Commission to have an independent machinery to carry on all the work of the preparation of the electoral roll, the revision of the roll, the conduct of the elections and so on would be really duplicating the machinery and creating unnecessary administrative expense which could be easily avoided for the simple reason, as I have stated, that the work of the Electoral Commission may be at times heavy and at other it may have no work. Therefore we have provided in clause (5) that it should be open for the Commission to borrow from the provincial

Governments such clerical and ministerial agency as may be necessary for the purposes of carrying out the functions with which the Commission has been entrusted. When the work is over, that ministerial staff will return to the provincial Government. During the time that it is working under the Electoral Commission no doubt administratively it would be responsible to the Commission and not to the Executive Government. These are the provisions of this article and I hope the House will now realise what it means and in what respects it constitutes a departure from the original article of the Draft Constitution.

Mr. President : Pandit Thakur Das Bhargava—do you wish to move your three amendments?

Pandit Thakur Das Bhargava : No, Sir.

Mr. President : Mr. Kapoor is not moving his amendment. The article is open for discussion.

Prof. Shibban Lal Saksena : Sir, I have given notice of an amendment to an amendment to article 289.

Sir, I beg to move :

"That in Amendment No. 99 of List I (Fifth Week), the following amendments be incorporated :—

(1) At the end of clause (1) add the following words :—

'Subject to confirmation by 2/3rd majority in a joint session of both the Houses of Parliament.'

(2) After the word appoint in clause (2), the following words be inserted :—

'Subject to confirmation by 2/3rd majority in a joint session of both the Houses of Parliament.'

(3) In clause (3), for the words 'after consultation with' the words 'in concurrence with' be substituted.

(4) In clause (4) for the words 'President may be rule determine' the words 'Parliament may be law determine' be substituted.

(5) In proviso (1) to clause (4) substitute 'Election Commissioners' for the words 'Chief Election Commissioner' in both places.

(6) In proviso (2) to clause (4) omit 'any other Election Commissioner or.' "

Mr. President, Sir, I must congratulate Dr. Ambedkar on moving his amendment. As he has said, his amendment really carries out the recommendations of the Fundamental Rights Committee and in fact the matter was so important that it was thought at one time that it should be included in the Fundamental Rights. The real purpose is that the fundamental right of adult franchise should not only be guaranteed by the Constitution but its proper exercise should also be guaranteed in practice. He has explained to us that he was tried to make the Election Commission wholly independent of the Executive and he therefore hopes that by this method the fundamental right to franchise of all the individuals shall not only be guaranteed but that it shall also be exercised in a proper manner so that the elected people will represent the true will of the people of the country. After a careful study of his amendment I have suggested my above amendments to carry out the real purpose of Dr. Ambedkar's amendment in full.

What is desired by my amendment is that the Election Commission shall be completely independent of the Executive. Of course it shall be completely independent of the provincial Executives but if the President is to appoint this Commission, naturally it means that the Prime Minister appoints this Commission. He will appoint the other Election Commissioners on his recommendations. Now this does not ensure their independence. Of course once he is appointed, he shall not be removable except by 2/3rd majority of both the Houses. That is certainly something which can instil

independence in him, but it is quite possible that some party in power who wants to win the next election may appoint a staunch party-man as the Chief Election Commissioner. He is removable only by 2/3rd majority of both Houses on grave charges, which means he is almost irremovable. So what I want is this that even the person who is appointed originally should be such that he should be enjoying the confidence of all parties—his appointment should be confirmed not only by majority but by two-thirds majority of both the Houses. If it is only a bare majority, then the party in power could vote confidence in him but when I want 2/3rd majority it means that the other parties must also concur in the appointment so that in order that real independence of the Commission may be guaranteed, in order that everyone even in opposition may not have anything to say against the Commission, the appointments of the Commissioners and the Chief Election Commissioner must be by the President but the names proposed by him should be such as command the confidence of two-thirds majority of both the Houses of Legislatures. Then no person can come in who is a staunch party-man. He will necessarily have to be a man who will enjoy the confidence of not only one party but also of the majority of the members of the Legislature. Then alone he can get a 2/3rd majority in support of his appointments. I therefore, think that if the real purpose of the recommendations of the Fundamental Rights Committee is to be carried out, as Dr. Ambedkar proposes to do by this amendment, then he must provide that the appointment shall not only be by the President but it shall be by the President subject to confirmation by a two-thirds majority of both Houses of Parliament sitting and voting in a joint session.

Shri Mahavir Tyagi : Don't you think that the party will issue whips to elect a certain man? He will be a party-man.

Prof. Shibban Lal Saksena : What I have said in this. He will not be a Member of Parliament. He can be anybody else, but whosoever is chosen must be a person who enjoys the confidence of at least two-thirds majority of both the House of Parliament so that one single party in power cannot impose its own man on the country.

Shri Mahavir Tyagi : The majority party will put up its own candidate for the job and issue whips that all should vote for that candidate. Whether he is a Member or outsider he will be a party nominee.

Prof. Shibban Lal Saksena : Majority means only 51 per cent., but I want a two-thirds majority.

Shri Mahavir Tyagi :You are having more than two-thirds majority already.

Prof. Shibban Lal Saksena : At this time nothing will help in this matter. Whosoever you put forward will be elected. But we are making a Constitution for ever and not only for today. Today of course whosoever is appointed by the President on the recommendation of the Cabinet will be approved. We are lucky in having as our Prime Minister a man of independence and impartiality and he will see that a proper person is appointed. But we can not be sure that the Prime Minister will always be such a personality. I want that in future, no Prime Minister may abuse this right, and for this I want to provide that there should be two-thirds majority which should approve the nomination by the President. Of course there is danger where one party is in a huge majority. As I said just now it is quite possible that if our Prime Minister wants, he can have a man of his own party, but I am sure he will not do it. Still if he does appoint a party-man, and the appointment comes up for confirmation in a joint session, even a small opposition or even a few independent members can down the Prime Minister before the bar of public opinion in the world. Because we are in a majority we can have anything passed only theoretically. So the need for confirmation will invariably ensure a proper choice. Therefore, I hope this majority will not be used in a manner which is against the interests of the nation or which goes against the impartiality and independence of the Election Commission. I want that there should be this provision in

the Constitution so that even in the future if some Prime Minister tends to be partial, he should not be able to be so. Therefore, I want to provide that whenever such an appointment is made, the person appointed should not only be a nominee of the President but should enjoy the confidence of two-thirds majority of both the Houses of Parliament.

The second point made by Dr. Ambedkar was that this Commission may not have permanent work and therefore only the Chief Election Commissioner should be appointed permanently and others should be appointed when necessary on his recommendations. Our Constitution does not provide for a fixed four years election cycle like the one in the United States of America. The elections will probably be almost always going on in some province or the other. We shall have about thirty provinces after the States have been integrated. Our Constitution provides for the dissolution of the Legislature when a vote of no-confidence is passed. So it is quite possible that the elections to the various Legislatures in the provinces and the Centre will not be all concurrent. Every time some election or other will be taking place somewhere. It may not be so in the very beginning or in the very five or ten years. But after ten or twelve years, at every moment some elections in some province will be going on. Therefore, it will be far more economical and useful if a permanent Election Commission is appointed—not only the Chief Election Commissioner but three or five Members of the Commission who should be permanent and who should conduct the elections. I do not think that there will be lack of work because as I said in our Constitution all the elections will not synchronize but they will be at varying times in accordance with the vote of no-confidence passed in various Legislatures and the consequent dissolution of the Legislatures. Therefore, I think that there will be no dearth of work. This Commission should be a permanent Commission and all the Commissioners should be appointed in the same manner as the Chief Election Commissioner. They should all be appointed by a two-thirds majority of the Legislatures and be removable in the same manner.

In clause (3) it has been said that the President may appoint Regional Commissioners after consultation with the Election Commission, that means the Chief Election Commissioner. Mere consultation means the President can have his way even disregarding the view of the Chief Election Commissioner. Therefore, I want "in concurrence with" so that if anyone disagrees,—if the Election Commission or the President disagree about a person—then he cannot be appointed.

Clause (4) says "the conditions of service and tenure of office of the Election Commissioners shall be such as the President may by rule determine". This I think is not proper. The conditions of service and tenure of office etc., of the Election Commissioners should not be in the power of the President to determine. Otherwise he can use his influence in a manner prejudicial to their independence. Therefore I want that these things should be determined by Parliament by law and they should be permanent so that nobody will be able to change them and no Election Commissioner will then look to the President for favours.

These are my suggestions so that the Election Commission may be really an independent Commission and the real fundamental right, the right of adult franchise, may be exercised in a proper manner. I agree with all that Dr. Ambedkar has said I only want to suggest that what he has suggested will not be sufficient to carry out what he wishes.

Shri H. V. Pataskar (Bombay : General) : Mr. President, Sir, I have carefully gone through the new amendment No. 99 moved by my respected Friend Dr. Ambedkar and I have also very carefully listened to the arguments that he advanced. While I agree with him entirely, that the elections in any democratic from of government must be free from any sort of executive interference I still do not understand and realise the

necessity of making it wholly centralised always. That is the only point. I am going to discuss the difference between the original article 289 as it stood in the Draft Constitution and the new Article which has been suggested in its place by amendment No. 99, and particularly clause (3) of the same. I would now like to give a brief history of this article. There was first the report of the Union Constitution Committee dated the 4th July 1947 and on page 55 there was this paragraph :

"The superintendence, direction and control of all elections, whether federal or provincial held under this Constitution, including the appointment of election tribunals for decision of doubts and disputes arising out of or in connection with such elections shall be vested in a Commission to be appointed by the President."

This clause (24) therefore laid it down that whether it is federal or provincial, the superintendence, direction and control of elections should vest in one single Commission. Then the matter came before this House on 29th June 1947 and I brought forward an amendment confining it to federal elections only. The idea was that there should be similarly constituted independent tribunals for provinces also. The underlying reason even then was that elections should be free; the only question was that there should be separate independent Commissions for the provinces or States. The idea was that it would be difficult for one Commission sitting here in Delhi or somewhere else to supervise elections all over India. That amendment was accepted by the then mover of the clause, Honourable Mr. Gopalaswamy Ayyangar. The idea of every one, including Dr. Ambedkar, then was that elections would be kept free from executive interference. The only point was that there should be different Commissions as one Commission could not carry out the functions entrusted to it. Then on 29th August the Drafting Committee was appointed which considered the decision of the House in framing article 289 (1) and (2). The Draft Report says :

"The Committee has not thought it necessary to incorporate in the Constitution electoral details including delimitation of constituencies, etc."

They left it to be provided by auxiliary legislation. So they considered the decision of this House of the 29th July and the original article 289 is in conformity with that. And the House will consider whether clauses (1) and (2) of article 289 are not enough for the purpose. Granting that elections are the basis of democracy and should be free from executive interference, let us see whether article 289(1) and (2) are or are not enough. So far as federal elections are concerned the provisions of the present amended or substituted article and clause (1) of article 289 are the same. Supposing we have to provide for the appointment of a federal Commission, it cannot be done by the Central Government which is an Executive Authority. It has to be done by the President. Then with regard to clause (2) the Drafting Committee thought that with respect to the appointment of a Commission for the province it will be equally independent if that appointment was made not by the Government of the day but by the Governor of the State. At the time of the Draft the idea was that there should be an elected Governor. Now at present we have no elected Governor but now we have provided for a Governor who will be nominated by the President. So virtually the appointment of the Commission to be made by the nominated Governor will be in the hands of the President himself. The Commission appointed by the President for the purpose of elections to the federal legislature can be independent. But I do not see why in the provinces the Commission appointed by the Governor should not be equally independent. His official existence depends entirely on the President. In that respect, if it was thought necessary, the power could be given to the President himself to make the appointment of a Provincial Commissioner. But is it necessary that we should go back and have one Central Commission only with all the inconveniences that it is likely to cause? Then clause (3) removes the regional Commission altogether. There is only one Central Commission and the regional commissioners are to assist that election commission. Is it desirable that one Commission sitting in one corner of India should

be entrusted to do this work, and the regional commissioners are merely to assist? I see absolutely no reason why this should be done. Then I find that, after the Constitution was presented to us, a note was given to us towards the middle of May 1949 which indicates to us the reasons for changing what we decided on 29th July 1947. Let us analyse the reasons given. The first reason is that this is a matter which requires careful consideration and that it has been hinted in a section of the press that in some provinces the Governments are helping the registration of their own supporters. This is a point which was adverted to by Dr. Ambedkar also. Sir, there will be no one in this House who will not condemn such practices aimed at the denying the people the franchise which this Constitution gives them. But then what is the remedy for it? The proper remedy would be to take action against people who resort to such practices. The Central Government has full power and authority to see that nothing of the kind is done. This is in the interests of democracy. Then we are told that it is hinted in a certain section of the press that certain provincial Governments are taking certain irregular actions. Sir, if it is merely a hint why should we be upset? Perhaps Dr. Ambedkar knows better how things are happening in the provinces. He may have information in the Cabinet. If this is so, it is better to take action against people who trifle with democracy on linguistic, racial or other considerations.

Another reason given is that in the bye-elections to the provincial assemblies it has been alleged by members of the losing party that provincial Governments take undue advantage of their position. That is bad. But I fail to understand how a change in the procedure as contemplated is going to bring about better state of affairs. If there are such people in Government they are unfit to be there in any democratic Government. If one or two instances of this kind have come to the notice the remedy is not to put down something in the Constitution which is not found anywhere else. These two reasons given in the report do not appeal to me.

Then it is said that the idea occurred of the Drafting Committee to change their draft of article 289 by a reference to what has been done in the Canadian Election Act of 1920. Sir, I find that that Act refers only to the appointment of a Chief Commissioner for the purpose of election to the Dominion Parliament. At page 380 of his latest book on the Canadian Government, Dr. Dawson says that the appointment of a Chief Commissioner or Chief Electoral Officer was made to provided for an independent official to supervise the Dominion Elections. It is only for the Federal election that the Chief Officer functions. For that there is no objection here also. There is already article 289(a). It is rather strange that even for provincial elections such an appointment should be considered necessary by the Central Authority.

To my mind the reason for all these changes is to be found in the fact that we are now trying gradually to move away from the idea of federation. On account of certain happenings in the provinces, on account of certain internal situations and external factors which are threatening us we are trying more and more to reverse the process of having a federations with which we started our business here. The first resolution of this Assembly known as the famous Objectives Resolution which we passed was to form a Union of autonomous units together with residuary powers. We are moving away from that from that position. We started with the idea of a Union or Federation of autonomous units. It may or may not be necessary now, to have such autonomous units. We have changed the name of a provinces into States. Then came the great tragedy of partition which gave a swing in favour of the unitary type of Government. It is due to this sort of thing that we are now trying to make everything, as we think, safe. We are clinging to the form of federation but we are changing it from within in substance. It is this process which has resulted in the amendment now under consideration. The land-marks in this process are that we changed from the elected Governors into nominated Governors and we are wanting to have for the Centre power to legislate in respect of subjects given to the provinces. Now we have this proposal

that in matters of election, even to provincial legislatures, the Centre alone should have power. In fact, this amendment No. 99 means that we are abolishing all provincial commissioners for elections, for what reason I do not know. If a Commission is appointed by the President for the Centre, why should not the same President appoint also election commissioners for the different provinces? Always why should we interfere with the provincial elections and thwart the process of democracy? I submit that this means that we are creating more and more points of difference between the Provinces and the Centre. After all, is this necessary? If you do not trust your Governor as he is likely to be influenced by the provincial Government, let the President appoint provincial commissioners or regional commissioners for elections. Why do you suppose that in the provinces there will be no purity of administration and that democratic practices will not be followed? It is not proper. I think a provision like this will only mean that we are getting away from the principles of federation and our distrust of even the nominated Governors is there. We are going to have adult franchise and for the transition period certain exceptional provisions may be necessary. But that need not lead us into framing a provision of this nature. After all in elections on the basis of adult franchise, whether for the Centre or for the province, the same type of people are likely to be returned and so I do not understand why there should be this distinction between the two. This can only result in creating a spirit of hostility which cannot and should not exist. Sir, I admit that the present conditions justify that there shall be a strong Central Government, but what is the idea of the Central Government being strong? Is it the idea that the Central Government should be so strong that the provinces will be deprived of their legitimate powers? It has become the fashion these days to say that if anybody talks of the provinces, it is something anti-national. This is entirely wrong.

Mr. President : Are you likely to take much time?

Shri H. V. Pataskar : Yes, Sir.

Mr. President : Then you can continue tomorrow.

Mr. Tajamul Husain (Bihar : Muslim) : Before you adjourn the Assembly, since we have been reading in the papers that the Assembly……..

Mr. President : If the honourable Member had waited, I was myself going to make a statement before adjourning.

We shall continue the discussion of this article tomorrow. Before we adjourn today, I desire to make one statement with regard to the programme of work. We have already dealt with nearly three-fourth of the Constitution. There are certain articles and certain Parts which have not yet been dealt with, but with regard to which we are not in a position today to take up the discussion. For example, the position of the Indian States in some cases is not quite clear yet. Then, there is the question of the distribution of revenues between the Union and the Units. This requires consultation between the Central Government and the provincial Governments. We are not in a position to have that Conference immediately for various reasons, one of which is that the Finance Minister has to be away from India for some time in connection with urgent national work. It has therefore become necessary to adjourn discussion of the remaining article of the Constitution for some time so that within the time available these consultations may be held and the articles may be taken up for consideration at a time when everybody is ready to deal with them finally. It has therefore been proposed that we adjourn discussion of the other articles of the Constitution after tomorrow and we meet again, say, about five weeks later, and then we pass the remaining articles of the Constitution in the second reading. When that will be finished, some time will be taken up in putting the various articles in their proper places, looking into the various articles from the drafting point of view and also considering whether any lacuna has been left or whether any changes are required

when the whole picture is before the Drafting Committee. That will take some time and when that has been done, we shall meet for the third reading which, I hope, will be a short session because the whole thing will have been thrashed out in the second reading state and we shall be able to get through the third reading pretty rapidly. That is the programme as I envisage it, and therefore I desire Members to note that we shall be adjourning after tomorrow for about five weeks. I shall announce the exact date of the meeting later on.

Shri R. K. Sidhva : Any idea of the date?

Mr. President : As I said, I shall announce the exact date later on.

Mr. Tajamul Husain : Under the rules, the President has no power to adjourn the House for more than three days.

Shri L. Krishnaswami Bharathi (Madras : General) : A formal resolution can be moved tomorrow before we adjourn.

Mr. President : When we adjourn, we shall adjourn in accordance with the rules.

We adjourn now till Eight O'clock tomorrow morning.

The Assembly then adjourned till Eight of the Clock on Thursday, the 16th June 1949.

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CONSTITUENT ASSEMBLY DEBATES
Volume 8
Thursday, the 16th June, 1949

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The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

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TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Members took the pledge and signed the Register :—

(1) Sheikh Mohd. Abdullah.
(2) Mirza Mohd. Afzal Beg. [Kashmir]
(3) Maulana Mohd. Syeed Masoodi.
(4) Shri Moti Ram Bagda.

Mr. President : I am sure the House will join me in extending a cordial welcome to Sheikh Mohd. Abdullah and the three other Members, who have joined the Assembly today and are going to take their seats for the first time. This brings to the Assembly now the full complement of representative from all the States that have acceded to India.

Shri H. V. Kamath (C. P. & Berar : General) : Bhopal and Hyderabad?

Mr. President : Their presence, I am sure is going to be of great help in framing the Constitution which is intended to cover the whole country and which, I am sure, will receive full support from all its constituent members. They have been somewhat late in coming but it is not their fault, nor do I think it is our fault. Circumstances have been such that they have been delayed, but I am sure they have come in time to make very useful contributions to our Constitution.

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DRAFT CONSTITUTION—*contd*.

Article 289 [COI Article 324]

Mr. President : We shall now proceed with the discussion of article 289. Mr. Pataskar.

Shri H. V. Pataskar (Bombay : General) : Sir, I am now going to look at this question from a constitutional point of view. So far as I am aware there is no other Constitution where such elaborate provisions with respect to the elections and its details are made. Even the Canadian Election Act on the basis of which the present amendment and the subsequent amendments which are to follow are drafted, is an Act of the Canadian Legislature, and that too, as I said yesterday, as far as I can find out from the records available to me, applicable only to the Dominion Parliament in Canada. In spite of all efforts, I could not get a copy of it either in the Legislative Library or this library. All the same, from the documents available, I am convinced. My point is whether really it is necessary or desirable that all these elaborate details about the method of election, about the Election Commission, etc., are necessary to be included in the Constitution. While, as we could find, there is some justification probably from what must have come to the notice of the Drafting Committee and in view of the work which is now proceeding for the preparation for the elections, that they want some provision of this kind to be made, the best remedy would be not to include them in the Constitution here, but to get an Act passed by the legislative section of the Constituent Assembly. I am told it is likely to meet in September next

and it would not have mattered if an Act on the lines of the Canadian Election Act was passed by the Central Legislature. It is not desirable that it should be provided for in the Constitution which is for all time to come. We do not know what conditions may prevail after ten or twenty years. From what is happening in some parts of the country, it is not desirable that our Constitution should be burdened with all these details. I would therefore still appeal—probably it may be without much effect—that all these thing and the subsequent provisions which are to follow could have more appropriately found a place in the Act to be passed by the Central Legislature. We have our own legislature even now and that could have been used.

Sir, I do not think it is desirable in matters of such consequence we should try to depart from time to time from what we decided earlier, unless there were some very cogent reasons as to why that decision should be reversed after a few months time. As I said, so far as I can see, article 289(2) is quite enough for the purpose. Even under article 289(2) we can appoint not merely some officials of the Government as Election Commissioners, but people of the position of High Court Judges; we can make them permanent; we can make them as Independent as we are trying to make them in the case of the Central Commission. Even under the Government of India Act, 1935, which certainly did not contemplate so much of a Federal Government as a type of Government which was to some extent more unitary than otherwise, provision for election was contained in section 291. It says : "In so far as provision with respect to the matters hereinafter mentioned is not made by this Act, His Majesty in Council may from time to time make provision with respect to those matters or any of them.....the conduct of elections under this Act and the methods of voting thereat etc. " Even then, practically it was left to the provincial Governments. I do not see any reason why we should make provision for all these things in the Constitution itself and as far as I have been able to ascertain, no other constitution contains a provision of this nature.

I have therefore to make one or two concrete suggestions. We may keep article 289 as it is. We may supplement it by an Act of the Central Legislature for making provision with respect to all other matters which are now tried to be put in this Constitution, as to what should be the status of these Regional and other Commissioners when they are appointed, whether they should be independent men of the position of High Court Judges, how they should be removed and all these things. I agree that they should be free from influence of the executive. All that we can easily entrust at least to the present Central Legislature.

Finally, I have to make an appeal that it is not yet too late in the day when we should really seriously consider whether article 289(2) is not enough. As I have already stated, the amendment takes away to my mind not only the last vestige of provincial autonomy, but actually displays a distrust of our people in provinces, down from the Governor nominated by the President to the smallest local authority. I do not think there is any justification for an attitude of this type. Therefore, I suggest that we should not try to incorporate all these things in the Constitution itself.

Shri R. K. Sidhva (C. P. & Berar : General) : Mr. President, Sir, I consider this article in the Constitution as one of the important articles as far as elections are concerned. I do not think that there are two opinions either in this House or outside the House that elections should be fair, pure, honest and impartial. If that is the view, I am sure it could be achieved only by an impartial agency as has been contemplated in this article. We want the elections to be above-board. Any machinery that is to be set up should be quite independent, free from any influence from any agency, executive or anybody. Therefore, Sir, I whole-heartedly welcome the article that has been proposed by my honourable Fiend Dr. Ambedkar.

Sir, I do feel that even this article does not go as far as is necessary in the matter of perfection of elections is concerned. I will show you presently that there is some

defect in this article also. With all that, I feel that every effort has been made in this article to achieve the object which we all are anxious to achieve.

It has been stated, why do you encroach upon the rights of the provinces by entrusting this work to a Special Commission? Now, Sir, I fail to understand how the question of encroaching upon the right of the provinces arises at all. This Commission will not run the elections for the provincial legislatures only, but it will run the elections for the Central Legislature also. If, it encroaches on the rights of the provinces, it encroaches on the rights of the Centre also, and therefore it is unfair to say that it encroaches upon the rights of the provinces.

Under this article, a machinery has been set up for the election purposes. While it has been made independent of the executive for purposes of administration, clause (5) says that the staff required for election work may be borrowed from the provinces. Herein lies the defect, which I said makes the scheme imperfect. If you want to make the scheme perfect, you should not borrow any staff from the provinces. Though during the period of election, the staff would be under the control of the Commission, it will be only for a temporary period. They will be permanent people responsible to the executive and if the executive wants to play mischief, it can issue secret instructions to that staff to act according to their behests. The staff may feel that their permanent duty lay with the executive, that the work with the Commission was for a short period and they would thus carry out the fiat or behest of the permanent officials. Therefore, Sir, I would have preferred all the staff to be also recruited from outside but I considered myself as to what will be the effect of it. It will require an army of men. Those persons who have seen the elections being run and those who are interested in it know that do run the elections of the whole country they will have to recruit a number of men, a large army of men. It will be very expensive; therefore, although to that extent it is imperfect, I accept it for the reason that it is nearer to perfection. If we have to recruit a new staff it will be prohibitive as far as expenditure is concerned and it will be a new untrained staff and probably it will not be administratively as effective as we would expect it to be. Another provision is as regards the permanency of the Commission. It has been suggested why you incur so much expenditure in providing for a permanent Commission. I have some experience of election of the Karachi Municipal Corporation both as the Mayor and Chairman of the Standing Committee. There is a provision in Karachi Municipal Act that there shall be a permanent election staff and in accordance with that since ten years we have introduced this permanently and the elections have been fair and perfect although compared with Karachi the number of voters there being negligible but the impersonation and the false votes have been completely removed by that method which we have introduced. I am positive that with the permanent Commission that we are going to establish, we are going to remove all these defects and it is incorrect to state that this Commission will not have any work after the general election is over. We shall have now about 4,000 members in all the provinces and there will be bye—elections. Surely every month there will be two or three elections—some will die, some will be promoted to high offices—some will go here and there. In this Constituent Assembly during the short period we have had a number of bye-elections although we had nothing to do with them, but in the places from which they have come there have been a number of elections. Therefore, apart from the necessity and fairness, this Commission will have ample work. Apart from that if the Commission is permanent, what will it do? Periodically it will examine the electoral rolls and from the statistics of those provinces those who are dead they will remove those names and will bring the electoral rolls up to date as far as possible. An electoral roll is to provide pure election and I know at present as the electoral rolls are prepared, 50 per cent. of them are defective. Some are dead and their names are intentionally put in by a particular party who wants to run the election and wants to put in names of their own choice; I have

heard people living in the cities trying to influence by mixing up with the executive. I can tell you that from my own personal experience and I feel that if we were to have a perfect electoral roll—and electoral roll is the principal thing in an election—I am sure we must have an independent Commission and if we establish a Permanent Commission we shall certainly have a permanent roll and a very good electoral roll. I have no doubt in my mind about that and therefore, though you say that it will be an expensive thing and it is not a necessity, I strongly say from my experience that this Commission is very necessary under the circumstances that I have mentioned.

Now coming to the tribunal, it will be necessary for the election petitions or those who have to make any application for the election, to have a Tribunal. I have also certain experience of tribunals. Tribunals have been appointed by the Governors in the past and they have appointed tribunals, at the instance of the Executive, of the favourites and they have never acted impartially. I therefore suggest that the tribunal should consist of judges of superior courts to whom the election petitions of the election should go. I am opposed to such cases being entrusted to any kind of tribunals. It will mar the very purpose and the very object for which we are striving—to have our elections pure and fair—it will frustrate that very object, if in the tribunal that will be appointed, some kind of mischief is made. In England also—I might state—the Constitutional law of the British Commonwealth provides for entrusting this work to superior courts. I therefore suggest that although nothing could be provided in this Constitution, I do not desire that the Constitution should be burdened with all this—but in the Act that will be made—the Election Act—wherein many things are required to be put in, *e.g.*, the secret ballot boxes etc.—I suggest to Dr. Ambedkar to bear that in mind that when the Parliament Act is made it must be made clear that the tribunal's appointment should not be left to the President or anybody—I do not want hereafter any kind of trickery that was played in the past should be played hereafter. With all that, I feel that the permanent superior judiciary alone can fairly and impartially adjudicate in such disputes and they will command the confidence of the public. Those who will be appointed from public men or some lawyers may be best lawyers but they will be temporary men and would be liable to influence. If the tribunal does not consist of responsible permanent men I am sure these tribunal will be of no effect. My Friend Mr. Pataskar desired that why burden the Constitution with election scheme, the rules may be made; but I can surely and safely tell him that if we have not such an article in our Constitution our very purpose of making our elections pure will be frustrated; it is, therefore, necessary that it should be provided here. I do not want this to go into the Election Act. I really wish even some of the other provisions *e.g.*, the secret ballot-box could also be provided in the Constitution which is very essential for an election. The whole thing depends upon the election for the future constituencies and if we do not make this provision in the Constitution and leave it to Parliament to be made, it will be running a great risk. Under these circumstances I whole-heartedly welcome this article and strongly support it.

Shri Kuladhar Chaliha (Assam : General) : Mr. President, I have heard with great attention the arguments advanced by Dr. Ambedkar who is the Constitutional manoeuvrer and whose industry and diligence is a wonder to all of us. Yet, his arguments have not brought that conviction which ordinarily they bring. His main objection is—he first argued that he wanted it to be inserted in the Fundamental Rights but as it was said that he wanted separate provision for this, so this article has been added in order to safeguard the interest of the electorate—he thought that a body outside the Executive should be there to conduct the elections; but what is that body outside the Executive? It is the President who will select the Chief Election Commissioner and he is a party-man whatever it may be and will have the same prejudices and same bias towards his own party-man as anyone else and therefore that argument does not hold very good. Secondly, he says and he admits that it is a

radical change I do not see any reason why this radical change is brought forward. Has he been able to give us examples of corruption and nepotism in case of election tribunals in the provinces? No instance has been given of abuse of power by the election tribunals appointed by the Governors in the provinces. In spite of that he wants a radical change. Of course radical illness requires a radical remedy, but Dr. Ambedkar has not been able to give one single instance of corruption or abuse of powers by these election tribunals. On the contrary we know that, as a result of the findings of an election tribunal in Sind, Pir Ilahi Bux was removed by his own party-men, which shows that our people have the capacity to be impartial. I see no reason why this radical change should be necessary.

Then it is said that there are minorities in the provinces who require protection. But should we keep them in haughty isolation and not pave the way for harmonious relations with the general population? By doing this you will be creating big problems for these provinces. It is said that they are racially and linguistically different. But will you prepetuate these differences or should you try to remove them? I submit that no justification has been offered for this radical change. Dr. Ambedkar has brought this forward on the analogy of the Canadian Act of 1920. But there they have a small population as against our 340 millions, and one Election Commission would hardly do for this country. In spite of there being Regional Commissioners this Election Commission would not be able to realise the feelings of the people of different parts of the country. They would not know what a man in Madras would do and what a man in Assam would do. I submit that this thing should not be taken out of the provinces. If you suspect the provinces and take greater powers for the Centre it will only lead to undesirable results. If you cannot trust men like Messrs. Pant, Kher and Shukla and the men working under them you will hardly make a success of democracy. You are doing something which will have a disintegrating effect and will accentuate differences instead of solving them. If you take too much power for the Centre the provinces will try to break away from you. How can a man in Madras understand the feelings the sentiments of a man in Assam or Bengal? You seem to think that all the best qualities are possessed by people here in the Centre. But the provinces charge you with taking too much power and reducing them to a municipal body without any initiative left in them. You think you possess better qualities than the men in the provinces, but I know there are people there who are much better than you are. If you cannot trust the honesty of your own individuals you can never make a success of democracy. You are always suspicious and think that the province will be unjust to the minorities. But if they are kept aloof and always under the protection of the President or the central executive, they will never be able to develop their own virtues, and you will only be encouraging disturbances and rebellions. It has been suggested that the Scheduled class people are suspicious about the impartiality of the provinces. But they are our own people and they can be just as fair and impartial as men in the Centre. Why should you think that you have developed the virtue of impartiality which no one else possesses? Sir, I fail to see why this provision should be sought to be embodied in the Constitution.

Sir, the Governor is appointed by the Centre and he will form election tribunals, as has been done in the past. In spite of Mr. Sidhva's assertion I must say that no case of partiality has been proved against any of these tribunals. In a case in which I was interested I know that even when the Congress was in the bad books of Government, the tribunal decided in favour of the Congress, although the candidate was opposed by Rai Bahadurs and other big men. That shows that they can be impartial. Why should you condemn your own men as partial, unjust and incapable of being honest? If we cannot trust our own people we are not worthy of our independence, Sir, an injustice is sought to be done to the provinces and they are needlessly suspected, and I therefore oppose this proposal.

Pandit Hirday Nath Kunzru (United Provinces : General) : Sir, my honourable Friend Dr. Ambedkar moved a new article yesterday in place of article 289 as contained in the Draft Constitution. The article deals with a very important matter and departs radically from the corresponding article in the Draft Constitution. Nevertheless he contented himself with moving his amendment without explaining in the smallest measure the reasons why the new Draft had been proposed. When I pointed out that it was not fair to the House that an article dealing with a very important matters should be placed before the House without a full explanation of its provisions he felt the need for defending himself. But finding that he was in a very difficult position he became reckless and said I had asked for an explanation only because I had not read the amendment. It was obvious that this irresponsible statement of his did not satisfy the House and he was therefore compelled to explain the differences between the new Draft and the old Draft.

Sir, several points arise in connection with this question. The most important question is one of principle. It is right that in a matter of this kind the provincial Governments which are being given full responsible government should be deprived of all power? I shall not dilate on this subject because it has been dealt with very ably and fully by our honourable Friend Mr. Pataskar. Dr. Ambedkar defended the new procedure which makes the Central Government responsible for superintendence, control and guidance in all matters relating to the preparation of the electoral rolls and the conduct of the elections on the ground that complaints had been received from some provinces that members belonging to racial, linguistic or cultural minorities were being excluded, under ministerial instructions, from the lists of voters. I do not know to what extent the complaints received by him or by the Government of India have been investigated and found to be correct. Supposing that they have been found to be correct, one has to ask oneself why this elaborate Constitution is being framed. If we cannot expect common honesty from persons occupying the highest positions in the discharge if their duties, the foundation for responsible government is wanting, and the outlook for the future is indeed gloomy. I do not know of any federal Constitution in which the Centre is charged with the duty of getting the electoral rolls prepared and the elections held fairly and without prejudice to any minority—there may be some constitution in which such a provision exists, but I am not aware of it. In all probability ours will be the only federal or quasi-federal Constitution in which the Provinces will be excluded from all share in the preparation of the electoral rolls and other ancillary matters except in so far as their help is needed by the Election Commissioners appointed by the President.

Even granting however, Sir, that there is need for taking the control of elections out of the hands of the provincial Governments we have to see whether the new Draft contains the necessary safeguards. It may be right to curtail the political power of the provinces; but is there no danger, if the article is left as it is, that the political prejudices of the Central Government may prevail where otherwise the political prejudices of the provincial Government might have prevailed? Everything in the new Draft is left to the President; the appointment of the Election Commission will be made by the President; he will appoint the Chief Election Commissioner and decide how many Election Commissioners should be appointed; he will decide the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners that might have to be appointed. Again, while it is provided that the Chief Election Commissioner should not be removed except in the same manner as a Judge of the Supreme Court, the removal of the other Election Commissioners is left in the hands of the President. He can remove any Commissioner he likes in consultation with the Chief Election Commissioner. Clause (4) of the article which deals with this matter is so important that I think it is desirable that I should read it out to the House. It says.

"The conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine :

Provided that the Chief Election Commissioner shall not be removed from office except in like manner and on the like grounds as a judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment;

Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner."

I find, Sir, that I made a mistake when I said that the other Election Commissioners and the Regional Commissioners could be removed in consultation with the Chief Election Commissioner. They can be removed only on the recommendation of the Chief Election Commissioner. Here two things are noticeable : the first is that it is only the Chief Election Commissioner that can feel that he can discharge his duties without the slightest fear of incurring the displeasure of the executive, and the second is that the removal of the other Election Commissioners will depend on the recommendations of one man only, namely the Chief Election Commissioner. However responsible he may be, it seems to me very undesirable that the removal of his colleagues who will occupy positions as responsible as those of judges of the Supreme Court should depend on the opinion of one man. We are anxious, Sir, that the preparation of the electoral rolls and the conduct of elections should be entrusted to people who are free from political bias and whose impartially can be relied upon in all circumstances. But, by leaving a great deal of power in the hands of the President we have given room for the exercise of political influence in the appointment of the Chief Election Commissioner and the other Election Commissioners and officers by the Central Government. The Chief Election Commissioners will have to be appointed on the advice of the Prime Minister, and, if the Prime Minister suggests the appointment of a party-man the President will have no option but to accept the Prime Minister's nominee, however unsuitable he may be on public grounds. (*Interruption*). Somebody asked me suitable why it should be so. As full responsible Government will prevail at the Centre, the President cannot be expected to act in any matter at his discretion. He can only act on the advice of the Ministry and, when, in matters of patronage, he receives the recommendations of the Prime Minister, he cannot, if he wants to act as a constitutional Head of the Republic, refuse to accept them. I think, Sir, therefore, that the Draft placed before us by Dr. Ambedkar has to be modified in several respects, so that the Election Commission may, in reality consist of impartial persons and the Election Commissioners may be able to discharge their responsible duties fearlessly.

My remedy for the defects that I have pointed out is that Parliament should be authorised to make provision for these matters by law. Again, Sir, this article does not lay down the qualifications of persons who are chosen as Chief Election Commissioners or as Election Commissioners. And, as I have already pointed out, in the matter of removal, the Election Commissioners are not on the same footing as the Chief Election Commissioner. I feel, Sir, that the opinion that I have placed before the House, was at one time or other the opinion of Dr. Ambedkar too. We have in the List of Amendments, amendment No. 103 which has not been moved by Dr. Ambedkar, but has been given notice of by him. Honourable Members who have read this amendment will have noticed that clause (2) provides that a 'member of the Commission shall only be removed from office in like manner and on the like grounds as a judge of the Supreme Court, and the conditions of service of a member of the Commission shall not be varied to his disadvantage after his appointment'. It will be clear therefore that the suggestion that I have made is in accord with the better judgment of Dr. Ambedkar

which, unfortunately, has not been allowed to prevail.

I know, Sir, that Dr. Ambedkar told us yesterday that it might be unnecessary to have permanent Election Commissioners and that all that might be required might be to appoint Election Commissions when there is work enough for them to do. In such a case obviously the procedure relating to the removal of judges of the Supreme Court cannot be applied in the case of Election Commissioners. This is true, but then there is no reason why the whole matter should be left in the hands of the President, and why the conditions and tenure of service of the Election Commissioners should be determined by rule by him. These, too, should be determined by law made by Parliament.

Again, Sir, we have to consider the position of Regional Commissioners who may have to be appointed in the provinces in order to help the Election Commission in carrying out its duties honestly and efficiently. It is obvious that so long as these officers are holding their offices they will be carrying out highly responsible duties. It will depend on them primarily whether the preparation of the electoral rolls and all matters connected with the conduct of the elections gives satisfaction to the public or not. Now, in the Draft which was not placed by him before the House Dr. Ambedkar provided with regard to the Regional Commissioners and the Returning Officers, etc., that no such authority or officer would be removed except by order of the President. As I have already pointed out a change has been made now and their removal has been made to depend on the recommendation of the Chief Election Commissioner. This has been done presumably because the Election Commissioners would be permanent officers and if there is only one permanent officer, the law cannot obviously require that the removal of the Regional Commissioners and the Returning Officers should depend on the decision of the Commissioners, as a whole. But for this very reason, Sir, the matter ought not to be left to the sweet will of the President, in reality the Prime Minister of the day, but should be determined by law.

My honourable Friend, Professor Shibban Lal Saksena, moved a number of amendments yesterday, Sir, with regard to the new Draft placed before the House by Dr. Ambedkar. It may not be practicable to accept some of them, but I think that he has done a public service by drawing the attention of the House to the glaring defects in the Draft that we are considering. I think it is the duty of my honourable friend, Dr. Ambedkar, to consider the matter carefully and to provide such safeguards as will give general satisfaction by ensuring that our electoral machinery will be free not merely from provincial political influences but also from Central political influences. We are going in for democracy based on adult franchise. It is necessary therefore that every possible step should be taken to ensure the fair working of the electoral machinery. If the electoral machinery is defective or is not efficient or is worked by people whose integrity cannot be depended upon, democracy will be poisoned at the source; nay, people, instead of learning from elections how they should exercise their, vote how by a judicious use of their vote they can bring about changes in the Constitution and reforms in the administration, will learn only how parties based on intrigues can be formed and what unfair methods they can adopt to secure what they want.

Mr. President : I think that Members understand that we will have to finish the agenda today. Otherwise we may have to sit tomorrow.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Mr. President, Sir, I have come here to support this article. At the beginning when I came to this Assembly for the first time, I thought that the Provinces should be made strong and the Centre to that extent must yield. But after a considerable amount of experience and on prolonged consideration of what is happening in the Provinces and in the States, I am now of the opinion that for many years to come the Centre must take charge of all important matters affecting the general well-being of the country and encroach on the Provincial

field. Election is a most important item in a democratic set-up and it is very necessary that it should be controlled and supervised by a very competent, independent and impartial body. The way in which some of the Provinces are proceeding shows that the Provinces are rent by party factions and it will always be the desire of the party, or the faction in power for the time being, to appoint election tribunals and officers of their own choice with a view to control or manipulate the elections. The result will be that election tribunals and officers will not be free from corruption and partiality. It is for this reason that I welcome the move by the Centre to control elections, so that thereby the impartiality and efficiency of the election machine could be ensured. We have had the experience of West Bengal and other Provinces. West Bengal is rent by party factions. Even in the Congress ranks in Calcutta and in the districts there are several groups and factions accusing one another of habitual corruption and the like. They are fighting against one another in a most unseemly fashion to the detriment of the general well-being of the country. This is also happening in some of the State. We have the unseemly quarrel in the Greater Rajasthan State and also in some other States. If we do not want the Provinces and the States to descend into chaos and disorder, the first thing that we should do is to control the election, not to interfere with the policies and activities of the different parties, but just to ensure impartiality and efficiency in the conduct of elections. The most important duty of the Commission would be to appoint Election officers upon whose efficiency, integrity and independence much will depend, and I believe that the Central control of the these elections will be welcome in serious quarters. The secrecy of the ballot box, as has been pointed out by one of the speakers and is well-known, is a very important matter in an election as fostering freedom of the vote, and this secrecy must be thoroughly and effectively guarded. We hear allegations and counter-allegations that in the recent South-Calcutta election, the secrecy of the ballot box and the integrity of the ballot papers were violated. I do not know what truth there may be in these allegations, but they have a bad odour in themselves. I believe that if these matters are controlled by the Centre, these tendencies to make allegations and counter-allegations of this type would be removed. The officers who are to be appointed to conduct these elections should be above all suspicion and should be selected just to avoid provincial cliques and parties. Sir, I do not wish to take up further time of the House. I accord my humble and whole-hearted support to this article.

Shri K. M. Munshi (Bombay : General) : Mr. President, Sir, I rise to support the amendment No. 99 moved by my honourable Friend, Dr. Ambedkar. This amendment has been subjected to two files, one by my honourable Friend, Pandit Kunzru, on the ground that the amendment does not go far enough, that it does not make the Election Commission sufficiently independent, that the Central Government could influence it in a manner prejudicial to fair elections. That is one ground. The other ground, of which the exponents have been my honourable Friends Mr. Pataskar and Kuladhar Chaliha from Assam, put forward, is that this is a trespass on provincial autonomy, to put it shortly. I will deal with these two points separately.

Sir, the amendment which has finally emerged from the Drafting Committee makes it clear that neither the Central Government nor the provincial Governments will have anything to do with the elections. The Chief Election Commissioner, as the House will find, is practically independent. No doubt he is appointed by the President, that is, the Central Government. There can be no other authority, no higher authority in India than the President for appointing this Tribunal. You cannot omit this important thing.

The next argument against the amendment is that this amendment departs from the old amendment No. 103 which was to be moved on behalf of the Drafting Committee, under which the Commissioners other than the Chief Election Commissioners were not removable except in the manner in which a High Court Judge can be removed. Perfectly right. But the change has been made for a very good

reason. Between two elections, normally there would be a period of five years. We cannot have an Election Commission sitting all the time during those five years doing nothing. The Chief Election Commissioner will continue to be a whole-time officer performing the duties of his office and looking after the work from day to day, but when major elections take place in the country, either Provincial or Central, the Commission must be enlarged to cope with the work. More members therefore have to be added to the Commission. They are no doubt to be appointed by the President, but as the House will find, they are to be appointed from time to time. Once they are appointed for a particular period they are not removable at the will of the President. Therefore, to that extent their independence is ensured. So there is no reason to believe that these temporary Election Commissioners will not have the necessary measure of independence. Any way the Chief Election Commissioner an independent officer, will be the Chairman and being a permanent officer will have naturally directing and supervising power over the whole Commission. Therefore, it is not correct to say that independence of the Commission is taken away to any extent.

We must remember one thing, that after all an election department is not like a judiciary, a quasi-independent organ of Government. It is the duty and the function of the Government of the day to hold the elections. The huge electorates which we are putting up now, the voting list which will run into several crores—all these must necessarily require a large army of election officers, of clerks, of persons to control the booths and all the rest of them. Now all this army cannot be set up as a machinery independent of Government. It can only be provided by the Central Government, by the Provincial Government or by the local authorities as now. It is not possible nor advisable to have a kingdom within a kingdom, so that the election matters could be left to an entirely independent organ of the Government. A machinery, so independent, cannot be allowed to sit as a kind of Super-Government to decide which Government shall come into power. There will be great political danger if the Election Tribunal becomes such a political power in the country. Not only it should preserve its independence, but it must retain impartiality. Therefore, the Election Commission must remain to a large extent an ally of the Government; not only that, but it must, a considerable extent, be subsidiary to Government except in regard to the discharge of the functions allotted to it by law.

Some reference has been made that the powers of the Parliament have not been preserved. I may point out that amendment no. 123 which is also going to be moved by Dr. Ambedkar gives to the Parliament power to make provisions with respect to elections to legislatures, subject, of course to the provisions of this Constitution. Similarly Sir, you find amendment No. 128 which gives to a State Legislature the power to make provisions with respect to elections to such Legislatures. Therefore, the Parliament as well as the State Legislatures are free to make all provisions with regard to election, subject, of course, to this particular amendment, namely, the superintendence, direction and control of the Election Tribunal. Today, for instance, the elections are controlled by officers appointed either by the Center or the Provinces as the case may be. What is now intended is that they should not be subjected to the day -to-day influence of the Government nor should they be completely independent of Government, and therefore a sort of compromise has been made between the two positions; but I agree with my honourable Friend, Pandit Kunzru that for the sake of clarity, at any rate, to allay any doubts clause (2) requires a little amendment. At the beginning of clause (2) the following words may be added; "subject to the provisions of law made in this behalf by Parliament." Similarly in clause (4) also where the conditions of service and tenure of office of the Election Commissioners and Regional Commissioners are prescribed, it will be proper to have words to this effect; " subject to the provisions made by Parliament in that behalf." That, of course, would follow from amendment No. 123, but we do not want any doubt to be on this point, and

therefore, it would be better if these words are added to give parliamentary control over the terms of service and the tenure.

Shri H. V. Kamath : How will you insert those words in the amendment?

Shri K. M. Munshi : I have no doubt in my mind that Dr. Ambedkar will accept my suggestion and move these amendments.

The question was raised with regard to the qualifications of the Regional Commissioners. The same could easily be provided by parliamentary legislation either under article 123 or under the new phrase with I submit should be added to clauses (2) and (4). So in this way the Parliament's power over these details would be secured. This amendment, therefore, maintains impartiality and independence of the Election Commission so far as it is necessary in the circumstances and also supremacy of the Parliament over the details.

Now I come to the other part of criticism. And, that is the argument that this provision whittles down or takes away what is called provincial autonomy. This argument has the knack of appearing again and again in respect of almost every article, and I think it is high time that those honourable Members of the House who put it forward reconcile themselves to the position that the House has taken the line more suited to the country rather than the doctrinaire views of theoretical writers on federalism. Dr. Ambedkar in the opening speech has made it clear that the idea of an Election Commission was accepted as far back as January or February 1947, when even the question of the partition of the country had not become a settled fact. The Fundamental Rights Committee put forward this suggestion. It was unanimously accepted by the Advisory Committee and again it was accepted unanimously by the House. Therefore, it must be treated as the opinion of the House, and the country as a whole that matters of election must be taken out of the purview of the Centre and the provinces with a view to meet the realities of the situation. That being so, the only other question is as to how this should be done.

With regard to the precedent, reference has already been made to section 19 of the Dominion Elections Act of Canada. This Act lays down that for the whole of Canada, a Chief Electoral Officer, not a Commission as we have envisaged, will superintend, control and direct all elections. His tenure of office is exactly the same as we have adopted here for the Chief Election Commissioner.

Another argument put forward in the course of this debate was that this is undemocratic. I fail to understand how democracy is affected by this provision. Let us analyse the position. This Constituent Assemble, if it lays down a Constitution for the country, is nothing else but an instrument of the sovereign people of India, not the different people of the provinces meeting together in a confederation for the purpose of evolving Constitution. Let us not forget this main fact. It is open to the House to look at the conditions in the country, to look at the realities of the situation and to give some power to the Centre, to give other power to the provinces, to transfer power from one to the other. That does not take away from either the representative character of the Constituent Assembly or the democratic power of he sovereign Indian people. The House cannot be tied down by any theoretical considerations in this matter. In the debate on article 226 also, I found the same kind of argument advanced. But we must realise once for all that it is the Constituent Assembly as the instrument of the sovereign people of India which is one unit that is going to decide what are going to be the functions of the Centre and the provisions in view of the actual condition that exist in this country. Now, Sir, if that is so, the sovereign people, and the Constituent Assembly as their agent, is bound to maintain the purity of elections in a practical manner. That can only be done by the establishment of the machinery envisaged in this amendment. To say that it is undemocratic is entirely baseless. If there is going to be democracy, the sovereign people of India must be in a position to elect their own

representatives in a manner which is above suspicious, above partiality. Corrupt practices do not necessarily apply to the candidates. There may be corrupt practices by a government of the day. Therefore, it is necessary that we should not consider this question from the point of view of any theoretical provincial autonomy, a point which is being trotted out again and again in this House.

My honourable Friend Mr. Kuladhar Chaliha coming from Assam said that this affects the power of the provincial Governments. He further put forward the point of view that in point of efficiency and integrity the Centre is no better than the provinces. He said if I heard aright that the provinces were better in this respect than the Centre. If that be so, I wish the sooner we wound up our democratic business the better. My friend coming from Assam ought to know that complaints after complaints have been received from Assam that ingenious devices are found to shut out people who have settled in Assam from the electoral rolls. The complaints may be wrong; I am not here judging them. But the complaints are there……..

Shri Kuladhar Chaliha : I question that.

Shri K. M. Munshi : The complaints are known to every department that is concerned with them. The fact that such complaints come is the reason why provincial Governments cannot be trusted, in the condition in which we are, to be as impartial in the elections as they should be.

Shri Kuladhar Chaliha: I seriously protest against this remark.

Mr. President : There is no need to introduce heat in the discussion. We are only discussing a purely constitutional question.

Shri K. M. Munshi : I am not introducing heat. My honourable Friend said that the provinces are such superior to the Centre or this Constituent Assembly. I reminded him that coming as a leader from Assam, it was a surprising remark. It may come from some other province; that is a different matter.

As my honourable Friend Mr. Sidhva said, in the past several Election Tribunals were appointed by Governments of the provinces. They were not Congress Governments; they were appointed by other Governments. They were appointed to secure a particular object. As honourable Members know, one leading Member of this House, who was the head of the Congress organisation of his province, was victimised in the past regime and debarred from being a Member of the legislatures. It is very easy for a Premier to manipulate an Election Tribunal and thus remove a strong rival for five or seven years from the scene. It is therefore necessary that these matters should be placed beyond the reach of temporary passions in the provinces.

Sir, one thing more. We must realise—and this is the general answer that I propose to give to my honourable Friends Mr. Pataskar and Mr. Chaliha—we can only consider the problems before us from the conditions as they exist today. We cannot forget the fact that some ten or eleven of the Indian States which are not accustomed even to the little measure of democratic life which is enjoyed by the provinces are coming into the Union on equal terms. We cannot ignore the fact that there are corners in India where provincial autonomy requires to be placed on a better footing. In these conditions, it is but natural, apart from world conditions, that the Centre should have a larger measure of control over the affairs which affect the national existence as a whole. Even in America in which it was not a question of the Centre decentralising itself, but thirteen, independent States coming together first in a sort of confederacy, and then in a federation, what do we find? After the depression of 1929, agriculture, education, industry, unemployment, insecurity, all passed gradually by various means under the control or influence of the Centre. There, the Constitution is water-tight and they had to go round and round in order to achieve this result. There cannot be smaller units than a nation today; even a nation is small unit in the light of the international situation. This idea that provincial autonomy is the inherent right of the

provinces, is illusory. Charles Merriam one of the leading political thinkers in America to his book called "*The Need for Constitutional Reform*", with reference to the States of U.S.A., says, " Most States do not now correspond to economic and social unities and their position as units of organisation and representation may be and has been seriously challenged." In our country the situation is different. From the Councils Act of 1833 till the Government of India Act of 1935, there has been central control over the provinces and it has proved wholesome. The strength, the power and the unity of public life which India has developed during the last one hundred years is mainly due to centralised administration of the country. I would warn the Members who are still harping on the same subject to remember one supreme fact in Indian history that the glorious days of India were only the days, whether under the Mauryas or the Moghuls, when there was a strong central authority in the country, and the most tragic days were those when the central authority was dismembered by the provinces trying to resist it. We do not want to repeat that fatal mistake. We want that the provincial sphere should be kept intact, that they should enjoy a large measure of autonomy but only subject to national power. When national danger, cones, we must realise that the Centre alone can step in and safeguard against the chaos which would otherwise follow. I therefore submit that this argument about Provincial Autonomy has no a priori theoretical validity. We have to judge every subject or matter from the point of view of what the existing conditions are and how best we can adjust the controls, either Central or Provincial, to secure maximum national efficiency. From that point of view I submit the amendment moved by my Friend Dr. Ambedkar is a good one, a very good one and a very wholesome one for the whole country.

The Honourable Shri Satyanarayan Sinha (Bihar : General) : Sir, the question be now put.

Mr. President : There is a closure motion. I would like to take the sense of the House.

The question is :

"That the question may now be put."

The motion was adopted.

The Honourable Dr. B. R. Ambedkar : (Bombay : General) : Mr. President, Sir, this amendment of mine has been subjected to criticism from various points of view. But in my reply I do not propose to spread myself over all the points that have been raised in the course of the debate. I propose to confine myself to the points raised by my Friend Professor Shibban Lal Saksena and emphasized by my Friend Pandit Hirday Nath Kunzru. According to the amendment moved by my Friend Professor Saksena there are really two points which require our consideration. The one point is with regard to the appointment of the Commissioner to this Election Commission and the second relates to the removal of the Election Commissioner. So far as the question of removal is concerned, I personally do not think that any change is necessary in the amendment which I have proposed, as the House will see that so far as the removal of the members of the Election Commission is concerned the Chief Commissioner is placed on the same footings as the Judges of the Supreme Court. And I do not know that there exists any measure of greater security in any other constitution which is better than the one we have provided for in the proviso at clause (4).

With regard to the other Commissioners the provision is that, while the power is left with the President to remove them, that power is subjected to a very important limitation, *viz.*, that in the matter of removal of the other Commissioners, the President can only act on the recommendation of the Chief Election Commissioner. My contention therefore is, so far as the question of removal is concerned, the provisions which are incorporated in my amendment are adequate and nothing more is necessary for that purpose.

Now with regard to the question of appointment I must confess that there is a great deal of force in what my Friend Professor Saksena said that there is no use making the tenure of the Election Commissioner a fixed and secure tenure if there is no provision in the Constitution to prevent either a fool or a knave or a person who is likely to be under the thumb of the Executive. My provision—I must admit-—does not contain anything to provide against nomination of an unfit person to the post of the Chief Election Commissioner or the other Election Commissioners. I do want to confess that this is a very important question and it has given me a great deal of headache and I have no doubt about it that it is going to give this House a great deal of headache. In the U.S.A. they have solved this question by the provision contained in article 2 Section (2) of their Constitution whereby certain appointments which are specified in Section (2) of article 2 cannot be made by the President without the concurrence of the Senate; so that so far as the power of appointment is concerned, although it is vested in the President it is subject to a check by the Senate so that the Senate may, at the time when any particular name is proposed, make enquiries and satisfy itself that the person proposed is a proper person. But it must also be realised that that is a very dilatory process, a very difficult process. Parliament may not be meeting at the time when the appointment is made and the appointment must be made at once without waiting. Secondly, the American practice is likely and in fact does introduce political considerations in the making of appointments. Consequently, while I think that the provisions contained in the American Constitution is a very salutary check upon the extravagance of the President in making his appointments, it is likely to create administrative difficulties and I am therefore hesitating whether I should at a later stage recommend the adoption of the American provisions in our Constitution. The Drafting Committee had paid considerable attention to this question because as I said it is going, to be one of our greatest headaches and as a *via media* it was thought that if this Assembly would give or enact what is called an Instrument of Instructions to the President and provide therein some machinery which it would be obligatory on the President to consult before making any appointment, I think the difficulties which are felt as resulting from the American Constitution may be obviated and the advantage which is contained therein may be secured. At this stage it is impossible for me to see or anticipate what attitude this House will take when the particular draft Instructions come before the House. If the House rejects the proposal of the Drafting Committee that there should be an Instrument of Instructions to the President which might include, among other things, a provision with regard to the making of appointments, this problem would then be solved by that method. But, as I said, it is quite difficult for me to anticipate what may happen. Therefore in order to meet the criticism of my honourable Friend Professor Saksena, supported by the criticism of my honourable Friend Pandit Kunzru, I am prepared to make certain amendments in amendment No. 99. I am sorry I did not have time to circulate these amendments, but when I read them the House will know what I am proposing.

My first amendment is :

"That the words 'to be appointed by the President' at the end of clause (1) be deleted."

"In clause (2) in line 4, for the word 'appoint' substitute the word 'fix' after which insert the following :—

> "The appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in this behalf by Parliament, be made by the President.' "

"The rest of the clause from the words 'when any other Election Commissioner is so appointed' etc., should be numbered clause (2a)."

Shri M. Ananthasayanam Ayyangar (Madras : General) : Sir, on a point of order,

new matter is being introduced which ought not to be allowed at this stage. Otherwise there will have to be another debate.

The Honourable Dr. B. R. Ambedkar : I hope the Chair will allow other Members to offer their views.

Mr. President : In that case I think the best course would be to postpone consideration of this article.

The Honourable Dr. B. R. Ambedkar : These amendments are quite inoffensive; they merely say that anything done should be subject to laws made by Parliament.

Shri T. T. Krishnamachari (Madras : General) : I suggest that these amendments may be cyclostyled and circulated, and they may be taken up later on.

The Honourable Shri K. Santhanam (Madras : General) : I suggest that these may be considered by the Drafting Committee. Even if they are merely technical we must have an opportunity of considering them.

The Honourable Dr. B. R. Ambedkar : These amendments have been brought after consultations with the Drafting Committee.

Shri T. T. Krishnamachari : The amendments merely say that the President's powers are subject to parliamentary legislation. They do not detract from the contents of the article and we need not be too finicky about the procedure at this stage.

Pandit Hirday Nath Kunzru : Even if there is to be further discussion, I think we should know how Dr. Ambedkar proposes to meet the difficulties that have been pointed out. He should therefore be allowed to put forward his suggestions.

Mr. President : That is why I allowed him to move these amendments. After they are moved we shall decide whether to discuss them now or at a later date.

Shri K. M. Munshi : The amendments only say that acts done should be subject to the laws of Parliament. That is already covered by amendment 123.

Mr. President : Let the amendments be moved.

The Honourable Dr. B. R. Ambedkar : My next amendment is :

"That in the beginning of clause (4) the following words should be inserted :—

'subject to the provisions of any law made in this behalf by Parliament'."

The Honourable Shri K. Santhanam : Sir, this is a material amendment because the President's discretion may be fettered by parliamentary law.

Mr. President : I do not think any further discussion is necessary; let these be moved :

The Honourable Dr. B. R. Ambedkar : You cannot deal with a constitution on technical points. Too many technicalities will destroy constitution-making.

Shri H. V. Kamath : Sir, you ruled some days ago that substantial amendments would be postponed.

Mr. President : If these are considered to be substantial amendments they will be held over. As there seems to be a large body of opinion in the House in favour of postponement, the discussion will be held over.

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New Article 289-A [COI Article 325]

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That with reference to amendment No. 110 of List I (Fifth Week), for the proposed new article 289-A, the following article be substituted :—

'289-A. *No person to be ineligible for inclusion in, or to claim to be excluded from the electoral roll on grounds of religion, race, caste or sex*.—There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a

State and no person shall be ineligible for inclusion in, or claim to be excluded from, any such roll on grounds only of religion, race, caste, sex or any of them."

Sir, the object of this is merely to give effect to the decision of the House that there shall hereafter be no separate electorates at all. As a matter of fact this clause in unnecessary because by later amendments we shall be deleting the provisions contained in the Draft Constitution which make provision for representations of Muslims, Sikhs, Anglo-Indians and so on. Consequently this is unnecessary. But it is the feeling that since we have taken a very important decision which practically nullifies the past it is better that the Constitution should in express terms state it. That is the reason why I have brought forward this amendment.

Mr. President : Do I take it that only for the purpose of discussion you have brought it up and that you do not want it to be passed?

The Honourable Dr. B. R. Ambedkar : No, Sir, not like that. I have moved the amendment. I was only giving the reasons why I have brought it up.

I shall move the other amendment also for inserting new article 289-B. I move :

"That for amendment No. 3087 of the List of Amendments, the following be substituted:—

"That after article 289-A, the following new article be inserted :—

289-B. *Elections to the House of the People and to the Legislative Assemblies of states to be on the basis of adult suffrage*.—The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that it to say, every citizen, who is not less than twenty-one years of age on such date as may be fixed in this behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.' "

Shri Brajeshwar Prasad (Bihar : General) : Mr. President, Sir, I rise to oppose article 289-B. I am opposed to adult franchise on grounds both theoretical and practical. I am opposed to adult franchise because it is a gross violation of the tenets of democracy. Adult franchise presupposes that the electorate is enlightened. Where the electorate is not enlightened there cannot be parliamentary democracy.

Mr. President : Is that open to objection now? We have already passed article 149 in which it is expressly stated that the election shall be on the basis of adult suffrage. It was passed in the winter session.

Shri Brajeshwar Prasad : Sir, I will submit to your ruling. I was not present when that article was passed.

Mr. President : Then you cannot oppose it at this stage.

Shri T. T. Krishnamachari : This new article is actually redundant. It may be that the Drafting Committee will subsequently have to take it away.

Mr. President : That is what he has also said. When the time comes for rearranging the sections it may not be necessary to have this section in this form. But it has been moved.

Shri T. T. Krishnamachari : The principle is one which has been accepted by the House.

Mr. President : That is what I say. The principle has already been accepted.

The question is :

"That with reference to amendment No. 110 of List I (Fifth Week), for the proposed new article 289-A, the following article be substituted :—

'289-A. *No person to be ineligible for inclusion in, or to claim to be excluded*

from, the electoral roll on grounds of religion, race, caste or sex.—There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in, or claim to be excluded from, any such roll on grounds only on religion, race, caste, sex or any of them'."

The amendment was adopted.

Mr. President : The question is :

That article 298-A, as amendment, stand part of the Constitution.

The motion was adopted.

Article 289-A, as amended, was added to the Constitution.

Mr. President : The question is:

"That for amendment no. 3087 of the List of Amendments, the following be substituted:—

'That after article 289-A, the following new article be inserted:—

289-B. *Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage*.—The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that it to say, every citizen, who is not less than twenty-one years of age on such date as may be fixed in this behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.' "

The amendment was adopted.

Mr. President : The question is:

"That article 289-B stand part of the Constitution."

The motion was adopted.

Article 289-B, was added to the Constitution.

(New article 289-C was not moved.)

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Article 290 [COI Article 327]

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for article 290, the following article be substituted :—

290. *Power of Parliament to make provisions with respect to elections to Legislatures*.—Subject to the provisions of this Constitution, Parliament may from time to time by law make provisions with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including matters necessary for securing the due constitution of such Houses or House and the delimitation of constituencies."

Sir, with your permission I would also like to move the other amendment which amends this. I move:

"That with reference to amendment No. 123 of List I (Fifth Week) in the new article 290, after the word 'including' the words 'the preparation of electoral rolls and all other' be inserted."

Pandit Thakur Das Bhargava (East Punjab : General) : Sir, I gave notice of amendment No. 100 and amendments 127 and 129 with the idea that the entire responsibility and jurisdiction for making laws in regard to elections should be left to the Central Legislature and that the Central Legislature alone should have been given

this power to enact laws in regard to matters pertaining to elections. Even now when amendment No. 99 was being discussed I felt that it would not be necessary to have these new amendments if my amendments Nos. 100, 127 and 129 were accepted, because, according to me, it is not fair to give the power to the executive to appoint such highly placed officers in whom all the rights and powers in regard to elections are concentrated. Parliament should have the ultimate power. Similarly with regard to my amendment No. 127 which I did not move when I found that the wording of amendment No. 123 was "Subject to the provisions of this Constitution, Parliament may from time to time by law make provisions with respect to all matters relating to, or in connection with, elections……" When Parliament has been given this power, I do not know what power is left to be exercised under this article by the provinces. If we want uniformity in the conduct of elections we should see that Parliament alone has this power.

Under article 289 many arguments were advanced for giving these powers to the Central Government instead of to the provinces. If those arguments are valid, it does not behove us to say that any power which is left may be exercised by the provincial legislatures. Amendment No. 123 is all embracing and therefore there is no need for amendment No. 128.

Shri M. Ananthasayanam Ayyangar : Sir, I support the retention of amendment No. 128 moved to article 291. I do not agree with my Friend Mr. Bhargava. We have taken away the elections from the provincial legislatures and the Governors. Practically we have centralised the appointment of the Election Commission. This is a deviation with respect to which there have been complaints that the provincial governments have been made ciphers, To avoid corrupt practices we wanted the entire power to be vested in Parliament. Amendment 128 only says that for matters for which the Parliament does not make a provision the provision legislatures shall have power. My Friend Mr. Bhargava does not want even this. According to him, either Parliament makes the law or there should be no authority to make law. There may be certain matters where for the sake of uniformity Parliament may make law and the State legislature may make the rest of the laws. That is what is provided in amendment No. 128. I do not know why even to this limited extent power should not be give to the State legislatures. Why are we so suspicious of the State legislatures that we want to take away everything from them? I support amendment No. 128.

Mr. President : I find that there is notice of an amendment by Prof. Shibban Lal Saksena to article 290. He was not here at the time the amendments were moved. Anyhow it is not an amendment of substantial character.

If Dr. Ambedkar does not want to say anything in reply I shall put the amendment to vote.

The Honourable Dr. B. R. Ambedkar : I have nothing to say, Sir.

Mr. President : The question is :

"That for article 290, the following article be substituted :—

290. *Power of Parliament to make provisions with respect to elections to Legislatures*.—Subject to the provisions of this Constitution, Parliament may from time to time by law make provisions with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls and all other matters necessary for securing the due constitution of such House or Houses and the delimitation of constituencies."

The amendment was adopted.

Mr. President : The question is :

"That article 290, as amended, stand part of the Constitution."

The motion was adopted.

Article 290, as amended, was added to the Constitution.

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Article 291 [COI Article 328]

The Honourable Dr. B. R. Ambedkar : I move :

"That for article 291, the following article be substituted :—

291. *Power of Legislature of a state to make provisions with respect to election to such Legislature*.—Subject to the provisions of this Constitution and in so far as provision in that behalf is not made by Parliament, the Legislature of a State may from time to time by law make provisions with respect to all matters relating to, or in connection with, the elections to the House or either House of the Legislature of the State including matters necessary for securing the due constitution of such House or Houses."

Sir, with your permission I move also amendment No. 211 of List VI. Fifth week.

The amendment runs thus :

"That with reference to amendment No. 128 of List I (Fifth Week), in the new article 291, after the word 'including' the words 'the preparation of electoral rolls and all other' be inserted."

Mr. President : There are also other amendments. Amendment No. 129 is a negative one and so cannot be moved. Amendments Nos. 130 and 131 are not moved.

Does any Member wish to say anything on the amendment or the article?

Shri H. V. Kamath : Mr. President, this article 291, following as it does article 290 already adopted, is a corollary to it. Article 291 follows very closely article 290 except with regard to the last matter contained in article 290 relating to the delimitation of constituencies. The question here arises as to the powers which will be vested in Parliament and in the State Legislature. In article 290 it is stated that Parliament may from time to time by law make provisions with respect to all matters—the phrase used is "with respect to all matters"—relating to or in connection with elections, etc. Here again the same words are used, that is to say, article 291 lays down that the State Legislature may from time to time by law make provisions with respect to all matters relating to or in connection with elections, etc. That is to say, all matters relating to elections to either House of the State Legislature come within the purview of Parliament as well as the State Legislature. Are we going to define the limits of or demarcate the powers to be conferred on the Parliament and on the State Legislature? Are we going to have another Schedule? That is my question. Are we going to have a new Schedule to this Draft Constitution wherein we will define the powers of Parliament and the powers of the State Legislature to legislate with regard to matters relating to elections in the States? If we do not define, definitely allocate the functions, I am afraid it might lead to some sort of friction or tension between the Parliament and the State Legislature at some time or other. No doubt the saving clause is there in 291 "in so far as provision in that behalf is not made by Parliament". Sir, if the Parliament exhausts all matters relating to elections in the States—the power to do is thereunder 290; the Central Parliament has full power to make laws with respect to all matters relating to elections in the States including delimitation of constituencies which is taken away from the State—I do not quarrel with that—what will be left for the States? In regard to various other matters relating to elections, I do not think it wise to deprive the State Legislature of any jurisdiction in this regard. To my mind, it will be better and wiser to leave them some powers so as to promote greater harmony. We are here, I am afraid, aiming at over-centralisation of functions. Over-centralisation to my mind is not conducive to harmony between the Union and the Units. We certainly want strength, but strength along with harmony. Strength

without harmony, without good-will between the Union and the Units, is no strength at all. It is mere rigidity. Therefore, Sir, I would personally prefer that certain matters relating to elections in the States must be allowed to be dealt with by the State Legislature itself and Parliament should not be given entire authority to make, laws with respect to all matters relating to elections to either House of the State Legislature. Some definite powers to my mind should be given to the Legislature of the State also.

The Honourable Dr. B. R. Ambedkar : I think Mr. Kamath has not properly read or has not properly understood the two articles 290 and 291. While 290 gives power to Parliament, 291 says that if there is any matter which is not provided for by Parliament, then it shall be open to the State Legislature to provide for it. This is a sort of residue which Parliament may leave to the State Legislature. This is a residuary article. Beyond that, there is nothing.

Shri A. Thanu Pillai (Travancore State) : When steps have to be taken according to the time schedule, is the local Legislature to wait and see what the Central Parliament does?

The Honourable Dr. B. R. Ambedkar : Primarily it shall be duty of the Parliament to make provision under 290. The obligation is squarely placed upon Parliament. It shall be the duty and the obligation of the Parliament to make provision by law for matters that are included in 290. In making provisions for matters which are specified in 290, if any matter has not been specifically and expressly provided for by Parliament, then 291 says that the State Legislature shall not be excluded from making any provision which Parliament has failed to make with regard to any matter included in 290.

Shri A. Thanu Pillai : May I know from Dr. Ambedkar whether it would not be better for either the Central Legislature or the Local Legislature to be charged with full responsibility in this matter so that elections may go on according to the time schedule?

The Honourable Dr. B. R. Ambedkar : I do not agree. There are matters which are essential and which Parliament might think should be provided for by itself. There are other matters which Parliament may think are of such local character and liable to variations from province to province that it would be better for Parliament to leave them to the Local Legislature. That is the reason for the distinction between 290 and 291.

Mr. President : The question is :

"That with reference to amendment No. 128 of List I, (Fifth Week), in the new article 291, after the word 'including' the words 'the preparation of electoral rolls and all other' be inserted."

The amendment was adopted.

Mr. President : The question is :

"That for article 291, the following article be substituted :—

291. Subject to the provisions of this Constitution and in so far as provision in that behalf is not made by Parliament, the Legislature of a State may from time to time by law make provisions with respect to all matters relating to, or in connection with, the elections to the House or either House of the Legislature of the State including the preparation of electoral rolls and all other matters necessary for securing the due constitution of such House or Houses."

The motion was adopted.

Mr. President : The question is :

"That article 291, as amended, stand part of the Constitution."

The motion was adopted.

Article 291, as amended, was added to the Constitution.

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Article 291-A [COI Article 329]

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That after article 291, the following new article be inserted :—

291-A. *Bar to jurisdiction of courts in electoral matters*.—Notwithstanding anything contained in this Constitution—

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 290 or article 291 of this Constitution shall not be called in question in any court;

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

(c) provision may be made by or under any law made by the appropriate Legislature for the finality of proceeding relating to or in connection with any such election at any stage of such election."

Sir, I also move :

"That with reference to amendment No. 132 of List I (Fifth Week) in the new article 291-A, clause (c) be omitted."

The amendment was adopted.

Mr. President : The question is :

"That after article 291, the following new article be inserted :—

291-A. *Notwithstanding anything contained in this Constitution*— Bar to jurisdiction of courts in electoral matters.

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 290 or article 291 of this Constitution shall not be called in question in any court;

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature."

The amendment was adopted.

Mr. President : The question is :

"That article 291-A, as amended, stand part of the Constitution."

The motion was adopted.

Article 291-A, as amended, was added to the Constitution.

Mr. President : Then we go to the other article 296.

Shri T. T. Krishnamachari : As articles 292 to 295 form part of a whole scheme and article 296 also goes along with them, we might take up article 297 and leave 296 over for the present.

Mr. President : Is that the idea that we should postpone discussion of article 296 also? Then we shall take up article 297.

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Article 297 [COI Article 336]

(Amendment No. 3169 was not moved.)

Shri H. V. Kamath : Mr. President, Sir, I move :

"That in clause (2) of article 297, for the words 'if such members are found qualified for appointment on merit as compared with the members of other communities', the words 'provided that such appointment is made on ground only of merit as compared with the members of other communities' be substituted."

I think, Sir, that this is an amendment more or less a drafting nature and I leave it to the cumulative wisdom of the Drafting Committee to consider it at the appropriate stage.

The Honourable Dr. B. R. Ambedkar : I do not see that it is of a drafting nature. However, we shall consider it later on.

Mr. President : The question is :

"That article 297 stand part of the Constitution."

The motion was adopted.

Article 297 was added to the Constitution.

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Article 298 [COI Article 337]

(Amendment No. 3172 was not moved.)

Mr. President : There is no amendment to this article No. 298 also.

Mr. Frank Anthony (C.P. & Berar : General) : Sir, I do not intend to make a speech. I had given notice of an amendment to article 298 seeking to make it applicable to the Mysore State, but after I had discussed my amendment with Dr. Ambedkar and Mr. Munshi, it was pointed out to me that even if they were prepared to accept my amendment, they were unable to do it at this stage because it has not yet been decided as to whether this Constituent Assembly is going to legislate for the Mysore State and because of that, Sir, I do not propose to ask for admission of this amendment at this stage. If and when the Assembly does legislate with regard to Mysore, then I feel that I may be given permission at that stage to reiterate this amendment. In this connection, I only wish to say a few words and to thank all those Members, who in spite of the fact that they have given notice of several amendments, have once more shown their generosity by withdrawing those amendments *en masse*.

Pandit Thakur Das Bhargava : Sir, when I gave notice of certain amendments to articles 297 and 298, I did not do so in any spirit of niggardliness or disregard for honouring the words of our leaders who had given some sort of assurance to the Anglo -Indian community, but I must state in fairness to myself that, as a matter of fact, it was a different standpoint from which I gave these notices of amendments. When these concessions were given to the Anglo-Indian community, it was in 1947 and ten years' time was regarded as sufficient. Ordinarily these ten years would have been finished by 1957. Now the Constitution will commence in 1950. So I thought that the concessions should have been given only for ten years. I do not grudge any sort of concessions to this community or that community but we must realise that the basis of concessions given to suppressed classes and depressed classes is of a different nature. We want that these concessions may be implemented. Apart from reservation of seats which is only for ten years, other concessions like educational facilities etc., to be provided under article 301 may have to be given for more than ten years. But here in this case this community is not a suppressed community. This community has to a certain extent been given this concession because its standard of life was different from the rest of the Indian community and it was higher. So I gave amendments in the view that when Mr. Anthony said on the last occasion when he spoke on the question of minorities that the Committee had shown unique generosity I thought that his community would respond by showing unique fairness in saying that they would only want these concessions for ten years because I know that for every boy of the Anglo-Indian community to whom this concession is granted, we have to grant these

very concessions to the upper classes also because in these schools to which these grants are made, 40 per cent. or so are Anglo-Indian boys and the remaining 60 per cent. belong to the upper classes. So if we grant these concessions, we should grant them not only to the Anglo-Indians but also to the upper classes. After all our means are limited, and we cannot make one rupee into seventeen annas and if you grant these concessions for very long periods to people whose standard of life is better and who are more affluent, you would have to deny even ordinary rights to the rest of the people. So that, for educating these persons, you starve the boys of other communities. I think my honourable Friend Mr. Anthony will not misunderstand me for giving notice of this amendment. I gave notice of these amendments in the hope that in his patriotism, in his recognition of the principle of fair treatment to all, he will agree that only ten years will be available of and not more.

Prof. Shibban Lal Saksena : Mr. President, Sir, these two articles 297 and 298, one of which we have already passed, give certain concessions to the Anglo-Indian community. I may say at the very outset that I am not opposed to any concession which these people may want. I may also say that I would wish them to make the best use of the concessions. But, I would like to utter a word or warning. I feel that these concessions are based on a principle which has not been followed anywhere else in the constitutions. We have given separate representation to people who are backward. But, in this case the position is different. The Anglo-Indian community has up till now lived a different kind of life from the rest of the people. They probably feel some difficulty in accommodating themselves to the new change and therefore they want these concessions. I only want the representatives of the community who are present here, who are very distinguished members and who are my very good friends, to consider coolly whether these concessions will really benefit the community. My feeling is that during the last so many years, this community has been kept aloof from the rest of the population and the British people who kept us under subjection tried to make them also completely isolated. They gave them a different kind of education, different habits etc. I am only surprised that they still want to keep to their old methods of education. I only hope that although these concessions are given, the boys of that community will try to take advantage of the common education given to all Indian boys, and that they shall not continue any further their separation which was imposed by the British people for their own purposes. I have known these friends through my contacts with labour on railways and in the posts and telegraphs and in other places. They are very active people; they form a virile element in the nation and I know they do not need any crutches. Like the Parsis, they will get more than their due even in the general electorate and in the normal course of general competition. I therefore think that these two articles are based on the apprehension that they may not get their legitimate share in the circumstances. I wish to give this friendly advice, if it is of any worth. I do wish this community to become one with the rest of the people and to remove all those barriers of separation which the British Rulers had raised between this community and the rest of the people, so that when the time comes, at least after ten years, there is no need for them to demand all these concessions,—I hope they will realise that it is better that they merge themselves in the general population. We all wish to feel that they are one with us. I also know that they realise that the British had made up pawns in their game. I hope that they will very soon give up those old habits and traditions. I hope that these articles which we all approve unanimously will not be supposed to be something intended to perpetuate the old separation, but intended to help them to assimilate themselves with the rest of the population.

Shri Mahavir Tyagi: (United Provinces : General) : Mr. President, Sir, I rise to oppose the article as it is. I know I will incur the displeasure of my very great Friend Mr. Anthony. He is so charming that nobody in the House would like to annoy him :

but then, I want to give him an advice.

He has seen many minorities claiming special rights in India; he has also seen their fate. Suppose we agree to this article. I do not know whether Mr. Anthony agrees to it. If he is a party to this article, I am afraid he is doing a disservice to his community. As it is mentioned in this article, we cannot give more grants than we are giving them today. I do not know how we can agree to this. After all, it is a progressive community; it is a privileged community. It has the affection of both India and England. They are a bright community; wherever they are, they fare very well; they are the least communal. They are a very intelligent and bright people. In India they need have no fear; they have to thrive. I ask why should they not deserve more grants or more help from the State if they really deserve it. The article says during the first three years after the commencement of this Constitution, the same grants if any, shall be made by the Union and by each State. I ask, why not more grants? If their students deserve more grants, why should we make the same grants? I do not know whether you call it sympathy; it is a wrong-placed sympathy. I do not know how my honourable and intelligent Friend Mr. Anthony would agree to the same grants. The prices may go on rising, but the boys in the school will get the same grants. Why not more? This is neither help nor any protection. I do not want to waste the time of the House by reading the article further which says that every third year there will be a reduction of ten per cent. Why should we envisage a reduction at all? My view is this. Such a small community if you go on identifying it as a community, as a minority, I assure you that that community will ultimately lose. Let them merge their identity into the whole nation and belong to the nation without any distinction whatsoever. Their distinction of beauty and colour is enough to distinguish them from us; that is a good distinction. Let them stand on their own colour and on their beauty and on their intelligence. Why should they take to the adjective 'minorities' and all that. That is a slur on that community. That is a community which can stand on its own legs and stand boldly. From the friendly manner in which the members of this community are behaving, I think it is an insult to their attitude to say that these people at all need any protection. They need nothing. Their attitude is their own protection. I think it is better we leave them to their natural protection God has given them. Then again when we have once decided that we do not encourage any minorities or communities, then, in the face of that, should only one small community be recognised? Well, they will become the target of jealousy from all the rest of the communities. It is only a little money that is being guaranteed, but for this little privilege why should they become the target of hatred, jealousy and envy of all other small communities? I think they will not fare well if they get this too small a privilege, the losses entailed with it being much greater. And if communities are to be considered I would suggest consideration of that community which is only newly created—it is the community of displaced persons. Why do you not protect these refugees who are homeless? Let us guarantee that for 10 years they will get such and such privileges and they are the real minority community deserving help. In the provinces today nobody has ever thought of giving them special privileges or help because they are Hindus but inspite of their being Hindus or belonging to a religious majority community, they are a deplorable small minority today in India. It is a pity that it is now a year gone and little has been done for them; and now the time has come when their protection should have been our first thought and we should have protected their rights of education, their accommodation and other things. If communities are to be considered here in this Constitution, the most miserable community that should be considered first is that of the refugees, but the refugees are not considered even as a community. And why should we always take communities be religious distinctions or by distinctions of their blood? Communities are a group of people being affected in one common manner either adversely or in better circumstances. Whatever the conditions, those who are affected together

similarly in similar circumstances become a community; and as such, if there is any community which requires safeguards and protection, it is that of the refugees. But they have never come forward for any special grant before us. I would suggest that we do not allow this article to remain in this Constitution. It will contain the germs of communalism. Why not purge the whole Constitution of this disease altogether and why keep germ? They might develop and again we might have to face another big problem of communalism and the same old history of the Muslim League days might repeat itself. I would suggest with emphasis that either the consideration of this article be also postponed or, if the House or you are not pleased to postpone it for further consideration, I would appeal to the House to reject the article here and now, and not care for your private decisions of groups. Let us take liberty of our groups and say that it being a dangerous article, if we allow it to remain, we shall allow this body politic to remain diseased for ever. With these words I oppose the article.

Shri K. M. Munshi : Mr. President, Sir, I am sure that on a matter of this importance we should appreciate all that happened in the past and not reopen the discussion which has passed through several stages. The two sections which are under discussion are the result of very long discussions and suggested by a Special Committee appointed for this purpose, accepted by the Advisory Committee and ultimately accepted by the House. Now after all that has been said and done, it serves no useful purpose to repeat the arguments that were advanced by certain sections of the House at different stages. The House has always accepted that the Minorities Commissions decisions as more or less conclusive. We must realise the importance of the two points dealt with by my Friend Mr. Tyagi. When this decision was arrived at by the House, the one point which it had to consider was that this small community had been under the protecting wings of the old Government in such a manner that it was impossible for it to stand on its legs unless it were spoon-few by some kind of concession for a small period of time. Over 60 per cent. of its adults are in certain services. We need not go into the various causes of this situation, but a sudden change would throw this community immediately on the streets. The second point was that certain special grants were given to their educational institutions. Those educational institutions as now being attested to by our own educational authorities in various provinces have attained a high standard of educational school and now that the schools take students from other, communities the policy of some provincial Governments is that that standard should be maintained for all schools. In Bombay, for instance in the Anglo-Indian schools, 70 per cent. of the students are not Anglo-Indians but members belonging to other communities. Therefore these articles have been considered from every point of view. They are only for a limited period of time. My appeal therefore to the House is that a decision which has been come to after considerable deliberation should not be disturbed, apart from a vote, even by a discussion, which may not create a right impression in the country. I hope Members will realise that any discussion or criticism would perhaps take away from the generous gesture which the majority community made to this small minority community.

Shri Krishna Chandra Sharma (United Provinces : General) : Mr. President, I very much appreciate the spirit of compromise and reconciliation and would not grudge any help to any section of the people whatsoever, but my only trouble is that article 9 in the Fundamental Rights says that the State shall not discriminate against any citizen on grounds only of religion, race, caste or sex, etc. Now the State Funds are meant for education for all citizens. Because A belongs to Muslim Community, B belongs to Hindu community and C belongs to Parsee or Anglo-Indian community, therefore *per capita* they will have different sums of money for their education and training, one differing from the other simply because their religion or community differs, I beg to submit, is against the spirit of this article. My second point is that the grant is meant

to be given to the institution. This money can be given on the ground that the institution has a better standard of education, it is more expensive or situated at a place where ordinary grants would not suffice, etc. That may be the basis for greater grants to an institution like the Muslim University at Aligarh or an Anglo-Indian institution at Naini Tal. I do not grudge the grant but there should be a rational basis.

A further objection is that these are minute details which should be left to the Education Department and the University, and not laid down by Parliament in the Constitution. I do not find this in any other constitution in the world and I do not think it would be advisable to do it here.

Honourable Members : The question may now be put.

Mr. President : I may point out that these article have been brought in pursuance of decisions arrived at by the Advisory Committee on Minorities and by some sort of agreement between the parties. So I do not think there is any occasion to reopen what was then decided. It was also placed before a previous session of the Assembly and accepted. So I do not think the question need be reopened.

The question is :

"That the question be now put."

The motion was adopted.

Mr. President : The question is :

"That article 298 stand part of the Constitution."

The motion was adopted.

Article 298 was added to the Constitution.

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Mr. President : Article 299 is held over.

Article 300 [COI Article 339]

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That with reference to amendment No. 3186 of the List of Amendments in clause (1) of article 300 after the word figure 'Part I' the words and figures 'and Part III' be inserted."

Shri A. V. Thakkar (Saurashtra) : Sir, I am very glad that this amendment extends the benefits of welfare work for the tribal people of all the States where they live at present. These tribal people come into the picture for the first time now in this Constitution. It would have been a half measure if it had been confined to tribal people in provinces only but not extended to those in Indian States. But as now amended it is in the interest of all backward tribal people. The same benefit to all backward people applies to article 301 and therefore there is greater reason that the same extension is given in article 300.

Prof. Shibban Lal Saksena : Sir, I support this article whole-heartedly. I shall draw attention to the problem confronting us in the tribal areas. They are some of the most backward people in the country. The British Government tried to keep them secluded and attempts were sometimes made by missionaries to convert them. I have visited many of these people and can say that they live a kind of sub-human and miserable existence. This article is intended to devise ways and means for bringing them to the normal level. But we should not rest on our oars by merely passing this provision but should do our utmost to bring them up to the normal level. The consciousness about them came first in 1931 when the British Government tried to give them separate representation. Reforming bodies and people like our revered Shri Thakkar Bapa have worked among them but much still remains to be done and we should see that these people are made to take their rightful place in society.

Shri Mahavir Tyagi : Sir, this article is very halting from the point of view of

helping the scheduled areas. It only says that a Commission may be appointed from time to time or whenever the President so likes to enquire into and report on the conditions of these areas, and "the executive power of the Union shall extend to the giving of directions to such a State as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the scheduled tribes in the State". I wonder whether there is anything constitutional about it. Why should we encumber a Constitution with the mention of scheduled areas? They are backward areas. The State has so far been keeping them deliberately backward and not much of improvement has been effected in those areas. Half of my constituency is partially excluded area, known as the Jaunsar Bawer. I know the conditions that obtain in that area. Years ago when Committees had been appointed they looked into the conditions. But looking into the conditions is not much of a job. Real job is to improve the conditions. This article does not go far in improving their conditions. It does not even give a ray of hope as to what will be done. To know what the conditions are a Commission will be appointed. That is not enough. It would be better if the article had been taken away from the Constitution because it does not help the scheduled areas at all. There is nothing positive about the article. Commissions can be appointed even without the Union being authorised to appoint the Commissions. What is there to prevent it from appointing Commissions or Committees or from making enquiries? So I think the article is not at all positive. If there be anything important or if any hope is hidden within these words or lines, I would like the Chairman of the Drafting Committee to expose it to air so that the people residing in those areas might also know what good future lies for them in between these lines. I do not see any hope for them. It is with this view, just to provoke Dr. Ambedkar or anyone on his behalf to give us an idea as to what is the meaning of bringing in the scheduled areas here and what hope it offers, that I have raised this point. If there is nothing and if only their mention is meant, then I would rather prefer that the article is taken away.

Mr. President : Dr. Ambedkar, do you wish to say anything?

The Honourable Dr. B. R. Ambedkar : No, Sir.

Mr. President : The question is :

"That with reference to amendment No. 3186 of the List of Amendments, in clause (1) of article 300, after the word and figure 'Part I' the words and figures 'and Part III' be inserted."

The amendment was adopted.

Mr. President : The question is :

"That article 300, as amended, stand part of the Constitution."

The motion was adopted.

Article 300, as amended, was added to the Constitution.

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Article 301 [COI Article 340]

(Amendments Nos. 3189 and 3190 were not moved.)

Shri H. V. Kamath : Mr. President, Sir, I move amendments Nos. 3191, 3195, 3196, 3197, 3198 and 3200 standing in my name.

I move :

"That in clause (1) of article 301, the words 'consisting of such persons as he thinks fit be deleted."

In my judgment these words are wholly superfluous. I may even go to the length of saying that they cast a reflection upon the wisdom of the President. The President when he appoints certain persons, certainly appoints such persons as he thinks fit for the job with the commission of which those persons are charged. It is absolutely pointless and purposeless to say here that he may "appoint a Commission consisting

of such persons as he thinks fit." It may stop after "appoint a Commission". This adequately and sufficiently conveys the meaning intended in this portion of the article.

Then I move :

"That in clause (1) of article 301, for the word 'difficulties' the word 'disabilities' be substituted."

Bearing in mind what we have already adopted in this House I think the word "disabilities" conveys the idea far better than the word "difficulties". If we turn to the Chapter on Fundamental Rights we find that the second part of article 9 refers to "any disability, liability, restriction, condition" etc. The word "difficulty" nowhere occurs in that very important article which seeks to abolish discrimination on grounds of religion, race, caste or sex. We have passed that article. The word "difficulty" is to my mind hardly a constitutional term. I have read several constitutions of the world, but I find that it finds no place in constitutional terminology or parlance. The word 'disability' is a far more appropriate word than the word "difficulty". I am sure Dr. Ambedkar, steeped as he is in constitutional lore and constitutional learning, will have no difficulty in accepting this amendment.

I move my next amendment.

"That in clause (1) of article 301, for the words 'grants should be given' the words 'grants should be made' be substituted."

This is a purely verbal amendment. I do not wish to press it home, but I leave it to the collective wisdom of the Drafting Committee which I am sure will come into play at the appropriate time.

Then I move :

"That in clause (1) of article 301, for the word 'and' (in line 10) the words 'as well as' be substituted."

That portion of the article reads thus as it has been moved before the House :

"The President may by order appoint a Commission….. to remove such difficulties and to improve their condition and as to the grants that should be given for the purpose by the Union or any State and the conditions subject to which such grants should be given…"

I think the meaning would be more exactly expressed by the phrase "as well as" than by the single word 'and' here. That also I leave to the wisdom of the team of wisemen which this House has appointed to draft the Constitution.

I next move amendment No. 3198—

"That in clause (2) of article 301, for the words 'a report setting out the facts as found by them and' the words 'a report thereon' be substituted."

The clause as it stands reads thus :

"A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper."

If my amendment is accepted by the House the clause will read as follows :

"A Commission so appointed shall investigate the matters referred to them and present to the President a report thereon making such recommendations as they think proper."

This is only with a view to avoid cumbersome language and style and secure brevity and precision, but not at the sacrifice of any substantial meaning.

Lastly, I move my amendment No. 3200 which runs thus :

"That in clause (3) of article 301, the words 'together with a memorandum explaining the action taken thereon' be deleted and the following words be added at the end :—

'for such further action as may be necessary.' "

"This clause of the article as it now stands runs thus :

"The President shall cause a copy of the report so presented, together with a memorandum explaining the action taken thereon to be laid before Parliament."

My amendment seeks to modify it in this regard and if it is accepted by the House, the clause will read as follows :

"The President shall cause a copy of the report so presented to be laid before Parliament for such further action as may be necessary."

This is a drafting amendment, plus an amendment of substance. There are two parts to it. The first relates to the manner in which the President shall cause a copy of this report to be laid before both the Houses of Parliament. The clause, as it is now, makes it incumbent upon the President to affix a memorandum to the copy of the report to be laid before Parliament. It does not seem to be wise to lay down the manner in which the report should be presented to Parliament by the President. If the President deems it necessary to submit a memorandum along with the report he will certainly do so. The President will be a wise man. I am sure we will not have as President a man who is not wise or who is incompetent to do this duties in the interests of the nation. If the President thinks it necessary to affix a memorandum to the report he will do so. Why should we lay down in the Constitution things in such minute detail? It is just a tremendous trifle to say that he must add a memorandum to the report. That is the first aspect of my amendment.

The second part of my amendment relates to the sequel to the submission to Parliament by the President of this report by the Commission. I think, Sir, that the House is agreed on this point that Parliament, our sovereign Parliament of Free India, shall have a definite say, a substantial voice in whatever policy is going to be adopted or action taken with regard to the welfare of the socially and educationally backward classes in our country. This article has relation to the conditions of socially and educationally backward classes in the Indian Union. Parliament, I am sure, will be entitled to ask that any action taken with regard to the welfare of its backward people must be in conformity with the policy that will be formulated by it. Therefore I am anxious that with a view to having this implemented, when the report comes before Parliament, further action should be taken by Parliament and not by the President. The President will if need be, communicate to Parliament his own reactions to the report, but should not be the final authority to take action thereon. Parliament must have the last word on the action to be taken on that report. Therefore, this last amendment of mine seeks to make that quite clear, absolutely fool-proof and knave-proof, as Dr. Ambedkar might say, and make it impossible for the President to divest Parliament of this inherent right to take action on the report of the Commission submitted by the President to Parliament. Therefore I have suggested the addition of the words "for such further action as may be necessary". It may be that within the next ten years there may be no socially or educationally backward classes in our country. I look forward to that day even before the expiry of ten years. We have the example of Soviet Russia before us. Russia abolished illiteracy and brought even the lowest strata of the population to a fairly decent level in ten or fifteen years. Can we not, with our ancient heritage and our background of cultural and spiritual genius aspire to something better and to bring all these backward classes within less than ten years to a socially and educationally higher level? I hope, Sir, that within ten years we will have advanced a good deal towards redeeming these fallen and so-called backward people and we shall have no occasion to appoint a Commission for the submission of a report. I shall be very happy if that day comes in less than ten years. But, as it is, the Constitution provides for the appointment of a Commission. Then let Parliament consider and deliberate on the report submitted by the Commission to the President

and let Parliament take such action as it deems fit or necessary in this matter, so that within the ten-year period, when a Commission has been appointed and its report comes before Parliament, Parliament may chalk but a programme for the uplift and redemption of these educationally backward classes, and carry it out. I trust that after the first ten-year period has expired, there will be no need for the President again to appoint a Commission of this nature to enquire into the conditions of the backward classes in our country. Sir, I move these various amendments and commend them for the acceptance of the House.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in clause (3) of article 301, for the word 'Parliament' the words 'each House of Parliament' be substituted."

Mr. President : There are two amendments of which notice has been given by Pandit Thakur Das Bhargava, Nos. 180 and 181 of the First List.

Pandit Thakur Das Bhargava : I do not wish to move the amendments but I wish to speak on the article.

(Amendments Nos. 3192, 3193, 3194, 3199 and No. 181 of the First List were not moved.)

Mr. President : The article and the amendments are now open to discussion.

Pandit Thakur Das Bhargava : Sir, I consider that article 301 is one of the most important articles of this Constitution. Left to myself, I would call it the soul of the Constitution. So far as the Depressed Classes are concerned, we have only reserved some seats for them. The rest we have not done, and this article 301 seeks to complete the process of bringing them up to normal standards. This article places upon the entire nation the obligation of seeing that all the disabilities and difficulties of the Depressed Classes are removed and therefore it is really a charter of the liberties of the backward classes and in a sense this is an oath taken by the House, an oath to see that within the coming years we will provide all the facilities which can be provided by the nation for expiating our past sins. Now, Sir, in this country there are backward classes some of whom have had reservation given to them so far as representation is concerned, but the other classes have not been given such reservations but they are equally backward. I would therefore have liked a register to be made of all the backward classes including the present Depressed Classes, and after the Commission had found out what their difficulties and disabilities were and a programme chalked out for providing facilities to every member of these backward classes. If a particular class was economically very backward, provision could be made that with regard to their houses in the villages, they were given not only the residential rights but rights of disposal of their properties. If we chalk out a programme after the Commission has investigated their disabilities, we will be taking a great step towards the removal of those disabilities. There are many disabilities pertaining to them which the House fully knows and I need not go into them at this stage. What I want to say is that so far as these classes are concerned, we should see to it that these classes do not continue in the category of backward classes after they have come up to normal standards so that their backwardness is not crystallized or perpetuated. After they have reached normal standards, they should be taken away from this category. If any community continues in backwardness, socially, culturally or educationally, then it should not be a question of ten years or fifteen years but up to the time they are brought up to normal standards, facilities should be given and continued for them.

My next submission is that the article says "The President may by order appoint, etc." I have given notice of an amendment in this regard for substituting the word 'shall' for 'may' and even if the word 'may' is used in the article, I think it should be the obligation of the President to appoint such a Commission. Even though the word

'may' has been used, it must be construed as 'shall'. Therefore I have no doubt that the President shall appoint such a Commission and the Commission after making investigation into the conditions of these classes, shall have to suggest in what particular manner the steps suggested should be implemented. The article here simply says that he shall cause a copy of the Report to be placed before Parliament. The obligations of the Parliament are not given in article 301. I understand there is provision for them in 299 which has been held over. I do not want to speak now on that article, but what I want to submit is this : Now the safeguards for minorities have been taken away, for instance for the Muslims and the Sikhs. The only responsibility of the Parliament are the Scheduled Castes and the backward classes. In regard to these classes, special officers are to be appointed to see whether the fundamental rights which have been given to them under this Constitution and the special facilities which are sought to be provided for them after the investigation of the Commission are enjoyed by these people or not. These classes are not only the responsibility of the Central Parliament but of the State Legislature as well. But I submit they are the special obligation of the Central Legislature. This article 301 is only the material form of the Objectives Resolution. This article only gives the mechanism by which the Objectives Resolution is carried out. We should provide in this article that it shall apply not only to the communities for whom reservation has been made but also to those for whom no reservation has been made but who are all the same backward.

Sir, I feel great happiness in supporting article 301.

Prof. Shibban Lal Saksena : Mr. President, Sir, I whole-heartedly support this article. I only wish to point out two things in this regard. The first thing is according to the scheme of the Constitution, this Commission will be appointed at the very outset of the commencement of the Constitution. That means that as soon as our Constitution comes into existence, the President shall appoint the Commission to investigate into the conditions of the socially, educationally and culturally backward classes and then make its report on how to remove their backwardness. We are using the expression 'the backward classes' in several places in the Constitution, but we have not defined them anywhere in the whole Constitution. I hope this Commission which will specially investigate the conditions of the backward classes all over the country will be able to tell us what is meant by the term "backward classes". When the Commission reports to the Parliament, I hope they will define the terms "backward classes" and "depressed classes" in their report.

I also support the amendment of Mr. Kamath for the addition of the words "for such further action as may be necessary". That means that when the report is made, the House must consider the ways and means of removing the backwardness of these people. I think therefore that this amendment is necessary.

The Honourable Shri Satyanarayan Sinha : Sir, the question be now put.

Mr. President : The question is :

"That the question be now put."

The motion was adopted.

Mr. President : I have to put the various amendments to vote now.

The Honourable Shri Satyanarayan Sinha : If there is no other work then the House should be adjourned.

Mr. President : The question is :

"That in clause (1) of article 301, the words 'consisting of such persons as he thinks fit be deleted."

The amendment was negatived.

Mr. President : The question is :

"That in clause (1) of article 301, for the word 'difficulties' the word 'disabilities' be

substituted."

The amendment was negatived.

Mr. President : Amendments Nos. 3196 and 3197, I think, are of a drafting nature. We had better leave them. The question is :

"That in clause (2) of article 301, for the words 'a report setting out the facts as found by them and' the words 'a report thereon' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in clause (3) of article 301, the words 'together with a memorandum explaining the action taken thereon' be deleted and the following words be added at the end :—

'for such further action as may be necessary.' "

The amendment was negatived.

Mr. President : The question is :

"That in clause (3) of article 301, for the word 'Parliament' the words 'each House of Parliament' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That article 301, as amended, stand part of the Constitution."

The motion was adopted.

Article 301, as amended, was added to the Constitution.

Mr. President : This brings us to the end of these articles which we have set down for consideration today. One article which we passed over, article 289, remains to be considered. There were certain amendments and certain Members said that they were taken by surprise and that they would like to have time to consider it. If the House so desires, we might have an afternoon session, so that we may not have to sit tomorrow.

An Honourable Member : We are prepared to discuss it now.

Mr. President : At 6 o'clock.

Shri K. M. Munshi : The sittings should not be fixed for tomorrow as many Members, I know, have booked their accommodation.

Mr. President : It is therefore why I am suggesting six o'clock.

The Honourable Shri Satyanarayan Sinha : Either we can hold it over or you have a meeting in the evening and finish it.

Mr. President : I think some Members feel that they would like to have time to consider the amendments and therefore it is much better to give them time, and if you all agree, I would like to have an afternoon session in the evening, say at six o'clock.

Honourable Members : 6 p.m.

Mr. President : So the House stands adjourned till six o'clock this evening.

The Assembly then adjourned till Six of the Clock in the afternoon.

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The Constituent Assembly re-assembled at Six of the Clock in the afternoon, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

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DRAFT CONSTITUTION—(*Contd*.)

Article 289 [COI Article 324]—(*Contd*.)

Mr. President : We shall take up the amendment moved by Dr. Ambedkar in the morning. I think that is the only amendment now to the original article which was

moved by Dr. Ambedkar.

I have just received notice of amendments from two Members, Shri Mahavir Tyagi and Mr. Jaspat Roy Kapoor. I do not know how these amendments come in at this stage. They cannot be amendments to amendments; they can only be amendments to amendments to amendments. I am not inclined to allow any amendments to amendments to amendments.

Shri Jaspat Roy Kapoor (United Provinces : General) : May I then be permitted, Sir, to put forth my viewpoint as contained in this amendment, of course during general discussion?

Mr. President : The article and the amendment will be open to discussion. Any Member may say whatever he likes. It is for him to vote according to what he says or otherwise.

Shri Mahavir Tyagi : May I submit, Sir, if at any stage some serious discrepancy is found and it is pointed out, I hope it must be taken notice of.

Mr. President : I do not think your amendment comes under that. In your case, the amendment of which you have given notice does not deal with the matter which has just been discovered.

Shri Mahavir Tyagi : I could not follow, Sir.

Mr. President : Your amendment is this : that in clause (1) of the proposed article 289, the words "and Vice-President" be deleted. That is to say, you want to keep the election of the Vice-President out of the purview of the Election Commission.

Shri Mahavir Tyagi : Yes, Sir.

Mr. President : It is not a case in which something has been discovered as a result of discussion which creates difficulty and this amendment becomes necessary. This should have been foreseen and if you wanted to give notice of an amendment, you should have given it before. I cannot allow this now.

Shri H. V. Kamath : May I request, Sir……..

Mr. President : I have given a ruling on Mr. Tyagi's amendment, I am now dealing with the other amendment.

Shri H. V. Kamath : For the future at least, may I know, Sir, what is the position with regard to amendments to amendments to amendments?

Mr. President : I am not going to make any promise about the future. I will deal with every case as it comes up.

Shri H. V. Kamath : I want to know what is the rule, Sir.

Mr. President : The Member may rest assured, I will follow the rules.

Shri H.V. Kamath : I am not questioning that. As the rules are silent on the point, I want to know what the position is with regard to amendments to amendments to amendments.

Mr. President : As I have said, I shall decide each case as it comes up.

As regards the amendment of Mr. Jaspat Roy Kapoor, he may speak on it. The article and the amendment are open to discussion.

Shri R. K. Sidhva (C.P. & Berar : General) : May I know, Sir, whether the discussion will be only on the amendment or on the article also?

Mr. President : The whole thing.

Shri Jaspat Roy Kapoor : Mr. President, Sir, if I rise to speak on amendment No. 99 relating to article 289, it is not because I am fond of speaking too often. While coming to the rostrum, Sir, it was suggested to me by my honourable Friend Dr. Ambedkar that the galleries today were empty and that I need not be very particular about speaking on this article. I may assure my honourable Friend Dr. Ambedkar that I never speak to the galleries or with the object of finding any prominent place in the

Press. I speak only when I feel it is absolutely necessary to speak and on this occasion, Sir, such is my feeling and hence I have come before you to address on article 289.

I must confess, Sir, that on the last day of this session, article 289 has proved to be rather an inconvenient one. It has been debated at length yesterday and today and I find that the more it is being debated the more defective it appears to be and I find that the more we scrutinise it the more defects of it come to light. On a closer scrutiny of this article I find that it is necessary to recast it altogether. A few amendments here and there, a few alterations or changes here and there in this article would not do : it needs being recast altogether. I do not suggest that it needs being recast in order to meet the viewpoint of those who question the propriety of the Centre being invested with the authority to conduct all elections. I take it that everyone of us, or at least the overwhelming majority of us, is inclined to the view, is definitely of the view that elections must be run under the control, direction and supervision of an authority appointed by the Central Government, the President I mean of course, subject to any law which may be enacted by the Parliament. But, Sir, I think it is necessary to recast this in order to make the procedure laid down in this article 289 as a really effective and workable one so that there may be no conflict between the authority which is to be appointed by the President—I mean the Election Commission—and the other bodies in the Centre or in the provinces. As it is, however, I think that article 289 if allowed to remain in its present form would lead to conflict between the Election Commission and the presiding officers of the various legislatures. Let us see how it stands.

"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 etc. by the President."

Now these are the various functions that are going to be entrusted to this Election Commission. Superintendence, direction and control of what things, firstly, of the preparation of the electoral rolls for all elections to Parliament, to State Legislatures and for all elections to the offices of President and the Vice-President. The electoral rolls for these elections are to be under the supervision, direction and control of this Election Commission. Secondly, its function is the conduct of all these elections. These are the two functions that are going to be entrusted to the Election Commission. Now let us see how the election of the President is going to be, how the election of the Vice -President is going to be, how the election of members of the Council of States is going to be and lastly how the election of members to the Legislative Councils of the States is going to be. Under article 43 which we have already passed the President will be elected by the elected members of both Houses of Parliament and by the elected members of the Legislative Assemblies of the various States. Now the question is what will be the electoral roll of all these members? Is it the intention of Dr. Ambedkar that the question as to who are to be the electors who will from these electoral colleges is to be decided by this Commission? Now the electors will be members who will have been already duly elected to the House of the People, Council of States and the various Legislative Assemblies. They will be already duly elected members. So the question of preparing an electoral roll of these members simply does not arise at all. It should not be open—I think it will be readily admitted—to the Election Commission to decide as to which of those particular members are unqualified. A person once having been duly elected can of course become disqualified from remaining as a member; and so far as the Legislative Assembly of the various States are concerned, we have only the other day enacted article 167-A which lays down that if any such question arises, it will be decided by the Governor and the order of decision of the Governor shall be final. Now that decision and order of the Governor being final what function remains for the Election Commission to perform in the matter of determining the question as to which particular members are entitled or not entitled to participate in the election of the

President? So far as the preparation of electoral roll is concerned, the Election Commission has no function to perform. The second is the stage of conducting the election itself. Now the question arises that the members of the House of the People will be called upon to elect the President and also members of the Council of States, and so also elected members of the Legislative Assemblies of the various States. These persons will cast their votes as members of the various Legislatures and as such they must perform that function of casting their votes under the supervision, direction and control of the presiding officers of the respective legislatures. Is it the intention to divest the presiding officers of these various legislatures of their ordinary and inherent right of conducting these elections? I suppose not. So that so far as the election of the President is concerned, both in the matter of the preparation of the electoral roll as also in the matter of the conduct of election, the Election Commission shall have absolutely no function to perform or if it has, obviously it will come in conflict with the presiding officers of these various legislative bodies. Now let us come to the question of the election of the Vice-President. There the matter is more complicated still. The election of a Vice-President it was pointed out to us—the credit of which must go to my honourable Friend Mr. Tyagi—it was pointed out by him outside the House that under article 55 we have it "That the Vice-President shall be elected by members of both Houses of Parliament assembled at a joint *meeting* in accordance with the system etc." Here also we find that the question as to who shall vote for the election of Vice-President is already definitely determined by article 55, and the Election Commission will have nothing to do about this. The manner of conducting the election is also laid down in article 55. All the members will sit together in a joint *meeting* which will be presided over, as has been provided, by the Speaker of the House of the People. Where does the Election Commission come in as regards the election of Vice-President? Thirdly comes the question of election of members of the Council of States. Under article 67 they are to be elected by the elected members of the legislative assemblies of the various States. There too the members who will participate in the election are well-known; there is no question of preparation of electoral roll there. Then as to the conduct of elections and casting of votes, that will be done, as in the past, under the direction and control of the Speakers of the various legislatures; and interference by the Election Commission will lead to conflict with the Speakers. The same objection will apply in the case of elections of these members to the legislative Councils of the States who are to be elected by the members of the legislative assemblies in the various States. Therefore, while the underlying intention of article 289 is a laudable one and while we must provide for elections to be conducted under the supervision and control of a central authority appointed by the Central Government, we must so frame the article as to obviate any chances of conflict between the Election Commissions and the presiding officers of the various States, by taking away those things which may give rise to such conflicts. We should also take note of article 55 in which we have provided for the election of Vice-President. Therefore I submit that it is necessary to recast this article so as to make it applicable to direct elections only to House of People and legislative assemblies. Today we can commit ourselves definitely to the principle that all elections shall be conducted under the supervision, direction and control of a central authority, subject of course to such variations as appear obviously necessary in the light of article 55 and in the light of what I have already submitted. That is what I have to submit and the amendment of which I had given notice was only in regard to these points that I have raised. If the difficulties and apprehensions that I have raised are in any way removable by some interpretation of article 289 that Dr. Ambedkar may give, that is another thing.

Mr. President : I may point out that no explanation need be given. You are assuming that in all these elections members will give votes while sitting in Parliament. But they will not be sitting in Parliament; they will vote as voters of that

particular constituency.

Shri Mahavir Tyagi : What will happen as regards disputes, and the filing of nomination papers before the Speaker?

Mr. President : It will be for the Election Commission to decide who the returning officer for this election will be. The whole argument is based on the assumption that when members of the legislatures who are entitled to vote for the election of the President sit, they sit in a session of the Assembly. They are not going to do that. They will be members of an electoral college and they will vote in that capacity.

Shri Mahavir Tyagi : In the case of the election of Vice-President, the names are to be proposed in the House by honourable Members, then it will be seconded and nomination papers are to be filed, etc.

Mr. President : You are again assuming that it will be a session of the House.

Shri Jaspat Roy Kapoor : My submissions were based on that assumption surely, but I do not know if there can be any other assumption. We find everywhere that members shall be electing the President, Vice-President and members of the Council of States as members of the legislature and in no other capacity. For instance, we find in article 55 that the Vice-President will be elected by members of both Houses of Parliament in a *meeting*.

The Honourable Dr. B. R. Ambedkar : The working is "at a joint meeting" and not "sitting".

Shri Jaspat Roy Kapoor : It will be all right if that point is authoritatively stated on the Floor of the House so as to avoid the possibility of this article being interpreted differently, for in articles 80(3) and 164(3) the word 'meeting' has obviously been used in the sense of a sitting of the legislature and not in the sense of merely a congregation of the members. The same word cannot be interpreted differently in different article unless definitely specified therein. That is all I have to submit.

Sardar Hukam Singh (East Punjab : Sikh) : Sir, article 289 as has been lately amended is surely a very important provision for the safeguarding of—as the Mover said, cultural, racial or linguistic minorities. It is conceived with the very laudable idea that it will give protection to them against any provincial prejudices or whims of officials. But there is one thing that I am afraid of. Whereas sufficient protection has been given against injustice to racial, cultural or linguistic minorities so far as provincial prejudices are concerned, it has been assumed that the Centre will not be liable to corruption at any time. We are perhaps obsessed with the feeling that our present leaders, who are noble and responsible people and are at the helm of affairs now, will continue for ever or that their successors will be as responsible as they are. My fear is that in future that may not be so and with a little prejudice or unsympathetic attitude at that time the minorities may be in great danger. I am certainly against centralisation of powers and I feel that in this Constitution we are reducing the provincial Governments to the position of District Boards by centralising all power here. But I am not opposing the present amendment because we have been assured that it is to safeguard the interest of these minorities. I rather welcome it. But I want to make one observation about that and that is that this Commission will have very important functions to perform and one of them would be delimitation of constituencies. Of course this business would be the soul of all elections. If delimitation of constituencies is made with full sympathy to the minorities it might restore their confidence and they might never feel sorry for what they have done—I mean this voluntary giving up of all safeguards of reservation of seats. So far as the majority is concerned it has nothing to fear. So far as the Scheduled Castes are concerned they are quite safe because they have got that reservation of seats. So far as the Anglo-Indians are concerned they will be nominated if they are not adequately represented. But for other minorities such as Muslims and Sikhs I feel that if they are

not properly represented they might lose confidence in that majority. This Commission shall have a very responsible task to perform in that respect when it is carving out those constituencies. If the Commission, as our object is, feels that responsibility and does its job with full responsibility then I am sure the minorities shall have nothing to fear. But with a little apathy and some ill-adjustment in the delimitation this Commission can certainly work much havoc and those minorities may not even get what they ordinarily would have got according to their population. So my object in making this observation is that in the beginning at least the Government should take care that this Commission is so constituted that every interest is represented on that Commission, and this the Government can do very easily. By this they would restore all confidence in the minorities. This would go a long way in achieving the object which we have in view, namely, that we should have one nation, all people welded together. If the Government were simply to give an assurance that it would give sympathetic consideration to this request of mine, that for the beginning at least this Commission shall be representing all interests, my object would be achieved and the minorities also would not feel apprehensive of their future fate. With these remarks I welcome this article as now proposed in this House.

Shrimati Annie Mascarene (Travancore State) : Mr. President, Sir, after hearing Dr. Ambedkar's explanation two days back I thought I would abide by this article. But after listening to Mr. Munshi's speech this morning I am provoked to speak again on the subject and resume my old position. Sir, I am a believer in the right of the people of the province to elect their representatives independent of any control, supervision and direction of any power on earth. I believe that to be democracy. If the Centre is to think that expediency demands that they should supervise and control the elections, as one sitting in the Provincial Legislature I can see in the Centre as many delinquencies as they see in us. From this article it looks as if the Centre is assuming to be the custodian of justice. Well, justice is not in the custody of anybody but of those who are lovers of truth. Mr. Munshi this morning spoke that article 289 is calculated to defend the rights of the people in the provinces in view of expediency and reality. May I remind him of the expediency and reality of nations in days long gone by—of the Parliament of Rome, of the Long Parliament of England? Cromwell thought that it was expedient to run the administration by a unicameral legislature. The Napoleonic heroes thought that it was expedient to run the administration by a unicameral legislature. But time has proved the effect of those expediencies. What is reality and expediency today is not reality and expediency tomorrow. We are here laying down principles—rudimentary principles—of democracy, not for the coming election but for days to come, for generations, for the nation. Therefore principles of ethics are more suitable to be considered now than principles of expediency. I am a believer in politics as nothing but ethics writ large. I am not a believer in politics as a computative principle of addition, subtraction and multiplication. If this section is to be accepted we are to believe that hereafter the provincial election will be under the perpetual tutelage of the Centre. That means, Sir, that the integrity of the provincial people is questioned. I wish to turn the tables on the Centre itself. Sir, should we, at this psychological moment when the people of India are demanding their rudimentary right of electing their representatives without being interfered with by any authority on earth, impose any restriction? If democratic principles are to be accepted, this article should be deleter from the Constitution.

Then I come to the latest amendment, giving the legality of Parliament to a section which was hitherto blooming as autocratic. Well, Sir, whatever may be the amendment added on to it, it cannot lose its old shade or colour and it stands there as the ancient Roman tutelage under the patriarchal system. If the provincial or the States people are to be guided, let them be guided by experience. If we have erred, we will err only for a time or a period. They say that this is a deviation from the democratic principle.

Well, I ask where is the necessity to deviate from the experience of nations and ages? Have you any *prima facie* case to show that we have erred in our democratic principles? In that case I am willing to accept this clause. But, as it is, we have not tried the experiment. We are only in the making of it. If in the experimental stage we fail, well, there is provision in the Constitution to amend it when time and circumstances demand. But let us not sully the fair name of the nation by believing in the first instance that the provincial people will not be guided by principles of truth and justice and will not keep up the democratic principles of fairness by electing by fair means. Centralisation of power is good enough for stable administration, but centralisation of power should be a development at later stages and not from the very inception of democracy. At the very inception of democracy, centralisation would look more autocratic than democratic. We are living in an age when democratic experiments are being tried by many a nation. Dr. Ambedkar quoted from the Canadian Act of 1920. How is it that he did not travel down to the United States from Canada? Why would he not look at the Australian Commonwealth? If Canada has adopted a measure, is it necessary that India, with twenty-five times the population of Canada and half the size of Europe, should adopt those very principles in her Constitution and take it as a salutary example for experiment in democracy? If democracy could succeed in the United States, if it can succeed in England, why should it not succeed in India without this clause? Well, Sir, I hope this House will give consideration to this article and be guided by principles of democracy rather than by principles of expediency.

Shri H. V. Kamath : Mr. President, article 289 of our Draft Constitution dealing as it does with elections and electoral matters has naturally evoked intense interest in this House and I am sure it has evoked or is bound to evoke equally keen interest outside the House as well. If we compare article 289 as it was originally drafted by the Drafting Committee and the article as it has come before the House today, we cannot fail to notice some salient differences, the main difference being that the superintendence, direction and control of all elections to State legislatures have been radically modified in the draft article as it was moved by Dr. Ambedkar yesterday and amended by him today. The footnote to this article on page 138 of the Draft Constitution reads thus :

"The Committee is of opinion that the Election Commission to superintend, direct and control elections to the Legislature of a State in Part I of the First Schedule should be appointed by the Governor of the State."

This was apparently the Drafting Committee's original view. But later on the view underwent some transformation and, in so far as the Election Commission for a State a concerned, the Governor has disappeared from the picture. I fail to see why the Governor, now that he is going to be nominated by the President, should not have any voice in the matter of the Election Commission to superintend, direct and control the elections to the State legislature. If honourable Members will turn to article 193(1) they will find that even where appointments of High Court Judges in a State are concerned, the Governor of that particular State has been invested with some authority in the matter. That relevant clause reads as follows :

"Every judge of a High Court shall be appointed by the President by a warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State…"

I cannot understand why the Governor of the State should have no voice whatsoever in the appointment of the Regional Election Commissioner or the Election Commissioners of that State. The article as it has been modified by Dr. Ambedkar confers power on the Governor of the State in so far as supplies are concerned, such as staff, furniture and I do not know what else. As far as these are concerned, the Ruler

of the State or the Governor of the State shall, when requested, by the Election Commissioners make available to the Election Commission or the Regional Commissioner, such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1) of this article. That, Sir, to my mind is a sort of anti-climax to the whole scheme of the article. That, Sir, to my mind is a sort of anti-climax to the whole scheme of the article. In my humble judgment there is no valid reason whatsoever why the Governor should be deprived of the right of even exercising his voice or giving the benefit of his opinion in so far as the appointment of Election Commissioners for the State is concerned. The executive head of the Union is the President and the executive head of the State is the Governor. May I ask the House why, if we seek to invest the President who is the constitutional head of the Union with such vast powers in the appointment of Election Commissioners for the whole of India, we should not give the Governor the right to give his opinion, his judgment in the appointment of Election Commissioners for his State? I fail to see any reason whatsoever for not giving the Governors any powers except in so far as providing the staff is concerned, how many clerks, how many superintendents and how many assistants are required for the Election Commissioners. A sort of *Bada Babu* the Governor has become so far as the Election Commission is concerned. You are making him nothing more. I submit that this is utterly derogatory to the dignity of the Governor of a State. I cannot understand why the Governor is being asked to supply the staff when he has no voice in the appointment of the Election Commissioners. I strongly object to this denudation of the Governor's authority, so far as the office of the Election Commission is concerned. Again, I personally feel that clause (5) is absolutely unnecessary. We are burdening the Constitution with redundant details, with purposeless and meaningless details. Certainly every office will have to have necessary staff. But why put it down in the Constitution? The President of the Indian Union and the Governors of the States will certainly require staff for their offices, but we have not mentioned that in the Constitution. Why mention then that the Election Commissioners at the Centre or the Regional Commissioners in the provinces shall be provided with necessary staff. What I ask is this. Is it conducive to the dignity of our Constitution if we burden it with such unnecessary details, such minute?

Next I pass on to the amendment which has been moved by Dr. Ambedkar today after listening to the debate in the House yesterday and today. I feel that the amendment which has been placed before the House today is a sort of half-hearted concession to the viewpoints that have been put forward in this House. We are dealing with elections and electoral matters. Parliament is the supreme elected body in the Indian Union and so Parliament must have greater voice in the matter of superintendence, direction and control of elections. With a view to serving this purpose, my Friend Prof. Shibban Lal Saksena moved certain amendments yesterday. The amendment that has been moved by Dr. Ambedkar today meets of those amendments, some of those viewpoints half way. I personally think—I may be wrong in the assertion—but I believe that Dr. Ambedkar individually is inclined to go the whole hog. I shall not venture to make a statement on that point, and I have to take the amendment as it has been placed before the House. Clause (4) of the article moved by Dr. Ambedkar yesterday says that the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine. Today the amendment placed before the House says, "subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine." There are two things, the Parliament's law and the President's rule. Why, may I ask, in fairness to this House and the future Parliament of the Indian Union, should we not say that the conditions of service and tenure of office shall be such as Parliament may by law

determine? Why also say "as the President may by rule determine"? The President in the executive head of the Union, while Parliament is the supreme elected body. Why then leave it to the President to frame rules in this regard?

The next point is, why the Chief Election Commissioner's conditions of service and tenure of office are made so very secure he is almost irremovable—except on a vote of two-thirds majority of both the Houses of Parliament. Why has he been made almost irremovable, while his colleagues the Election Commissioners are, according to this article, removable at the sweet will and pleasure of the Chief Election Commissioner? Is this the way that this House is going to treat the colleagues of the Chief Election Commissioner? Even a clerk in a District office or in the Secretariat has got far better conditions of service and security of tenure that what is envisaged for the Election Commissioner in this article. I feel, Sir, that with the article left as it is, most of the time of the Election Commissioners will be utilised in doing what I may call *khushamat*, to keep the Chief Election Commissioner in good humour, because it will be only natural, human nature being what it is, lest the Chief Election Commissioner should give a bad chit. So this is what we are trying to provide by means of this article. I personally know that a superior officer often gives a bad chit, not because his subordinate is bad at his work but because he is of independent views, is of strong mind or does not humour his boss. This sort of thing should not be encouraged, but I am afraid that is what this article might do.

Pandit Lakshmi Kanta Maitra (West Bengal : General) : How can Members be sacked by the Election Commissioner, I cannot understand.

Shri H. V. Kamath : Not members but Election Commissioners. You are not listening properly. I think you honourable Friend is a hurry to go home.

Pandit Lakshmi Kanta Maitra : I am listening to you, but I am getting more and more confused as you proceed.

Shri H.V. Kamath : The second proviso to clause (4) to this article moved yesterday by Dr. Ambedkar is to the effect that "provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner." Is it clear now? I want the Election Commissioners to be placed on a par with the Chief Election Commissioner. We have adopted the article with regard to the removal of Supreme Court Judges and High Court Judges, placing them on a par with one another. There is no distinction between the Chief Justice and his colleagues. I ask, therefore, Sir, why this distinction between the Chief Election Commissioner and the Election Commissioners?

Pandit Lakshmi Kanta Maitra : That has been provided in the case of the Chief Commissioner. They would be done on the recommendation of the Chief Commissioner.

Shri H. V. Kamath : Perhaps the language of the article is not clear. If of course, the article means that the Chief Commissioner and his colleagues the Election Commissioners and the Regional Commissioners, all these can be removed only in a like manner and on like grounds as a Judge of the Supreme Court, then it is all right. The removal, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners have been made so tenuous that with these conditions before them, men of real merit, men of ability and competence may not like to serve on the Election Commission (*Interruption*). There is the President to pull me up if necessary. I hope there is only one President in the House. I will bow to his ruling and to none other's. The President's command I will obey.

Then, Sir, there are one or two more points which I would like to stress before the House. I feel that so far as the Regional Commissioners are concerned, that is, the Commissioners for a particular State are concerned, I have already stated that the

Governor of the State should be consulted by the President before he appoints Election Commissioners for that State. As it is, we are watering down provincial autonomy to a considerable extent in this Constitution, but certainly there is no harm if in appointing the Election Commissioners for the particular State the Governor of the State is consulted. After all the Governor is not going to be elected now. He is going to be nominated by the President; he is the President's nominee and more or less a creature of the President. The President will have full confidence in the Governor of the State; he is not going to be an elected Governor at all, but a nominated Governor. If the President cannot trust even his own nominee. I do not know whom else he can trust. So, I suppose some sort of a suitable alteration will be made in this regard providing for consultation with the Governor by the President, especially in view of the fact that even as regards the appointment of a High Court Judge in a State, we have provided that the President shall consult the Governor of the State. I fail to see why the Governor should not be invested with a similar power in regard to the appointment of Regional Commissioner.

Next, so far as the removal of Regional Commissioners is concerned, it should not be left so very delightfully easy as it is now in this article. I feel that there must be more secure conditions of tenure and of service. If Parliament can have no voice—Parliament at the Centre and the Legislature in the State can have no voice in the removal of Regional Commissioners I at least feel that they should be removed only by the whole Election Commission and not simply by the Chief Election Commissioner and the entire Commission will consist of the Chief Election Commissioner and his colleagues. The one-man show must cease. It is all a one-man show at present. Now, of course we are going to adopt an amendment to the effect that "subject to any law made by Parliament", but so far as the removal is concerned, according to the article it is a one-man show,—the removal of the Election Commissioners or Regional Commissioners. This should not be. The removal must be made more difficult; otherwise, I warn the House that no men of proved merit, ability or competence will come to serve on the Election Commission when the conditions of service are so very insecure.

Then, Sir, there is one point made by my honourable Friend, Prof. Shibban Lal Saksena and that is that the Regional Commissioners must be appointed by the President not merely in consultation with, but in concurrence with the Election Commission. I think that is a safe rule to adopt, that the President should not have the only word, but he must be guided by the opinion of the Chief Commissioner with whom he must concur in the matter of appointment of his colleagues. After all when the President has appointed the Chief Commissioner, I see no reason why the President cannot get suitable men about whom both are in agreement. Certainly India is a vast country, and she can produce men for every place and for every office that the future may have in store; and I am sure for this job of Election Commissioner there will certainly be men available about whom the President and the Election Commission can agree, and both in agreement with each other can appoint the Regional Commissioners. These are the lacunae and pitfalls in the article and the amendments that have been moved by the Honourable Dr. Ambedkar before the House. I have serious misgivings about the working of this article. I have doubts about the way in which it will work, unless it is further amended suitably. Unless it is so amended, I am sure the Election Commission at the Centre and in the State will not function as well as we all want it should, and it is, I dare say, the unanimous desire of the whole House that with elections looming on the horizon, the first general elections should be conducted in an able, impartial, efficient manner. There can be no two opinions on that point. I, however, fear that that object may not be achieved by this article. This is a possibility which I for one do not like to envisage. I desire that a suitable method should be devised to have more competent, more impartial and more

efficient Election Commissions in the States as well as at the Centre to conduct elections. What I fear is that this article moved by Dr. Ambedkar may not serve that purpose. I hope that Dr. Ambedkar and his wise men of the Drafting Committee will take into consideration this matter, if not now, at a later stage perhaps, and try to make further suitable amendments in this article. The House, I am sure, will consider this matter more carefully because it is not a matter to be lightly treated, for members to laugh at and smile. They might live to weep another day. If we are in a hurry to go home, I wish that this article may be held over. It is not a laughable matter at all and if Members are tempted to laugh, I wish them joy of it. Sir, I trust that the article will be suitably modified in the light of my observations.

Some Honourable Members : The question be now put.

Mr. President : Closure has been moved. The question is :

"That the question be now put."

The motion was adopted.

Mr. President : I will first put the amendment which Ambedkar has moved last.

The question is :

"That in amendment No. 99 of List I in the proposed article 289—

(i) in clause (1) the words 'to be appointed by the President' occurring at the end be deleted.

(ii) for the clause (2), the following clauses be substituted :—

'(2) 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 other Election Commissioners shall, subject to the provisions of any law made in this behalf by Parliament, be made by the President.'

'(2a) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Commission.'

(iii) in clause (4), before the words 'The conditions of service' the words 'subject to the provisions of any law made by Parliament' be inserted."

The amendment was adopted.

Mr. President : I will put Prof. Shibban Lal Saksena's amendment. I think there will be a little change because of the new arrangement.

The question is :

"That at the end of clause (1) the following words be added :—

'Subject to confirmation by two-thirds majority in a joint session of both the Houses of Parliament'."

The amendment was negatived.

Mr. President : The question is :

"That after the word 'appoint' in clause (2) the following be inserted :—

'Subject to confirmation by two-thirds majority in a joint session of both the Houses of Parliament.' "

The amendment was negatived.

Mr. President : The question is :

"That in clause (3) for the words 'after consultation with', the words 'in concurrence with' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in clause (4) for the words 'President may by rule determine', the word

'Parliament may by law determine' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in proviso (1) to clause (4) for the words 'Chief Election Commissioner' the words 'Election Commissioners' be substituted, in both places."

The amendment was negatived.

Mr. President : The question is :

"That in proviso (2) to clause (4), the words 'any other Election Commissioner or' be omitted."

The amendment was negatived.

Mr. President : The question is :

"That for article 289, the following article be substituted :—

289. *Superintendence, direction and control of elections to be vested in an Election Commission*.—(1) 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 President and Vice-President held under this Constitution, including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections to Parliament and to the Legislatures of States shall be vested in a Commission (referred to in this Constitution as the Election Commission).

(2) 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 other Election Commissioners shall, subject to the provisions of any law made in this behalf by Parliament, be made by the President.

(2a) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Commission.

(3) Before each general election to the House of the People and to the Legislative Assembly of each State and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President shall also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on it by clause (1) of this article.

(4) Subject to the provisions of any law made by Parliament the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine :

Provided that the Chief Election Commissioner shall not be removed from office except in like manner and on the like grounds as a judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment :

Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

(5) The President or the Governor or Ruler of a State shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1) of this article."

The amendment was adopted.

Mr. President : The question is :

"That article 289, as amended, stand part of the Constitution."

The motion was adopted.

Article 289, as amended, was added to the Constitution.

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ADJOURNMENT OF THE HOUSE

The Honourable Shri Satyanarayan Sinha : Mr. President, Sir, in the rules of procedure of this House, rule 19, there is a proviso that the House cannot be adjourned for more than three days by the President unless the House authorises him to do so. Therefore I move this formal motion :

"Resolved that the House do adjourn until such date in July 1949 as the President may fix."

No date is specified; the President will fix the date.

An Honourable Member : Why put down the month?

The Honourable Shri Satyanarayan Sinha : The month is fixed; the President shall fix the date.

The Honourable Shri Ghanshyam Singh Gupta : (C.P. & Berar : General) : That means that the President shall have no choice in regard to the month.

The Honourable Shri Satyanarayan Sinha : The motion is simply that the House do adjourn until such date in July 1949 as the President may fix. He cannot alter the month; he can fix a date.

Mr. President : Before I put this motion to the House, I desire to explain the situation and the programme as I envisage it. May own idea is that we should be able to finish the second reading by the 15th of August. Thereafter, we shall have to adjourn for some time to enable the Drafting Committee to prepare the Constitution in its final form for the third reading. That might take some weeks. Therefore, we shall have to meet some time in September. That should also be subject to this that we are able to pass the third reading by the second of October. That is my wish. If the House generally agrees to this tentative programme, I shall fix the dates in consultation with the Drafting Committee and perhaps with the members of Government who are principally concerned in this.

Shri Mahavir Tyagi : Could you also give an idea as to how long you may require us to sit in the month of July?

Mr. President : I could give you an idea. The Assembly cannot meet before the 15th of July, because, as I said the other day, the adjournment has been necessitated by the fact that there are certain provisions which have to be considered consultation with the Provincial Ministers and the Finance Minister has also to be present at these consultations. The Finance Minister is going to England in connection with the Sterling Balance negotiations, and he will be coming back some time early in July. We cannot expect that this Conference of Provincial Ministers may take place before the 15th of July. Therefore, the House cannot meet before the 15th of July. The question is as to on what exact date after the 15th of July we should be able to meet. I shall try to adjust that in consultation, as I have said, with the Drafting Committee and with the Government.

Shri Mahavir Tyagi : I want to know the length of period for which we will have to sit.

Mr. President : As I have said, from the day we begin up to the 15th of August; that is as I envisage.

Shri Mahavir Tyagi : Fifteenth is the probable date on which you might summon the session. What I want to know is how long will that session last.

Mr. President : I have answered that question. I have said, the session will last

from the day it commences up to the 15th of August, if my provisional programme stands.

The Honourable Shri Ghanshyam Singh Gupta : May I also remind you, Sir, that it will be difficult for us to say on what particular date we will finish. That will depend on the work and how much time we take.

Mr. President : As I have said, this is a provisional suggestion of mine. That is a good date and therefore I want to have it finished by that date. If the Members want to prolong it, they can do it, of course.

Shri R. K. Sidhva : My point is, we have held over a number of clauses and unless we meet a little earlier, *viz.*, by the 20th, we will not be able to finish the subject matters held over as contentious by the 15th August 1949.

Mr. President : I shall bear that in mind.

The Honourable Shri Satyanarayan Sinha : Sir, let us adjourn now.

Mr. President : Do I take it that the House accepts the motion moved by Mr. Sinha?

Honourable Members : Yes.

Mr. President : The question is :

"Resolved that the House do adjourn until such date in July 1949 as the President may fix."

The motion was adopted.

The Assembly then adjourned until a date in July 1949 to be fixed by the President.

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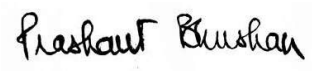

(TRUE COPY)

GOVERNMENT OF INDIA

LAW COMMISSION
OF
INDIA

Report No.255

Electoral Reforms

March 2015

न्यायमूर्ति अजित प्रकाश शहा
भूतपूर्व मुख्य न्यायाधीश, दिल्ली उच्च न्यायालय
अध्यक्ष
भारत का विधि आयोग
भारत सरकार
हिन्दुस्तान टाइम्स हाउस
करतूरबा गान्धी मार्ग, नई दिल्ली - 110 001
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सत्यमेव जयते

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D.O. No.6(3)/240/2013-LC(LS) 12 March, 2015

Dear Shri Sadananda Gowda ji,

The Ministry of Law and Justice, in January 2013, requested the Twentieth Law Commission of India to consider the issue of "Electoral Reforms" in its entirety and suggest comprehensive measures for changes in the law. While working on the subject, the Supreme Court of India, in the matter of "Public Interest Foundation & Others V. Union of India & Anr - Writ Petition (Civil) No. 536 of 2011, directed the Law Commission of India to make its suggestions on two specific issues, viz., (i) 'curbing criminalization of politics and needed law reforms'; and (ii) 'impact and consequences of candidates filing false affidavits and needed law reforms to check such practice'. In the light of this judgment, the Commission worked specifically on these two areas and, after series of discussions, followed by a National Consultation held on 1st February 2014, submitted its 244th Report titled "Electoral Disqualifications" on 24th February 2014 to the Government of India.

After the submission of Report No.244, the Commission circulated another questionnaire to all registered national and State political parties seeking their views on ten points, the response received was not very encouraging, though. However, the Commission undertook an extensive study to suggest electoral reforms, held various rounds of discussions with the stakeholders and analysed in-depth the issues involved. After detailed deliberations, the Commission has now come up with its recommendations which are put in the form its final Report, **Report No.255,** titled ***"Electoral Reforms",*** which is sent herewith for consideration by the Government.

With warm regards,

Yours sincerely,

Sd/-
[Ajit Prakash Shah]

Shri D.V. Sadananda Gowda
Hon'ble Minister for Law and Justice
Government of India
Shastri Bhawan
New Delhi – 110 115

Report No.255
Electoral Reforms
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CHAPTER I

BACKGROUND TO THE REPORT

A. History of Electoral Reform in India

"I mean to diminish no individual, institution or phase in our history when I say that India is valued the world over for a great many things, but for three over all others : The Taj Mahal; Mahatma Gandhi; and India's electoral democracy."

– Gopalkrishna Gandhi (2013)[1]

"It needs little argument to hold that the heart of the Parliamentary system is free and fair elections periodically held, based on adult franchise, although social and economic democracy may demand much more."

– Supreme Court of India (1978)[2]

1.1 These two quotes, although more than three decades apart, speak to the same message of the importance of democracy, and hence, purity in the election process. It is trite to say but important to note that a fair and unbiased electoral process, with greater citizen participation is fundamental to safeguarding the values of democracy.

1.2 Maintaining the purity of the electoral process however, requires a multi-pronged approach, which includes removing the influence of money and criminal elements in politics, expediting the disposal of election petitions, introducing internal democracy and financial transparency in the functioning of the political parties, strengthening the Election Commission of India (*hereinafter* "**ECI**"), and regulating opinion polls and paid news.

1.3 Unfortunately, these are some of the issues, which have plagued the Indian electoral system over the decades and have eroded the trust of many people in the country. Consequently, over the years, a number of committees have examined some of the major challenges and issues affecting India's electoral system and have made suggestions accordingly. Both the Law Commission in its 170th Report on "*Reform of the Electoral Laws*" in 1999 and the ECI in its seminal 2004 "*Proposed Electoral Reforms*" report have addressed some of these challenges. Other Committees and Commissions, which have examined these issues, are:

- The Goswami Committee on Electoral Reforms (1990)
- The Vohra Committee Report (1993)

[1] In the foreword to Mr. S.Y. Qureshi's book, AN UNDOCUMENTED WONDER: THE MAKING OF THE GREAT INDIAN ELECTION ix (2014).
[2] Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405, 424, at para 23.

- The Indrajit Gupta Committee on State Funding of Elections (1998)
- The Law Commission Report on Reform of the Electoral Laws (1999)
- The National Commission to Review the Working of the Constitution (2001)
- The ECI – Proposed Electoral Reforms (2004)
- The Second Administrative Reforms Commission (2008) (*hereinafter* ("**ARC**")

Unfortunately, their recommendations were not followed by legislative action, required for the enhancement of the quality of democracy, by reducing the influence of money and media in politics and ensuring free and fair elections.

B. Consultation Paper Issued by the Law Commission

1.4 In January 2013, the Ministry of Law and Justice, Government of India requested the Twentieth Law Commission to consider the issue of "Electoral Reforms" in its entirety and suggest comprehensive measures for changes in the law. Accordingly, the Commission, under the guidance of the then Chairman, Justice (Retd.) D. K. Jain, former Judge of the Supreme Court of India, prepared and circulated a Consultation Paper in this regard.

1.5 The Consultation Paper listed eight major issues for consideration, including, de-criminalisation of politics and disqualification of candidates; need to strengthen provisions relating to the period of disqualification; false affidavits; state funding of election expenses and donations to political parties; regulation of the conduct of political parties; adjudication of election disputes and enhancement of punishment for electoral offences; issues pertaining to the role of the electronic and print media, and various other issues.

1.6 The Consultation Paper was widely circulated amongst – political parties and elected representatives, Houses of Parliament and State Legislatures, High Court Bar Associations, the ECI, heads of other important National Commissions and institutions, civil society organisations, jurists and academics and other eminent and public spirited persons – in a bid to get diverse and comprehensive feedback from all these stakeholders.

1.7 The Commission received over 157 responses, with the largest number of responses being received from individuals, followed by civil society organisations. The ECI was the only Commission that sent its response, and former Chief Election Commissioners (*hereinafter* "**CEC**") were also consulted. However, the response from the political class was discouraging, with only one national party, being the Indian National Congress, and one registered party, being the Welfare Party of India sending in their views.

Further, only eight Members of Parliament, four each from the Lok Sabha and Rajya Sabha, responded.

C. The 244th Report of the Law Commission

1.8 While the Commission was working towards preparing a Report to submit to the Government, the Hon'ble Supreme Court passed an order on 16th December 2013 in *Public Interest Foundation v. Union of India*, W.P. (Civil) 536 of 2011, *vide* D.O. No. 4604/2011/SC/PIL(W) dated 21st December, 2013 requesting the Law Commission to "expedite consideration" for giving a report on the two issues of (a) de-criminalisation of politics and (b) disqualification for filing false affidavits by the end of February 2014.

1.9 Subsequently, a National Consultation on these two issues was organised by the Commission on 1st February 2014, and various political parties [3] were represented. Apart from the parties, a cross-section of stakeholders from all parts of society – such as a retired Supreme Court judge and former Chairman of the Law Commission; various senior advocates, a former CEC, members of the ECI; a Member of Parliament; and various representatives from the Bar and the Bench, from academia, and from civil society organisations – were also present.

1.10 This culminated in the submission of the first part of the Commission's work on decriminalisation of politics and disqualification for filing false affidavits in the form of the 244th Report titled "*Electoral Disqualifications*" on 24th February 2014. The Commission's recommendations were subsequently forwarded to the Hon'ble Supreme Court.

D. The Present Report

1.11 After submitting the 244th Report, the Commission circulated another questionnaire to all the registered national and State political parties requesting their views on issues such as possible amendments to the Tenth Schedule of the Constitution to do away with the concept of 'merger' and 'split'; expediting the disposal of election petitions; giving statutory status to the Model Code of Conduct; incorporating the right to recall in the Representation of People Act, 1951 (*hereinafter* "**RPA**"); the right to reject principle and the None of the Above Option (*hereinafter* "**NOTA**"); the status of independent candidates; whether candidates should be allowed to contest elections from more than one constituency; making 'paid news' an electoral

[3] These included the All India NR Congress (Pondicherry), All Jharkhand Students Union Party (Jharkhand), Biju Janata Dal, Communist Party of India, Communist Party of India (Marxist), Nationalist Congress Party, J & K National Panthers Party, Rashtriya Lok Dal, and Telangana Rashtra Samithi.

offence/corrupt practice; and regulating opinion polls during the election period. The Present Report, forming the second part of the Commission's work, seeks to examine these issues; the issues raised in the earlier consultation paper; and other related issues; to suggest amendments to the Constitution, the RPA, 1951 and other laws to strengthen our electoral system further.

1.12 While the Commission was preparing the second part of its Report dealing with the aforementioned issues, the Supreme Court, in its latest order dated 16th January 2015, in a PIL in *Yogesh Gupta v ECI*,[4] recorded the government's submission that it would seek the views of the Law Commission, and the submission of an interim report, on the issue of totaliser for counting votes. Hence, the Commission has given its recommendations on the same.

1.13 The Commission hoped to receive constructive suggestions from the political parties to assist it in the submission of the second part of its Report, dealing with the issues in the questionnaire. However, once again, the Commission received very few responses from the various political parties, with only two national parties (being the Indian National Congress and the Communist Party of India (Marxist)) and three registered state parties (being the Shiv Sena, the Zoram Nationalist Party, the People's Party of Arunachal) sending in their views. This was very discouraging given that political parties are one of the most important stakeholders in the electoral process.

1.14 In order to undertake a study for suggesting amendments to the various laws and the Constitution, the Commission formed a sub-committee comprising of the Chairman, Justice S.N. Kapoor, Professor (Dr.) Mool Chand Sharma, Mr. Arghya Sengupta, Ms. Chinmayee Arun, Ms. Srijoni Sen, Ms. Ujwala Uppaluri, Ms. Vrinda Bhandari, and Ms. Ritwika Sharma. The Commission then consulted with three former CEC's, namely Mr. T.S. Krishnamurthy, Mr. N. Gopalaswamy and Mr. S.Y. Qureshi, and Mr. S.K. Mendiratta, Legal Advisor to the ECI. In its deliberations, Mr. Gautam Bhatia, Mr. Sameer Rohatagi and Mr. Pranay Lekhi also assisted the Commission.

1.15 The Commission would also like to place on record its special appreciation for Ms. Srijoni Sen, Ms. Vrinda Bhandari, and Ms. Ritwika Sharma, Consultants to the Commission, whose inputs were incisive, vital and require special mention. They played a key role in drafting the Report.

1.16 Thereafter, upon extensive deliberations, discussions and in-depth study, the Commission has given shape to the present Report.

[4] WP (Civil) No. 422/2014 order of the Supreme Court on 08.09.2014.

CHAPTER II

ELECTION FINANCE REFORM

2.1 Electoral reforms often contain proposals for reforming election funding, and candidate and party expenditure. This Chapter discusses the issue under three broad sub-groups: limits on political contributions and party and candidate expenditure; disclosure norms and requirements; and State funding of elections. These issues are governed by the provisions of the RPA, the Conduct of Election Rules, 1961 (*hereinafter* "**Election Rules**"), the Companies Act, 2013, and the Income Tax Act, 1961 (*hereinafter* "**IT Act**").

2.2 Part A of this Section provides a brief summary snapshot of the relevant laws governing each of the three aspects, while Part B discusses the need for election finance reform. Parts C analyses the laws regulating election expenditure, contributions, and disclosure and Part D provides the comparative perspective. Part E then describes the legal lacunae causing the under-reporting of election spending while Part F examines the case for State funding of elections. Part G concludes with a summary of recommendations.

A. The Current Law: A Summary Snapshot

2.3 The law regulating election finance in India has to be ascertained after examining the provisions of the RPA and Election Rules, the Companies Act, the IT Act, and the Foreign Contribution (Regulation) Act. This section briefly summarises the law in a tabular form.[5]

	Existing Regulation	**Applicable Law**
Limits on Expenditure	Yes • Between Rs. 54-70 lakhs for Parliamentary constituencies and Rs. 20-28 lakhs for Assembly constituencies • Includes party and supporter spending towards a candidate's campaign • Excludes expenditure incurred by "leaders of a political party" for travel for propagating the party's program • Excludes expenditure by parties or their supporters incurred for generally propagating the party's program as long as no specific candidate is mentioned (given s. 77's focus is on "candidate" and not party)	• S. 77, RPA • Rule 90, Election Rules, 1961 as amended by Conduct of Elections (Amendment) Rules, 2014 dated 28th February, 2014

[5] The table is a modification of Table 3, in PRS Legislative Research, *Financing of Election Campaigns,* 18th November 2008 at <http://www.prsindia.org/administrator/uploads/general/1370582100~~Financing%20of%20Election%20Campaigns.pdf>.

Disclosure of Expenditure	True copy of account of election expenses of every contesting candidate lodged with the District Election Commissioner within thirty days of election of returned candidate	• S. 77, 78, RPA • Part VIIA, VIII, Election Rules, 1961
Limits on Contribution	None • No limits on individual contributions • Corporate contributions to political parties are allowed as long as the (non-government) company is three years old; its aggregate contribution in every financial year is below 7.5% of its average net profits during the three immediately preceding financial years; and it is authorized by a Board of Directors' resolution • Corporate contributions to parties or electoral trusts entitled to deduction from total income • Ban on foreign contribution to candidate or political party • No limits on political party accepting contribution	• S. 29B, RPA • S. 182(1), Companies Act • S. 3 and 4, Foreign Contribution (Regulation) Act, 2010
Disclosure of Contribution	• By party: Report detailing all contributions above Rs. 20,000 received from any person or company submitted in each financial year to the Election Commission • By company: Profit and Loss account will detail the total amount contributed and the name of the party to which contribution made in every financial year	• S. 29C, RPA • S. 182(3), Companies Act • S. 13A, S. 80GGB and 80GGC, IT Act
Public Funding of Election Campaigns	Partial • No direct State subsidy • Partial in kind subsidy in the form of free allocated air time on state owned electronic media (since 1996) to parties based on their past performance • Free supply of copies of electoral rolls and identity slips of electors to candidates	• S. 39A, 78A and 78B, RPA (introduced by the 2003 amendment)
Penalties	Both civil and criminal in nature and affect • The candidate: disqualification from being a voter or standing in elections if convicted of corrupt practices or failure to lodge election expenses (3 years) • The party: loses IT exemptions • Company: Fines and imprisonment	• S. 8A, 10A, 11A, 123(6), RPA • S. 182(4), Companies Act • S. 13A, IT Act

B. Need for Election Finance Reform

2.4 It is now well established that money plays a big role in politics, whether in the conduct, or campaigning, for elections. The Election Commission of India (*hereinafter* "ECI"), in its guidelines issued on 29th August 2014, recognised that "*concerns have been expressed in various quarters that money power is disturbing the level playing field and vitiating the purity of elections*."[6] What gives rise to these concerns about the role of big money in politics? These are not mere theoretical debates but are actual problems afflicting the electoral process in India. Money, often from illegitimate sources, results in "undisguised bullying" when it is used (both authorised and unauthorised) to buy muscle power, weapons, or to unduly influence voters through liquor, cash, gifts. Currency notes come first in containers, then in truckloads, moving to wholesale/small retail forms, and finally to suitcases and in people's pockets. Mr. Qureshi, in his book, documents instances of Returning Officers and Chief Electoral Officers in Tamil Nadu seizing crores of rupees in cash, bundles of saris and dhotis and hundreds of gas stoves.[7] It is evident that money is used in myriad of forms in today's election process, but what are its consequences? Why is there a need for election finance reform? The answers to these questions are articulated below.

2.5 **First**, is the undeniable fact that financial superiority translates into electoral advantage, and so richer candidates and parties have a greater chance of winning elections. This is best articulated by the Supreme Court in *Kanwar Lal Gupta v Amar Nath Chawla* (*hereinafter* "**Kanwar Lal Gupta**")*,* [8] when it explained the influence of money as follows:

> *"…money is bound to play an important part in the successful prosecution of an election campaign. Money supplies "assets for advertising and other forms of political solicitation that increases the candidate's exposure to the public." Not only can money buy advertising and canvassing facilities such as hoardings, posters, handbills, brochures etc. and all the other paraphernalia of an election campaign, but it can also provide the means for quick and speedy communications and movements and sophisticated campaign techniques and is also "a substitute for energy" in that paid workers can be employed where volunteers are found to be insufficient. The availability of large funds does ordinarily tend to increase the number of votes a candidate will receive. If, therefore, one political party or individual has larger resources available to it than another individual or political party, the former would certainly, under the present system of*

[6] ECI, *Guidelines on Transparency and Accountability in Party Funds and Election Expenditure*, No. 76/PPEMS/Transparency/2013, 29th August 2014, at < http://eci.nic.in/eci_main1/PolPar/Transparency/Guidelines_29082014.pdf>.
[7] Qureshi, *supra* note 1, at x, xii, 259.
[8] (1975) 3 SCC 646.

conducting elections, have an advantage over the latter in the electoral process". [Emphasis supplied]

2.6 The Supreme Court, in its 2014 decision in *Ashok Shankarrao Chavan v Madhavrao Kinhalkar* (*hereinafter* "**Ashok Shankarrao Chavan**"),[9] repeated this line of reasoning, where it highlighted how money was used to buy votes:

> *"55. In recent times, when elections are being held it is widely reported in the Press and Media that money power plays a very vital role. Going by such reports and if it is true then it is highly unfortunate that many of the voters are prepared to sell their votes for a few hundred rupees.*
> *….. This view of ours is more so apt in the present day context, wherein money power virtually controls the whole field of election and that people are taken for a ride by such unscrupulous elements who want to gain the status of a Member of Parliament or the State Legislature by hook or crook."* [Emphasis supplied]

2.7 **Second**, and connected to the above point is the issue of equality and equal footing between richer and poorer candidates. This can be explained with the help of the Court's observations in *Kanwar Lal Gupta* on the rationale behind expenditure limits:

> *"…it should be open to individual or any political party, howsoever small, to be able to contest an election on a footing of equality with any other individual or political party, howsoever rich and well financed it may be, and no individual or political party should be able to secure an advantage over others by reason of its superior financial strength."*[10]

2.8 Similarly, in *Ashok Shankarrao Chavan,*[11] the Supreme Court noted that:

> *"…it is a hard reality that if one is prepared to expend money to unimaginable limits only then can he be preferred to be nominated as a candidate for such membership, as against the credentials of genuine and deserving candidates."*

2.9 The Court's observations are not made in vacuum. A simple perusal of the Lok Sabha 2014 candidates reveals that 27% (or 2208 candidates) of all the candidates were "crorepati candidates," and the average asset of each of the 8163 candidates was Rs. 3.16 crores. The percentage of crorepati candidates increased from 16% in 2009 Lok Sabha elections.[12]

2.10 **Third,** in complete contravention to the various laws and ECI notifications, there is widespread prevalence of black money, bribery, and

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[9] (2014) 7 SCC 99.
[10] (1975) 3 SCC 646.
[11] (2014) 7 SCC 99.
[12] Association of Democratic Reforms, *Lok Sabha Elections 2014: Analysis of Criminal Background, Financial, Education, Gender and Other Details of Candidates*, 9th May 2014.

quid pro quo corruption; this helps candidates fund their campaigns. The Supreme Court, affirming the conclusions of the 2002 report of the National Commission to Review the Working of the Constitution (*hereinafter* "**NCRWC**"),[13] recognized this reality in *PUCL v Union of India*[14] and stated:

> *"One of the most critical problems in the matter of electoral reforms is the hard reality that for contesting an election one needs large amounts of money. The limits of expenditure prescribed are meaningless and almost never adhered to. As a result, it becomes difficult for the good and the honest to enter legislatures. It also creates a high degree of compulsion for corruption in the political arena. This has progressively polluted the entire system. Corruption, because it erodes performance, becomes one of the leading reasons for non-performance and compromised governance in the country. The sources of some of the election funds are believed to be unaccounted criminal money in return for protection, unaccounted funds from business groups who expect a high return on this investment, kickbacks or commissions on contracts etc."* [Emphasis supplied]

2.11 Likewise, in *Ashok Shankarrao Chavan,*[15] the Court observed:

> *"48. It is common knowledge as is widely published in the Press and Media that nowadays in public elections payment of cash to the electorate is rampant and the Election Commission finds it extremely difficult to control such a menace. There is no truthfulness in the attitude and actions of the contesting candidates in sticking to the requirement of law, in particular to Section 77 and there is every attempt being made to violate the restrictions imposed in the matter of incurring election expenses with a view to woo the electorate concerned and thereby, gaining their votes in their favour by corrupt means viz by purchasing the votes…..*
>
> *56. It is unfortunate that those who are really interested in the welfare of society and who are incapable of indulging in any such corrupt practices are virtually sidelined and are treated as totally ineligible for contesting the elections."* [Emphasis supplied]

2.12 Candidates and political parties have devised ingenious ways to disguise the illegitimate sources and expenditure of money by holding community feasts, organising birthday parties and marriages, giving costly gifts, or topping up mobile phones. Money is sometimes transferred through cash packets slipped in newspapers, through rural moneylenders and

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[13] See Chapter 4, *Electoral Processes and Political Parties*, para 4.14 on "High Cost of Elections and Abuse of Money Power" in Ministry of Law and Justice, REPORT OF THE NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION (*hereinafter* "**NCRWC Report")** at < http://lawmin.nic.in/ncrwc/finalreport/v1ch4.htm>.
[14] (2003) 4 SCC 399.
[15] (2014) 7 SCC 99.

pawnbrokers or by organising 'fake aartis'.[16] In fact, Tamil Nadu gained notoriety for the "Thirumangalam formula", when Rs. 5000 was paid per voter in Thirumangalam in Madurai in the 2009 bye-elections and other methods were used to distribute money and earn votes.[17]

2.13 **Fourth,** the current system tolerates, or at least does not prevent, lobbying and capture, where a sort of *quid pro quo* transpires between big donors and political parties/candidates. While the problem of bribery, corrupt practices and black money are important, to some extent, they have distracted from the larger problem of election finance and the capture of government by private individuals and interest groups. The Supreme Court, citing a note from Harvard Law Review on campaign finance regulation, articulated this concern in *Kanwar Lal Gupta* observing:

> *"A less debatable objective of regulating campaign funds is the elimination of dangerous financial pressures on elected officials. Even if contributions are not motivated by an expected return in political favours, the legislator cannot overlook the effects of his decisions on the sources of campaign funds."*[18]

2.14 Similarly, Justice Kennedy in *McConnell v Federal Election Commission* very well, when recognising the problem of solicitation as a corruption, said:

> *"The making of a solicited gift is a quid both to the recipient of the money and to the one who solicits the payment (by granting his request). Rules governing candidates' or officeholders' solicitation of contributions are, therefore, regulations governing their receipt of quids*."[19]

2.15 Unregulated, or under-regulated, election financing leads to two types of capture: the first involves cases where the industry / private entities use money to ensure less stringent regulation, and the money used to finance elections eventually leads to favourable policies.[20] The second involves cases of "deeper capture", where through their disproportionate and self-serving

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[16] Qureshi, *supra* note 1, at 263-267.
[17] K. Raju, Dravidian Parties Trying to Thirumangalam Formula, THE HINDU, 25th January 2015; L. Srikrishna, AIDMK, DMK Retry Thirumangalam Formula, THE HINDU, 19th April 2014; Sarah Hiddleston, Cash for Votes, a Way of Political Life in South India, THE HINDU, 16th March 2011; Qureshi, *supra* note 1, at 245-267.
[18] Note, *Statutory Regulation of Political Campaign Funds*, 66 HARV L. REV. 1259, 1260 (1953).
[19] 540 US 93, 124 S. Ct. 619, 157 L. Ed. 2d 491 (2003).
[20] Teigler, *Theory of Economic Regulation*, 2(1) THE BELL J. OF ECON. & MANAGEMENT SC. 3, 11 (1971).

influence, corporations capture not just regulators, but also the views of ordinary citizens and what they think of as "public interest."[21]

2.16 Thus, lobbying and capture give undue importance to big donors and certain interest groups, at the expense of the ordinary citizen and violates what the Indian Supreme Court terms, "*the right of equal participation [of each citizen in the polity*]."[22] In *Kanwar Lal Gupta*, the Supreme Court expressed its views on this issue when it stated:

> *"The other objective of limiting expenditure is to eliminate, as far as possible, the influence of big money in electoral process. If there were no limit on expenditure political parties would go all out for collecting contributions and obviously the largest contributions would be from the rich and the affluent who constitute but a fraction of the electorate. It is likely that some elected representatives would tend to share the views of the wealthy supporters of their political party, either because of shared background and association, increased access or subtle influences which condition their thinking*."[23]

2.17 **Finally**, the argument for election finance reform is premised on a more philosophical argument that large campaign donations, even when legal, amount to what Lessig terms "institutional corruption", [24] which compromise the political morality norms of a republican democracy. Here, instead of direct exchange of money or favours, candidates alter their views and convictions in a way that attracts the most funding. This change of perception leads to an erosion of public trust, which in turn affects the quality of democratic engagement.[25]

2.18 Having touched upon the need for election finance reform, it is useful to examine the laws regulating election expenditure, disclosure and contribution next.

C. Laws Regulating Election Expenditure, Contributions, and Disclosure

(i) <u>Laws regulating election expenditure for candidates</u>

2.19.1 Limits on electoral expenditure for contesting candidates have been set out in Section 77 of the RPA and the Election Rules, 1961, reproduced below:

> "***Section 77: Account of election expenses and maximum thereof—***

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[21] Jon Hanson and David Yosifon, *The Situation: An Introduction to the Situational Character, Critical Realism, Power Economics, and Deep Capture*, 152 U. PA. L. REV. 129, 202-206 (2003)
[22] R.C. Poudyal v. Union of India, (1994) Supp 1 SCC 1267.
[23] Kanwar Lal Gupta v. Amar Nath Chawla, (1975) 3 SCC 646.
[24] Lawrence Lessig, REPUBLIC LOST 16, 107-114 (2011).
[25] *Ibid*., at 28, 36.

(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 authorized 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.

Explanation 1- For the removal of doubts, it is hereby declared that-

a) the expenditure incurred by leaders of a political party on account of travel by air or by any other means of transport for propagating programme of the political party shall not be deemed to be the expenditure in connection with the election incurred or authorised by a candidate of that political party or his election agent for the purposes of this sub-section.

b) any expenditure incurred in respect of any arrangements made, facilities provided or any other act or thing done by any person in the service of the Government and belonging to any of the classes mentioned in clause (7) of section 123 in the discharge or purported discharge of his official duty as mentioned in the proviso to that clause shall not be deemed to be expenditure in connection with the election incurred or authorised by a candidate or by his election agent for the purposes of this sub-section.

(3) The total of the said expenditure shall not exceed such amount as may be prescribed."

2.19.2 Section 77(3) of the RPA limits the electoral spending by candidates within the limits prescribed by Rule 90 of the Rules, stipulating the maximum election expenditure that can be incurred by a candidate in a parliamentary or assembly election. By the recent Conduct of Elections (Amendment) Rules, 2014, notified on 28th February 2014, the limit for candidate expenditure is between Rs. 54-70 lakhs for parliamentary constituencies, and between Rs. 20-28 lakhs for assembly constituencies.[26] The incurring or authorising expenditure in violation of Section 77 amounts to a corrupt practice under Section 123(6) of the RPA and can result in disqualification for a maximum period of six years, both as a candidate and a voter, under Sections 8A and 11A. Section 10A additionally provides for disqualification for failure to lodge accounts of election expenses.

(ii) <u>Laws regulating election expenditure for political parties: Third party expenditure</u>

2.20.1 Section 77 of the RPA does not directly limit the election expenditure of political parties, and this has given rise to the contested question of third party expenditure, namely the financing of a candidate's campaign by political parties, corporate donors, or well wishers.

[26] ECI, *Conduct of Election (Amendment) Rules 2014*, No. 3/1/2014/SDR-Vol.-III, 5th March 2014, <http://eci.nic.in/eci_main1/current/ImpIns1_06032014.pdf>.

2.20.2 Till 1975, the Supreme Court refused to regard third party expenditure as electoral expenditure within the meaning of Section 77 of the RPA.[27] This changed with *Kanwar Lal Gupta*, where the Supreme Court relied on the "authorisation" of expenditure by a candidate in excess of the election expenditure limits to note:

> *"When a political party sponsoring a candidate incurs expenditure specifically 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 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 rigors of the ceiling by saying that he has not incurred expenditure but big political party has done so."*[28]

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.[29]

2.20.4 The constitutionality of the 1974 amendment was challenged in *P. Nalla Thampy Terah v Union of India*[30] 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*

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[27] Karimji Rehmanji Chipa v. Abdurahim Tajuji, 36 ELR 283; Rananjaya Singh v. Baijnath Singh, (1955) 1 SCR 671; Magraj Patodia v. R. K. Birla (1970) 2 SCC 888.
[28] Kanwar Lal Gupta v. Amar Nath Chawla, (1975) 3 SCC 646.
[29] 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*."
[30] (1985) Supp. SCC 189, at paras 13-15.

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",[31] and that the practice of parties in not maintaining accounts of donations and expenses incurred in regard a candidate's election made it to difficult to determine "*whose money was actually spent through the hands of the party*".[32] Eventually in the seminal case of *Common Cause, a Registered Society v. Union of India,* [33] 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….."[34]

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.

(iii) <u>Laws regulating disclosure of election expenditure for candidates and parties</u>

2.21.1 Pursuant to Sections 77(1) and 78 of the RPA read with Rule 86 of the Rules, all contesting candidates are also required to maintain a correct

[31] C Narayanaswamy v C.K. Jaffar Sharief, 1994 Supp. (3) SCC 170.
[32] Gajanan Bapat v Dattaji Meghe, (1995) 5 SCC 437.
[33] (1996) 2 SCC 752.
[34] *Id*, at 764, para 23.

account of their election expenses and lodge a true copy of the same with the district election officer within thirty days from the date of election of the returning candidate. Contravention of the above provisions can be the basis for disqualification up to a period of three years under Section 10A of the RPA. It is important to note, as several Supreme Court decisions have done,[35] that a mere failure to maintain correct accounts is not in and of itself a corrupt practice under Section 123(6), provided the prescribed limit of expenditure is not exceeded. While discussing the relevance of these provisions in maintaining "absolute purity in elections", the Supreme Court in *Ashok Shankarrao Chavan* noted as follows:

> *"…Even the explanation to Sub-section (1) to Section 123 makes it clear that incurring of election expenses and the maintenance of account of those expenses are not an empty formality but the very purpose of stipulating such restrictions and directions under Section 77(1) and (3) read along with Section 78 explains the mandate to maintain absolute purity in elections by the contesting candidates. This is required in order to ensure that the process of the election is not sullied by resorting to unethical means while incurring election expenses."*[36]

2.21.2 Further, the Supreme Court in *PUCL v Union of India*[37] endorsed the recommendations of the NCRWC's Report,[38] which had highlighted the need for stronger disclosure and auditing norms observing:

> *"4.14.3. ….The Commission recommends that the political parties as well as individual candidates be made subject to a proper statutory audit of the amounts they spend…. At the end of the election each candidate should submit an audited statement of expenses under specific heads. EC should devise specific formats for filing such statements so that fudging of accounts becomes difficult. Also, the audit should not only be mandatory but it should be enforced by the Election Commission."*

2.21.3 The ECI issued transparency guidelines under Article 324 of the Constitution bearing No. 76/PPEMS/Transparency/2013 dated 29th August, 2014 w.e.f. 1st October 2014 after consultation with all the recognised political parties, and including the following:

- **On election expenses by parties**: the payment of any election expenditure over Rs. 20,000 should be made by the political parties via cheque or draft, and not by cash, unless there are no banking facilities

[35] Dalchand Jain v Narayan Shankar Trivedi, (1969) 3 SCC 685; L.R. Shivaramagowda v T.M. Chandrashekar (1999) 1 SCC 666.
[36] (2014) 7 SCC 99
[37] (2003) 4 SCC 399.
[38] NCRWC Report, *supra* note 13, at para 4.14.3.

or the payment is made to a party functionary in lieu of salary or reimbursement.

- **On election expenses by unrecognised parties**: although not required by law to submit their election expenditures to the ECI, unrecognised parties are required under these guideless to file their expenditure statements with the Chief Electoral Officer of the State in which the party headquarters are located.
- **On giving money to candidates**: 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), RPA and Rule 90, 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.
- **On accounts and audit**: all parties are required to maintain books of accounts (under s. 13A, IT Act) based on the guidance note issued by the Institute of Chartered Accountants of India to enable the calculation of their party income. These books need to be audited and certified by qualified, practicing Chartered Accountants, and are to be submitted annually (as audited annual accounts) to the ECI by 31st October, with a copy of the Auditor's Report.

2.21.4 The ECI in a clarification bearing No. 76/PPEMS/Transparency/ 2013 dated 19th November, 2014 stated that its "lawful instructions" were issued to fill the legal vacuum in the area, pursuant to the Supreme Court's order in *Mohinder Singh Gill v CEC*[39] and Article 324; and are binding on all parties.[40]

(iv) <u>Laws regulating contribution to political parties</u>

2.22.1 Section 29B of the RPA makes it very clear that there is no limit on political parties accepting contributions from individuals or corporations, so long as the donor is not a government company, or the donation is not a foreign contribution (since it is prohibited under Section 3 of the Foreign Contribution (Regulation) Act, 2010).

2.22.2 A significant source of political donations is through corporate funding, which is explicitly permitted under Section 182(1) of the Companies Act of 2013, dealing with prohibitions and restrictions regarding political contributions to political parties, and reproduced below:

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[39] AIR 1978 SC 851.

[40] ECI, *Clarification of Transparency Guidelines for the Political Parties issued by the ECI,* No. 76/contribution/Transparency/2013, 19th November 2014 <http://eci.nic.in/eci_main1/PolPar/Transparency/Clarification%20of%20Transparency%20guideline%20for%20political%20parties.pdf>.

"182. (1) Notwithstanding anything contained in any other provision of this Act, a company, other than a Government company and a company which has been in existence for less than three financial years, may contribute any amount directly or indirectly to any political party:

Provided that the amount referred to in sub-section (1) or, as the case may be, the aggregate of the amount which may be so contributed by the company in any financial year shall not exceed seven and a half per cent of its average net profits during the three immediately preceding financial years:

Provided further that no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making and the acceptance of the contribution authorised by it."

2.22.3 Pertinently, the contribution limit of 7.5% of the company's average net profits during the three immediately preceding financial years is an increase from the previous stipulation of 5% profit in Section 293A of the Companies Act of 1956. Additionally, as per Rule 4(7) of the Companies (Corporate Social Responsibility Policy) Rules, 2014 notified on 27th February 2014, direct or indirect contribution to any political party under Section 182 of the Companies Act shall not be considered as a corporate social responsibility activity.[41]

2.22.4 Section 182(4) of the Companies Act, 2013 provides for penalties for corporate contributions in contravention with the provisions of Section 182 in the form of fines levied on the company up to five times the amount so contributed, or imprisonment up to six months along with a similar fine for any company officer who is in default.

(v) <u>Laws regulating disclosure of political contribution by parties and companies</u>

2.23.1 Section 29C of the RPA regulates the disclosure of donations received by political parties and requires every party to prepare an annual report in respect of all contributions exceeding Rs. 20,000, received from any person or (non-government) company, and submit the report to the Election Commission. If this is not complied with, the party is not entitled to any tax relief under Section 29C(4) read with Section 13A of the IT Act. Commenting on the need to disclose the source of funding, the Supreme Court has observed as follows:

[41] Ministry of Corporate Affairs, *Companies (Corporate Social Responsibility Policy) Rules, 2014* 27th February 2014, <http://www.mca.gov.in/Ministry/pdf/CompaniesActNotification2_2014.pdf>.

"We wish, however, to point out that though the practice followed by political parties in not maintaining accounts of receipts of the sale of coupons and donations as well as the expenditure incurred in connection with the election of its candidate appears to be a reality but it certainly is not a good practice. It leaves a lot of scope for soiling the purity of election by money influence."[42]

2.23.2 Section 13A of the IT Act further provides that income of political parties will be exempt from tax only if they maintain a record of the sources of funding, i.e. the names and addresses of the contributors, when the amount donated exceeds Rs. 20,000.[43] Section 80GGB of the IT Act provides that all corporate contributions to political parties and electoral trusts are entitled to income tax deduction, while Section 80GGC of the IT Act has similar provisions with respect to contributions made by individual persons to political parties or electoral trusts.

2.23.3 Section 182(3) of the Companies Act, 2013 regulates the disclosure of donations made by companies, requiring every company to disclose the total amount of its contribution, and the name of the party receiving the said contribution, in every financial year in its profit and loss account. Failure to comply with this provision will result in a fine and/or imprisonment provided under Section 182(4) referred above.

2.23.4 In exercise of its plenary powers under Article 324 of the Constitution, the ECI issued a scheme relating to "Electoral Trust Companies" on 10th December 2013 to fill in the vacuum in respect of disclosure requirements of contributions by electoral trusts in 2014. Although companies contributing to Electoral Trust Companies (for further contribution to political parties) are not required to make any disclosures pursuant to Section 182(3) of the Companies Act, 2013, they are required to disclose the amount released to an Electoral Trust Company. In turn, the Electoral Trust Company is required to disclose all amounts received from other companies or sources in its books of account and the amount contributed by it to a party pursuant to Section 182(3).[44] Further, Electoral Trusts are required to submit Annual Reports of contributions to the ECI containing details of the name and

[42] Gajanan Krishnaji Bapat v Dattaji Raghobaji Meghe, (1995) 5 SCC 347.
[43] Section 29C, RPA; Section 13A, Income Tax Act, 1961.
[44] Ministry of Corporate Affairs, *Clarification with regard to Applicability of Section 182(3) of the Companies Act, 2013*, Circular No. 17/27/2013-CL-V, 10th December 2013, <http://www.mca.gov.in/Ministry/pdf/General_Circular_19_2013.pdf>.

addresses of the donors and the amount of donation given to each political party.[45] The ECI has released a list of approved Electoral Trusts.

2.23.5 Finally, Section 75A of the RPA requires every elected candidate in a parliamentary constituency to furnish information relating to their assets and liabilities to the Lok Sabha Speaker or the Rajya Sabha Chairperson within ninety days of taking the oath for their seat in Parliament.

2.23.6 Having examined the law in India, it is worthwhile to examine the law in different countries around the world in the next section.

D. Electoral Expenditure, Disclosure, and Contribution: A Comparative Analysis

(i) United Kingdom

Expenses

2.24.1 In the UK, there are limits on party and candidate expenditure, and these limits differ depending on the type of election (parliamentary or local body).

2.24.2 Section 76(2) of the Representation of the People Act, 1983 (*hereinafter* "**RPA, 1983**") along with the Representation of the People (Variation of Limits of Candidates' Election Expenses) Order 2014 sets the limits on candidate expenditure or "election expenditure". For county constituencies in a parliamentary general election, this is £8,700 with an additional 9 pence for every entry in the register of electors. The amount is higher under section 76ZA if Parliament has not been dissolved within 55 months (or has sat for more than 55 months) and covers pre-candidacy election expenses. These amounts do not cover the candidates' personal expenses.

2.24.3 "Campaign expenditure", incurred to promote a party or its policies in general, is limited under the Political Parties, Elections and Referendums Act (*hereinafter* "**PPERA**") 2000. Schedule 9 of the Act limits campaign expenditure by parties up to £30,000 per constituency or a total of £810,000 for England; £120,000 for Scotland and £60,000 for Wales.[46] Campaign expenditure is defined with reference to a list of specified expenses in Schedule 8 of the PPERA, which includes party political broadcasts, advertising, unsolicited material to electors, manifesto or other policy

[45] ECI, *Guidelines for Submission of Contribution Reports of Electoral Trust,* No. 56/ElectoralTrust/2014/PPEMS, 6th June 2014, <http://eci.nic.in/eci_main1/PolPar/ElectoralTrust_06062014.pdf>.

[46] Schedule 9 of the PPERA Act, 2000 makes party spending limits depend on, and increase with, the number of constituencies that it contests.

documents, market research and canvassing, media/publicity, transport, rallies or other events.

2.24.4 Notional campaign expenditure or "third party/controlled" expenditure, that is "*incurred by or on behalf of the third party in connection with the production or publication of election material which is made available to the public at large or any section of the public (in whatever form and by whatever means)",* is also limited under section 85, PPERA and section 75, RPA 1983. This expenditure includes money spent on holding public meetings or organizing public displays, or by issuing advertisements, circulars, or publications praising or disparaging candidates. It can independently be incurred only up to a limit of £500 for parliamentary expenses, although "recognised third parties" can incur greater expenditure.

2.24.5 Of particular interest is the regulation where expenditure limits have been introduced for periods both, before nomination ("pre-candidacy") and after nomination as a candidate. For instance, the 2015 general elections has been divided into a "long campaign" – which is pre-candidacy; and a "short campaign" – which is from the time of becoming candidate to polling day; and each has its own spending limit with fixed and variable amounts. [47] The fixed amount for the long campaign is £30,700 and for the short campaign is £8,700 for 2015.[48]

Contributions

2.24.6 In the UK, there are no caps on individual or corporate contributions to parties or candidates [under Section 54(2)(b), PPERA r/w Schedule 2A of RPA, 1983], although foreign donors are banned. In fact, there is no specific provision prohibiting corporations with partial government ownership or government contracts from donating as well. [49] However, donations above £200 may only be received by parties only from 'permissible donors'.[50] With respect to corporate contributions, it is important to note that they require prior shareholder approval.[51]

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[47] Electoral Commission, *UK Parliamentary Guidance Candidates and Agents: Parliamentary Elections 2015,* at <http://www.electoralcommission.org.uk/__data/assets/pdf_file/0004/173074/UKPGE-Part-3-Spending-and-donations.pdf>.

[48] Electoral Commission, *Third Parties*, <http://www.electoralcommission.org.uk/?a=29607>.

[49] IDEA, *Political Finance Data for United Kingdom,* <http://www.idea.int/political-finance/country.cfm?id=77>.

[50] Permissible donors *vide* section 54, PPERA include "an individual registered on a UK electoral register; a UK registered political party; a UK registered company; a UK registered trade union; a UK registered building society; a UK registered limited liability partnership; a UK registered friendly/building society; or a UK based unincorporated association".

[51] Samya Chatterji and Niranjan Sahoo, *Corporate Funding of Elections: Strengths and Flaws*, OBSERVER RESEARCH FOUNDATION ISSUE BRIEF #69, February 2014,

2.24.7 Section 52(2) of the PPERA prohibits all anonymous donations to parties, unless it is under £500; while Schedule 2A of the RPA, 1983 disregards all donations under £50.

Disclosure

2.24.8 All registered parties must maintain accounting records, which show all the money received and expended by the party. These include an annual statement of accounts; quarterly donation reports *vide* Section 62 of PPERA; and weekly reports during general election periods *vide* Section 63. Both the quarterly and weekly reports must list the names and addresses of donors for donations over £7,500 along with other relevant transactions" such as loans and sponsorships.[52] Schedule 6 of the PPERA lists the details to be given in donation reports in detail. Further, Section 43 provides that a qualified auditor must audit parties' accounts, if their gross income or total expenditure in any financial year exceeds £250,000 or if the Commission considers it desirable to do so.

2.24.9 Under section 81, RPA 1983 and Schedule 2A, candidates are also required to submit a return detailing their campaign expenses incurred by or on behalf of the candidate, or by their agents, to the Electoral Commission, within thirty-five days of the declaration of result. Donations of more than £50 to the candidate and impermissible donations must all be included in their returns.

2.24.10 On disclosure, the UK repealed Section 68 of the PPERA Act 2000, requiring donors making multiple small donations annually up to £5000 to report the same to the Electoral Commission, vide the Electoral Administration Act 2006 because "in practice" it had been "of little use".[53]

2.24.11 All reported financial information of political parties, namely their donation/loan reports, campaign expenditure returns (including pdfs of invoices and receipts) and statement of accounts are made available on the website of the Electoral Commission of the UK.[54] Information about regulated donees including MPs and members of political parties, along with third parties are also available online.

<http://www.orfonline.org/cms/export/orfonline/modules/issuebrief/attachments/issuebrief69_1394871243494.pdf>, at 7.

[52] Sections 62, 63, 71M, 71Q of the PPERA, 2000; S. 20, Political Parties and Election Act 2009.

[53] UK Parliament, *Electoral Administration Bill: Part 7*, <http://www.publications.parliament.uk/pa/cm200506/cmbills/050/en/06050x-c.htm>; US Library of Congress, *Campaign Finance: UK*, <http://www.loc.gov/law/help/campaign-finance/uk.php#_ftnref8>.

[54] IDEA, United Kingdom, *supra* note 49.

Penalties

2.24.12 The Electoral Commission has certain supervisory, enforcement and investigatory powers under the PPERA that allows it to check that funding is derived from permissible sources; to issue notice to a person/organisation to produce any books, documents or records for its inspection.

2.24.13 Schedule 20 of the PPERA lists the various penalties, which provides for instance a fine or one year imprisonment for being indicted for making false statements to auditor; or a level 5 fine (maximum £5,000) for summary conviction for failing to deliver proper statements of account, or within time. The Electoral Commission's *Enforcement Policy* prescribes the varying nature of penalties in detail providing for fines ranging from £250-£5,000 for prescribed contraventions and £250-£20,000 for certain offences triable by a Magistrate or in a Crown's Court. Apart from this, it can issue a compliance notice, a restoration notice, a stop notice, or an enforcement undertaking.[55]

2.24.14 Courts can also order forfeiture, if the Commission applies for the same in a civil process. The forfeited amount will be equal to the donation value that was accepted impermissibly or from an unidentifiable source or was concealed in a statutory report. The Commission will request a court-ordered forfeiture in these cases if it cannot agree on a voluntary settlement and it believes it is in public interest to do so.[56]

2.24.15 Finally, the Commission lacks the power to impose criminal sanctions, although it may refer a breach for criminal investigation and prosecution under certain circumstances.

(ii) Germany

Expenses

2.25.1 There are no limits on political parties' campaign expenditure – whether the total amount, or expenditure on specific items for the campaign, or routine spending, although Section 1(4) of the Political Parties Act, 1967 stipulates that parties shall "*use their funds exclusively for performing the functions incumbent on them under the Basic Law and the Act*". Thus, there are no qualitative or quantitative restrictions on party spending on elections or

[55] The Electoral Commission, *Enforcement Policy* December 2010. <http://www.electoralcommission.org.uk/__data/assets/pdf_file/0003/106743/Enforcement-Policy-30March11.pdf>, at 10.
[56] *Ibid.*

daily business.[57] Consequently, there does not seem to be any limits on how much candidates can spend.

Contributions

2.25.2 Section 25 of the Political Parties Act makes it clear that there are no limits on the amount of contributions to political parties and that and donations up to €1000 can be made in cash. While small donations and party membership dues are tax deductible since 1967, pursuant to a Supreme Court order in 1994, corporate donations are not deductible.[58] Further, section 25 prohibits corporate donations to political parties if the State's direct participation in the company is more than 25%.

2.25.3 However, under section 25, donations from charitable organisations, trade unions, professional associations, and industrial or commercial associations are prohibited. Further, anonymous donations of more than €500 to political parties are also prohibited.

2.25.4 The law is silent on donations to individual candidates, although it seems permissible (even foreign donations to candidates do not seem to be prohibited). In any event, while there are parliamentary rules governing disclosure in such cases, donations to individual candidates does not seem as important given that section 25(1) requires candidates to turn over the donations to the Executive Committee member of the party "immediately".[59]

Disclosure

2.25.5 Article 21(1) of the Basic Law requires parties to "*publicly account for their assets and for the sources and use of their funds*". Disclosure is regulated under Section V of the Political Parties Act, 1967, which requires an annual reporting of origin of funds, statement of income and expenditure, and party assets and liabilities, along with a list of big donors to the President of the German *Bundestag*. These annual reports are audited/verified by chartered accountants and under Section 22(4) published as legislative documents (after being presented before the German Parliament).

2.25.6 Thus, public disclosure (names and addresses) in the annual party financial statement under Section 25 of the Act is limited to big donors,

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[57] IDEA, *Political Finance Data for Germany,* <http://www.idea.int/political-finance/country.cfm?id=61>.
[58] US Library of Congress, *Campaign Finance: Germany,* <http://www.loc.gov/law/help/campaign-finance/germany.php#t39>.
[59] *Id.*; IDEA Germany, *supra* note 57.

with donations exceeding €10,000 per year. Private donations greater than €50,000 are required to be disclosed immediately under section 25 to the President of the German *Bundestag.* This has led to a move towards grass root financing and party membership donations towards a party's private income.

2.25.7 The party's annual report thus contains information under the following categories *vide* section 24(4) of the Act – membership dues; mandatory contributions of officials; individual donations; corporate donations; receipts from commercial activities and participation; receipts from other assets and from events, publications; and public funds.

2.25.8 Under sections 23 and 23a of the Political Parties Act, the *Bundestag*, who receives and publishes these annual financial statements also evaluates these statements to check for compliance with the provisions of the Act. Germany's Supreme Audit Institution, the BRH, further verifies under section 21, whether the procedures under section 23a have been complied with properly.

Penalties

2.25.9 Part VI of the Political Parties Act deals with procedures in case of inaccurate statements of accounts and other penal provisions and provides for fiscal and criminal sanctions for serious violations. Section 31b provides that in cases of inaccuracies in financial statements detected by the President of the German *Bundestag* (causing a party to obtain more public funds than due), the President makes the appropriate adjustment and fines the party twice the amount of the wrongly stated sum or 10% of the value of its assets/participating interests, if the inaccuracy arose from there.

2.25.10 Section 31c provides that in cases where the party either (a) fails to disclose a donation in its statement of accounts or (b) retains/has illegally obtained donations, without remitting them to the *Bundestag*, it will be liable to a penalty of two times the undisclosed amount or three times the illegally obtained amount respectively.

2.25.11 Section 31d provides for three years' imprisonment or a fine for intentional concealment of the "*origin or the use of the party's funds or assets or [for] evading the obligation to render public accoun*t". Offences under this section are committed by the inclusion of inaccurate data in the party's financial statement; the incorrect breaking of big donations into smaller ones to avoid disclosure; or failure to remit the donation properly (to prevent

unlisted slush funds from being created).[60] Section 31d(2) also penalises an auditor or their assistants for falsifying an audit report/statement of accounts or for failure to disclose relevant facts with maximum three-year imprisonment or a fine.

(iii) United States of America

2.25.12 Campaign finance laws in the US are different at the federal, state, and local levels. At the federal level, the Federal Election Commission (*hereinafter* "**FEC**"), an independent federal agency, enforces these laws.

Expenses

2.25.13 There are no limits on election expenses by candidates or political parties. In *Buckley v Valeo,*[61] the Supreme Court struck down the Federal Election Campaign Act's (*hereinafter* "**FECA**") individual expenditure limit on the grounds that it curtailed the quantum of free speech, and hence violated the First Amendment rights of the candidates. As the Court noted:

> *"A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money".*

It must be noted, however, that when Presidential candidates are publicly funded, an upper limit to that expenditure is constitutional.

2.25.14 Independent third party expenditures in the US are not subject to any limit – corporations and unions may incur such expenditure. These refer to any communications that expressly advocate the winning or defeat of any party, without being requested or suggested to do so by any party or agents or political committee to do so.[62]

Contribution

2.25.15 In 2010, in *Citizens United v FEC*,[63] the Court continued the line of reasoning followed in *Buckley* and proceeded to strike down any limit on independent expenditures by corporations, associations, and labour unions in

[60] LOC Germany, *supra* note 58.
[61] 424 US 1 (1976).
[62] FECA, *How General Election Funding Works*, < http://www.fec.gov/info/chtwo.htm>.
[63] 553 US 310 (2010). As per the ruling, corporations and unions can now spend money, for instance via advertisements, supporting or denouncing individual candidates, even though the ban on direct corporate contributions remained.

federal elections citing the free speech clause. However, the ban on direct corporate contributions remained unaffected. Justice Stevens who delivered the dissenting opinion in this case made the observation that the bench in *Buckley* had recognised the possibility of its judgement being misused and had left open a window to impose regulations on the grounds of curbing corruption. This ruling has been criticised for allowing special interest groups to influence the election campaigns through unbridled spending, while undermining the efforts of ordinary citizens making modest contributions to support the candidates of their choice.

2.25.16 After *Buckley*, a distinction was drawn between election contribution and election spending. In other words, the different limits that are imposed in each state on the amount of contribution that an individual, company, union etc. can make, stood intact after this decision. However, with the 2014 decision in *McCutcheon v. FEC*, [64] this distinction between contribution and spending was blurred, and the Supreme Court struck down the biennial upper limit to the total amount any individual could contribute to federal candidates and national parties. According to the Court, these aggregate limits restricting how much money a donor may contribute to candidates for federal office, political parties, and PACs do not further the government's interest in preventing *quid pro quo* corruption, although they seriously restrict participation in the democratic process. Hence, the First Amendment was said to have been violated, with the Court noting that, "*Any regulation must instead target what we have called 'quid pro quo' corruption or its appearance.*"[65]

2.25.17 Thus, after *McCutcheon*, there are no overall limits on aggregate contributions by an individual to candidates and political parties. Apart from this, the ban on direct corporate contribution stands and there are limits on individual contributions to a single candidate or a Political Action Committee ("PACs").

Disclosure

2.25.18 The FECA mandates the disclosure of all sources and spending of funding for candidate, party committees and PACs.[66] Under Section 432 of the Act, a treasurer is mandatorily appointed for every party, and all

[64] 134 S. Ct. 1434 (2014).
[65] The Supreme Court's rationale in McCutcheon v FEC, 134 S. Ct. 1434 (2014) was that aggregate limits restricting how much money a donor may contribute to candidates for federal office, political parties, and PACs do not further the government's interest in preventing quid pro quo corruption, although they seriously restrict participation in the democratic process. Hence, the First Amendment was said to have been violated, with the Court noting that, "*Any regulation must instead target what we have called 'quid pro quo' corruption or its appearance."*
[66] FEC, *Citizens' Guide,* April 2014, <http://www.fec.gov/pages/brochures/citizens.shtml>.

contributions must be forwarded to this person within a specific time (10 days for contributions over $50 and 30 days for contributions less than $50). The treasurer is obliged to maintain records of all contributions and transactions and file a report with the FEC.

2.25.19 There are also disclosure norms in place even for independent expenditures – a disclaimer is required to identify who paid for communication and financing must be disclosed to the public. The reports must be quarterly when aggregate is greater than $250 per election, 48-hour reports between the beginning of the year and twenty days prior to the election when the aggregate is greater than or equal to $10,000. Within 20 days before the election, 24 hours reports must be given when the aggregate is greater than or equal to $1000. Electioneering communications are also subject to disclosure norms if the costs of disbursement exceed $10,000.[67]

2.25.20 Disclosure norms are different for different categories of 'political committees', which play a supremely important role in US elections. The terms refers to any committee or association of people who receive total contributions or makes net expenditure in excess of $10,000 during a calendar year or any local committee of a political party which makes certain kinds of expenditure and receives contributions in aggregate excess of $5,000 in a year. Section 434 of the FECA lays down the reporting requirements for various such committees, such as the authorized political party committees, unauthorized committees, personal contributions of the candidate etc., each being required to be filed under different norms.

2.25.21 When reports are filed with the FEC, however, they must contain the following details:

(a) The amount of cash on hand at the beginning of the reporting period.
(b) The total amount of all receipts in the reporting period.
(c) The identification of each person who makes a contribution or provides any dividend, interest or other receipt exceeding $200 in the calendar year or cycle, or any lesser amount if the reporting committee should so select, as well as the date and amount of their contribution.
(d) The identification of political committees and other affiliated committees making contributions or loans.
(e) Numerous other heads such as rebates, refunds, dividends, interests, other forms of receipts etc.

[67] IDEA, *Campaign Finance for United States*, <http://www.idea.int/political-finance/country.cfm?id=231>.

(f) The total amount of all disbursements and all disbursements in specified categories like expenditures made to meet committee or candidate expenses, transfers, repayment or loans, etc.[68]

2.25.22 All candidates and party committees and PACs are required to file regular reports with the FEC, which maintains a public database.[69] Campaign finance reports are placed in the public record within 48 hours of receipt at the FEC.[70] Further, any amount of contribution more than $1000 received on behalf of a candidate by an authorized party within the last 20 days of an election will be notified to the Commission within 48 hours of receipt of the same.[71]

Penalties

2.25.23 The FECA has the power to conduct audits and field investigations of any political committee filing a report under Section 434 and its powers (including enforcement) are delineated in greater detail in Section 437d and g.

2.25.24 Instances of noncompliance with the provisions of the FECA may lead to an FEC enforcement case, or Matter Under Review ("**MUR**"). The Office of Complaints Examination and Legal Administration and the Enforcement Division of the Office of General Counsel usually deal with these MURs through the FEC's traditional enforcement program, based on procedures detailed in the Act. In some less complex cases, the candidates or political committees may also be permitted to participate in the FEC's ADR program for a swift resolution through settlements. Further, failure to or late submissions of FEC reports or any other violations of such nature are subject to the FECA's Administrative Fine Program.[72]

(iv) Australia

Expenses

2.26.1 There are no limits on expenditure by political parties or candidates.[73]

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[68] S. 304, FECA (2 USC 434).
[69] FEC, *Campaign Finance Reports and Data,* <http://www.fec.gov/disclosure.shtml>.
[70] 2 USC § 438(a)(4); FEC, *Freedom of Information Act,* <http://www.fec.gov/press/foia.shtml>.
[71] FEC, *Candidate Committee*, <http://www.fec.gov/rad/candidates/FEC-ReportsAnalysisDivision-CandidateCommittees.shtml>.
[72] FEC, *FY 2014-2019 Strategic Plan,* <http://www.fec.gov/pages/strategic_plan/FECStrategicPlan2014-2019.pdf>.
[73] IDEA, *Political Finance Data for Australia,* <http://www.idea.int/political-finance/country.cfm?id=15>.

Contribution

2.26.2 There are no contribution limits, and no ceiling on how much a donor can contribute, or a party can raise. Further, there is no ban on donations from foreigners, trade unions or government contractors.[74]

2.26.3 Section 306 of the Commonwealth Electoral Act, 1918 makes it unlawful for any political party or candidate or their representatives to receive a gift greater than the disclosure threshold, unless the name and address of the donor or giver of the gift are provided to the donee. Thus, anonymous donations in such cases are barred.

2.26.4 Finally, section 327(2) prohibits and criminalises the discrimination of a donor by a person of the opposite party by denying such donor work, access to membership of some trade union/club/other body, intimidating or coercing them, or subjecting them to other detriment.

Disclosure

2.26.5 Both parties and candidates are required to publicly disclose their expenditure; and both donors and parties have to disclose the contributions over a "disclosure threshold", currently at AUD 12,800.[75] Pertinently, the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010, which has now lapsed, provided for reducing the disclosure threshold to AUD 1,000 and permitting anonymous donations below AUD 50 when they were received at a general public activity or private event.[76]

2.26.6 Returns filed by individual candidates to the Electoral Commission must include:

(a) the total amount of the donations received;
(b) the total number of donors;
(c) all the individual donations received above the disclosure threshold
(d) the details of donations (such as date of receipt, amount, and name and address of donor) for donations above the disclosure threshold; and,

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[74] *Ibid.*
[75] Australian Electoral Commission, *Disclosure Threshold,* <http://www.aec.gov.au/Parties_and_Representatives/public_funding/threshold.htm>.
[76] Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010, <http://www.comlaw.gov.au/Details/C2010B00247>.

(e) electoral expenditures, primarily advertising, printing and direct mail costs incurred between the issue of the writ and polling day.[77] From 2006-07, third party expenditure above the disclosure threshold is also required to be filed in an annual return.[78]

2.26.7 Political parties must file annual returns with the Commission including:

(a) the total values of their receipts;
(b) the details, including names and addresses, of the donors and the donations above the disclosure threshold;
(c) the total value of payments; and
(d) the total amount of debt as on 30th June of that particular year.[79]

2.26.8 Further, *vide* Sections 304, 305A and 305B, Commonwealth Electoral Act, 1918, all in kind donations must be disclosed to the Australian Electoral Commission by the donors and agents of candidates within 15 weeks of the date of polling; and by parties, within 20 weeks after the financial year. This includes the total value of the gifts and the relevant details, if the value is greater than the disclosure threshold.

2.26.9 Interestingly, section 311 provides that even Commonwealth Departments have to furnish statements with complete particulars and details of the amounts paid to

(a) advertising agencies;
(b) market research organisations;
(c) polling organisations;
(d) direct mail organisations; and
(e) media advertising organisations; and others.

2.26.10 Thus, to conclude associated entities, donors to political parties, and 'third parties' that incur political expenditure also have annual disclosure obligations; while candidates are required to file election returns.[80]

2.26.11 Moving from the disclosure of donations to the disclosure of expenditure, section 309 provides that an agent of a candidate shall furnish

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[77] Commonwealth Electoral Act 1918 (Cth), sections 303-309, 313-314, 314AA-314AEC.
[78] Australian Electoral Commission, *Financial Disclosure Overview,* < http://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/Overview.htm>.
[79] *Id.*
[80] Australian Electoral Commission, *Financial Disclosure Guide for Political Parties: 2013-2014 Financial Year,* <http://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/guides/political-parties/files/political-parties-2013-14.pdf>.

the details of all its electoral expenditure, in relation to the election incurred by or with the authority of the candidtate, within 15 weeks from the date of polling.

2.26.12 On public inspection, section 320 provides that election disclosure returns (of both donations and expenditure) shall be made available for public inspection on the expiry of 24 weeks after the date of polling and on the website.[81] Similarly, annual disclosure returns are made available for public inspection until the first working day of the February of the calendar year after the return is furnished.

Penalties

2.26.13 Section 315 of the Act deals with offences and sub-section (1) provides that failure to file a return, by a person required to do so under Divisions 4, 5, or 5A of Part XX of the Act, will result in a fine payable by such guilty person – of AUD 5,000 in case of an agent of a party; or AUD 1,000 in other cases. Similarly, section 315(2) criminalises furnishing an incomplete return or failing to retain records for three years (under section 317) by a fine up to AUD 1,000. In both sub-sections, the offence is a strict liability offence.

2.26.14 Section 315(3)-(4) criminalises the furnishing of false or misleading information in a claim or return "to the knowledge of the agent" of the party with a fine up to AUD 10,000 payable by such agent of a political party; and AUD 5,000 payable by any other person if the offence is committed by them.

2.26.15 Similarly, Section 316 deals with the Commission's powers of investigation into compliance with disclosure obligations and the consequent power to issue notice for the production of documents, which has to be statutorily complied with. Sub-section (2D) makes it mandatory for the Australian Electoral Commission to investigate a gift or the disposition of property of AUD 25,000 or more to a registered political party or candidate. Further, the section stipulates providing false or misleading information during a compliance investigation results in a fine up to AUD 1,000 or/and imprisonment up to six months.[82]

2.26.16 At the conclusion of an investigation, the Commission is empowered to refer the evidence and its opinion to the Commonwealth Director of Public Prosecutions, if it considers that the particular party acted unreasonably in its non-compliance with Part XX of the Act.

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[81] AEC, Financial Disclosure Overview, *supra* note 78.
[82] AEC, Financial Disclosure Guide, *supra* note 80.

(v) Japan

Expenses

2.26.17 Articles 127 and 194 of the Public Office Election Act, 1950 (*hereinafter* "POEA") limit election expenses of candidates based on the type of elections and the number of voters in the constituency. For instance, in an election to the House of Representatives, candidates can spend 15 yen x the number of registered voters in the constituency + 19.1 million yen. The POEA aims to place a ceiling on campaign expenses to ensure the elimination of inequalities in the campaign, achieved through prohibiting door to door campaigning; restricting internet usage; regulating (print and electronic) advertising and the size and number of placards and posters; and shortening the campaign period to between 12-17 days depending on the type of elections.[83]

2.26.18 However, there does not seem to be any article in the PFCA limiting the expenditure by political parties.[84]

Contribution

2.26.19 Article 22.5 of the PFCA prohibits donations by foreign interests to parties or candidates. Further, Article 22.6 prohibits anonymous donations, in relation to elections or other political activities, to political parties. However, this prohibition does not apply to streets or meeting collections if the donation amount is under 1,000 yen. There is a complete ban on anonymous donations to individual candidate.[85]

2.26.20 Corporate donations are prohibited to individual candidates under Article 21.3 of the Political Fund Control Act, 1948 (*hereinafter* "PFCA"), although this ban does not apply to fundraisers, where candidates can charge 1.5 million yen per ticket per seat.

2.26.21 In the case of political parties, corporate (and labour union and other organisations') donations are limited under Article 21.3 and Article 22.4 of the PFCA to 7.5 million to 30 million yen, and cannot be made by corporations that have incurred deficit in the last years. Further, there are specific ceilings for organisations based on their capital amount, number of

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[83] Matthew Wilson, *E-Elections: Time for Japan to Embrace Online Campaigning*, 2011 STAN. TECH. L.R. 4,9; *Government of Japan: Japan Electoral Laws*, COLUMBIA UNIVERSITY <http://afe.easia.columbia.edu/at/jp_elect/govjel01.html>.

[84] IDEA, *Political Finance Data for Japan*, <http://www.idea.int/political-finance/country.cfm?id=114>.

[85] *Id*.

union members and other factors.[86] Corporates with government contracts or partial government ownership cannot donate money to parties (or candidates).

2.26.22 Individuals can donate up to 20 million yen per year to political parties/organisations under Article 21.3 and 1.5 million yen per year to "persons other than political parties or political organisations" under Article 22 of the PFCA.[87]

Disclosure

2.26.23 Article 12 of the PFCA requires political parties to disclose their incomes and expenses annually, along with their internal audit, and present their reports to the Minister of General Affairs or the Election Control Commission. These reports are made available for public inspection for three years (at no cost) and are uploaded online.

2.26.24 Campaign finances of candidates are also internally audited. Articles 189 and 192 deal with disclosure obligations for candidates, whose campaign accountants must maintain records of revenue and expenditure reports and present them to the Local Election Management Council ("LEMC"). A summary of these reports are made public on LEMC's website and should be maintained for three years to allow for public inspection.[88]

2.26.25 Article 12 of the PFCA further provides that the identities of donors must be disclosed if they contribute more than 50,000 yen.

Penalties

2.26.26 If a candidate is found to have spent more than the stipulated campaign expense, their election will be nullified. Further, under the PFCA, filing financial reports in contravention with the Act can result in a penalty of up to three years imprisonment or a fine of up to 500,000 yen. Article 31 empowers the Minister for Internal Affairs and Communications or the Electoral Commission to order the person who has filed a deficient or incomplete report to explain the same and file a corrected report. Articles 22 and 28 of the PFCA provide for forfeiture options as well.

2.26.27 Conversely, violations under the POEA by the candidate or their campaign accountants/general managers/relatives/secretaries such as bribing voters, disturbing elections, door to door canvassing, and other such violations result in an investigation by the police and if necessary, prosecution as criminal offences. Candidates found to have committed an election crime

[86] *Id.*
[87] *Id.*
[88] *Id*.

are disqualified under Article 251-252 of the POEA, along with being disqualified from voting or standing for elections in the future. Further, candidates found to be engaging in unauthorised campaign activities during the 'black out' period are subject to two years imprisonment and a fine up to 500,00 yen.[89]

(vi) Philippines

Expenses

2.26.28 The Philippines Omnibus Election Code of 1985 regulates the expenditure by parties and candidates. Section 1 of the Code sets the ceiling for political parties at 5 pesos per voter in each constituency where the party is fielding a candidate. Further candidate expenditure is also limited, with presidential and vice-presidential candidates being permitted to spend 10 pesos per registered voter; and for other candidates, the limit is 3 pesos, with an additional 5 pesos per voter for independent candidates.[90]

Contribution

2.26.29 Political parties or candidates cannot accept donations from corporates; foreign interests; anonymous donors and other financial institutions, educational institutions receiving state support and officials/employees of the Civil Service or Armed Forces.[91]

Disclosure

2.26.30 Section 15 of the Manila Resolution and sections 106-107 of the Omnibus Code requires the candidates or the treasurers of the political parties to submit a statement setting out in detail the amounts of contribution received, the date of receipt, the name and address of the donors and a record of their expenses and obligations. Records of contributions are to be kept for three years, failing which it will be considered *prima facie* evidence of violation of the provisions of the law. The identity of donors is required to be reported *vide* section 109 of the Code.

Penalties[92]

[89] Wilson, *supra* note 83.
[90] IDEA, *Political Finance Data for Philippines,* <http://www.idea.int/political-finance/country.cfm?id=177>; Article 13, Section 7 Republic of the Philippines, Commission On Elections. *Manila Resolution No. 9087*; and Article 13, Republic Act No. 7166.
[91] Section 4, Manila Resolution*;* Sections 94(a), 95, 96 of the Batas Pambansa Bilang 881 Omnibus Election Code Of The Philippines, 1985; Article 36.9, Corporation Code of Philippines.
[92] IDEA Philippines, *supra* note 90.

2.26.31 The Commission on Elections is empowered under Section 57.3 of the Omnibus Code of 1985 to inquire into the financial reports of candidates, *suo motu* or based on written representation by other candidates or voters, and issue due notice and conduct a hearing. The failure to file written statements or reports in connection with electoral donations and expenditures is classified as an administrative offence, with a fine payable of 1,000 pesos to 30,000 pesos under Section 17 of the Manila Resolution. Failure to pay the fine within 30 days will allow the COMELEC to issue a writ of execution against the properties of the offender. Subsequent offences under the section shall result in fines levied by the Commission ranging from 2,000 pesos to 60,000 pesos, with possible perpetual disqualification to hold office.

2.26.32 Section 111 of the Omnibus Code of 1985 stipulates that, "*no person elected to any public office shall enter upon the duties of his office until he has filed the statement of contributions and expenditures herein required*." Section 264 sentences a person guilty of an electoral offence under the Code to a term of imprisonment between one to six years, with disqualification from the public offence and the deprivation of the right to vote. Political parties guilty under the Code will have to pay a fine of minimum 10,000 pesos, along with criminal action being instituted against the concerned party official.

2.26.33 Till now, this report has examined the law in India and other parts of the world. This gives us a better understanding of the loopholes of the laws in India and how they can be improved. The next section deals with this.

E. Legal Lacunae and the Under-reporting of Election Spending

(i) <u>Understanding the reality of election financing today</u>

2.27.1 Although there are legal provisions limiting election expenditure for candidates and governing the disclosure of contributions by companies to political parties, the same is not properly regulated, either due to loopholes in the law, or improper enforcement.

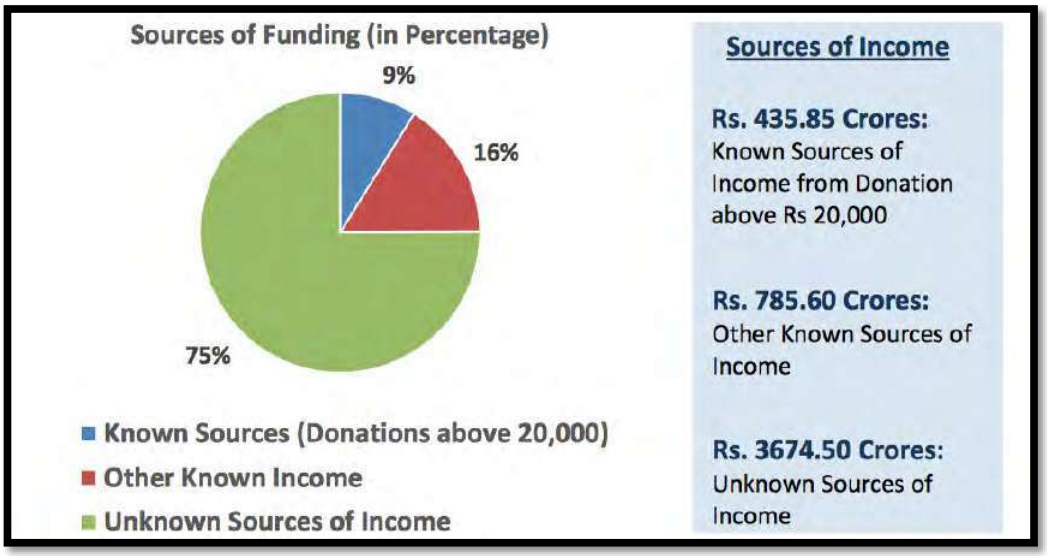
2.27.2 This is evident from the 2001 Consultation Paper of the NCRWC on Electoral Reforms, which estimates that actual campaign expenditure by candidates is "*in the range of about twenty to thirty times the said limits.*"[93] In fact, one of the major concerns regarding expenditure and contribution regulation is that the apparently low ceiling of candidate expenditure increases the demand for black money cash contributions and drives

[93] NCRWC, *A Consultation Paper on Review of Election Law, Processes, and Reform Options,* January 2001, <http://lawmin.nic.in/ncrwc/finalreport/v2b1-9.htm> at para 14.1 ("NCRWC Consultation Paper").

campaign expenditure underground, causing parties to conceal their actual source of funds and expenditure.[94]

2.27.3 Interestingly however, the Association of Democratic Reforms (*hereinafter* "ADR") in its election expenses analysis for the Lok Sabha 2009 elections found that on average, the Members of Parliament declared election expenditures of 59% of the total expenses limit.[95] Of the 6753 candidates (of a total of 8028 candidates) whose summary statements of expenses were available, only four candidates exceeded the ceiling and only 30 spent up to 90% of the expenditure limit.[96] On the other hand, 1066 candidates declared election expenses of less than Rs. 20,000 and 197 declared expenses less than Rs. 10,000.[97] Given the distortion between the reported and estimated candidate expenditure, increasing the expenditure limits further (from the 2014 increase) might not necessarily provide an answer.

2.27.4 Additionally, in their analysis on the sources of funding for political parties, ADR found that more than 75% of parties' sources are unknown, while donations over Rs. 20,000 comprise only 9% of parties' funding.[98]



[94] *Ibid.,* at para 14; M.V. Rajeev Gowda and E. Sridharan, *Reforming India's Party Financing and Election Expenditure Laws,* 11(2) ELECTION L.J. 226, 232-235 (2012).
[95] ADR, *129 (30%) MPs declared Election Expenses of less than 50% during Lok Sabha, 2009*, <http://www.adrindia.org/content/129-30-mps-declared-election-expenses-less-50-during-lok-sabha-2009>.
[96] ADR, *Lok Sabha 2009 Election Expense Analysis: A Report,* <http://adrindia.org/sites/default/files/ls09_electionexpense.pdf>, at 4.
[97] *Ibid.*, at 3.
[98] ADR, *Electoral and Political Reforms,* <http://adrindia.org/sites/default/files/Electoral,%20Political%20Reforms%20and%20ADR.pdf>.

2.27.5 To try and remedy the situation, the ECI's transparency guidelines, effective from 1st October, 2014 state that no income tax deductions are permissible for cash contributions to political parties by an individual or a company under s. 80GGB and 80GGC, IT Act and that all cash donations should be duly accounted in the account books. Further, parties are stipulated to maintain names and addresses of all donors, specifically those donating during public rallies (except petty sums and hundi/bucket collections).[99]

2.27.6 Therefore, there is clearly under reporting of election expenditure and opacity of political contribution. Part of the explanation lies in the lacunae in the law, and part in black money and poor enforcement. To this, we now turn.

(ii) <u>Legal lacunae</u>

2.27.7 There are various loopholes in the laws regarding election expenditure, contribution and disclosure. *First,* and most importantly, despite the Election and Other Related Laws (Amendment) Act 2003, the subject of regulation under Section 77 of the RPA only covers individual "candidates", and not on political parties. This is evident from the stipulation requiring "every candidate" (or his electoral agent) to keep a separate account of the expenditure which has been "incurred or authorized by him" between the date of nomination and declaration. Consequently, political parties and candidate supporters are allowed unlimited expenditure in propagating the party program, as long as no specific candidate is favoured.[100]

2.27.8 The implications of the wording of Section 77(1) are evident in the ECI guidelines on expenditure allocation in the General Observers Handbook. The ECI has categorised the advertisements published by political parties in the following three categories:

(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."

[99] ECI Transparency Guidelines and Clarifications, *supra* note 6 and *supra* note 40.
[100] Gowda, *supra* note 94, at 230.

2.27.9 According to the ECI, the first case will not be included in the candidate's expenditure limits under Section 77(1) of the RPA, while the second and third cases shall be included in the expenditure incurred or authorised by the candidates or their election agents.[101]

2.27.10 *Second*, clever accounting can allow parties to attribute large amounts of expenditure to their "leaders" and hence, avail of the exception under the Explanation to Section 77. For instance, the ECI states that when leaders of a political party travel to and from their constituency to other constituencies as star campaigners, the expenditure on their travel would fall within the exempted category.[102] As the above break down of expenditures for the 2009 Lok Sabha Elections reveal, expenditure incurred on vehicle usage and transport comprise the largest proportion of a candidate's declared expenses.

2.27.11 *Third,* the scope of Section 77(1) is very narrow and applies only from the date of nomination to the date of declaration and thus any expenditure incurred in the remaining period is exempt from any limit or regulation.

2.27.12 *Fourth*, regarding political contribution, the Rs. 20,000 disclosure limit can be easily evaded by writing multiple cheques below Rs. 20,000 each, or giving the money in cash. Nor is the profit-linked contribution limit of 7.5% a significant restriction for large companies. As per Gowda and Sridharan while the law creates incentives for disclosure vide tax exemptions, it can be outweighed by the disincentive created by the loss of anonymity, especially given that in many instances big donors support multiple parties, or change their support, and do not want this information to be disclosed for fear of reprisal.[103]

2.27.13 *Fifth,* the authorisation of corporate contribution requires a resolution to be passed to such effect at the meeting of the Board of Directors under Section 182(1) of the Companies Act, 2013. The empowerment of a small group to decide how to use the funds of a company for political purposes, instead of involving the vast numbers of shareholders (being the actual owners of the company) has also been criticised.[104] Britain follows such

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[101] ECI, *Instructions on Expenditure Monitoring in Elections*, <http://eci.nic.in/eci_main/recent/Instruction_expenditure.pdf>, at paras 10.2-10.3. See also ECI, *General Observers Hand Book 2014*, <http://eci.nic.in/eci_main/ElectoralLaws/HandBooks/Observers_hand_book_2014.pdf>.
[102] ECI, Instructions on Expenditure, *supra* note 101, at para 10.4.
[103] Gowda, *supra* note 94, at 230, 236.
[104] Samya Chatterjee, *Campaign Finance Reforms in India: Issues and Challenges*, ORF ISSUE BRIEF #47, December 2012,

a shareholder approach where British companies require shareholder approval before they can make any political contribution or incur any political expenditure.[105]

2.27.14 *Finally,* disclosure norms need to be strengthened. As we have seen, the ECI's transparency guidelines do not have statutory authority and there is no legal consequence for non-compliance. Further, unlike many of the countries discussion in the previous section, political parties and candidates file their returns with the ECI, without putting up the information online (on the ECI's website) or making it easily available for public inspection (barring an RTI). This is essential to bring about transparency in the public domain and to let the voters know the donors, contributions and expenditures of the parties and candidates. Moreover, in many cases such as compliance with section 29C of the RPA (regulating political party disclosure) the only penalty for non-compliance is losing the income tax exemption. This is not a significant enough deterrent to parties.

2.27.15 Despite the various legal lacunae, electoral reform is possible and will not be impeded by free speech claims as in the United States, evident in the *Citizens United* and *McCutcheon* decisions. In India, Article 19(1) of the Constitution only extends to citizens and natural persons, and corporations have not been considered citizens with free speech rights,[106]which can only be exercised by shareholders. [107] Thus, corporations do not have a right to make a political contribution as part of their exercise of free speech rights, especially given the non-involvement of shareholders in this decision making process. Apart from that, countervailing interests of equality, anti-corruption, and public morality will provide a constitutional basis for any election finance reform.

(iii) Recommendations

(a) *On Expenses and Contribution*

2.28.1 Section 77 of the RPA imposes a ceiling on the election expenses of a candidate from the date of nomination to the date of declaration of results and hence does not cover any period before the nomination, even though it constitutes a major part of candidates' expenses. This form of

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<http://orfonline.org/cms/export/orfonline/modules/issuebrief/attachments/Issue_47_1360754379618.pdf at 8>.

[105] *ICSA Guidance on Political Donations*, REFERENCE NUMBER 081110, <https://www.icsa.org.uk/assets/files/pdfs/081110%20-%20Political%20Donations.pdf>.

[106] State Trading Corporation v, CTO, AIR 1963 SC 1811; Barium Chemicals v. Company Law Board, AIR 1967 SC 295; Municipality v. State of Punjab, AIR 1969 SC 1100; TELCO v. State of Bihar, (1964) 6 SCR 885.

[107] Divisional Forest Officer v Bishwanath Tea Company, AIR 1981 SC 1368; Bennett Coleman v Union of India, AIR 1973 SC 106.

regulation on election expenditure should be amended to extend from the date of notification of the elections to the date of declaration of results, given that many candidates file their nominations only on the last date of filing, to prevent the application of section 77 limiting their expenses. Campaigning commences before or at least once the ECI announces the date of elections, and the filing of nominations is often viewed only as a formality.

2.28.2 Although the UK system of covering both the pre-candidacy long-campaign period, namely a certain specified time, such as a year, before the date of nomination; and the short-campaign period, namely from the date of nomination to the declaration of results is desirable, it may not be feasible in India. Unlike the UK, India is a much larger and more diverse country, which would make the task of determining what constitutes election expenses in the pre-candidacy period, and then regulating it, difficult. Instead, an amendment to section 77 extending its scope as suggested above, may be a better mid-way solution and a more practical alternative.

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.

2.28.6 On a separate note, the authorisation of corporate contribution through a resolution passed at the meeting of the Board of Directors under Section 182(1) of the Companies Act, 2013 should be amended to empower a larger group of people, such as the company's shareholders, in deciding how to use the funds of a company for political purposes. This has been done in the United Kingdom as well. Section 182(1) should be amended to this effect.

(b) *On Disclosure*

2.28.7 Disclosure is at the heart of public supervision of political finance and requires strict implementation of the provisions of the RPA, the IT Act, the Company Act, and the ECI transparency guidelines, effective from 1st October 2014, bearing No. 76/PPEMS/Transparency/2013 dated 29th August, 2014 and 19th November 2014, which need to be given statutory backing. This is especially important given the Commission's recommendations that the current absence of expenditure caps for parties and contributions remain unchanged.

2.28.8 The primary provision governing disclosure of election expenses for candidates in the RPA is Section 78 and Rules 86-90 of the Election Rules. A new section, section 77A needs to be inserted (similar to the comparative practices referred above) to provide for candidates disclosing (a) any individual contributions received by them and (b) any contribution by the political party from the date of notification of elections, regardless of whether the donation is in cash, cheque, or in kind.

2.28.9 Similarly, Section 78 should also be amended in light of the proposed amendment to section 77A above, and the reference to more than one returned candidate should be removed.

2.28.10 The primary provision governing disclosure for political parties in the RPA is Section 29C and Rule 85B, which requires political parties to report contributions only in excess of Rs. 20,000 and the ECI's transparency guidelines which stipulate that all cash contributions be duly accounted for. As the abovementioned analysis by ADR on the sources of political funding for parties reveals, more than 75% of parties sources of funds are unknown while only 9% of their funding is said to comprise donations over Rs. 20,000.

2.28.11 Evidently, writing multiple cheques below Rs. 20,000 each can easily evade this Rs. 20,000 disclosure limit (and even otherwise, the non-deductibility of income tax does not serve as a sufficient deterrent). Even

otherwise, donor incentives created by tax exemptions do not always outweigh the disincentive caused by the loss of anonymity, especially in a situation where donors or companies or trusts donate to multiple parties. Hence, it is imperative to require the disclosure of all contribution amounts, subject to a cap of Rs. 20 crore or 20 per cent of the total contribution, whichever is lesser as discussed below, whether in cash or cheque or kind. Further, the limit should apply to contributions given cumulatively by a person or company throughout the year. Even if these measures are unable to stem the flow of black money, it is hoped they will improve transparency and make the process of evasion more difficult.

2.28.12 Further, parties claim that part of this 75% unaccounted funding comes from small donors contributing amounts such as Rs. 50 or Rs. 100, making it difficult to keep account of the same. Similarly, *hundi* or bucket collections at public rallies are also said to form part of parties' funding corpus, and are also not disclosed on grounds of practical difficulty. However, such levels of anonymity are used as means of avoiding disclosure.

2.28.13 While the Commission agrees that there are undoubtedly cases where parties collect a part of their funding from anonymous small donors and *hundi*/bucket collections at public rallies, the anonymity should be limited. The Commission suggests that *only* up to Rs. twenty crore or twenty per cent of the total contribution of a political party's entire collection (whether cash/cheque), whichever is lesser, can be anonymous. Apart from this, the details and amounts of all donations and donors (including PAN cards, wherever applicable) need to be disclosed by political parties, regardless of their source or amount.

2.28.14 Additionally, the auditing provisions should be enforced across all the levels of political parties, including the national, regional, local, and sub-local levels. It is pertinent to note that the Law Commission had recommended the insertion of a new Section 78A in its 170th Report in 1999 on the "Maintenance, audit, publication of accounts by political parties". As per the proposed Section 78A(1):

> *"Each recognised political party shall maintain accounts clearly and fully disclosing the sources of all amounts received by it and clearly and fully disclosing the expenditure incurred by it. The accounts shall be maintained according to the financial year. Within nine months of each financial year, each recognised political party shall submit its accounts, duly audited by an accountant (as defined in the Explanation below sub-section (2) of section 288 of the Income-tax Act, 1961), to the Election Commission. The Election Commission shall publish the said accounts in accordance with such general directions as may be issued by the Election Commission in this*

behalf. The accounts shall also be open for inspection by the members of the public in the office of the Election Commission and they shall also be entitled to obtain copies of such accounts or any part thereof in accordance with such instructions as the Election Commission may issue in that behalf."[108]

2.28.15 This is similar to ECI's auditing and accounting guidelines stating that all books of accounts need to be audited and certified by qualified, practicing Chartered Accountants annually, with a copy of the Auditor's Report. The Commission recommends inserting a new section 29C (replacing the current provision), along these lines, to require parties to maintain and submit audited accounts annually.

2.28.16 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;

(b) The ECI to upload all the annual returns of the parties (under section 29E) and the district election officer to upload the election and contribution expenses of candidates (under section 78A) and keep the same on record for public inspection for three years.

(c) Parties to submit election expense accounts within a specified period after every Parliamentary or State election, pursuant to the Supreme Court's judgment in *Common Cause vs Union of India*,[109] and the ECI's notifications on election expenses and transparency guidelines through a new section 29F.

(c) <u>*On Penalties*</u>

2.28.17 Currently, penal provisions for candidates are governed by section 10A, RPA which provides for disqualification, up to a period of three years, for failure to lodge accounts of election expenses. The period of disqualification should be increased up to five years, and should apply to contribution reports under section 77A as well, so that a defaulting candidate may be ineligible to contest at least the next general elections normally held after five years.

[108] Law Commission of India, *Reform of Electoral Laws,* Report No. 170, May 1999 ("LCI, 170th Report"), <http://www.lawcommissionofindia.nic.in/lc170.htm>, at para 4.2.6.
[109] AIR 1996 SC 3081.

2.28.18 With respect to political parties, the ECI's transparency guidelines only stipulate that the penalty for cash contributions to political parties by an individual or a company is that such contribution will not be deductible under section 80GGB and 80GGC, IT Act. Given the prevalence of black money, this does not serve as a true deterrent and the penalty needs to include more than just non-deductibility of tax.

2.28.19 Similarly, the penalty of non-deductibility of tax under section 29C of the RPA r/w section 13A of the IT Act for parties which do not maintain the names and addresses of all donors (donating above Rs. 20,000) as per Form 24A of the Election Rules is not stringent enough and may be flouted. While Section 10A of the RPA disqualifies candidates for a failure to lodge an account of election expenses, similar strict provisions are not applicable to parties. The Law Commission had recommended the insertion of a new Section 78A(2) in its 170th Report on penalties for non-compliance:

> *"(2) A political party which does not comply with any of the requirements of sub-section (1) shall be liable to pay a penalty of Rs.10,000/- for each day of non-compliance and so long as the non-compliance continues.*
>
> *If such default continues beyond the period of 60 days, the Election Commission may de-recognise the political party after affording a reasonable opportunity to show cause.*
>
> *(3) If the Election Commission finds on verification, undertaken whether suo motu or on information received, that the statement of accounts filed under sub-section (1) is false in any particular, the Election Commission shall levy such penalty upon the political party, as it may deem appropriate besides initiating criminal prosecution as provided under law."*

2.28.20 The Commission endorses these proposed sub-sections with certain modifications: *first*, the penalty for non-compliance should be increased from Rs. 10,000 daily to Rs. 25,000 daily; *secondly*, the default period before the ECI may de-recognise the party be extended to 90 days; *third*, the penalty for filing false information should be stipulated up to a maximum of fifty-lakh rupees. This can be inserted *vide* a new section 29G to the RPA.

2.28.21 Section 29B of the RPA and section 182 of the Companies Act prohibits political parties from receiving funds from foreign sources, government companies and loss making companies, but there is no penalty against the parties which contravene the above provisions. The law may be amended to provide for suitable remedy. A new section 29H should be

inserted levying a penalty of five times the amount of such contribution accepted.

(d) *On electoral trusts*

2.28.22 The IT Act has been amended to provide for tax relief on donations to the electoral trusts, setup for the sole purpose of making donations to political parties and as discussed above, the ECI regulates electoral trusts as well through its "Electoral Trust Companies" scheme notified on 10th December 2013. However, there is no disclosure provision under the RPA corresponding to the changes in the income tax laws. Additionally, the only penalty prescribed non-submission of an annual report of contributions to the ECI as per the prescribed format (detailing the names and addresses of donors and donations given to parties), before the due date of filing of tax returns is that "adverse notice shall be taken" of the failure to comply with the instructions.[110] Thus, a new Chapter IVB pertaining to the 'Regulation of Electoral Trusts' should be introduced, to provide for the regulation of electoral trusts with appropriate penal provisions for enforcement in case of default, along the lines of the proposed amendments above.

2.28.23 A list of recommendations is given below:

On Expenses and Contribution

1. Section 77(1) of the RPA should be amended to extend the starting time period of the regulation of the election expenditure from the current date of nomination to the date of notification of elections, extending to the date of declaration of results.
    - Thus, the words "on which he has been nominated" in sub-section (1) of section 77 should be deleted and instead, the words "of notification of such election" should be inserted in its place.

2. Section 182(1) of the Companies Act, 2013 should be amended to require the passing of the resolution authorising the contribution of the company's funds at the company's Annual General Meeting (AGM) instead of its Board of Directors.
    - Thus, the words "a meeting of the Board of Directors" in sub-clause (1) of section 182 should be deleted and in its place, the words "the annual general meeting" should be inserted.

[110] ECI, *Guidelines for submission of contribution reports to electoral trusts,* No. 56/Electoral Trust/2014/PPEMS, 6th June 2014, *available at* < http://eci.nic.in/eci_main1/PolPar/ElectoralTrust_06062014.pdf>.

On Disclosure

Relating to individual candidates

3. A new section 77A of the RPA has to be inserted requiring the candidates, or their election agents to maintain an account of the contributions received by them from their political party (not in cash) or any other permissible donor. The new section 77A reads as follows:

"**77A. Account of contributions received.—**Every candidate at an election shall, either by himself or by his election agent, also keep an account of the following particulars in respect of the donations or contributions received by the candidate after the date of notification of election, namely: —

(a) the amount of contribution received by the candidate from his party for the election;
(b) the amount of contribution received by the candidate from—
    (i) any person;
    (ii) any company, not being a government company
(c) the name, address and PAN card details, if applicable, of the donor in sub-clause (b) above;
(d) the nature of each contribution, in particular, whether it is:
    (i) cash;
    (ii) cheque; or
    (iii) gifts in kind;
(e) the date on which the contribution was received.

Explanation: All contributions by a political party to its candidate shall be made by a crossed account payee cheque or draft or bank transfer."

4. A new section 78A to be inserted in the RPA requiring the ECI to make publicly available, on its website, all the expenditure reports submitted by every contesting candidate under section 78. Section 78A shall read as:

"**78A. Disclosure of account submitted by contesting candidates.–** (1) The district election officer shall make publicly available, on his website, the accounts of election expenses and contribution reports submitted by every contesting candidate or their election agent under section 78.

(2) The district election officer 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 under Rule 88 of the Conduct of Election Rules, 1961."

Relating to political parties

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-setion (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."

8. The Commission recommends giving statutory basis to the ECI's 'statement of election expenditure' requirement introduced pursuant to the Supreme Court's judgment in *Common Cause v UOI,* AIR 1996 SC 3081, and its transparency guidelines pertaining to election expenses by political parties through a new section 29F, which states as follows:

"**29F. Election expenses by political parties. —** (1) Every political party contesting an election shall, within seventy five days of the date of an election to a Legislative Assembly of a State or ninety days of the date of an election to the House of the People, lodge with the Election Commission a statement of election expenditure, which shall be a true copy of such statement maintained by the party in consonance with the directions of the Election Commission.

(2) The payment of any election expenditure over twenty thousand rupees should be made by the political parties via cheque or draft, and not by cash, unless there are no banking facilities or the payment is made to a party functionary in lieu of salary or reimbursement."

On Penalties

Relating to individual candidates

9. The disqualification of a candidate for a failure to lodge an account of election expenses and contribution reports should be increased and should extending from the current three period up to a five year period, so that a defaulting candidate may be ineligible to contest at least the next elections.
    - Thus, in the title and sub-clause (a), after the words "account of election expenses", add the words "and contribution reports".
    - After the words "period of three years" and before the words "from the date of" in section 10A, add the words "up to a period of five years".

Relating to political parties

10. Express penalties, apart from losing tax benefits under section 13A of the IT Act, should be imposed on political parties for the non-compliance with

the provisions of section 29D of the RPA. This should include a daily fine for each day of non-compliance, with the possibility of de-recognition in extreme cases, along the lines of proposed section 78A in the 170th Report. This new section 29G reads as follows:

"**29G. Penalty.—(**1) Where the treasurer of any political party or any other person authorised by the political party in this behalf fails to submit a report in the prescribed form within the time specified under sub-section (4) of section 29D then, notwithstanding anything contained in the Income-tax Act, 1961 (43 of 1961), such political party:

(a) shall not be entitled to any tax relief for such financial year under the Income-tax Act, 1961; and
(b) shall be liable to a penalty of twenty five thousand rupees for each day of non-compliance and so long as the non-compliance continues.

Provided that If such default continues beyond the period of ninety days, the Election Commission may de-register the political party after giving a reasonable opportunity to show cause.

(2) If the Election Commission finds on verification, undertaken whether suo motu or on information received, that the report submitted under sub-section (4) of section 29D is false in any particular, the Election Commission shall levy a fine up to a maximum of fifty lakh rupees on such political party."

11. A new section 29H should be inserting penalising parties that contravene the stipulations of section 29B, RPA and section 182 of the Companies Act in terms of accepting contributions from impermissible donors, by levying a penalty of five times the amount so accepted:

"**29H. Penalty for political parties accepting contributions from an impermissible donor. –** If a political party accepts any contribution offered to it from an impermissible donor, it shall be liable to pay a penalty that is five times the amount so accepted from such donor.

Explanation.– For the purpose of this section, "impermissible donor" refers to:

(a) a government company, as defined in section 29B;

(b) a company that does not comply with the requirements of sub-section (1) section 182 of the Companies Act, 2013; or

(c) any foreign source defined under clause (e) of section 2 of the Foreign Contribution (Regulation) Act, 1976."

On Electoral Trusts

12. A new Part IVB should be inserted to the RPA dealing with the "Regulation of Electoral Trusts", and detailing provisions pertaining to their entitlement to accept contributions, disclosure obligations, and penal provisions so that the RPA can be amended in line with the changes already made to the IT Act and the ECI guidelines. The new part IVB, section 29I reads as:

Part IVB: Regulation of Electoral Trusts.

29I. Electoral Trusts entitled to accept contribution. (1) Subject to the provision of the Companies Act, 2013 and the Income Tax Act, 1961, an Electoral Trust approved by the Central Board of Direct Taxes under the Electoral Trusts Scheme, 2013 may accept any amount of contribution voluntarily offered to it by any person or company other than a Government Company:

Provided that no Electoral Trust shall be eligible to accept any contribution from any foreign source defined under clause (e) of section (2) of Foreign Contribution (Regulation) Act, 1976.

Provided further that all words and phrases used in this Part, shall have the same meaning as assigned to them in section 29B.

2. Maintenance, audit, publication of accounts by electoral trusts (a) Each Electoral Trust 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 Electoral Trust shall submit its accounts, duly audited by a qualified and practicing chartered accountant from panel of Chartered Accountants, selected by the Comptroller and Auditor General to the Election Commission.

(b) The Election Commission shall make publicly available, on its website, the audited accounts submitted by all electoral trusts under sub-section (1).

(c) 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.

3. Declaration of contribution received by the Electoral Trusts — (a) The treasurer of an Electoral Trust or any other person authorised by the trust in this behalf shall, in each financial year, prepare a report in respect of the following, namely: —

(i) the contribution received by such electoral trust from any person in that financial year, with name, address, PAN of such persons.

Provided that the Electoral Trust or any other person authorised by the Trust in this behalf shall not receive any donation in cash and without the name, address and PAN (if any);

(ii) the contribution to political parties from electoral trusts in that financial year with date amount, mode of payment and name of political party.

Provided that the electoral trusts shall not make any contribution to political parties in cash other than by bank account transfer.

(b) The report under this sub-section 2shall be in such form as may be prescribed.

(c) The report for a financial year under sub-section (1) shall be submitted by the treasurer of an Electoral Trust or any other person authorised by the Trust within six months of the close of each financial year to the Election Commission.

4. Disclosure of contribution reports submitted by Electoral Trusts by Election Commission – (a) The Election Commission shall make publicly available, on its website, the contribution reports, submitted by all Electoral Trusts under sub-sections (2) and (3) of this section.

(b) 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.

5. Penalty.—(1) Where the Electoral Trust fails to submit a report in the prescribed form within the time specified under sub-sections (2) or (3) of this section then, notwithstanding anything contained in the Income-tax Act, 1961 (43 of 1961), such Electoral Trust:

(a) shall not be entitled to any tax relief for such financial year under the Income-tax Act, 1961; and
(b) shall be liable to a penalty of twenty five thousand rupees for each day of non-compliance and so long as the non-compliance continues.

Provided that If such default continues beyond the period of ninety days, the Election Commission may ban the electoral trust from receiving any donations in future, after giving a reasonable opportunity.

(2) If the Election Commission finds on verification, undertaken whether suo motu or on information received, that the statement of accounts filed

under this section is false in any particular, the Election Commission shall impose a fine up to a maximum of fifty lakh rupees on such Electoral trust.

(3) If the Electoral Trust has received funds from an impermissible donor, it shall be liable to penalty that is five times the amount so accepted by the Trust.

Explanation.– For the purpose of this section, "impermissible donor" refers to:

(a) a government company, as defined in section 29B;

(b) a company that does not comply with the requirements of sub-section (1) section 182 of the Companies Act, 2013; or

(c) any foreign source defined under clause (e) of section 2 of the Foreign Contribution (Regulation) Act, 1976."

F. State Funding of Elections

2.29.1 In many countries around the world, the role of big money in elections (and the associated charges of bribing, capture, lobbying, and institutional corruption) has sought to be reduced through public funding of elections. In India too, the idea of state funding has been proposed to reduce the unending increase in the cost of elections (and create a more level playing field) and to curb corruption and the influence of black money. Nevertheless, despite similar proposals in India, there is currently no direct public funding of elections.

2.29.2 However, the 2003 Amendment to the RPA introduced Sections 39A of the RPA to provide for partial in-kind subsidy in the form of allocation of equitable sharing of airtime on cable television networks and other electronic media (based on past performance); and Sections 78A, and 78B for the free supply of copies of electoral rolls and certain other items. It is pertinent to note that no rules for operationalization for the sharing of airtime on private media have been finalised under Section 39A.[111] On 14th March 2014, the ECI issued an order bearing No. 437/TVs/2014(LS) to extend the scheme of equitable time sharing through the Prasar Bharti Corporation, namely Doordarshan and All India Radio for the forthcoming General Elections to the recognised six National parties and 47 State parties and not to independent candidates.[112]

[111] Gowda, *supra* note 94, at 230.

[112] ECI, *Telecast/Broadcast Facility to Political Parties During Elections*, No. 437/TVs/2014(LS), 14th March 2014, <http://pib.nic.in/archieve/others/2014/mar/d2014031502.pdf>.

2.29.3 Such legislative provisions are a consequence of our history of reform proposals on state funding of elections, which are described in the section below.

(i) History of reform proposals

2.29.4 The first committee to deal with the issue of public funding was the Dinesh Goswami Committee on Electoral Reforms in 1990, which advocated for partial state funding of elections in the form of limited in-kind support for vehicle fuel (which is a primary campaign expense); rental charges for microphones; issuance of voter identity slips; and additional copies of electoral rolls.[113]

2.29.5 In 1993, the Confederation of Indian Industries constituted a Task Force that recommended that elections be funded in effect, through a tax on the industry. This would involve the funds to be raised either through a cess on excise duty, or through corporate contributions to an election fund pool managed by the State, which would then be distributed via a pre-decided formula based on vote and seat share.[114]

2.29.6 The 1998 Indrajit Gupta Committee Report on State Funding of Elections endorsed state funding of elections, seeing "*full justification constitutional, legal as well as on ground of public interes*t" in order to establish a fair playing field for parties with less money power. The Committee envisaged a phased introduction of public funding, given the economic conditions of the country in 1998, beginning with in-kind state subsidies (and no cash) such as rent-free office space, free telephone facilities, electoral rolls' copies, loudspeakers, specified quantities of fuel, food packets, and airtime (both on state and private media). Gradually, the Committee envisioned a transition to full state funding, along with monetary provision via the creation of a central-governed Election Fund, whose funding would be provided by the Centre and the states together. However, the Committee excluded independent candidates from the benefits of state funding and required parties to submit audited accounts and tax returns to avail the benefits.[115]

2.29.7 This was followed soon after by the Report of the Law Commission in 1999 on the Reform of Electoral Laws, which endorsed the

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[113] Government of India, REPORT OF THE COMMITTEE ON ELECTORAL REFORMS, May 1990 (*hereinafter* "Dinesh Goswami Report"), <http://lawmin.nic.in/ld/erreports/Dinesh%20Goswami%20Report%20on%20Electoral%20Reforms.pdf>; Gowda, *supra* note 94, at 228.

[114] ORF, *supra* note 51.

[115] Government of India, COMMITTEE ON THE STATE FUNDING OF ELECTIONS, December 1998, at 11-45, 55-56, <http://lawmin.nic.in/ld/erreports/Indrajit%20Gupta%20Committee%20Report.pdf>.

ideas of the Indrajit Gupta Committee Report on partial state funding, as a first step towards total funding given that the latter was not "feasible" in light of the "prevailing economic conditions". However, the Commission clarified that given that the underlying premise of state funding was the elimination of the influence of money power, corporate funding and black money support, it was:

> *"… absolutely essential before the idea of state funding (whether partial or total) is resorted, the provisions suggested in this report relating to political parties (including the provisions ensuring internal democracy, internal structures) and maintenance of accounts, their auditing and submission to Election Commission are implemented…..The state funding, without the aforesaid pre-conditions, would merely become another source of funds for the political parties and candidates at the cost of public exchequer."*[116]

2.29.8 In 2001, the NCRWC concurred with the 1999 Law Commission report that the question of permitting state funding "should not even arise" without:

> *"an effective systemic acceptance of full audit of party funds including a full audit of campaign funds, deletion of explanation 1 to section 77(1) of the Representation of People Act 1951, a fool proof mechanism to deter expenditure violations, and until the government is convinced that these improvements have been institutionalised and are no longer being breached."*[117]

2.29.9 To do so otherwise, would simply add to the burden on the Exchequer and taxpayers without any public or systematic benefit. The NCRWC's views were premised on the failure of the existing mechanisms of partial or indirect state funding in reducing campaign expenditure and the need to bring in transparency mechanisms first.[118]

2.29.10 Similarly, the ARC's 2007 Report on "Ethics in Governance" also recommended partial state funding of elections to reduce the scope of "illegitimate and unnecessary funding" of elections expenses.[119]

(ii) Comparative provisions governing public funding of elections

Country	Public Funding of Election Campaigns
India	Partial state funding through in kind subsidies such as free air time on state owned electronic media, free supply of electoral rolls and identity slips, and tax deductions for donations

[116] LCI, 170th Report, *supra* note 108, at para 4.3.4.
[117] NCRWC, *supra* note 93, at para 14.7.
[118] *Ibid*, at paras 14.9, 14.10.
[119] Fourth Report of the Second Administrative Reforms Commission, *Ethics in Governance,* (2007) <http://arc.gov.in/4threport.pdf> at para 2.1.3.1.6 (*hereinafter* "ARC Report").

U.S.A.[120]	• No direct or indirect public funding for political parties • No public subsidy for congressional elections • Partial public funding available for Presidential primary candidates in the form of primary matching grants (up to $250 by an individual) and general elections grants (to the individual candidates) – this results in a ceiling on expenditure • On 3rd April 2014, Present Obama signed a law (Public Law No. 113-94) to end public funding of national nominating conventions to eliminate taxpayer financing of political party conventions[121]
U.K.[122]	• Modest public funding of political parties • Political parties receive direct public funding over each financial year for policy development purposes up to a total of £2mn on the basis of current legislative representation • Indirect support is provided to parties based on the number of candidates put forward in the election, which includes free broadcasting time for party political broadcasts, free postage, meeting rooms, and mail shot to electors
Germany[123]	• Public funding to national political parties with tax credits, matching grants (of the amount earned by parties from transparent, private sources), and flat grants to parties based on their past performance • Absolute ceiling of public subsidy to all parties, with no subsidy for local party organisations or individual candidates • The state "request[s] partial approval" of public subsidy from the tax payers or party supporters, although threshold for access to public funding is "lower than anywhere else in the world" • Public subsidies not earmarked for any specific purpose • Indirect support in the form of free media access based on the duration and continuity of electoral participation; exemption from income, inheritance, and property tax; and caucus subsidies
Italy[124]	• Public subsidies are a "major source" of funding elections, although have been restricted to election campaign activities since 1993 • Funding is distributed according to the votes polled and is given to candidates • The state "request[s] partial approval" of public subsidy from the tax payers or party supporters • Indirect, in-kind subsidy in the form of free media access and state aid for radio and newspapers, and reduced rates for sending electoral propaganda material by post to voters

[120] IDEA, *Funding of Political Parties and Election Campaigns*, HANDBOOK SERIES (2003), <http://www.idea.int/publications/funding_parties/funding_of_pp.pdf>, at 41-42 (*hereinafter* "IDEA Report"); FEC, *Public Funding of Presidential Elections,* <http://www.fec.gov/pages/brochures/pubfund.shtml#anchor684182>

[121] Gabriella Miller Kids First Research Act, <http://www.gpo.gov/fdsys/pkg/PLAW-113publ94/pdf/PLAW-113publ94.pdf>.

[122] IDEA Report, *supra* note 120, at 40,42, 213, 218, 219, 223.

[123] *Ibid.*, at 123, 124, 210, 216, 223.

[124] IDEA Report, *supra* note 120, at 118,123, 211, 223.

Sweden [125]	• "High level" of public subsidies exist for parties at various levels, with each party being given a base amount at the sub-national level, along with additional state aid to party sub-organisations and to party media based on part performance and current representation • General subsidy is given to parties, their secretariat and party groups in Parliament alongside regional and local subsidies • Public subsidies are given for general party administration and are not earmarked for any specific purpose • Indirect subsidies include media access and the party affiliated press receive public support
Australia[126]	• Political parties receive direct public funding during the election period and between elections • Funding is not ear-marked for a specific purpose and depends on the performance of the party at the previous election

(iii) Recommendations

2.30.1 A quick perusal of the recommendations of various committees on state funding of elections and comparative provisions makes it clear that complete public funding of elections or political parties in India is not a practical option; instead, indirect state subsidy is a better alternative for various reasons provided below.

2.30.2 *First*, prevailing economic conditions make it impossible for complete state funding of elections. Full funding should prohibit candidates and parties from accessing alternative sources of money both during election campaigns and in the inter-election period. If full funding is a seen as a replacement for the pervasiveness of big money in elections, then it will have to be substantial enough to stop the prevalence of black money. Given the amount being spent on elections today, and the alternative use of money on poverty reduction, health, education, food etc.; it seems highly unlikely that the centre can provide such money.

2.30.3 *Second,* for similar reasons of financial burdens, monetary constraints, and weak enforcement, a system of matching grants as in Germany and the United Kingdom are not possible. Corporate grants are often enormous and hence will be difficult to match, while a lot of big donors give money in black, and hence will only to serve to increase the amount of total funding available with parties.

[125] *Ibid.*, at 118, 123.
[126] *Ibid.*, at 209.

2.30.4 *Third*, currently, there is no clear picture on the cost of financing elections given the weak disclosure of expenditure by political parties and contributions by corporates and big donors. A system of complete monetary state support will work only if it replaces the actual demand for money in election campaigns and day-to-day administration of political parties. Hence any state support has to be in kind support, and not in cash because unless the current system satisfies the total requirement of parties, monetary support will only serve to increase party spending and invite uninterested or opportunistic candidates and parties.

2.30.5 *Fourth,* as the Law Commission Report in 1999 and the NCRWC Report in 2001 acknowledge, reforms on state funding of election have to be preceded by campaign finance reform; improvement in transparency, disclosure and audit provisions; decriminalisation of politics; and the introduction of inner party democracy. Funding parties (instead of candidates) with little internal democracy will only strengthen the power of the leadership and the benefits of public funding might not extend to the rank and file of the party.[127]

2.30.6 *Fifth*, there are various associated problems with state funding such as the possible undermining of the independence of the parties due to their financial reliance on the exchequer, and can be especially problematic for new parties. [128] Even otherwise, the distribution of public money may reduce party incentives to maintain their social base and generate funds through political mobilisation.[129] Moreover, as the comparative table shows, in most countries subsidies are determined on the basis of past performance or current representation, and thus automatically discourage new (and weaker) parties. In case of current representation, money will have to be given upfront and subsequently, overpaid parties will have to reimburse the State, while underpaid parties will be reimbursed by the state after the results.[130]

2.30.7 *Finally,* public funding of elections, including existing provisions on partial in-kind funding only extends to registered parties and hence excludes independent candidates, whilst simultaneously encouraging frivolous candidatures, with the sole intention of gaining access to public funds.

2.30.8 Instead, as the Indrajit Gupta Committee noted in its 1998 report, efforts should be made to curb the costs of campaigning by limiting or regulating the use and location of cut outs and banners; hoardings and posters; the number of public meetings; the use of vehicles during campaigns,

[127] Gowda, *supra* note 94, at 245.
[128] IDEA Report, *supra* note 120, at 8.
[129] ORF, *supra* note 104.
[130] Gowda, *supra* note 94, at 246.

and the publicity from moving vehicles. This will help reduce the cost of elections, although it may not reduce the incentives to raise election funds and abuse power.[131]

2.30.9 With respect to indirect in-kind subsidy, reference should be made to the British practice to increase the quantum of such subsidies to include free broadcasting time on private channels, free postage and meeting rooms, access to public town halls, the cost of printing, and even provision of specified quantities of fuel and food packets. Thus, by providing a "financial floor" to parties and candidates,[132] it reduces the cost of elections, without providing parties with liquid cash to spend in addition to their resources.

2.30.10 On the basis of the above, the following recommendations are suggested:

1. Currently, a system of complete state funding of elections or of matching grants, wherein the government matches the private funding (by donors or corporates) raised by political parties, are not feasible given the economic conditions and developmental problems of the country.
2. Given the high cost of elections and the improbability of being able to replace the actual demand for money, the existing system of giving indirect in-kind subsidies instead of giving money via a National Election Fund, should continue.
3. The wording of Section 78B of the RPA permits the Central Government, in consultation with the ECI, to supply certain items to the electors or the candidates and this provision can be used to expand the in-kind subsidy to include free public meeting rooms, certain printing costs, free postage etc.
4. Any reform in state funding should be preceded by reforms such as the decriminalisation of politics, the introduction of inner party democracy, electoral finance reform, transparency and audit mechanisms, and stricter implementation of anti-corruption laws so as to reduce the incentive to raise money and abuse power.

G. Recommendations

2.31 A combined list of recommendations is reproduced below:

a) On Expenses and Contribution

1. Section 77(1) of the RPA should be amended to extend the starting time period of the regulation of the election expenditure from the current date of

[131] Gowda, *supra* note 94, at 241.
[132] *Ibid.*, at 242.

nomination to the date of notification of elections, extending to the date of declaration of results.

- Thus, the words “on which he has been nominated” in sub-section (1) of section 77 should be deleted and instead, the words “of notification of such election” should be inserted in its place.

2. Section 182(1) of the Companies Act, 2013 should be amended to require the passing of the resolution authorising the contribution of the company’s funds at the company’s Annual General Meeting (AGM) instead of its Board of Directors.
    - Thus, the words “a meeting of the Board of Directors” in sub-clause (1) of section 182 should be deleted and in its place, the words “the annual general meeting” should be inserted.

b) On Disclosure

Relating to individual candidates

3. A new section 77A of the RPA has to be inserted requiring the candidates, or their election agents to maintain an account of the contributions received by them from their political party (not in cash) or any other permissible donor. The new section 77A reads as follows:

“**77A. Account of contributions received.—**Every candidate at an election shall, either by himself or by his election agent, also keep an account of the following particulars in respect of the donations or contributions received by the candidate after the date of notification of election, namely: —

(f) the amount of contribution received by the candidate from his party for the election;
(g) the amount of contribution received by the candidate from—
    (i) any person;
    (ii) any company, not being a government company
(h) the name, address and PAN card details, if applicable, of the donor in sub-clause (b) above;
(i) the nature of each contribution, in particular, whether it is:
    (j) cash;
    (iv) cheque; or
    (v) gifts in kind;
(j) the date on which the contribution was received.

Explanation: All contributions by a political party to its candidate shall be made by a crossed account payee cheque or draft or bank transfer.”

4. Section 78 should also be amended in light of the proposed amendment to section 77A above, and the reference to more than one returned candidate should be removed. It should read as follows:

"**78. 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 lodge with the district election officer an account of his election expenses and contribution reports which shall be a true copy of the account kept by him or by his election agent under section 77 and section 77A respectively."

5. A new section 78A to be inserted in the RPA requiring the district election officer to make publicly available, on its website, all the expenditure and contribution reports submitted by every contesting candidate under section 78. Section 78A shall read as:

"**78A. Disclosure of account submitted by contesting candidates.–** (1) The district election officer shall make publicly available, on his website, the accounts of election expenses and contribution reports submitted by every contesting candidate or their election agent under section 78.

(2) The district election officer 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 under Rule 88 of the Conduct of Election Rules, 1961."

Relating to political parties

6. 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."

7. 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 or twenty per cent of party's total contribution, whichever is less.. 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-setion (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 less, 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."

8. 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."

9. The Commission recommends giving statutory basis to the ECI's 'statement of election expenditure' requirement introduced pursuant to the Supreme Court's judgment in *Common Cause v UOI,* AIR 1996 SC 3081, and its transparency guidelines pertaining to election expenses by political parties through a new section 29F, which states as follows:

"**29F. Election expenses by political parties. ––** (1) Every political party contesting an election shall, within seventy five days of the date of an election to a Legislative Assembly of a State or ninety days of the date of an election to the House of the People, lodge with the Election Commission a statement of election expenditure, which shall be a true copy of such statement maintained by the party in consonance with the directions of the Election Commission.

(2) The payment of any election expenditure over twenty thousand rupees should be made by the political parties via cheque or draft, and not by cash, unless there are no banking facilities or the payment is made to a party functionary in lieu of salary or reimbursement."

c) On Penalties

Relating to individual candidates

10. The disqualification of a candidate for a failure to lodge an account of election expenses and contribution reports should be increased and should extending from the current three period up to a five year period, so that a defaulting candidate may be ineligible to contest at least the next elections.
    - Thus, in the title and sub-clause (a), after the words "account of election expenses", add the words "and contribution reports".
    - After the words "period of three years" and before the words "from the date of" in section 10A, add the words "up to a period of five years".

Relating to political parties

11. Express penalties, apart from losing tax benefits under section 13A of the IT Act, should be imposed on political parties for the non-compliance with the provisions of section 29D of the RPA. This should include a daily fine for each day of non-compliance, with the possibility of de-recognition in extreme cases, along the lines of proposed section 78A in the 170th Report. This new section 29G reads as follows:

"**29G. Penalty.—(**1) Where the treasurer of any political party or any other person authorised by the political party in this behalf fails to submit a report in the prescribed form within the time specified under sub-section (4) of section 29D then, notwithstanding anything contained in the Income-tax Act, 1961 (43 of 1961), such political party:

(a) shall not be entitled to any tax relief for such financial year under the Income-tax Act, 1961; and

(b) shall be liable to a penalty of twenty five thousand rupees for each day of non-compliance and so long as the non-compliance continues.

Provided that If such default continues beyond the period of ninety days, the Election Commission may de-register the political party after giving a reasonable opportunity to show cause.

(2) If the Election Commission finds on verification, undertaken whether suo motu or on information received, that the report submitted under sub-section (4) of section 29D is false in any particular, the Election Commission shall levy a fine up to a maximum of fifty lakh rupees on such political party."

12. A new section 29H should be inserting penalising parties that contravene the stipulations of section 29B, RPA and section 182 of the Companies Act in terms of accepting contributions from impermissible donors, by levying a penalty of five times the amount so accepted:

"**29H. Penalty for political parties accepting contributions from an impermissible donor. –** If a political party accepts any contribution offered to it from an impermissible donor, it shall be liable to pay a penalty that is five times the amount so accepted from such donor.

Explanation.– For the purpose of this section, "impermissible donor" refers to:

(a) a government company, as defined in section 29B;

(b) a company that does not comply with the requirements of sub-section (1) section 182 of the Companies Act, 2013; or

(c) any foreign source defined under clause (e) of section 2 of the Foreign Contribution (Regulation) Act, 1976."

13. A new Part IVB should be inserted to the RPA dealing with the "Regulation of Electoral Trusts", and detailing provisions pertaining to their entitlement to accept contributions, disclosure obligations, and penal provisions so that the RPA can be amended in line with the changes already made to the IT Act and the ECI guidelines. The new part IVB, section 29I reads as:

Part IVB: Regulation of Electoral Trusts.
29I. Electoral Trusts entitled to accept contribution. (1) Subject to the provision of the Companies Act, 2013 and the Income Tax Act, 1961, an Electoral Trust approved by the Central Board of Direct Taxes under the Electoral Trusts Scheme, 2013 may accept any amount of contribution voluntarily offered to it by any person or company other than a Government Company:

Provided that no Electoral Trust shall be eligible to accept any contribution from any foreign source defined under clause (e) of section (2) of Foreign Contribution (Regulation) Act, 1976.

Provided further that all words and phrases used in this Part, shall have the same meaning as assigned to them in section 29B.

2. Maintenance, audit, publication of accounts by electoral trusts (a) Each Electoral Trust 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 Electoral Trust shall submit its accounts, duly audited by a qualified and practicing chartered accountant from panel of Chartered Accountants, selected by the Comptroller and Auditor General to the Election Commission.

(b) The Election Commission shall make publicly available, on its website, the audited accounts submitted by all electoral trusts under sub-section (1).

(c) 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.

3. Declaration of contribution received by the Electoral Trusts — (a) The treasurer of an Electoral Trust or any other person authorised by the trust in this behalf shall, in each financial year, prepare a report in respect of the following, namely: —

(i) the contribution received by such electoral trust from any person in that financial year, with name, address, PAN of such persons.

Provided that the Electoral Trust or any other person authorised by the Trust in this behalf shall not receive any donation in cash and without the name, address and PAN (if any);

(ii) the contribution to political parties from electoral trusts in that financial year with date amount, mode of payment and name of political party.

Provided that the electoral trusts shall not make any contribution to political parties in cash other than by bank account transfer.

(b) The report under this sub-section 2shall be in such form as may be prescribed.

(c) The report for a financial year under sub-section (1) shall be submitted by the treasurer of an Electoral Trust or any other person authorised by the Trust within six months of the close of each financial year to the Election Commission.

4. Disclosure of contribution reports submitted by Electoral Trusts by Election Commission – (a) The Election Commission shall make publicly available, on its website, the contribution reports, submitted by all Electoral Trusts under sub-sections (2) and (3) of this section.

(b) 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.

5. Penalty.—(1) Where the Electoral Trust fails to submit a report in the prescribed form within the time specified under sub-sections (2) or (3) of this section then, notwithstanding anything contained in the Income-tax Act, 1961 (43 of 1961), such Electoral Trust:

(a) shall not be entitled to any tax relief for such financial year under the Income-tax Act, 1961; and
(b) shall be liable to a penalty of twenty five thousand rupees for each day of non-compliance and so long as the non-compliance continues.

Provided that If such default continues beyond the period of ninety days, the Election Commission may ban the electoral trust from receiving any donations in future, after giving a reasonable opportunity.

(2) If the Election Commission finds on verification, undertaken whether suo motu or on information received, that the statement of accounts filed under this section is false in any particular, the Election Commission shall impose a fine up to a maximum of fifty lakh rupees on such Electoral trust.

(3) If the Electoral Trust has received funds from an impermissible donor, it shall be liable to penalty that is five times the amount so accepted by the Trust.

Explanation.– For the purpose of this section, “impermissible donor” refers to:

(a) a government company, as defined in section 29B;

(b) a company that does not comply with the requirements of sub-section (1) section 182 of the Companies Act, 2013; or

(c) any foreign source defined under clause (e) of section 2 of the Foreign Contribution (Regulation) Act, 1976”

d) On State Funding of Elections

1. Currently, a system of complete state funding of elections or of matching grants, wherein the government matches the private funding (by donors or corporates) raised by political parties, are not feasible given the economic conditions and developmental problems of the country.
2. Given the high cost of elections and the improbability of being able to replace the actual demand for money, the existing system of giving indirect in-kind subsidies instead of giving money via a National Election Fund, should continue.
3. The wording of Section 78B of the RPA permits the Central Government, in consultation with the ECI, to supply certain items to the electors or the candidates and this provision can be used to expand the in-kind subsidy to include free public meeting rooms, certain printing costs, free postage etc.
4. Any reform in state funding should be preceded by reforms such as the decriminalisation of politics, the introduction of inner party democracy, electoral finance reform, transparency and audit mechanisms, and stricter implementation of anti-corruption laws so as to reduce the incentive to raise money and abuse power.

CHAPTER III

REGULATION OF POLITICAL PARTIES AND INNER PARTY DEMOCRACY

3.1 Democratic theory can be thought of to include accounts of both procedural and substantive democracy. Procedural democracy can be said to refer to the practice of universal adult franchise, periodic elections, secret ballot, while substantive democracy can be said to refer to the internal democratic functioning of the parties, which purportedly represent the people. This section deals with the internal democratic functioning of parties, and the question of how parties should function and regulate themselves.

3.2 The NCRWC in its Report on Electoral Processes and Political Parties appropriately recognised that "*no electoral reforms can be effective without reforms in the political party system*" and it recognised the following areas of immediate concern here:

1. *"Structural and organisational reforms – party organisations - National, State and local levels - inner party democracy - regular party elections, recruitment of party cadres, socialization, development and training, research, thinking and policy planning activities of the party.*
2. *Party system and governance – Mechanisms to make parties viable instruments of good governance*
3. *Institutionalization of political parties – need for a comprehensive legislation to regulate party activities, criteria for registration as a national or State party - de-recognition of parties".*[133]

3.3 Of primary relevance in this chapter, is the first concern regarding the regulation of the *practice* of political parties in terms of internal elections, recruitment of party cadres, and development and training activities. At the very outset, it is important to note the distinction between the regulation of party *practice* and party *ideology* as components of internal and inner party democracy. The section begins with reviewing the history of various committee reports.

A. History of Reform Proposals

3.4 The 1999 Law Commission Report strongly recommended the introduction of a regulatory framework governing the internal structures and inner democracy of parties, financial transparency, and accountability before attempting state funding of elections. The 170th Report recommended the insertion of Sections 11A-I in the RPA dealing with the "*Organisation of*

[133] NCRWC Report, *supra* note 13.

Political Parties and matters incidental thereto" on the premise that a political party "cannot be a dictatorship internally, and democratic in its functioning outside."[134]

3.5 Apart from the concerns articulated earlier, the NCRWC recommended:

> *"The rules and by-laws of the parties seeking registration should include provisions for: (a) A declaration of adherence to democratic values and norms of the Constitution in their inner party organisations*,"[135]

3.6 The ARC's 2008 Ethics and Governance report also alluded to the importance of inner party democracy when it noted that corruption is caused by over-centralisation since "*the more remotely power is exercised from the people, the greater is the distance between authority and accountability*."[136]

3.7 In 2011, a draft Political Parties (Registration and Regulation of Affairs, etc.) Act, 2011 was prepared under the guidance of Justice Venkatachalaih and submitted to the Law Ministry. Section 6 of the draft Act envisaged the creation of an Executive Committees for every political party, whose members would be elected by members of the local committees of the State units of the party, and who themselves would elect the office-bearers of the party from amongst themselves (without accepting any nominations). The Executive Committee was also empowered to elect candidates for contesting Parliamentary and State, having due regard to the recommendations made by the State and District units of the constituency. The Act further provided for all decisions of the Executive and local committees to be taken on the basis of a simple majority vote with secret ballots.[137]

3.8 Thus, a perusal of the above reports makes clear that internal democracy includes provisions governing internal elections, candidate selection, secret ballots, and registration and deregistration of parties.

B. Laws Regulating Internal Democracy

3.9 Currently, there is no express provision for internal democratic regulation of political parties in India and the only governing law is provided by Section 29A of the RP Act, which provides for registration of political parties

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[134] LCI, 170th Report, *supra* note 108, at paras 3.1.2.1, 4.3.4.
[135] NCRWC Report, *supra* note 13, at para 4.32.
[136] ARC Report, *supra* note 119, at para 1.9.
[137] ADR/NEW, *Recommendations for Electoral Reforms,* April 2011, <http://adrindia.org/files/ADR-NEW%20Recomendations-April20%202011-Final.pdf> at 75.

with the ECI. Section 29A(5) provides for every application to the ECI to be accompanied by a copy of the party memorandum or regulations, with a specific provision "*that the association or body shall bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy, and would uphold the sovereignty, unity and integrity of India*."

3.10 The ECI in its "Guidelines and Application Format for the Registration of Political Parties under Section 29A", states that the party application should be accompanied, *inter alia*, by the following documents/information:

> *"(i) Party Constitution drawn on following lines:*
> *Article IV: Organs of the Party (Organizational Structure): Powers and Functions of each of these organs (Decision making power should reflect democratic spirit – no veto power)*
> *Method of appointment (and terms) of members to each of these organs (Not more than 1/3rd members can be nominated; Tenure should be fixed not exceeding 5 years; Periodic elections within 5 years maximum)*
>
> *Article V: Office-bearers of the Party: Powers and functions of each of these office-bearers (Decision making power should reflect democratic spirit – no veto power)*
> *Method of appointment (and terms) of each of these office-bearers*
> *(Should be elected; Not more than 1/3rd can be nominated; Fixed tenure not exceeding 5 years for everyone; Periodic elections within 5 years maximum)*
>
> *(v) There should be a specific provision in the rules/Constitution of the party regarding internal democracy in the party, organisational elections at different levels, mode of such elections and the periodicity of such elections, term of office of the office-bearers and powers and duties of the office-bearers of the party, and the various representative bodies of the party (such as Executive Committee, Council etc.)*
>
> *(xxi) The applicant party must ensure in its constitution itself vide a specific clause in the party constitution that party will hold periodic (Period to be specified in constitution but at least once in 4 years) and regular election to all positions of office-bearers and organs of the party."* [Emphasis supplied][138]

3.11 Unfortunately, the aforesaid guidelines are silent on candidate selection, apply only to the registration of new parties, and do not regulate the internal functioning of already registered parties. Moreover, the ECI's power to

[138] ECI, Guidelines and Application Format for Registration of Political Parties under Section 29A, <http://eci.nic.in/eci_main/ElectoralLaws/guidelinesandformat.pdf>.

require parties to hold regular internal elections for office bearers, and candidate selection is compromised in the absence of any penal provisions. The Supreme Court in *Indian National Congress (I) v Institute of Social Welfare*[139] made it clear that neither Section 29A of the RP Act, nor the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 empowered the ECI to de-register parties on the grounds of violating the Constitution or breaching the undertaking given to it at the time of registration.

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 de-registered 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 de-registration, 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. The need for reform is thus evident, and it is useful at this stage to briefly examine the law and practice in countries in Western Europe, which have tried to regulate practice and/or ideology.

C. Internal Democracy: A Comparative Perspective

(i) <u>Germany</u>

3.14.1 With the adoption of the German Constitution (the Basic Law) in 1949, Germany became the first European country with a Constitution that regulated its political parties in order to safeguard democracy. Article 21 of the Basic Law facilitates the regulation of the ideology and activities of political parties, in their adherence to democratic principles and states:

> *"(1) Political parties shall participate in the formation of the political will of the people. They may be freely established. Their internal organization must conform to democratic principles. They must publicly account for their assets and for the sources and use of their funds.*

[139] (2002) 5 SCC 685.
[140] ECI Guidelines, *supra* note 138.

> *(2) Parties that, by reason of their aims or the behaviour of their adherents, seek to undermine or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany shall be unconstitutional. The Federal Constitutional Court shall rule on the question of unconstitutionality.*
>
> *(3)Details shall be regulated by federal laws."*[141]

3.14.2 Pursuant to Article 21(3), the *Gesetz über die politischen Parteien* or the Political Party Act was enacted in 1967 to regulate all aspects of political parties such as their internal organisation, candidate nomination, accounts, and banning unconstitutional parties.

3.14.3 The wording of Article 21(2) ("aims or behaviour") lends credibility to the claim that Germany regulates parties both for its unconstitutional actions, and unconstitutional aims, which have not yet been put to action. This power to declare parties unconstitutional has been exercised twice by the Constitutional court to ban the neo-Nazi Socialist Imperial Party (SRP) in 1952 and the German Communist Party (KPD) in 1956. In the *SRP decision*, the Court rejected the parties' defence that its proposed form of government was compatible with liberal democratic order, noting that there was not even passive assent to democratic principles. Further, the finding of unconstitutionality implied that sitting party members would lose their seat as:

> *"[W]hen by a judgment of the Constitutional Court a political party's ideas are found to fall short of the prerequisites for participation in the formation of the popular political will, the mere dissolution of the party's organizational apparatus, which was meant to further these goals, cannot truly implement the court's judgment. Rather, it is the intent of the Court's sentence to exclude the ideas themselves from the process of the formation of the political will."* [Emphasis supplied][142]

3.14.4 In the *KPD decision*, the party defended its constitutionality by arguing that Article 21(2) was unconstitutional for violating free speech and association recognised in the Basic Law and that the party's ideology could not be properly subject to a court's review. However, the Constitutional Court reiterated its reasoning from the *SRP decision*, that it could constitutionally deny the advancement of an idea that violate the principle of individual dignity, even if such an idea had popular support. It stated:

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[141] Basic Law for the Federal Republic of Germany, <http://www.iuscomp.org/gla/statutes/GG.htm#21>.

[142] *The SRP Decision*, Decision of Oct. 23, 1952, 2 BVerfG I cited from Paul Franz, *Unconstitutional and Outlawed Political Parties: A German-American Comparison*, 5 BOSTON COLLEGE INTERNATIONAL AND COMPARATIVE LAW REVIEW 51, 57 (1982).

> *"[A]t the very least, those who are called upon to participate in the formation of this [political] will must be unanimous in their affirmation of the basic values of the constitution. It is conceivable that a political party that renounced and opposed these basic values could exist and be active as a sociopolitical group, but it is unthinkable that its lawful, responsible participation in the formation of the political will could be constitutionally guaranteed*." [143]

3.14.5 Thus, there appears to be pervasive state control on the internal regulation of political parties, for fear that the parties could "*turn the 'popular will' away from inviolable constitutional values*".[144] However, the same has been exercised infrequently (only in two cases), although there are current efforts to ban the country's largest far right party, the National Democratic Party (NDP).[145]

(ii) <u>Portugal</u>

3.15.1 Like Germany, Portugal too regulates the ideology of parties through Article 51 of its Constitution, prohibiting regional or religious objectives and requiring internal democracy. Article 51(3)-(5) state:

> 3. Without prejudice to the philosophy or ideology that underlies their manifestoes, political parties may not employ names that contain expressions which are directly related to any religion or church, or emblems that can be confused with national or religious symbols.
>
> 4. No party may be formed with a name or manifesto objectives that show it has a regional nature or scope.
>
> 5. Political parties must be governed by the principles of democratic transparency, organisation and management, and participation by all their members.

3.15.2 The governing law regulating these features is the Organisational Law no. 2/2003 (or the Law governing Political Parties). Through Article 2, it regulates, and lays down eight purposes of political parties, requiring them for instance to contribute to the promotion of the fundamental rights and freedoms. Articles 5 and 6 state that political parties must be internally governed by principles of democracy and transparency. Nevertheless, Article 18 permits the "judicial abolition" of party at the request

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[143] *The KPD Decision*, Decision of Aug. 17, 1956, 5 BVerfG at 137 cited from Franz, *supra* note 142, at 62.
[144] Franz, *supra* note 142, at 89.
[145] *German States Repeat Efforts to Ban Far Right Parties,* DW, 3rd December 2003, <http://www.dw.de/german-states-repeat-effort-to-ban-far-right-npd/a-17266103>.

of the Public Prosecutor's Office if it is deemed to be "an organisation that is racist or displays a fascist ideology".[146]

(iii) Spain

3.16.1 Unlike Germany and Portugal, Spain only regulates the actions of its political parties, not their aims or intentions. The enabling provision of the Constitution states as follows:

> *"Section 6: Political parties are the expression of political pluralism, they contribute to the formation and expression of the will of the people and are an essential instrument for political participation. Their creation and the exercise of their activities are free in so far as they respect the Constitution and the law. Their internal structure and their functioning must be democratic*."

3.16.2 The substantive law containing provisions related to the internal regulation and banning of political parties is the Institutional Law No. 6/2002 on Political Parties or the Organic Law (*Ley Orgánica 6/2002 de Partidos Políticos*).[147] Article 6 of the Law requires the organisation, operation, and activity of political parties to adhere to democratic principles. Article 7 stipulates that the internal structure and functioning of political parties must be democratic; elections to governing bodies be provided by secret ballot; and all elected leaders be democratically controlled. Article 8 provides that members of parties are entitled by right to be voters and candidates for the offices thereof.

3.16.3 In contradistinction to the German position, Article 9 of the Spanish law regulates activity, and not ideology of political parties. It states that political parties may freely engage in activities, as long as they respect constitutional values of democratic principles and human rights, and as long as they perform their functions democratically. However, parties can be declared illegal if their activities violate democratic principles by:

- Systematically violating fundamental freedoms and rights, by attacks on the life and integrity of persons.
- Fomenting violence to achieve political ends such by legitimising the use of terrorist actions for political ends or creating conditions of coercion.

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[146] Organisational Law No. 2/2008, *The Law Governing Political Parties*, <http://www.parlamento.pt/Legislacao/Documents/LawgoverningPoliticalParties_EN.pdf>.

[147] Organic Law No. 6/2002, of 27 June, Political Parties, <http://legislationline.org/documents/action/popup/id/6888>.

- Providing assistance and political support to the actions of terrorist organisations to undermine peace such as by including the names of convicted terrorists in party directing bodies or candidate lists.[148]

3.16.4 Article 10 further provides for a court-ordered dissolution of a political party, when it repeatedly and seriously infringes the requirement of Articles 7 and 8 to have a democratic internal structure operate democratically. Purusant to a judicial order, the party, vide Article 12, cease all its activities and liquidates its assets, which are then transferred to the Treasury to be used for social and humanitarian purposes.

3.16.5 Clearly, unlike India, countries in Western Europe regulate either the ideologies or the practice of political parties.

D. Recommendations

3.17.1 Introducing internal democracy and transparency within political parties is important to promote financial and electoral accountability, reduce corruption, and improve democratic functioning of the country as a whole. As the Law Commission in its 170th report recognised, "*whether by design or by omission, our Constitution does not provide for the constitution and working of the political parties, though they are at the heart of a parliamentary democracy*."

3.17.2 While the RP Act does not permit the regulation of the functioning or ideology of the parties, the ECI's Guidelines and Application Format for the Registration of Political Parties under Section 29A only prescribe provisions for internal accountability and not candidate selection. Even so, these provisions do not expressly apply to existing parties, are not backed by penal provisions, and cannot bar parties from contesting elections. Furthermore, the Supreme Court in *Indian National Congress (I) v Institute of Social Welfare* has made it clear that the ECI currently lacks the power to de-register a party under Section 29A of the RP Act. Thus any changes need to be introduced legislatively. The power of de-registration should also extend to cases where registered parties avail the benefits of income tax exemption under section 13A, IT Act, but have not contested any Parliamentary or State elections in ten years consecutive years.

3.17.3 Although it is open for India to follow Germany/Portugal or Spain's example, it is recommended that any powers to the ECI should extend to the regulation of action and not ideology, given the complex socio-religious-political fabric of the country, its diversity, and secular principles. The

[148] *Id*.; *Herri Batasuna and Batasuna v Spain,* Applications nos. 25803/04 and 25817/04, Fifth Section of the ECHR decided on 6th November 2009.

German example has to be viewed in the context of its violent Nazi history and cannot immediately be transplanted to India.

3.17.4 Keeping this in mind, the following recommendations are proposed:

1. Section 29A(5) of the RPA should be amended is in accordance with the draft Political Parties (Registration and Regulation of Affairs) Act to require parties to insert a specific provision in their memorandum to "shun violence for political gains, and avoid discrimination or distinction based on race, caste, creed, language or place of residence". Thus, the amended section 29A(5) reads as follows:

   "29A.—(5) The application under sub-section (1) shall be accompanied by a copy of the memorandum or rules and regulations of the association or body, by whatever name called, and such memorandum or rules and regulations shall contain a specific provision that the association or body shall bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy, would uphold the sovereignty, unity and integrity of India, shun violence for political gains, and avoid discrimination or distinction based on race, caste, creed, language or place of residence."

2. The proposed Sections 11A-I of the RPA finding place in the 170th Report of the Law Commission in 1990, should be introduced with certain modifications, through a legislative amendment as a new Part IVB titled "Regulation of Political Parties", starting from section 29J. A provision should also be inserted empowering the ECI to de-register a party for failing to contest any Parliamentary or Legislative Assembly elections for ten consecutive years. The new Part reads as follows:

PART IVC — REGULATION OF POLITICAL PARTIES

29J. Formation of political parties— (1) Political parties can be freely formed by the citizens of this country. The political parties shall form a constitutionally integral part of free and democratic system of Government.

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

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

29K. Name of political parties and power to sue— (1) A political party may sue and may be sued in its own name. A political party shall be competent to hold and dispose of properties.

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

29L. Constitution of a political party— The Constitution of a political party shall provide for the following matters:-

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

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

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

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

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

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

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

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

29M. Executive committees— The executive committee of a political party shall be elected. Its term shall not exceed years. Well before the expiry of the term, steps shall be taken for electing a new executive committee. It shall be open to the executive committee to constitute a sub-committee (by whatever name called) to carry out the business of the executive committee and to carry on regular and urgent executive committee business. The members of the sub-committee shall be elected by the members of the executive committee.

29N. Voting procedures— A political party and its organs shall adopt their resolutions on the basis of a simple majority vote. The voting shall be by secret ballot.

29O. Candidate selection—The candidates for contesting elections to the Parliament or the Legislative Assembly of the States shall be selected by the executive committee of the political party having due regard for the recommendations and resolutions passed by the concerned local party units.

29P. Regular elections— It shall be the duty of the executive committee to take appropriate steps to ensure compliance with the provisions of this chapter including holding of elections at all levels. The executive committee of a political party shall hold elections of national and State levels in the presence of the observers to be nominated by the Election Commission of India. Where considered necessary, the Election Commission may also send its observers at elections to be held at other national and state levels.

29Q. Penalties for non compliance— The Election Commission shall be competent to inquire, either suo motu or on information received into allegation of non-compliance of any of the provisions of this Part. If on due inquiry, the Election Commission is satisfied that there has been non-compliance of any of the provisions of this chapter by any political party, the Commission shall call upon the party to rectify the non-compliance within the period prescribed by the Election Commission. In case, the non-compliance continues even after the period so prescribed, it shall be open to the Election Commission to impose such fine on the political party as it may deem appropriate in circumstances of the case including imposition of a penalty of Rs. 25,000/- per day for each day of non-compliance and withdrawal of registration of the party.

29R. Penalty for failure to contest elections for ten years consecutively— (1) If any political party registered under section 29A of this Act does not contest any election to the House of the People or the Legislative Assembly of a State for ten consecutive years, its registration shall be liable to be cancelled by the Election Commission.

(2) The Election Commission shall scrutinise the registrations of all the political parties under section 29A, and if it finds that any registered party has not contested any election to the House of the People or the Legislative Assembly of a State for ten consecutive years, it shall cancel such registration."

CHAPTER IV

FROM FIRST PAST THE POST TO PROPORTIONAL REPRESENTATION

A. The Current System and Its Alternatives

4.1 While multiple electoral systems exist across the world, traditionally, the debate has centred around the merits of the 'first-past-the-post-system' (*hereinafter* "**FPTP**") vis-à-vis variants of the proportional representation system.[149]

4.2 The FPTP system, followed in Lok Sabha elections, is regarded as one of the simplest forms of electoral systems, where each voter has a single vote, and where a candidate wins if he receives the highest number of votes in a constituency.[150]

4.3 The system of proportional representation has many variants, one of the most common being the list system. In the list system, political parties present lists of candidates in advance, who are awarded seats in proportion to their party's vote share, usually with some minimum prescribed thresholds.

4.4 Another variant, the method of the single transferable vote, is followed for elections to the Rajya Sabha. In this system, the electoral college, comprising of MPs and MLAs, rank candidates in order of preference. Their vote is allotted to their first preference, and if no one emerges with a majority, the least voted candidate is removed from consideration and the second choices of those who voted for him are taken into consideration. This process continues till a winner with a majority emerges.[151]

4.5 During the drafting of the Constitution, various systems of proportional representation were considered, but the FPTP system was eventually adopted to avoid fragmented legislatures and to facilitate the formation of stable governments.[152] In the years since, certain criticisms have consistently arisen regarding the working of the FPTP system, which has led to a re-evaluation of the merits of the proportional representation system. This

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[149] Andrew Reeve and Alan Ware, ELECTORAL SYSTEMS: A COMPARATIVE AND THEORETICAL INTRODUCTION 6 (2001).
[150] Mahesh Rangarajan and Vijay Patidar, *India: First Past the Post on a Grand Scale*, INTERNATIONAL INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE, <http://www.idea.int/esd/upload/india.pdf>
[151] Reeve, *supra* note 149, at 150-151.
[152] Constituent Assembly Debates (Proceedings), Vol. VII dated 4th January,1949 <http://164.100.47.132/LssNew/constituent/vol7p32.html>.

section will look at the arguments advanced for and against the alteration of the electoral system in India.

B. The Merits and Demerits of the FPTP System

(i) Simplicity

4.6.1 The most significant advantage of the FPTP system is its uncomplicated nature. The FPTP is the simplest form of the plurality/majority system, using single-member districts and candidate-centred voting. [153] Moreover, the FPTP system allows voters to choose between people as well as parties, with voters having the opportunity to assess the performance of a candidate rather than having to accept a list of candidates presented by a party, as under the list system.[154]

4.6.2 This system, however, is thought to result in an increase in election expenditure, since every candidate is required to reach out to the electors on an individual as well as a party basis.[155]

(ii) Stability

4.7.1 The FPTP system has been the hallmark of stability in the electoral system of India. The Supreme Court in *RC Poudyal* v. *Union of India* [156] had categorised the FPTP system as possessing 'the merit of preponderance of decisiveness over representativeness'. The FPTP system presents the advantage of producing a majority government at a general election by being decisive, simple and familiar to the electorate.[157] This, at least in theory, assures stable terms for the party in power, with the requisite numbers in the House to ensure implementation of its policies. This also means better accountability for decision-making in the Parliament, since this system makes it easier for voters to identify whom to vote or not vote for in future.[158]

4.7.2 In practice, India has seen both stable majority and unstable coalition governments under the FPTP system, indicating that it is not this factor alone that assures the stability of the electoral system in India.

(iii) Representativeness

4.8.1 The principal criticism levelled against the FPTP system is that it leads to the exclusion of small or regional parties from the Parliament. There

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[153] Constituent Assembly Debates (Proceedings), Vol. VII, Chapter 3, p. 35.
[154] Constituent Assembly Debates (Proceedings), Vol. VII,Chapter 3, p. 37.
[155] Paul L. McKaskle, *Of Wasted Votes and No Influence: An Essay on Voting Systems in the United States*, 35 HOUS. L. REV. 1119.
[156] 1994 Supp (1) SCC 325.
[157]1994 Supp (1) SCC 325,para 72.
[158] See Justice Breyer's opinion in Vieth v. Robert, 541 U.S. 267.

is commonly a discrepancy in the vote share and seat share in results, where votes given to smaller parties are 'wasted' since they do not gain a voice in the legislature. What this often translates into is that the FPTP system, which boasts of the fact that it provides a majoritarian (and hence more democratic) government, is itself not able to adequately uphold majoritarianism in a multi-party system, since the winning candidate wins only about 20-30% of the votes.[159]

4.8.2 Examples abound from Lok Sabha and State Assembly elections, where parties enjoying significant vote shares have failed to translate the same into seats.[160] For example, the Indian National Congress won only about 49.10% of the total vote share in the 1984 General Elections to the Lok Sabha, but had a sweeping majority of 405 out of 515 seats in the House. In the elections to the Tamil Nadu Legislative Assembly in 1996, the AIADMK polled 21.47% votes, but could secure only four (1.71%) seats in the Assembly.[161]

4.8.3 Smaller parties, when they have a broad base across constituencies, rather than a concentrated following in a few constituencies, may fail to win even a single seat even if their vote share is significant.

4.8.4 This also means that slight changes in the vote share cause dramatic changes in the number of parliamentary seats won, causing the Indian electorate to be characterised as one that decisively swings in one direction or the other.

4.8.5 On the other hand, while representativeness of political parties is not ensured in the FPTP system, it does encourage political parties themselves to have more broad-based participation. Moreover, it ensures that there is a link between a constituency and its representative in the legislature, and incentivises representatives to serve their constituents well. Further, smaller districts are more likely to comprise of common interests, and the small size also facilitates better delineation of these regional interests through increased movements at the grass-root level, which ensure that representatives interact more closely with the constituents, at least in theory. [162] This might, however, not hold true for districts with large

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[159] Madhav Godbole, Editorial, *Reform of the Political Systeml, Economic and Political Weekly*, 39 (28) ECONOMIC AND POLITICAL WEEKLY (2004).
[160] Editorial, *A case for proportional representation?*, 47(11) ECONOMIC AND POLITICAL WEEKLY, (2012); Arvind Sivaramakrishnan, Editorial, *Between Formal and Substantive Legitimacy*, 49(19) ECONOMIC AND POLITICAL WEEKLY (2014).
[161] V.S. Rama Devi and S.K. Mendiratta, HOW INDIA VOTES: ELECTION LAWS, PRACTICE AND PROCEDURE, 1167 (3rd edn., 2014). (*hereinafter* "Mendiratta")
[162] McKaskle, *supra* note 155.

populations,[163] such as Thane and Pune, which hold over 11 crore and 9 crore persons respectively.[164]

C. Merits and Demerits of Proportional Representation

(i) Simplicity

4.9 Proportional representation undoubtedly falls second in competition with the FPTP system in terms of simplicity in voting, but it scores higher in terms of convenience during campaign. Candidates can simply focus pointed attention on defined groups to appeal to, and consequently, the problems of campaign financing do not feature as prominently in the process.[165]

(ii) Stability

4.10 Because parties are granted seats in accordance with their vote share, numerous parties get seats in the legislature in the proportional representation system, without any party gaining a majority. This detracts from the stability of the system. Coalition government becomes inevitable, with challenges to such governments also becoming frequent. This is also why the Constituent Assembly decided that proportional representation would not be suited to the Parliamentary form of government that our Constitution lays down. In the Constituent Assembly Debate on 4th January 1949, Dr. BR Ambedkar noted that:[166]

> *"Proportional representation is not suited to the form of government which this Constitution lays down….in the House where there is a Parliamentary system of government, you must necessarily have a party which is in majority and which is prepared to support the government. One of the disadvantages of proportional representation is the fragmentation of the legislature into a number of small groups. Proportional representation would not permit a stable government to remain in office, because Parliament would be so divided into so many small groups that every time anything happened which displeased certain groups in Parliament, they would, on that occasion, withdraw their support from the Government, with the result that the Government losing the support of certain groups and units, would fall to pieces. Our future government must do one thing, namely, it must maintain a stable government and maintain law and order."*

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[163] *Id*
[164] District Census 2011, <http://www.census2011.co.in/district.php>.
[165] McKaskle, *supra* note 155.
[166] Constituent assembly Debates (Proceedings) Vol. VII dated 4th January, 1949, <http://164.100.47.132/LssNew/constituent/vol7p32.html>.

Challenges of this sort are likely to become even more prominent in cases of legislative actions that require more than a mere simple majority to be carried out, such as constitutional amendments.[167]

(iii) Representativeness

4.11.1 Proportional representation, as the name suggests, tries to ensure that the election results are as proportional as possible, by curbing the inconsistency between the share of seats and votes. It ensures that smaller parties get representation in the legislature, particularly when they have a broad base across constituencies. It also encourages new parties to emerge and more women and minorities to contest for political power.[168]

4.11.2 Proportional representation, particularly the single transferable vote variant of it, also ensures that voters do not feel encumbered by tactical voting strategies in the worry that their vote might go 'waste'. In that sense, proportional representation ensures honesty in the election process both from the side of the candidate, who can choose their ideological commitments freely, and from that of the voter, who can vote freely.[169]

4.11.3 One potential drawback of this system is that the relationship between a voter and the candidate may dilute, for the candidate may now be seen as representing the party and not the constituency. The other way of looking at this is that a constituent could approach any representative of their choice in case of a grievance, which plays out as an advantage of this system.[170]

4.11.4 Detractors of the list system of proportional representation point out, however, that while the method ensures that more political parties are represented, it concentrates power *within* a political party, in the hands of the leaders who decide on the list of candidates.

D. The List System in Germany

4.12 After the Second World War, Germany adopted a new electoral system, which has been characterised as a 'personalised proportional system'. In this, the German parliament (Bundestag) has a minimum of 598 seats. Each voter has two votes, the first being given to a particular candidate in one of the 299 single-member constituencies. The second vote is a party vote, given to a party list at the federal state level. Candidates are allowed to compete in single-member districts as well as simultaneously for the party list.

4.13 The candidates who achieve a majority in the single-member

[167] McKaskle, *supra* note 155.
[168] Approximating Democracy: A Proposal for Proportional Representation in the California Legislature', 44 LOY. L.A. L. REV. 437.
[169] McKaskle, *supra* note 155.
[170] *Supra* note 168.

districts are elected directly. The second vote determines how many representatives will be sent from each party to the Bundestag, in proportion to the share of votes.[171]

4.14 Only parties obtaining more than 5% of the votes at the national level or, alternatively, having three members elected directly in the single-member constituencies, are considered in the national allocation of list proportional representation seats.[172]

4.15 This ensures both a close relationship between voters and their representatives through the direct election route, while ensuring representation of smaller parties. The hybrid model also helps ensure stability, even in a coalition government.[173] While Germany enjoys a stable model of proportional representation, other countries following the system, such as Italy have experienced turbulent and unstable coalition governments with frequent dissolutions of its Parliament resulting in more than 28 governments in the past four decades.[174]

E. Recommendations of Past Reports

(i) Report of the ECI on the fifth General Elections in India (1971-72)

4.16 The 1972 Report of the Election Commission also considered the merits of the proportional representation system, particularly by taking a look at how it operates in other countries. It took note of the fact that few populous countries have adopted a pure version of the proportional representation system – at best, a hybrid version of FPTP and proportional representation was followed, such as in Germany. It listed the many disadvantages of the proportional representation system – that it led to a multiplicity of political parties, increase in the power of the bureaucracy and the party leaders, and its complexity. It therefore came to the conclusion that neither the list system nor any other version of proportional representation was suitable for India.

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[171] German Bundestag, '*Election of Members and the allocation of seats*, <http://www.bundestag.de/htdocs_e/bundestag/elections/arithmetic>

[172] Michael Krennerich, Germany: The Original Mixed Member Proportional System, International Institute for Democracy and Electoral Assistance, <http://www.idea.int/esd/upload/germany.pdf>

[173] Thomas Stratman, Martin Baur, '*Plurality Rule, Proportional Representation and the German Bundestag*', CESIFO WORKING PAPER NO. 650(2), January 2002, <http://www.cesifo-group.de/portal/page/portal/DocBase_Content/WP/WP-CESifo_Working_Papers/wp-cesifo-2002/wp-cesifo-2002-01/650.PDF>.

[174] Tobias Jones, *In favour of a hung Parliament?* <http://www.dailymail.co.uk/debate/article-1269043/In-favour-hung-parliament-Read-damning-account-Italian-politics.html>

(ii) Chief Election Commissioner Shakdher's proposal

4.17 In 1977, however, the proposal to introduce the proportional representation system to Lok Sabha elections in some form was reconsidered by then Chief Election Commissioner SL Shakdher who suggested that a hybrid system be adopted, whereby half the seats in the Lok Sabha would be filled by direct elections under the FPTP system, while the other half be filled by political parties in proportion to their vote share.[175] This proposal did not outline the method of determination of seats which would not be represented through direct elections, and how the disparity between the two types of seats would be addressed.

(iii) 170th Report of the Law Commission

4.18.1 This issue was next discussed at length in the Law Commission's 170th Report on the Reform of Electoral Laws (May 1999). It considered the list system of proportional representation, as prevalent in Germany, as a possible alternative to the FPTP system. The conclusion that it reached was that while the FPTP system could not be abandoned outright, it could be combined with a proportional representation system.

4.18.2 Specifically, the 170th Report recommended that while the existing 543 seats of the Lok Sabha continue to be filled through direct elections, the number of seats in the Lok Sabha be increased by an additional 25%, or 136 seats, which are filled by proportional representation following the list system. A similar expansion should take place in the State Assemblies as well. This was essentially a modification of the Shakhder proposal.

4.18.3 However, if no minimum thresholds are prescribed to filter the parties that can nominate members to the list (under the list system), numerous small parties and fringe groups would eventually gain entry into the Parliament. To address concerns regarding the proliferation of political parties, the 170th Report additionally recommended that a new provision should be made in the RPA to the effect that any political party which obtains less than 5% of the total valid votes cast in the country (in the case of Parliament) and in the concerned State (in the case of a Legislative Assembly) shall not be allowed any representation in the Lok Sabha or in the concerned Legislative Assembly, as the case may be, either through the direct election or the proportional representation system. This means that even if a candidate wins a seat from that political party, that candidate will not be entitled to that seat. Thresholds such as these are commonly prescribed in countries following the hybrid FPTP and proportional representation system, such as Germany. However, the 170th Report does not detail the consequences of this rule – whether it would necessitate re-election or

[175] Mendiratta, *supra* note 161, at 1187.

whether such seats would be automatically redistributed to parties with more than 5% vote share.

4.18.4 Further, while the provision seems well intentioned, the imposition of a quota can have the effect of creating more problems than it would solve. If a 5% quota is prescribed, only a few parties would fulfil the criteria, undoing the purpose of introducing the proportional representation system. Imposition of such a quota would result in the list system falling in favour of the larger national parties. The voting patterns in India have been such that the larger national parties receive a substantial proportion of the votes (especially during the Lok Sabha elections). Hence, it would be relatively easier for them to cross the 5% mark while the same may not be true for the smaller/regional political parties.

4.18.5 This is evident from an analysis of the results of the 2009 Lok Sabha elections. Only the four major national parties, viz., the Indian National Congress (INC), the Bharatiya Janata Party (BJP), the Bahujan Samaj Party (BSP) and the Communist Party of India (Marxist) (CPM), would have crossed the quota of 5%. This became even more pronounced in the 2014 Lok Sabha elections, where only the BJP and the INC crossed the 5% mark, at 31% and 19.3% respectively, with the third being the BSP at 4.1%.[176] Hence, it is not sufficient to argue that the list system would ensure representation from regional parties by ensuring their presence in Parliament till the specifics of the list system are clarified.

4.18.6 To tackle this, state-wise quotas can be imposed but that would complicate the system to a large extent. This raises questions of the viability of introducing an inherently complicated system in place of the FPTP system which, despite its many criticisms, is currently a fairly stable process. Hence, simply a list system envisaging the imposition of arbitrary quotas cannot be adopted for the entire strength of the Parliament/Assembly. This needs to be done in parallel to the existing FPTP system.

F. Recommendations

4.19.1 As the discussion above has demonstrated, both electoral systems come with their own merits and demerits – proportional representation theoretically being more representative, while the FPTP system being more stable. It is also clear, from the experience of other countries that any changes in India's electoral system will have to follow a hybrid pattern combining elements of both direct and indirect elections. This, in turn will necessitate an increase in the number of seats in the Lok Sabha, which raises concerns regarding its effective functioning.

[176] Election Commission of India, *Statistical Reportage 2014*, <http://eci.nic.in/eci_main1/statistical_reportge2014.aspx>

4.19.2 As a result, the Law Commission recommends that the findings of the 170th Law Commission Report on the proportional system may be examined by the Government to determine whether its proposals can be made workable in India at present.

CHAPTER V

ANTI DEFECTION LAW IN INDIA

A. Introduction

5.1 Originally, the Constitution of India carried no reference to political parties and their existence. However, the existence of political parties is explicit in the nature of the democratic form of Government that our country has adopted.[177] India is now a federalised multi-party system.

5.2 The emergence of a large number of political parties within the Indian electoral landscape was accompanied by increasing defections. In fact, nearly 438 defections occurred within the period between March 1967 and February 1968.[178] The malaise of defection resulted in an increase in political corruption and instability of governments. Principally, frequent defections made a mockery of the party system and made the electoral system vulnerable to frequent and unnecessary elections which inevitably would cost a significant amount to the exchequer. Defections revealed the inner state of party politics which was fraught with division, fragmentation and factionalism.[179]

5.3 The increase in the number of defecting legislators between 1967 and 1969 necessitated the framing of an adequate anti-defection law. The mid-sixties witnessed numerous instances of elected representatives leaving the parties on whose ticket they were elected, to join the opposition parties. Hence, the need for an anti-defection law became increasingly urgent. The Committee on Defections, under the Chairmanship of then Home Minister, Mr. YB Chavan submitted its report in January 1969 where it noted that there were multiple acts of defections by the same person(s) and also, indifference on the part of defectors to political proprieties, constituency preference and public opinion.[180] Even though the Committee could not reach an agreed conclusion in the matter of disqualifying a defector from continuing to be a Member of Parliament/State Legislature, legislative proposals to usher in an anti-defection law soon followed. Based on the recommendations of the Committee, the Constitution (Thirty-second Amendment) Bill, 1973 and the Constitution (Forty-eighth Amendment) Bill, 1979 were introduced in the Lok Sabha. These legislative attempts towards framing an anti-defection law

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[177] Kanhaiya Lal Omar v. RK Trivedi, AIR 1986 SC 111, para 10.
[178] Subhash C. Kashyap, PARLIAMENTARY PROCEDURE: LAW, PRIVILEGES, PRACTICE AND PRECEDENTS 779 (3rd edn., 2014).
[179] Vandana Mishra, *Crisis of Indian Parties*, MAINSTREAM WEEKLY, Vol. XLVII, No. 13, March 14, 2009, <http://www.mainstreamweekly.net/article1230.html>
[180] Arvind P. Datar, *Commentary on the Constitution of India*, Vol. 2, 2nd edn. (2010), at 2253.

contemplated an amendment to the Constitution with a view to disqualifying a defector from his continued membership of the legislature.[181] However, while the former Bill lapsed due to dissolution of the Lok Sabha, the latter was opposed at the stage of introduction itself and was withdrawn by the leave of the House.

5.4 Finally, after the general elections in December 1984, the Constitution (Fifty-second Amendment) Bill was introduced in the Lok Sabha in January 1985. The object of this anti-defection law was to curb the evil of political defections motivated by the lure of office or other similar considerations that endanger the foundations of our democracy.[182] Pursuant to this ideal, the amendment inserted the Tenth Schedule into the Constitution in order to curb the evil of political defections. The 52nd Amendment Act, 1985 also amended Articles 101, 102, 190 and 191 of the Constitution regarding vacation of seats and disqualification from membership of Parliament and the State Legislatures.

5.5 The purpose of the Tenth Schedule is to prevent the breach of faith of the electorate. Where a constituency returns a candidate to the Legislature, it does so on considerations based on the ideologies of the political party he represents and it is only logical that where the candidate, after being elected, leaves that party or acts contrary to its policies, he should be recalled for betrayal of the faith of the electorate.[183] Essentially, the provisions in the Tenth Schedule give recognition to the role of political parties in the political process.[184]

5.6 Paragraph 2(1) of the Tenth Schedule provides that a member of Parliament or State Legislature belonging to any political party shall be disqualified for continuing as such member, if he:

(i) has voluntarily given up his membership of such political party; or

(ii) votes or abstains from voting in the House contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by him in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within 15 days from the date of such voting or abstention.

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[181] Constitution (Thirty-second Amendment) Bill, 1973, Statement of Objects and Reasons.
[182] Kihota Hollohon v. Zachilhu, AIR 1993 SC 412.
[183] Datar, *supra* note 180, at 2253.
[184] Kihota Hollohon v. Zachilhu, AIR 1993 SC 412.

5.7 Further, Paragraph 2(2) provides that if a member elected as an independent candidate joins any political party after his election, he shall also stand so disqualified. Paragraph 2(3) provides that a nominated member of a House shall be disqualified for being a member of the House if he joins any political party after the expiry of six months from the date on which he takes his seat upon taking an oath or affirmation as a member of either House of Parliament, or of the Legislative Assembly or the Legislative Council of the State.

B. Exceptions to the Law on Defection

5.8 Mere insertion of the Tenth Schedule did not mark an end to the problems arising out of defection. One of the primary reasons for the ineffectiveness of the Tenth Schedule was the provision on 'split'. The 170th Report of the Law Commission made the following observation about the Tenth Schedule:

> *"The experience of the country with the Tenth Schedule since its introduction has not been happy. It has led to innumerable abuses and undesirable practices. While the idea of disqualifications on the basis of defection was a right one, the provision relating to 'split' has been abused beyond recall."*

5.9 Paragraph 3 of the Tenth Schedule originally contained an exception for disqualification on the ground of defection of members in the case of split in the party to which they belonged, provided their strength was not less than one-third of the members of their legislature party in the House. The intention behind inserting this provision in the Tenth Schedule was the need to provide for such floor-crossing on the basis of honest dissent.[185] However, it was noticed that splits were being engineered for the purpose of Paragraph 3 by indulging in the kind of practices which the Tenth Schedule sought to prevent. The Tenth Schedule was criticised for effectively allowing bulk defections while declaring individual defections as illegal.[186]

5.10 The Supreme Court tried to impose strict standards for proving a split for the purpose of Paragraph 3 by saying that mere making of a claim would be insufficient, *prima facie* proof of a split in a political party is necessary to be produced before the Speaker.[187] The case of *Jagjit Singh v. State of Haryana*[188] was one such instance where the Supreme Court found that no split had occurred in the Haryana unit of the Republican Party of India

[185] Kihota Hollohon v. Zachilhu AIR 1993 SC 412.
[186] Mendiratta, *supra* note 161, at 448.
[187] Jagjit Singh v. State of Haryana, (2006) 11 SCC 1.
[188] (2006) 11 SCC 1.

but the claim of split was only made as an afterthought to escape defection under Paragraph 2(1)(a) of the Tenth Schedule.

5.11 The most scathing indictment of the anti-defection law came across during the open hearings conducted by former Speaker Mr. Shivraj Patil in his decision delivered on June 1, 1993 in the case of a split in the Janata Dal. The Speaker criticised the Tenth Schedule for having been drafted in haste, because of which it is defective and full of lacunae.[189] The Speaker also noted that splits were basically unprincipled defections which were allowed to go unchecked, and which would cause the entire electoral system to lose its legitimacy and become dysfunctional.[190]

5.12 Against this background, the Goswami Committee Report in May 1990, the 170th Report of the Law Commission in May 1999 as well as the NCRWC in April 2002 recommended omission of Paragraph 3 of the Tenth Schedule.[191] The need to strengthen the law in this regard led to the Constitution (Ninety-first Amendment) Act, 2003, which omitted Paragraph 3 altogether from the Tenth Schedule.

5.13 Pursuant to this Amendment, the Fourth Report of the Second ARC on Ethics in Governance noted that:

> *"The 91st Amendment to the Constitution was enacted in 2003 to tighten the anti-defection provisions of the Tenth Schedule, enacted earlier in 1985. The Amendment makes it mandatory for all those switching political sides – whether singly or in groups – to resign their legislative membership. They now have to seek re-election if they defect and cannot continue in office by engineering a 'split' of one-third of members, or in the guise of a 'continuing split of a party'."*

5.14 The Supreme Court, in *Rameshwar Prasad v. Union of India and Anr.*[192] also remarked:

> *"By the 91st Amendment, defection was made more difficult by deleting the provision which did not treat mass shifting of loyalty by one-third members as defection and by making defection altogether impermissible and only permitting merger of the parties in the manner provided in the Tenth Schedule."*

5.15 While Paragraph 3 with the exception on split has been deleted, another exception to disqualification of the ground of defection exists in the

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[189] Kashyap, *supra* note 178, at 791.
[190] *Ibid.*, at 791.
[191] Constitution (Ninety-first Amendment) Act, 2003, Statement of Objects and Reasons.
[192] (2006) 2 SCC 1.

case of merger of a political party with another political party, as provided under Paragraph 4 of the Tenth Schedule. A party shall be deemed to have merged with another party if not less than two-thirds of the members of the legislature party concerned have agreed to such merger. If such merger takes place, those who do not agree to such merger and opt to function as a separate group in the House are also saved from disqualification, irrespective of their numerical strength.

5.16 The 170th Report of the Law Commission had recommended deletion of Paragraph 4 as well (along with Paragraph 3) in the 'interest of maintenance of proper political standards in the House and also to minimise the complications arising on that account.'[193] However, the 91st Amendment (or any other) did not delete the provision on merger and it continues as an exception to the law on disqualification upon defection.

5.17 As opposed to instances of split, various mergers of political parties have been legitimately recognised by the Speakers in recent years.[194] The requirement that two-thirds of the members of the legislature party need to consent to a merger for it to be considered legitimate is a sufficient safeguard which has prevented the misuse of Paragraph 4. Hence, in the present Report, the Law Commission does not make any recommendation with regard to amendments to Paragraph 4.

C. Procedure under Paragraph 6 of the Tenth Schedule

i) The role of the Speaker in deciding petitions under the Tenth Schedule

5.18.1 It is necessary that the decisions taken by the deciding authority under the Tenth Schedule are viewed as impartial and untainted by political considerations. Currently, under Paragraph 6 of the Tenth Schedule, any question as to whether a member of a House has become subject to disqualification under the Tenth Schedule is referred to the Chairman/Speaker of the House. While the decision of the Chairman/Speaker can be judicially reviewed on various grounds, the presence of Paragraph 6 has generated widespread controversy.

5.18.2 In *Kihota Hollohon v. Zachilhu,*[195] the constitutionality of the Tenth Schedule was challenged on the ground that the investiture of adjudicatory functions in the Chairman/Speakers creates the apprehension of political bias. It was contended that an independent, fair and impartial

[193] LCI, 170th Report, *supra* note 108, at Chapter IV.
[194] Kashyap, *supra* note 178, at 798.
[195](1992) 1 SCC 309.

machinery for resolution of electoral disputes is an essential and important aspect of democracy and that the same would be vitiated by vesting the adjudicatory function in the Speaker. In response to this contention, the Supreme Court held that the Chairman/Speakers hold a pivotal position in the scheme of Parliamentary democracy and it would be inappropriate to express distrust in the high office of the Speaker, merely because some of the Speakers are alleged to have discharged their functions in a manner not befitting the great traditions of their high office. Hence, immense confidence was invested in the high position that the Speaker enjoys within the constitutional scheme. Regardless of this, Courts have imposed safeguards to ensure that the Speaker/Chairman does not act in an arbitrary manner. As a necessary safeguard, the decision of the Speaker is subject to review on the grounds of *mala fides*, non-compliance with the rules of natural justice and perversity, among others.

5.18.3 However, due regard should be had to the minority view expressed in *Kihota Hollohan*. The minority held that the Speaker being dependent on continuous support of the majority in the House, he does not satisfy the requirement of an independent adjudicating authority and his choice as the sole arbitrator in the matter violates an essential attribute of the basic feature.[196] Not surprisingly, decisions of Speakers with regard to disqualification on the ground of defection have been challenged in various instances for being biased and partial. For instance, in *Mayawati v. Markandeya Chand and Ors*,[197] the Speaker's decision was challenged as being perverse because the Speaker unduly delayed the proceedings under the disqualification petition. While the Court refused to set aside the order of the Speaker in this case, legal challenges like these erode the confidence posed in the office of the Speaker. In *D. Sudhakar v. DN Jeevaraju and Ors.*[198], the impugned order of the Speaker was held to be vitiated by *mala fides* because the disqualification petition was decided by him in haste and revealed a partisan attitude in his approach. The Court observed that the Speaker's decision is subject to judicial review under Articles 32, 226 and 136 as the Speaker discharges quasi-judicial functions when acting under Paragraph 6 of the Tenth Schedule.

5.18.4 The Supreme Court in *Balchandra L. Jarkiholi and Ors. v. BS Yeddyurappa*[199] also affirmed that the Speaker functions in a quasi-judicial capacity, which makes orders passed by him subject to judicial review. In this case, the Speaker was held to have not taken into consideration rules of evidence while acting on the disqualification petition, and to have acted in

[196] Kihota Hollohon v. Zachilhu, AIR 1993 SC 412, at 449, 451.
[197] AIR 1998 SC 3340.
[198] 2012 (1) SCALE 704.
[199] (2011) 7 SCC 1.

haste and in violation of the principles of natural justice. The Court said that the Speaker acted in 'hot haste' while disposing off the disqualification petition, even though there was no conceivable reason for the Speaker to have taken up the matter in such hurry.

5.18.5 These instances show that even though Paragraph 6 gives finality to the Chairman/Speaker's decision, there is ample scope for his decision to be reviewed. The decision of the Speaker is not immune from challenge before the High Court under Articles 226 and 227 of the Constitution.[200]

ii) History of reform proposals

5.19.1 Without disregard to the high office of the Speaker, apprehensions regarding the partisan nature of the Speakers' decisions have been a cause for concern. Former Speaker Mr. Shivraj Patil himself in his decision of June 1, 1993 (referred above) duly noted:

> *"Since Speakers in India are, after all, party members, they should not be burdened with the job of pronouncing on the membership of their fellow members. Whatever they decide, motives would be imputed to them."*

5.19.2 It would be unrealistic to expect a Speaker to completely abjure all party considerations while deciding on matters under the Tenth Schedule.[201] The Dinesh Goswami Committee Report recommended that the anti-defection law should be changed insofar as

> *"the power of deciding the legal issue of disqualification should not be left to the Speaker or Chairman of the House, but to the President or the Governor, as the case maybe who shall act on the advice of the Election Commission, to whom the question should be referred for determination as in the case of any other post-election disqualification of a Member."*[202]

5.19.3 The 170th Report of the Law Commission also recommended that the decision on the question of disqualification on the ground of defection should be entrusted to the President and the Governor, as the case may be, who shall render their decision in accordance with the opinion of the Election Commission. Furthermore, the Election Commission, in its Report on Proposed Electoral Reforms (2004) also observed:

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[200] Rajendra Singh Rana v. Swami Prasad Maurya (2007) 4 SCC 270.
[201] Kashyap, *supra* note 178, at 801.
[202] Dinesh Goswami Committee, *supra* note 113, at 60.

> *"All political parties are aware of some of the decisions of the Hon'ble Speakers, leading to controversies and further litigations in courts of law. The Commission sees substance in the (above) suggestion that the legal issues of disqualifications under the Tenth Schedule should also be left to the President and the Governors of the States concerned, as in the case of all other post-election disqualifications of sitting MPs, MLAs and MLCs, under Articles 103 and 192 of the Constitution. In the case of disqualifications under the Tenth Schedule also, the President or the Governor may act on the opinion given by the Election Commission."*[203]

5.19.4 Consequently, the Election Commission proposed that in a manner similar to other cases of post-election disqualification of sitting MPs, MLAs, and MLCs under Articles 103 and 192 of the Constitution, disqualification on the ground of defection should also be left to the President and Governors of States. The President or the Governor may act on the opinion furnished by the Election Commission.

5.19.5 The Election Commission recommended that it would give its opinion to the President/Governor in the matters of post-election disqualification after giving full opportunity of being heard to the parties concerned. One of the grounds for the Election Commission to have made such recommendation was that if decisions are rendered by the President/Governor, on the opinion of the Commission, it would receive more respect and acceptability from the common people.[204]

5.19.6 The Election Commission's recommendation was also endorsed by the Ethics in Governance Report.[205] The NCRWC also recommended that the power to decide on questions as to disqualification on the ground of defection should vest in the Election Commission instead of the Chairman or the Speaker of the House concerned. [206] The NCRWC made this recommendation for the reason that

> *"Some Speakers have tended to act in a partisan manner and without proper appreciation – deliberate or otherwise – of the provisions of the Tenth Schedule."*[207]

5.19.7 The proposal to vest the power to decide on disqualification petitions on the ground of defection assume importance for the office of the

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[203] ECI, *Proposed Electoral Reforms*, D.O. No. 3/ER/2004 (2004) (*hereinafter* "ECI 2004 Reforms").
[204] *Ibid.*, at 19.
[205] ARC Report, *supra* note 119, at Chapter 2, Part 1.3.
[206] NCRWC Report, *supra* note 13, at para 4.18.
[207] *Ibid.,* at para 4.18.

Speaker as well, as is evident from the view taken by the Supreme Court in *Jagjit Singh v. State of Haryana*:[208]

> *"Undoubtedly, in our constitutional scheme, the Speaker enjoys a pivotal position. The position of the Speaker is and has been held by people of outstanding ability and impartiality. Without meaning any disrespect for any particular Speaker in the country, but only going by some events of the recent past, certain questions have been raised about the confidence in the matter of impartiality on some issues having political overtones which are decided by the Speaker in his capacity as a Tribunal."*

5.19.8 This can be understood to mean that if the power to decide disqualification petitions made under the Tenth Schedule is vested with the President/Governor, the Speaker's office would be insulated from the reach of constitutional challenges of the kind put forth in *Kihota Hollohan*.

D. Recommendation

5.20 The Law Commission recommends a suitable amendment to the Tenth Schedule of the Constitution which shall have the effect of vesting the power to decide on questions of disqualification on the ground of defection, with the President or the Governor (as the case may be) who shall act on the advice of the Election Commission.

5.21 A constitutional amendment vesting the power to decide matters relating to disqualification on the ground of defection with the President/Governor acting on the advice of the Election Commission would also help in preserving the integrity of the Speaker's office.

5.22 Hence, Paragraph 6 of the Tenth Schedule should be amended to read as under:

> "6. **Decision on questions as to disqualification on ground of defection.**—(1) If any question arises as to whether a member of a House has become subject to disqualification under this Schedule, the question shall be referred for the decision of the:
>
> (a) President, in case of disqualification of a member of either House of Parliament;
>
> (b) Governor, in case of disqualification of a member of a House of the Legislature of a State.

[208] (2006) 11 SCC 1.

Provided that the decision of the President or the Governor as to whether a member of a House has become subject to disqualification under this Schedule shall be final.

(2) Before giving any decision on any such question, the President or the Governor, as the case may be, shall obtain the opinion of the Election Commission and shall act according to such opinion.

Provided that no member of a House shall be disqualified under this Schedule, unless he has been given a reasonable opportunity of being heard by the Commission in the matter."

CHAPTER VI

STRENGTHENING THE OFFICE OF THE ELECTION COMMISSION OF INDIA

A. Constitutional Protection of all the Members of the ECI

6.1 The ECI is an independent, constitutional body, which has been 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 *vide* Article 324(1) of the Constitution.

6.2 Article 324(2) stipulates that the ECI shall comprise of the CEC and "*such number of other Election Commissioners, if any, as the President may from time to time fix.*" By an order dated 1st October 1993, the President has fixed the number of Election Commissioners as two, until further orders. There is all round consensus, evident from the Goswami Committee's Report in 1990;[209] the ECI's 1998 letter;[210] and its 2004 proposed reforms that the number of Election Commissioners should remain at two to ensure the "smooth and effective functioning" of the ECI. Their stated rationale is that:

> *"The three-member body is very effective in dealing with the complex situations that arise in the course of superintending, directing and controlling the electoral process, and allows for quick responses to developments in the field that arise from time to time and require immediate solution. Increasing the size of this body beyond the existing three-member body would, in the considered opinion of the Commission, hamper the expeditious manner in which it has necessarily to act for conducting the elections peacefully and in a free and fair manner".*[211]

6.3 Article 324(5) of the Constitution is intended to ensure the independence of the ECI and free it from external, political interference and thus expressly provides that the removal of the CEC from office shall be on "*like manner and on the like grounds as a Judge of the Supreme Court*". Nevertheless, a similar impeachment procedure is not prescribed for the other Election Commissioners under Article 324(5), and they are treated on par with the Regional Commissioners. Instead Article 324(5) stipulates that subject to any Parliamentary law, the office tenure of the Election and Regional Commissioners shall be determined by the President and that they cannot be removed except on the CEC's recommendation.

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[209] Goswami Committee Report, *supra* note 113, at para 1.1.
[210] Mendiratta, *supra* note 161, at 186.
[211] ECI 2004 Reforms, *supra* note 203, at 14.

6.4 The ECI in its 2004 Report expressly opined that the current wording of Article 324(5) was "inadequate" and required an amendment to bring the removal procedures of Election Commissioners on par with the CEC, and thus to provide them with the "same protection and safeguard[s]" as the CEC.[212] The proposed amendment by the Background Paper on Electoral Reforms prepared by the Legislative Department of the Law Ministry in 2010 is along the same lines.

6.5 Equating the removal procedures of the two Election Commissioners with that of the CEC is also in line with the legislative intent of the Parliament. In 1991, the Parliament enacted the Chief Election Commissioner and other Election Commissioners (Conditions of Service) Act whereby the retirement age of the CEC was fixed at 65 years, with a salary and other perquisites equal to that of a Supreme Court judge; whereas that of the other Election Commissioners was fixed at 62 years with benefits equivalent to a High Court judge. However, in 1993, the above Act was amended and the CEC and other Election Commissioners were placed on par on matters of retirement age, salaries and other benefits.[213] Section 10 of the Act also provided for all three members to have an equal say in the decision making process, with any difference in opinion being resolved "according to the opinion of the majority."

6.6 Commenting on this Act, the Supreme Court in *T.N. Seshan, CEC v Union of India*[214] held that the CEC was not superior to the Election Commissioners 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."* [Emphasis supplied]

6.7 It is thus clear that the CEC is at the same position as the other Election Commissioners and only functions as a first amongst equals.

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[212] ECI 2004 Reforms, *supra* note 203, at 14.
[213] Mendiratta, *supra* note 161, at 181.
[214] (1995) 4 SCC 611.

Moreover, the Election Commissioners are clearly superior to the Regional Commissioners and Article 324(5) should be amended to reflect that. Given that the removal (impeachment) procedure of the judges of the High Court and Supreme Court is also the same, the benefit of the CEC's removal procedures under Article 324(5) should also be extended to the other Election Commissioners.

6.8 The Law Commission thus, relying on the Court's observations in the *Seshan's* judgment, and for the reasons aforementioned reiterates and endorses the ECI's proposal to extend the same protection under the Constitution in the matter of removability from office to the Election Commissioners as is available to the CEC. Thus, the second proviso in Article 324(5) after the words "Chief Election Commissioner", the words "and any other Election Commissioner" should be added. In the third proviso, the words "and any other Election Commissioner" should be deleted.

Recommendation

6.9 The following change should be made 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".

B. Appointment of the Election Commissioners and the CEC

(i) Appointment process

6.10.1 The power to appointment the CEC and the Election Commissioners lies with the President *vide* Article 324(2) of the Constitution, which states that:

> *"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 other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President."*

6.10.2 Although the issue of appointments was discussed in the Constituent Assembly and a suggestion was floated to make the appointments subject to confirmation by a two-thirds majority, in a joint session of the Parliament, it was rejected.[215] Consequently, Article 324(2) left it open for the Parliament to legislate on the issue.

6.10.3 The Goswami Committee in 1990 recommended a change to the appointment process, suggesting that the CEC should be appointed by the President in consultation with the Chief Justice of India and the Leader of the Opposition in the Lok Sabha. In turn, the CEC should be additionally consulted on the question of appointment of the other Election Commissioners and the entire consultation process should have statutory backing.[216]

6.10.4 This was followed by the introduction of the Constitution (Seventieth Amendment) Bull 1990, which was introduced in the Rajya Sabha on 30th May 1990 providing that the CEC would be appointed by the President after consultation with the Chairman of the Rajya Sabha, the Speaker of the Lok Sabha, and the Leader of the Opposition (or the leader of the largest party) in the Lok Sabha. The CEC was further made a part of the consultative process in the appointment of the Election Commissioners. However, on 13th June 1994, the Government moved a motion to withdraw the Bill, which was finally withdrawn with the leave of the Rajya Sabha on the same day.[217]

6.10.5 Consequently, in the absence of any Parliamentary law governing the appointment issue, the Election Commissioners are appointed by the government of the day, without pursuing any consultation process. This practice has been described as requiring the Law Ministry to get the file approved by the Prime Minister, who then recommends a name to the President.[218] Thus, there is no concept of collegium and no involvement of the opposition.

6.10.6 The Commissioners are appointed for a six year period, or up to the age of 65 years, whichever is earlier. Further, there are no prescribed qualifications for their appointment, although convention dictates that only senior (serving or retired) civil servants, of the rank of the Cabinet Secretary or Secretary to the Government of India or an equivalent rank, will be appointed. The Supreme Court in *Bhagwati Prashad Dixit Ghorewala v Rajiv Gandhi*[219] rejected the contention that the CEC should possess qualifications

[215] Mendiratta, *supra* note 161, at 179.
[216] Goswami Committee Report, *supra* note 113, at 9.
[217] Rajya Sabha debates, 13th June 1994, at 600 and 637. See also Mendiratta, *supra* note 161, at 179.
[218] Qureshi, *supra* note 1, at 39-40.
[219] AIR 1986 SC 1534.

similar to that of a Supreme Court judge, despite being placed on par with them in terms of the removal process.

(ii) Comparative practices

6.11.1 An examination of comparative practices is instructive. In South Africa, the Independent Electoral Commission comprises of five members, including one judge. They are appointed by the President on the recommendations of the National Assembly, following nominations by a National Assembly inter-party committee, which receives a list of at least eight candidates. This list of (at least) eight nominees is recommended by the Selection Committee, which has four members being, the President of the Constitutional Court; a representative of the Human Rights Commission and the Commission on Gender Equality each; and the Public Prosecutor.[220]

6.11.2 In Ghana too, the seven member Election Commission is appointed by the President on the advice of the Council of State, with the Chairman and two Deputy Chairmen having permanent tenure.[221]

6.11.3 In Canada, the Chief Electoral Officer of "Elections Canada" is appointed by a House of Commons resolution for a non-renewable ten-year term, and to protect their independence from the government, he/she reports directly to Parliament.[222] In the United States, the six Federal Election Commissioners are appointed by the President with the advise and consent of the Senate. The Commissioners can be members of a political party, although not more than three Commissioners can be members of the same party.[223]

6.11.4 In all these cases thus, it is clear that the appointment of the Election Commissioners or the electoral officers is a consultative process involving the Executive/Legislature/other independent bodies.

(iii) Recommendations

6.12.1 Given the importance of maintaining the neutrality of the ECI and to shield the CEC and Election Commissioners from executive interference, it is imperative that the appointment of Election Commissioners becomes a consultative process.

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[220] Electoral Institute for Sustainable Democracy in Africa, *South Africa: Independent Electoral Commission*, <http://www.content.eisa.org.za/old-page/south-africa-independent-electoral-commission>.
[221] Section 4, The Electoral Commission Act, 1993; See also Establishment of Electoral Commission, < http://www.ec.gov.gh/assets/file/establishment_of_electoral_commision.pdf>
[222] Elections Canada, *Appointment of the Chief Electoral Officer,* <http://www.elections.ca/content.aspx?section=abo&dir=ceo/app&document=index&lang=e>.
[223] Qureshi, *supra* note 1.

6.12.2 To this end, the Commission adapts the Goswami Committee's proposal with certain modifications. *First,* the appointment of all the Election Commissioners (including the CEC) should be made by the President in consultation with a three-member collegium or selection committee, consisting of the Prime Minister, the Leader of the Opposition of the Lok Sabha (or the leader of the largest opposition party in the Lok Sabha in terms of numerical strength) and the Chief Justice of India. The Commission considers the inclusion of the Prime Minister is important as a representative of the current government.

6.12.3 *Second,* the elevation of an Election Commissioner should be on the basis of seniority, unless the three member collegium/committee, for reasons to be recorded in writing, finds such Commissioner unfit.

6.12.4 Such amendments are in consonance with the appointment process in Lokpal and Lokayuktas Act, 2013, the Right to Information Act, 2005 and the Central Vigilance Commission Act, 2003.

6.12.5 Pursuant to Article 324(2), an amendment can be brought to the existing Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991 to amend the title and insert a new Chapter 1A on the appointment of Election Commissioners and the CEC as follows:

- Act and Short Title: The Act should be renamed the "Election Commission (Appointment and Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991".
- The short title should state, "An Act to determine the appointment and conditions of service of the Chief Election Commissioner and other Election Commissioners and to provide for the procedure for transaction of business by the Election Commission and for matters connected therewith or incidental thereto."

- Chapter I-A – Appointment of Chief Election Commissioner and Election Commissioners.

  2A. Appointment of Chief Election Commissioner and Election Commissioners – (1) The Election Commissioners, including the Chief Election Commissioners, shall be appointed by the President by warrant under his hand and seal after obtaining the recommendations of a Committee consisting of:

  (a) the Prime Minister of India – Chairperson

(b) the Leader of the Opposition in the House of the People – Member
(c) the Chief Justice of India – Member

Provided that after the Chief Election Commissioner ceases to hold office, the senior-most Election Commissioner shall be appointed as the Chief Election Commissioner, unless the Committee mentioned in sub-section (1) above, for reasons to be recorded in writing, finds such Election Commissioner to be unfit.

Explanation: For the purposes of this sub-section, "the Leader of the Opposition in the House of the People" shall, when no such Leader has been so recognised, include the Leader of the single largest group in opposition of the Government in the House of the People.

C. Permanent, Independent Secretariat of the ECI

6.13 Currently the ECI 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, similar to other departments and ministries of the Government of India in connection with union matters. 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. Lower level officers are permanent officers in the ECI's secretariat, from its own ranks.[224]

6.14 To further strengthen the independence of the secretariat, consonant with the intention of the framers of the Constitution, the Goswami Committee in 1990 recommended that the ECI should have an independent secretariat, along the lines of the Lok Sabha/Rajya Sabha secretariats provided in Article 98(2), which permits the Parliament to regulate the recruitment and service conditions of persons appointed to the secretarial staff in either House of Parliament.[225]

6.15 To give effect to the Goswami Committee's recommendation, the government introduced the Constitution (Seventieth Amendment) Bill, 1990 in the Rajya Sabha on 30th May, 1990. However, the government subsequently withdrew the Bill in 1993 in view of the changed composition of the ECI on having become a multi-member body (pursuant to the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991) and their belief that the Constitution

[224] Mendiratta, *supra* note 161, at 187.
[225] Goswami Committee Report, *supra* note 113, at para 3.

Amendment Bill needed some amendments to reflect this change.[226] The Bill was never re-introduced.

6.16 The ECI relied on these two developments in 2004 to recommend the introduction of an independent Secretariat, which would be "vital" to the ECI's functioning, noting that its independence would be further strengthened if its Secretariat was insulated from Executive interference on the issues of appointments, promotions etc., along the lines of the Secretariats of the Lok Sabha, and Rajya Sabha, Registries of the Supreme Court and High Courts, etc.[227]

6.17 The Background Paper on Electoral Reforms prepared by the Legislative Department of the Law Ministry in 2010 reiterated these recommendations.

6.18 It is of paramount importance to ensure that the ECI, entrusted with the task of conducting elections throughout the country, be "fully insulated"[228] from political pressure or Executive interference to maintain the purity of elections, inherent in a democratic process. The ECI, the Goswami Committee and others are unanimous in their view that the ECI should have a permanent, independent secretariat to ensure its continued functioning as an independent, constitutional authority. The government too, has signified its in-principle approval with the introduction of the Constitution (Seventieth Amendment) Bill, 1990, which was withdrawn *only* with a view to re-introduce a more comprehensive Bill.

Recommendation

6.19 Thus, the Law Commission recommends the insertion of Article 324(2A) of the Constitution along the following lines:

After sub-section (2), add the following words:

> "(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."

[226] Mendiratta, *supra* note 161, at 187-188.
[227] ECI 2004 Reforms, *supra* note 203, at 15.
[228] T.N. Seshan, CEC v Union of India, (1995) 4 SCC 611.

6.20 Thus, the amended Article 324 of the Constitution reads as under:

> **"324. Superintendence, direction and control of elections to be vested in an Election Commission.-** (1) 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 President and Vice-President held under this Constitution *** shall be vested in a Commission (referred to in this Constitution as the Election Commission)
>
> (2) 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 other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.
>
> (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.
>
> (3) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission.
>
> (4) Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President may also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the Commission by clause (1).
>
> (5): Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Regional Commissioners shall be such as the President may by rule determine;
>
> *Provided* that the Chief Election Commissioner and any other Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and

the conditions of service of the Chief Election Commissioner and any other Election Commissioner shall not be varied to his disadvantage after his appointment:

Provided further that a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

(6) The President, or the Governor of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1).”

CHAPTER VII

PAID NEWS AND POLITICAL ADVERTISING

A. Introduction

7.1 Paid news, both generally and during election campaigns, is a widespread and pervasive phenomenon today. The scale of the problem is demonstrated by the fact that, according to the ECI, in the assembly elections held in the period 2011-2013 alone, there have been 1987 cases where a notice for paid news has been issued to the candidates and 1727 cases where the practice of paid news has been confirmed.[229]

7.2 The phenomena of paid news and its cognate, political advertising being presented as news, cannot be seen in isolation. They are integral to the ways in which the news industry, both print and electronic, has developed over last few decades. There has been a significant shift in the way media business is carried out. Media is growingly seen as a revenue generation model by almost all leading media houses. Traditionally, the two pillars of media, namely advertisements and editorial content, have been handled separately. The sustenance of any media house was dependent on the credibility of information circulated through news. Revenue driven news or editorial content was traditionally seen as damaging credibility of media houses. Therefore, though revenue generation through advertisements remained important, it certainly was not the priority of media houses. However, in recent times, the compulsions of revenue generation to run the newspapers and other media, have led to the growing importance of advertisements in the running of media houses.[230]

7.3 Another important development has been the internal change in the relation between advertisements and editorial wings of media. Mr. P. Sainath (former Rural Affairs Editor, The Hindu) suggests that the spread of the phenomenon of paid news can be attributed to the change in the employment model of journalists.[231] This new model of employment applied by several media conglomerates curtailed the collective bargaining position of journalists. This led to the concentration of power in the management wing of

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[229] Election Commission of India, *Handbook for Media, General Election to the 16th Lok Sabha, 2014,* para 3.5, <http://eci.nic.in/eci_main/ElectoralLaws/HandBooks/Handbook%20for%20Media%202014.pdf>.

[230] Anuradha Sharma, India Needs its Own Leveson? Journalism in India during the time of paid news and private treaties, REUTERS INSTITUTE FELLOWSHIP PAPER (2013).

[231] Submissions made by Rural Affairs Editor, The Hindu (P. Sainath) to the Standing Committee.

media houses and significantly curtailed the independence of journalists.[232] Further, it also weakened the editorial wing of the media as journalists were now controlled by management instead of editors.[233] Therefore, the needs of commercialisation and the requirement of revenue bolstered the advertisement/management wing of media houses over the editorial wing.[234] With managers becoming more influential in the selection and presentation of news, the importance of news started getting determined by the revenues that would be generated.[235]

7.4 It must also be noted that while – as the above arguments suggest – paid news is widespread through the Indian media, it is by no means suggested that every newspaper or media entity is involved in the dissemination of paid news. In fact, journalists and newspapers have themselves, at times, strongly criticised the practice of paid news. However it is a fact that news driven by consideration, or advertisements thinly disguised in the form of news, have grown exponentially over last few decades in the arena of electoral politics. This part looks at the issues of paid news and political advertising specifically in this context. It does not suggest systemic reforms for media regulation in general, as that issue is being examined separately by the Law Commission and will form part of a distinct and holistic report on the subject.

7.5 At a Consultation on Media Law, held by the Law Commission, which sought responses from media entities, journalists and Law School, there was a detailed examination of the issues. Respondents included the Press Council of India, the News Broadcasters Association, the Delhi Union of Journalists, Times Internet Limited, Mr. Paranjoy Guha Thakurta, National Law School of India University, National University of Juridical Sciences, and so on. Eleven Respondents out of fifteen suggested making paid news an offence under the Representation of the People Act. There were numerous suggestions pertaining to defining the offence, the nature of the offence, standards and burdens of proof, and so on. From the basis of wide consultations held by the Law Commission, it is clear that there is a general consensus, among the relevant stakeholders, in regulating the phenomenon of paid news.

7.6 In a speech during a public consultation organised by the Law Commission on the 27th and 28th of September, 2014, the CEC, Mr. V.S.

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[232] Submissions made by President, Indian Journalists Union (Mr. S.B. Sinha) to the standing Committee.

[233] APUWJ submissions to the Press Council of India (2010).

[234] Speech by Justice G.N. Ray, 'The Changing Face of India' <http://presscouncil.nic.in/OldWebsite/speechpdf/November%2016%202009%20Hyderabad.pdf>

[235] Ministry of Information and Broadcasting, *Issues Related To Paid News*, 47TH REPORT OF STANDING COMMITTEE ON INFORMATION TECHNOLOGY, Fifteenth Lok Sabha, (2012-2013), at 17.

Sampath, highlighted the problem of paid news. According to him, the problem had become particularly acute during the 2009 elections, when several prominent journalists approached the EC about paid news. Mr. Sampath further noted that the present legal framework did not deem paid news to be an offence, and that therefore, it was inadequate to deal with the problem. Consequently, the only option before the EC was to treat paid news as part of undisclosed expenditures, which it was doing. Naturally, this was a round-about and unnecessary procedure, and ought to be changed.

7.7 Consequently, this Part is divided into seven section. *First,* it looks at the definitional aspects of paid news and political advertisements. *Second,* it describes the ways in which the practices of paid news and disguised political advertising are prevalent in electoral coverage by the print and electronic media. *Third,* it analyses the current legal regime regulating such practices including seminal judicial decisions. *Fourth,* it considers recommendations made by previous committees and commissions on the subject of paid news. *Fifth,* it highlights the key constitutional issues surrounding regulation of paid news. *Sixth,* it describes the way paid news is being regulated in other jurisdictions. *Finally*, it suggests legal reform to gradually weed out the scourge of paid news from the electoral system.

B. Paid News and Political Advertising: Defining The Phenomena

7.8 Political advertising is constituted by activities, which relate to promoting an electoral candidate or a political party or a policy proposed by a particular party, in order to appeal to the public. At its core, political advertising does not exclusively relate to elections, political parties or candidates. Advertising on other issues, which reflect important societal debates, such as human rights, environmental issues, welfare schemes etc., and is generally in the nature of political propaganda or pursues political ends, may be construed as political advertising.[236]

7.9 Legitimate political advertisements indicate the identity of the sender or the speaker of the communication. This confirms that the communicated piece is an advertisement. Such speech is not sought to be constrained excessively since it promotes political ideas and reflects the ideologies and policy goals of a party, while ensuring that the viewers are aware that the content is not merely informational but also promotional. Under the Indian Constitution, speech of this kind is admittedly within the protection of Article 19(1)(a) of the Constitution.[237]

[236] EPRA Secretariat, Plenary Political Advertising: Case Studies and Monitoring, EPRA/2006/02, 17-19 May 2006.
[237] Tata Press v MTNL, AIR 1995 SC 2438.

7.10 On the other hand, there is no categorical legal definition of paid news. Paid news has been defined by the Sub-committee of the Press Council of India (*hereinafter* "**PCI report**") as "*any news or analysis appearing* in *any media (Print* & *Electronic) for* a *price* in *cash or kind* as *consideration*." The definition given by PCI report was also adopted by the 47th report of Standing Committee on Information and Technology of the Ministry of Information and Broadcasting (*hereinafter* "**SCIT report").** The ECI Handbook distinguishes between paid news and paid content and suggests that the latter must be unambiguously marked as 'paid advertisement'. Therefore, political advertisement will be one which is not presented in the garb of news or editorial content, but is clearly discernible as an advertisement.

7.11 Paid News therefore, is a *promotional* feature in the guise of an informative and meritorious piece of *news*. Further, paid news is communicated as any regular news content which is based on the labour invested in news finding and the merit of the author/speaker.

7.12 This demarcation between paid news and political advertising is significant. News reporting is supposed to be objective and neutral. Print and electronic media controls information dissemination which also affects the voters' decision. It is very important that the neutrality of the news object is not distorted by monetary considerations. Therefore, it is crucial that the distinction between advertisement and news is easily discernible to the reader. If paid content is presented as news, it harms the election structure at multiple levels. Apart from the deception of voters, the funds paid by candidates for paid news also help them hide the expenditure incurred by them, unlike in advertising, which can be publicly scrutinised.

C. Issues and Problems with Paid News and Political Advertising

7.13 A free and fair election is the cornerstone of any democracy. While free elections are determined by the absence of intimidation and coercion, a functioning secret ballot, and an enforceable right of universal adult suffrage, the concept of a "fair election" – while equally important – is more difficult to capture. Democracies the world over have recognised that "fairness" requires, in some sense, a level playing field. This means that the influence of money in corrupting the electoral process ought to be mitigated. In India, this is achieved by statutory norms governing election expenditures. In this context, it is important to note that in recent times, political advertising has also witnessed the involvement of several Public Relations firms. The expenses incurred for hiring these firms are likely to go much beyond the statutory expenditure limits. This makes elections very uneven towards those

who can get extensive funding and can incur the costs of political advertising, and adversely impacts the fairness of elections.

7.14 Political advertising raises several serious issues with respect to expenditure limits, truth or falsity of the claims, and the possible defamatory effects of advertisements. Some of the legal challenges posed by paid news and political advertising were manifest in the case of *Ashok Chavan v. Madhavrao Kinhalkar*[238] where Ashok Chavan did not include the expenditure on paid news and advertisement in his election expenses. Due to the absence of a legal regime regulating these practices, the legitimacy of paid news itself was not under contention. Instead, the contention was that he did not include the expenses on paid news in his lodged account of expenditure.

7.15 Political advertising serves a very important function of informing public. However, it increases the role of financial assistance in election campaigning and also incentivises the candidates to distort their election expenditure details. Furthermore, the problem is not just with respect to the information which is expressly shown as advertisement. The nexus between money and political journalism is manifest not only in the form of expensive advertisements but also in the form of paid editorial or news content.

7.16 In India, the most visible manifestation of the phenomenon of paid news in the electoral scene is in the form of several "packages" offered by the media houses to the candidates. Packages comprise exclusive stories, front page, negative coverage for opponent etc. Several media organisations have accepted money from politicians to provide favourable coverage. The ECI's estimation of the worth of paid news market is Rs. 500 Crore.[239] However, the phenomenon is widespread and takes various forms of undesirable nexus of candidates and media. In 2014 Lok Sabha Elections itself, around 700 cases of paid news were detected.[240] This section explores some of the ways in which paid news is being practiced.

7.17 The coverage is sold in the name of a "package" which is offered in proportion to the money the interested party is willing to pay.[241] On an average, each candidate hires two employees to write news stories about him which are printed without editing and sought to be passed off as independent editorial content.[242] The newspapers exaggerate the winning

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[238] SLP (C) NO.29882 OF 2011.

[239] Vidhi Choudhary and Utpal Bhaskar, *Election Commission Pegs Paid News Market at Rs. 500 Crore*, LIVE MINT, 2nd February 2013, < http://www.livemint.com/Politics/vELIACftlZbKXmzTzpGbFP/Election-Commission-pegs-paid-news-market-at-500-crore.html>

[240] http://www.dnaindia.com/india/report-almost-700-paid-news-cases-detected-in-2014-lok-sabha-elections-1989485

[241] Press Council of India, *Sub-Committee Report on Paid News*, at 25, <http://presscouncil.nic.in/OldWebsite/Sub-CommitteeReport.pdf>.

[242] *Ibid.*, at 22.

chances of the candidates and the support they are getting from the public. However, there is no credit line to these news items and the font used is often different from the other news items.[243]

7.18 Candidates pay huge amounts of money in a 'package' deal for cooked up favourable information to create a false atmosphere for influencing electorate.[244] A package generally comprises rate cards for coverage of specific political activities during the campaign. For example, there are different rate cards for covering campaign speeches, covering door to door campaign, showing skewed survey results etc.[245] Channels and newspapers have stated that they were not willing to provide air-time to a candidate's campaign unless he is willing to pay the amount the channel demands.[246]The phenomenon of paid news not just involves the printing of news, but also rejecting or delaying coverage.[247] The impact of this is twofold: *first*, as discussed above, it affects the fairness of elections by tying a candidate's prospects to his financial ability to remunerate the media for coverage. And *second*, it affects the public's right to know, which is an aspect of their constitutional right under Article 19(1)(a).

7.19 The right to know – and, by extension, the right to accurate information on the basis of which to make an informed political choice – is severely undermined by the phenomenon of paid news and undisclosed political advertisement. In some instances, for example, newspapers have published conflicting news items on the same page showing the lack of editorial consistency or control over the news items. In one such case, a news paper published a news item in favour of one of the candidates with the headline that a candidate is "getting the support of each and every section of the society". On the same page, there was another news item arguing that there will be a triangular fight in that constituency. Both these reports appeared on the same page and were credited to a reporter of the newspaper.[248] Furthermore, in many assembly elections, the same newspaper has predicted the win of two opposing parties in a single state in two different editions. For instance, the Panipat edition of *Dainik Jagran* published a news item on page 9 of its edition dated October 8, 2009, that

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[243]Press Council of India, "*Paid News": How Corruption In The Indian Media Undermines Democracy,* Paranjoy Guha Thakurta and Kalimekolan Sreenivas Reddy,(1st April, 2010), at 25, <http://presscouncil.nic.in/OldWebsite/Sub-CommitteeReport.pdf>.

[244]Dr. Madabhushi Sridhar, Tyranny Over The Mind: Paid News As Electoral Crime, 7 NALSAR L.R. (2013).

[245]PCI Sub-committee Report, *supra* note 241, at 26.

[246]Maseeh Rahman, *'Paid News' Scandal Hits Major Newspapers*, THE GUARDIAN, 4th Jan, 2010 <http://www.theguardian.com/media/2010/jan/04/india-paid-news-scandal>.

[247] Paranjay Guha Thakurta and K. Srinivas Reddy, *Blurring Boundaries Between News and Advertisement,* 2 NALSAR MEDIA L.R. 153 (2011).

[248]Mrinal Pandey, *Editorial Departmnet Bypassed,* 2 NALSAR MEDIA L.R. 169 (2011). See also Excerpts from PCI Report on Paid News, < http://presscouncil.nic.in/OldWebsite/CouncilReport.pdf>.

was in favour of the electoral prospects of the Congress. This news item criticised leaders of non-Congress parties, and stated that they would not be able to make a mark in the elections because the Congress had done very good work for every section of society. This news item added that candidates of the Haryana Janhit Congress (HJC) would not be able to harm. The Ludhiana edition of the same newspaper, on the other hand, published a news item in favour of the HJC on October 11, 2009, with a headline that stated that the HJC would play the role of king or king-maker after the elections.[249]

7.20 Lastly, the seriousness of these issues is exacerbated by the magnitude to which they have become a systemic feature of elections. The entrenched nature of such practices is demonstrated by the fact that some candidates, in fact, thought it to be legitimate political expenditure and included in their official expenses for the election. For instance, a candidate had formally represented to the ECI that he had paid a newspaper to publish favourable "news" about himself and had included the payment in his official expenditure statement.[250] The systemic and structural aspects of paid news and political advertising are also revealed by the fact that news items have even begun to carry names of advertising agencies. For example, the *Prabhat Khabar*, a newspaper published from Ranchi, published articles praising various candidates before the Parliamentary elections but placed the following line on top of each such item "PK Media Marketing Initiative".[251]

7.21 Instances of paid news and political advertising have been prominent enough to have attracted the attention of legal authorities, as well as the ECI. For example, when one legislator failed to include spending on paid news in her official poll accounts (involving favourable coverage which was dressed up as news in two Hindi dailies, *Dainik Jaagran* and *Amar Ujala*, during her 2007 election), she was penalised for not reflecting it in the expenditure.[252] The ECI also saw an involvement in these issues when, following complaints from Prafulla Mahanta and Nagaon Nagarik Forum, a Nagaon based NGO, The ECI officials sealed Nagaon Talks Channel, as it was owned by Congress MLA Rockybul Hussain who was contesting from Samguri constituency.[253] The Guwahati High Court later ordered the EC to

[249]Thakurta, *supra* note 247, at 172.
[250] Survey Andhra Pradesh Union of Working Journalists, Submissions made to the PCI.
[251] Selling News- Selected Anecdotes, Hindi Press, 2 NALSAR MEDIA L.R. 169 (2011).
[252] Nalsar, Paid News as Electoral Crime, at 13
[253] Anindita Banerjee and Nisha Gigani, *Paid News- Economics Rules*, STUDENT'S RESEARCH GLOBAL MEDIA JOURNAL – Indian Edition/ Summer Issue / June 2011, at 3 <http://www.caluniv.ac.in/global-mdia-journal/student_research/SR%203%20%20%20ANINDITA%20&%20NISHA.pdf>.

reopen the news channel.[254] On April 30, 2009, the Varanasi edition of the Hindi-language *Hindustan*, published by HT Media, published a front page story with a headline that suggested there was a wave in favour of the Congress party on the day of elections. On the following day, the paper issued an apology and clarified to the readers that it was paid content.[255]

7.22 These instances highlight the ways in which paid news and disguised political advertisements are growing deep into the process of democratic elections in India. The amount of money being spent on these practices has risen at exponential levels. Appendix I mentions the number of identified instances of paid news over last few assembly and general election. The unethical practices of paid news and disguised political advertising have reached the alarming level not just in a few cases of national media, but also in the regional media.

D. Legal Framework

7.23 Currently the problems of paid content identified above are tackled in a piecemeal manner. Neither is there a blanket prohibition on paid news, nor is there a provision exclusively dealing with political advertisement or paid news. However, several aspects of the current statutory regime regulating elections in India have impact on political advertisement and paid news.

(i) Restrictions on election expenses

Mandatory lodging of accounts

7.24.1 Section 77 of the RPA requires every candidate to keep account of expenses in connection with elections. If a candidate has failed to lodge an account of election expenses within the time and in the manner required by or under this Act and has no good reason or justification for the failure, the candidate shall be declared disqualified *vide* section 10A, RPA.

7.24.2 In *LR Shivaramagowda v. TM Chandrasekhar*[256], the Supreme Court held that mere lodging of accounts is not sufficient. The accounts should also be correct and true. In the *Ashok Chavan* case of false accounts, the ECI held that it could go into the correctness or falsity of the account of

[254] *Guwahati High Court Ordered Reopening of Nagaon Talks*, 3rd April 2011 <http://twocircles.net/2011apr03/guwahati_high_court_ordered_reopening_nagaon_talks_tv.html#.VJEsaNKUfOU>
[255] PCI Report, *supra* note 241, at 43.
[256] AIR 1999 SC 252.

election expenses filed by Ashok Chavan.[257] Both the Delhi High Court and the Supreme Court[258]upheld the decision of the ECI. In September 2014, however, through a judgment of Kait J., the Delhi High Court set aside the ECI's Order regarding Ashok Chavan's failure to lodge his accounts, on the ground that the Rules had not been complied with, as well as the fact that the Commission did not frame an issue regarding the knowledge and consent of the candidate.[259] These proceedings reveal a loophole in the legal system. Although the case involved paid news and political advertising, the only section that the ECI could proceed under was the section dealing with disclosure of accounts.

7.24.3 The Supreme Court in *Common Cause v. Union of India*[260] exempted the expenses incurred by political parties or any other association or body of persons apart from the candidate or his/her election agent. The court further issued directions to political parties to submit a statement of expenditure of elections to the ECI. Such statements are required to be submitted within 75 days of assembly elections and 90 days of Lok Sabha elections.[261]

7.24.4 After going through multiple amendments and judicial interpretations, section 77 was amended again in 2003. By this amendment, all expenditure incurred by *supporters and workers* of a candidate is deemed to be expenditure incurred or authorised by the candidate and subject to the overall ceiling fixed on his election expenses under the law. The section as it stands now excludes only the expenditure incurred on the travel of leaders of the political party for general party propaganda. This means that paid news – or political advertisements – that are paid for not by a candidate himself, but on his behalf, will also fall within the expenditure ceiling.

Disqualification

7.24.5 Section 10A of the RPA: Disqualification for failure to lodge account of election expenses:

> *"If the Election Commission is satisfied that a person:*
>
> *(a) has failed to lodge an account of election expenses within the time and in the manner required by or under this Act; and*
>
> *(b) has no good reason or justification for the failure, the Election Commission shall, by order published in the Official Gazette, declare him*

[257] ECI Order on *Account of Election Expenses of Shri Ashok Chavan,* 13th July 2014, <http://eci.nic.in/eci_main1/current/Ashok_Chavan_order_13072014.pdf>.
[258]SLP (C) NO.29882 OF 2011.
[259] Ashok Chavan vs Election Commission of India, W.P. (C) No. 459/2014.
[260] AIR 1996 SC 3081.
[261] Writ (Civ) No. 13 of 2003.

to be disqualified and any such person shall be disqualified for a period of three years from the date of the order."

The requirement of lodging such accounts subjects the candidates to disclose the advertisement expenditure. The provision does not directly deal with political advertising or paid news. However, placing restrictions on election expenses contributes in checking excessive political advertising.

Illegal payments in connection with an election

7.24.6 Section 171H: Illegal Payments in Connection with an Election

> *"Whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees:*
>
> *Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate."*

This restriction on election expenses without the authority of the candidate also involves "advertisement". Therefore, advertisements have to be routed through the candidate. This is to ensure that any expenses on political advertisements are directly counted as candidate's election expenses.

7.24.7 These provisions have been used by the courts frequently, including in *Ashok Chavan's*[262]case to target the paid news phenomenon. Though these provisions oversee expenditure incurred in such practices, they are not sufficient for tackling the problems of paid news and political advertising. For instance, if a candidate includes expenses of paid news, the paid news will still not be subjected to disqualification. It only controls excessive expenditure, not the practices of paid news and disguised political advertisements.

(ii) Disclosure provisions

7.25.1 Section 127A of the RPA imposes certain disclosure requirements on printing pamphlets, posters etc. These should bear names and addresses of the printer and the publisher. In order to enforce the requirement, it also mandates a declaration as to the identity of the publisher thereof, signed by him and attested by two persons to whom he is personally

[262]SLP (C) NO.29882 OF 2011.

known. Furthermore, the printer is also obligated to send one copy of the document along with one copy of the declaration to the mentioned authorities.

7.25.2 Section 127A defines "Election pamphlet or poster" as *"any printed pamphlet, hand-bill or other document distributed for the purpose of promoting or prejudicing the election of a candidate or group of candidates or any placard or poster having reference to an election, but does not include any hand-bill, placard or poster merely announcing the date, time, place and other particulars of an election meeting or routine instructions to election agents or workers"*

7.25.3 The section imposes duties of disclosure on both candidates/agents and printers/publishers. It does not expressly mention newspapers and only mentions specific stationery that the candidates use for election campaign. However, as per the instructions of the Commission issued on 08.06.2010[263] and 16.10.2007[264], printing "other documents" for the purpose of section 127A[265] includes any paid content published. Failure on part of any party to make such disclosures invites punishment with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both. However, it does not qualify as a ground for disqualification.

7.25.4 The disclosure provisions are not sufficient to tackle the practices of paid news and disguised political advertising. This is because the provision itself is not sufficient to cover advertisements in newspapers or electronic media. Such practices have only been targeted through *ad-hoc* instructions of ECI. Specific disclosure norms with respect to advertisements in newspaper and electronic media are required for clarity and certainty.

(iii) <u>Pre-certification of political advertisements</u>

7.26.1 The Supreme Court, in *Ministry of Broadcasting v. Gemini TV Pvt. Ltd.*[266] passed an Order stating all the political advertisements proposed to be issued on TV Channels and Cable Networks by any registered political party/any group or organization/ association/ individual candidate shall be pre-certified by the designated certification committee at various levels to be constituted by the ECI

7.26.2 The ECI, in consonance with the Supreme Court's Order[267], issued instructions on the requirement of pre-certification of political advertisements by a Committee before being telecast on television channels

[263] Vide No. 491/Media/2012 dated 08.06.2010.
[264] Vide No. 3/09/207/JS-I dated 16.10.2007.
[265] These include restrictions on the printing of pamphlets, posters, etc.
[266] N. SLP (Civil) N. 679/204, dated 13 April,2004.
[267] *Id*.

and cable networks by any political party contesting during elections.[268]The District MCMC entertains applications for certification of advertisement proposed to be issued on cable network or television channel by the candidate contesting from the Parliamentary Constituency or an Assembly Constituency of that district.

7.26.3 The Chief Election Officer is also empowered to accept and pre-certify the advertisements from any political party, irrespective of the location of the headquarters of the party.[269] The ECI has clarified that persons other than the candidates are not specifically prohibited from issuing advertisements. However, they are not permitted to issue ads in favour of or for the benefit of or against any political party or candidate.[270]

(iv) Requirement of maintaining distinction between news and advertisement

Advertisement code

7.27.1 With respect to electronic media, Rule 7(10) under Advertisement Code of Cable Television Networks (Regulation) Rules, 1994 formulated under Cable Television Networks (Regulation) Act, 1995 states *"All advertisements should be clearly distinguishable from the programme and should not in any manner interfere with the programme viz., use of lower part of screen to carry captions, static or moving alongside the programme."*

7.27.2 The 'Norms & Guidelines' issued by the NBSA in 2011 provides that:

> "Every news broadcasting organisation shall disclose conspicuously, in an appropriate manner during broadcast of a program, on their television channel/s and on their website/s, including during a news, current affairs, sports, entertainment or promotional broadcast, as to whether the content of such broadcast has been paid for by or on behalf of the entity that is subject matter of such broadcast in any manner whatsoever; and whether such broadcast is an "advertorial" or other media marketing initiative."[271]

7.27.3 By way of the same guideline, it has been recommended that where any footage/ segment/ programme carried on a news channel has

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[268] ECI, *Certification of Political Advertising,* 25th April 2014, <http://eci.nic.in/eci_main1/current/ImpIns25042014.pdf>.

[269] ECI, *Certification of Political Advertising,* 11th April 2014, <http://eci.nic.in/eci_main1/current/ImpIns11.4.2014_15042014_2.pdf>.

[270]ECI, Guidelines regarding applications received from individuals pre-certification of ads of political nature on TV Channels/Cable Network/Radio- clarification, 12th April, 2014, <http://eci.nic.in/eci_main1/current/ImpIns12.4.2014_15042014_1.pdf>.

[271]*Ibid.*, at 6; News Broadcasting Standing Authority, *Norms & Guidelines On Paid News*, (2011) <http://www.nbanewdelhi.com/pdf/norms-guidelines-paid-news.pdf>.

been "paid-for" whether as an advertisement or advertorial or other promotion, this aspect is required to be disclosed conspicuously during the broadcast, with the aim and intent that viewers are not misled into believing that such content is part of news reportage. Further, according to other guidelines issued by the National Broadcasting Standards Authority [272], the news channels are required to disclose any political affiliations, either towards a candidate or a party. Further, unless they publicly endorse or support a particular party or candidate, news broadcasters have a duty to be impartial. However, these guidelines are not adequate solutions as they are mere guidelines and not binding in nature.

(v) Media Certification and Monitoring Committee ("MCMC")

7.28.1 Due to the existence of multiple bodies like Ministry of Information and Broadcasting, PCI, ECI, various self regulatory bodies, etc., there is lack of clarity with regard to specific authority which would be the final authority in deciding a case of irregularity in this regard. Therefore, the PCI Report suggested a separate body to be set-up for monitoring paid news.

7.28.2 The ECI also adopted the recommendation given by the PCI Report to establish district level committees for monitoring paid news.[273]The MCMC has officers from the Ministry of I&B and State Department of Personal Relations. The Expenditure Observer is duty-bound to inform to the MCMC of all instances of suspected Paid News on the same day as brought to his notice independently by any source. The political party or candidate shall have to submit the details of expenditure on the telecast or broadcast in electronic media and print media. If the MCMC finds that any advertisement has been made in TV, Radio, Cable Network, FM Channel, in favour of any candidate without proper permission, they shall inform the Returning Officer (RO) immediately. The RO accordingly shall serve a notice upon the defaulting candidate. If the impugned paid news has not been accounted for in the election expense account, the RO will issue notice to the candidate with regard to the incidents of paid news in consultation with the Expenditure Observer for not showing the expenditure on such publication.[274]

7.28.3 The ECI, in the Compendium of Instructions on Election Expenditure Monitoring issued in January, 2014 provides for the establishment of an efficient election expenditure monitoring mechanism by appointment of Expenditure Observers, Assistant Expenditure Observers,

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[272] Norms and Guidelines issued by NBSA on 3rdMarch, 2014 & 24th March, 2014.

[273] No. 491/Paid News/2012/Media, 27th August, 2012, <http://eci.nic.in/eci_main/CurrentElections/ECI_Instructions/PaidNewsGuidelines27082012.pdf>

[274] Compendium of Instructions on Election Expenditure Monitoring, (January, 2014), <http://eci.nic.in/eci_main/ElectoralLaws/compendium/compendium2014_03022014.pdf>, at para 4.2.1.

Video Surveillance Team, Video Viewing Teams, Institution of Expenditure Monitoring Cells, an MCMC in every district.[275]

(vi) Inclusion of notional expenditure of paid news into the election expenses

7.29 The Commission also passed a direction that six months before the due date of expiry of Lok Sabha or the State/UT Legislative Assembly, as the case may be, a list of television channels/radio channels/newspapers, and their standard rate cards shall be obtained by the CEOs and forwarded to the Commission for inclusion of notional expenditure based on standard rate cards in their election expenses account, in case the candidate has not submitted the documents of actual expenses. However, the implementation of this directive is very difficult given the scale of newspapers published throughout India and the varying rates of advertisements of the newspapers. Even if the Commission obtains the rate cards, it will be difficult to identify the instances of paid news or disguised political advertising.

(vii) Is paid news "undue influence"?

Undue influence as an electoral offence

Section 171C (a):

"Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election."

7.30.1 "Electoral right", as per section 171A of the IPC, *"means the right of a person to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at any election."* Therefore, interference with the free exercise of electoral right would involve the right of the other candidates to stand and right of the voters to vote. In *Ram Dial v. Sant Lal*[276], the Supreme Court held that to determine 'undue influence', actual effect produced is not material. Furthermore, in *Baburao Patel v. Dr. Zakir Hussain*[277], the court further laid down a list of activities that will be excluded from the purview of 'undue influence' including canvassing by ministers for their party candidates, issuing a party whip to vote for certain candidate in Rajya Sabha, Presidential or Vice Presidential elections.

7.30.2 In *Shiv Kirpal Singh v. VV Giri*[278], the court held that undue influence can be present at any stage of elections. It can be present at the

[275] *Ibid.* at para 3.
[276] AIR 1959 SC 855.
[277] AIR 1968 SC 904.
[278] AIR 1970 SC 2097.

stage when a voter goes through a mental process deciding which candidate to vote for. Further, it also involves *"mental process of weighing the merits and demerits of the candidates to make his choice"*[279]. The act need not be authorized by any candidate. The undue influence can be practiced even by a third party completely unconnected with the candidate.

7.30.3 Arguably, paid news might come within the meaning of section 171(c)(a). This is because, by masquerading as objective analysis or reporting, paid news might well provide a wrong impression to voters, who will be wrongly influenced by content that they mistakenly believe to be objective and neutral. However, because the provision is open-ended, and not confined to specific practices, its applicability to paid news is doubtful, and depends upon the interpretation courts might place upon it. In any event, it will not cover political advertisements marked as such, because any influence they might exercise, will not be "undue".

Undue influence as corrupt practice

7.30.4 Section 123 of the Representation of the People Act, 1951 states:

> Section 123(2): *"Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agents, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right."*

7.30.5 The only difference between this provision and in section 171C of the IPC is that of consequence. While conviction under section 171C leads to punishment or fine, the consequence of section 123(2) is disqualification. Though undue influence may cover some instances of paid news and disguised political advertising, it is a determination contingent on proof adduced which might be difficult to obtain. Thus the provision does not provide a direct solution to prohibit and regulate paid news and disguised political advertising respectively.

E. Recommendations by Other Studies on Paid News

(i) Mandatory disclaimer and separation of editorial and management

7.31.1 The report on paid news prepared by a Sub-Committee of two members of the Press Council of India attempted to separate the blurring boundaries between news and advertisements. [280] A significant recommendation made by the sub-committee was that of mandating a disclaimer by the hosting medium. The editor or editor-in-chief of a publication

[279]AIR 1970 SC 2097.

[280]Press Council Sub-Committee Report, *Paid News": How Corruption In The Indian Media Undermines Democracy*, <http://presscouncil.nic.in/OldWebsite/Sub-CommitteeReport.pdf>.

should print a declaration in his or her newspaper stating that the news that is published has not been paid for by any political party or individual.

7.31.2 Further, there should be a clear distinction between the management and the editorial staff in media companies. The independence of the editor should be maintained and safeguarded. It also seeks to provide right of reply to the candidates: *"Press is not expected to indulge in canvassing of a particular candidate/party. If it does, it shall allow the right of reply to the other candidate/party."* In order to operationalise these reform suggestions, the committee also recommended the constitution of district level committees for scrutiny of Paid News during the periods of election.

(ii) Amendment to the RPA

7.32.1 The Sub-committee has recommended an amendment to the RPA, to provide therein that publishing and abetting the publishing of paid news for furthering the prospect of election of any candidate or for prejudicially affecting the prospect of election of any candidate be made an electoral offence under chapter-III of Part-VII of the RP Act with punishment of a minimum of two years imprisonment. The issue is pending with the Government of India.[281]

7.32.2 It also suggested that the act of publishing a news item in exchange for consideration should be included as a 'corrupt practice' under Section 123 of the RPA. Further, it should be made an electoral offence separately, so that it not only disqualifies the candidates, but also subjects them, the journalists and media-houses to penal consequences.

7.32.3 Furthermore, Section 127A of the RPA may be suitably amended, adding a new sub-section to the effect that in the case of any advertisements/election matter for or against any political party or candidate in print media, during the election period, the name and address of the publisher should be given along with the matter/advertisement.

(iii) Guidelines for determining paid news

Election Commission of Guidelines

7.33.1 The ECI issued a circular dated August 27, 2012 that comprised a comprehensive set of guidelines on paid news. They were further incorporated in the Handbook for Media for the Lok Sabha General Elections, 2014. The ECI proposed an amendment to the RP Act to provide that publishing and abetting the publication of 'paid news' for furthering the

[281] Sub-Committee's letter No. 3/ 1/2011/SDR dated 3rd February 2011 40-43 regarding proposals for amendment of the R.P. Act and Conduct of Election Rules 1961

prospect of election of any candidate or for prejudicially affecting the prospect of election of any candidate be made an electoral offence under Chapter III of Part VII of the Act with a punishment of a minimum of two years imprisonment. [282] In order to determine what constitutes paid news, the following guidelines ought to be kept in mind:

1. Identical articles with photographs and headlines appearing in competing publications carrying by-lines of different authors around the same time;
2. On the same page of specific newspapers, articles praising competing candidates, claiming that both are likely to win the same elections;
3. News item stating that one candidate is getting the support of each and every section of the society and that he would win elections from the constituency;
4. News items favouring a candidate and not carrying any by-line;
5. Newspaper publishing a banner headline stating that a party/candidate is ready to create history in the state/constituency but not carrying any news item related to this headline;
6. News item saying the good work done by a Party/Candidate had marginalized the electoral prospects of the other party/candidate in the state with each and every sentence of the news item in favour of the party/candidate;
7. There are instances of fixed size news items, each say a length of 125-150 words with a double column photo. News items are seldom written in such a rigid format and size whereas more often advertisements are;
8. In specific newspapers, multiple font types and multiple drop case styles are noticed within the same page of a single newspaper. This happens because, from the layouts to the fonts and photographs, everything is provided by the candidate who has paid for the slots in the newspaper;
9. Besides these, the cases decided as Paid News by the ECI and also by the PCI can provide guidance to District Complaint Monitoring Centre to decide future cases.

Standing Committee on Information Technology (2012-13)

7.33.2 The Parliamentary Standing Committee acknowledged that the issue of paid news is a product of foul play between the electoral candidates and the media houses. [283] The Committee has, *inter alia*, found the existing regulatory set-up dealing with paid news inadequate. Describing the voluntary

[282] *Handbook for Media,* General Election to the 16th Lok Sabha, 2014, Election Commission of India, para 3.5 <http://eci.nic.in/eci_main/ElectoralLaws/HandBooks/Handbook%20for%20Media%202014.pdf>.

[283] Standing Committee Report, *supra* note 235.

self-regulatory bodies like the News Broadcasting Standards Authority (NBSA) and Broadcasting Content Complaints Council (BCCC) as an 'eye wash', the Committee also found the punitive powers of statutory regulators like the PCI and Electronic Media Monitoring Centre (EMMC) to be inadequate. Expressing concern that the lack of restriction on ownership across media segments (print, radio, TV or internet) or between content and distribution could give rise to monopolistic practices, the Committee has urged the Authority to present its recommendations and the Ministry to take conclusive action on those recommendations on a priority basis.

7.33.3 The Standing Committee also noted that unlike in print media, in case of electronic media, there is no regulatory body. It suggested coordination with News Broadcaster Association to develop a mechanism to keep a check on Paid News in electronic media. The committee also affirmed some of the suggestions already made by the PCI Report.

Recommendations by TRAI

7.33.4 TRAI, in August 2014, provided a set of recommendations pertaining to media ownership wherein it emphasized that paid news should be defined comprehensively and a framework should be established for examining complaints and taking punitive action against the defaulting media entities. It noted that there is little doubt that an institutional response addressing both substantive and procedural issues including evidentiary rules is needed to curb the menace.[284]

7.33.5 It strongly recommended that entities related to political bodies, religious bodies, urban local governing bodies, Panchayati Raj, other publicly funded bodies, and Central and State Government ministries, departments, companies, undertakings, joint ventures, and government-funded entities and affiliates be barred from entering into broadcasting and TV channel distribution sectors.[285] Further, it also suggested that the Press Council of India must be fully empowered to adjudicate the complaints of "paid news' and give final judgments in the matter.

F. Constitutional Issues: Article 19(1)(a) and Article 19(2)

7.34 This Part proposes a two-pronged approach to tackling paid news and political advertising. *First*, it suggests a prohibition on paid news by creating a penal provision and *second*, it suggests mandatory disclosures for

[284] Recommendations on Issues Relating to Media Ownership, August 12, 2014, <http://www.trai.gov.in/WriteReadData/Recommendation/Documents/Recommendations%20on%20Media%20Ownership.pdf>, at para 5.68.
[285] *Id.,* at para 5.74.

political advertisements. The possible constitutional issues are discussed below.

7.35 Three questions need to be asked in order to ascertain if Right to Freedom of Speech and Expression is violated:

(i) Whether paid news and political advertising are protected under Article 19(1)(a)?

(ii) Whether the restriction is in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence?

(iii) Whether the restriction imposed is reasonable?

Right to Freedom of Speech and Expression [Art. 19(1)(a)]

7.36 In *Jununa Prasad Mukhariya v Lacchi Ram,*[286] the Supreme Court held that regulation of election speech does not raise any Article 19(1)(a) concerns. Rejecting a challenge to speech-restricting provisions of the RPA (Sections 123(5) and 124(5)), the Court held:

> *"The right to stand as a candidate and contest an election is not a common law right. It is a special right created by statute and can only be exercised on the conditions laid down by the statute. The Fundamental Rights Chapter has no bearing on a right like this created by statute. The appellants have no fundamental right to be elected members of Parliament. If. they want that they must observe the rules. If they prefer to exercise their right of free speech outside these rules, the impugned sections do not stop them."*

7.37 Although the Court has, in subsequent cases, subjected provisions of the RP Act to Article 19(1)(a) scrutiny, it has done so while affirming the core holding of *Jumuna Prasad*.[287] Therefore, insofar as prohibition of paid news and regulation of political advertising is accomplished through the RP Act, in the form of prescriptions upon the conduct of candidates, it will not raise any constitutional concerns.

7.38 Assuming that Article 19(1)(a) is *prima facie* applicable to the regulation of paid news and political advertising, the following two questions arise: do paid news and political advertising fall within the constitutional protection of Article 19(1)(a)? And if so, is legal regulation justified under Article 19(2)?

[286] AIR 1954 SC 686.
[287] See, e.g., Dr. Yeshwant Prabhoo vs Prabhakar Kashinath Kunte, AIR 1996 SC 1113.

7.39 One way of understanding political advertisement is as a form of commercial speech. Since the issuer pays for newspaper space, in order to extol his product, there is little to separate political advertising from commercial advertising *simpliciter*. The constitution on commercial speech is very clear. Although, in *Hamdard Dawakhana v Union of India*[288], the Court excluded commercial speech from the protection of Article 19(1)(a), this general position was overturned in *Tata Press v MTNL*.[289] However, while holding that commercial speech was protected by Article 19(1)(a), the Court also held that " commercial speech" which is deceptive, unfair, misleading and untruthful would be hit by Article 19(2) of the Constitution and can be regulated/prohibited by the State." This makes it clear that disclosure requirements for political advertisements, which are designed to ensure that the advertisements are *not* deceptive, misleading or untruthful, would pass constitutional muster.

7.40 What of the prohibition of paid news altogether? It is important to note that in *Secretary, Ministry of Information and Broadcasting, Government of India. v. Cricket Association of Bengal*[290], the Supreme Court of India observed, *"one-sided information, disinformation, misinformation and non-information, all equally create an uninformed citizenry".* The significance of free and fair information specially for the electoral process was also observed in *PUCL* by the Supreme Court. The availability of proper and relevant information about the candidate fosters and promotes the freedom of speech and expression both from the point of view of imparting and receiving the information.[291]Lastly, in *Union of India v. Motion Picture Association*[292], the Supreme Court held that a requirement compelling cinemas to showcase short documentaries before the start of films was justified, since it furthered the democratic purpose of Article 19(1)(a), i.e., spreading information and awareness. The conclusion that flows from these cases is that the central meaning of Article 19(1)(a) is the connection between the freedom of speech and the democratic process, which is to be achieved by using the freedom of speech as a method of spreading awareness and information among the electorate. Paid news quintessentially distorts this process. Consequently, the prohibition of paid news is unlikely to run into any Article 19(1)(a) hurdles, because it does not fall within the protection of the constitutional right to freedom of speech and expression (Article 19(1)(a)).

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[288] [1960] SCR 2 617.
[289] AIR 1995 SC 2438.
[290](1995) 2 SCC 161.
[291]PUCL v. UOI, Writ Petition (Civil) 490 of 2002, 509 of 2002, 515 of 2002, decided on 13th March, 2003
[292] AIR 1999 SC 2334.

G. A Comparative Perspective

7.41 The international practices regulating political advertisements mainly involve several measures like banning all political advertisements (U.K.), duty of media to give reasonable opportunity to publish to all political parties, mandatory disclosure requirements etc. This section elaborates on the modalities and validity of such restrictions in various jurisdictions.

(i) The United Kingdom

7.42 In the UK, all paid political advertising is banned from television and radio. The ECHR held that the ban imposed by the UK was compatible with the Convention.[293] This prohibition extends not only to political candidates and parties, but also to any advertisement which aims to influence public opinion on a matter of public controversy.[294] It also maintains strict restrictions on printing and publishing by third parties during campaigns. Prior to the Political Parties, Elections and Referendums Act, 2000 (PPERA), no political party could accept more than £5 as they were regarded as election expense. In *Bowman v. United Kingdom*[295]the ECHR decided that the limit of £5 was contrary to the right of freedom of expression contained in Article 10 of the European Convention on Human Rights. As of now, Section 79 and Schedule 9 of PPERA allow every national party a spending limit of £30,000 per constituency in a general election for the House of Commons. The Broadcasting Act, 1990 incorporated the practice of broadcasters letting out airtime for party political broadcasts.[296] Sections 36 and 107 of the Act provides for procurement of licenses to carry political broadcasts from the ITC and the rules to carry out the broadcasts within permissible limits.[297]

(ii) Australia

7.43 The Commonwealth Electoral Act, 1918 of Australia mandates disclosure provisions for any "electoral advertisement, handbill, pamphlet, poster or notice" containing "electoral matter".[298] The Australian law also prescribes a 'Blackout Period' during which broadcasters must not display any material containing electoral matter which is intended or is likely to affect the

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[293]*X and the Association of Z v. United Kingdom*, App. No. 4515/70, 38 Eur. Comm'n H.R. Dec. & Rep. 86 (1971).
[294] Michael Karanicolas, *Regulation of Paid Political Advertising: A Survey,* CENTRE FOR LAW AND DEMOCRACY, March, 2012.
[295]App. No. 24839/94, 26 Eur. H.R. Rep. 1 (1998).
[296]Bernd-Peter Lange, David Ward, The Media and Elections**:** A Handbook and Comparative Study, at 149
[297]Section 36, Broadcasting Act, 1990,
<http://www.legislation.gov.uk/ukpga/1990/42/section/36>.
[298]Section 328, Commonwealth Electoral Act, 1918

voters.[299] The Broadcasters Services Act, 1992 provides that where any election matter is broadcasted during an election period by a broadcaster, that broadcaster must give all the parties contesting the election a reasonable opportunity to have election matter broadcasted during the election period.[300] It further provides that for ensuring equal access, free broadcasting is not required.[301] However, it treats the editorial content and advertisement at the same footing. Therefore, there is no separate regulation on Paid *News* in Australia.

(iii) Canada

7.44 In Canada, while election advertising is permitted, the regulations are laid down with respect to adequate disclosure. Section 320 of Canada Election Act, 2000 provides that the material must be authorized by the candidate or his official agent and the same must be mentioned in the material being transmitted.[302] Sections 6 and 8 of the Radio Regulations, 1986and Television Broadcasting Regulations, 1987respectively provide that during an election period, a licensee shall be allocated time for the broadcasting of programs, advertisements or announcements of a partisan political character on an equitable basis to all accredited political parties and rival candidates represented in the election or referendum.

(iv) ECHR standards on permissibility of such restrictions

7.45.1 Political advertising is the exercise of freedom of speech expression. Restrictions on paid political advertising limit such freedom.[303]In *VgT v. Switzerland*,[304] the ECHR held that the ban on political broadcasts infringed the right to freedom of expression, but did concede that a prohibition could be compatible with such freedom in some circumstances if it met a *'pressing social need'*.[305]

7.45.2 The Human Rights Council in its 26th session[306] reaffirmed the view held by the Institute for Democracy and Electoral Assistance suggesting that while paid political advertising is permissible, private media outlets should be required to charge the same rates to all the parties and candidates without

[299]Schedule 2, clause 3A, Commonwealth Electoral Act, 1918
[300]Schedule 2, clause 3(2), Equal Access
[301]Schedule 2, clause 3(3) of the Act.
[302]Section 320, Canada Election Act, 2000.
[303]Animal Defenders International v. the United Kingdom ECHR (124) 2013.
[304]App. No. 24699/94, 34 Eur. H.R. Rep. 159 (2001).
[305]Sunday Times v United Kingdom (1979) 2 EHRR 229.
[306]A/HRC/26/30 Human Rights Council Twenty sixth session Agenda item 3, 30th May 2014

any discrimination.[307] The Pensioner's Party in Norway was fined for carrying out advertisements which read: *"We need your vote on 15th September! Vote for the Pensioners Party."* However, the ECHR in 1995 held that there was a lack of reasonable nexus between the restriction and the object sought from the regulation.[308]

7.45.3 Political advertisement denies equal or fair access to direct broadcasting as every candidate should have fair access regardless of the state of their campaign finance.[309] The ECHR in *Murphy* has held *"no advertisement shall be broadcast which is directed towards any religious or political end or which has any relation to an industrial dispute."*[310]

7.45.4 In *Animal Defenders International v. the United Kingdom,*[311] the ECHR, upheld the validity of a ban imposed by the BACC (Broadcast Advertising Clearance Centre) on broadcasting appellant's piece and drew attention to the political nature of ADI's objectives, which as such prohibited the broadcasting of the advertisement under Section 321(2) which disqualifies advertisement remotely promoting any political objective. It further stated that the ban imposed was not in contravention to Article 10 of the European Convention on Human Rights. The ECHR upheld the validity of the ban on two grounds: (i) the aim of preventing distortion of public debate by the highest spender is legitimate, and (ii) there is a reasonable nexus between the object sought and the measure employed.

(v) <u>US standards on permissibility of restrictions</u>

7.46.1 In *Buckley v. Valeo,* the Supreme Court of the U.S., invalidated the provisions of Federal Campaign Act which dealt with ceiling limits on electoral expenditures and deemed it unconstitutional.[312] The *Buckley* ruling settled that expenditures by a non-candidate that are "controlled by or coordinated with the candidate and his campaign" may be treated as indirect contributions subject to Federal Election Campaign Act's source and amount limitations.[313] Section 214 of the Bipartisan Campaign Reform Act (BCRA) of

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[307]International Electoral Standards *Guidelines for reviewing the legal framework of elections,* INTERNATIONAL INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE, 2002 <http://www.idea.int/publications/ies/upload/10.%20Media%20access%20and%20freedom%20of%20expression.pdf>.

[308](1 Of 1) Case of TV Vest As And Rogaland Pensjonistparti V. Norway, Application no. 21132/05, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-90235#{"itemid":["001-90235"]}>

[309]*Media and Elections*, 2013, Ace Network, <http://aceproject.org/ace-en/pdf/me/view>

[310]*Murphy v. Ireland,* No.44179/98, ECHR 2003-IX.

[311]ECHR (124) 2013.

[312]424 U.S. 1 (1976)

[313] *Guidelines On Media Analysis During Election Observation Missions,* European Commission For Democracy Through Law (Venice Commission), 27th October, 2005, at 54,

2002 extends the same rule to expenditures coordinated with a national, State, or local committee of a political party. In 2007, the Supreme Court of the United States held that an advertisement included express advocacy or its functional equivalent "*if the ad is susceptible to no reasonable interpretation other than as an appeal to vote for or against a specific candidate.*"[314]

7.46.2 Section 201 of the BCRA provides for a mandatory disclosure of electioneering communications.[315] It carves out an exception for independent expenditures and communications which solely promotes a debate or forum. The Supreme Court has time and again upheld the validity of this provision and in *Citizens United*, the Court held that disclosure is the least restrictive means.[316]

H. Recommendations

7.47 The recommendations pertain to three aspects: *first*, introducing definitions of paid news and political advertising; *second*, laying down the consequences attached to those indulging in such practices, and *third*, the institution that should exercise the powers of imposing such consequences.

(i) Definitions:

7.48.1 Two definitions need to be introduced: 'paying for news' and 'political advertisement'.

'Paying for news'

7.48.2 A vast majority of surveyed suggestions have agreed with the definition of 'paid news' provided by the PCI Report, i.e. paid news is *"any news or analysis appearing in any media (Print & Electronic) for a price in cash or kind as consideration."*

7.48.3 While this definition strikes an optimal balance between wide coverage and particular targeting, we believe that four changes are necessary:

a. Since an offence is sought to be created, the definition should be modified such that it defines the transitive verb 'paying for news' rather than the adjective-noun 'paid news'.

<http://www.gpb.ge/uploads/documents/bea833c7-2a31-4eb3-9518-6ed509639532Guidelines%20on%20Media%20Monitoring.pdf>.
[314] FEC v. Wisconsin Right to Life, Inc., 127 S.Ct. 2652 (2007).
[315]Section 201 of BCRA, 2002,
<http://www.law.cornell.edu/background/campaign_finance/bcra_txt.pdf>.
[316]No. 08-205, 558 U.S.310 (2010).

b. It should be made clear that for the definition to be met, the payment is made to the media house by the person seeking publication or telecast of a particular piece of news or analysis relating to elections and not vice-versa. This is because media houses often pay opinion columnists, talk show guests and other occasional contributors, remuneration in cash or kind for sharing their opinions. Payments such as these should not be covered by the definition of 'paying for news'.

c. By way of abundant caution, advertisements that follow all disclosure requirements and other legal preconditions should be specifically excluded from this definition since they would not fall within the ambit of 'news or analysis'.

d. The offence should exclude official publications by registered or recognised political parties or any news or electronic media house owned by a political party and disclosed as such. This is because of two reasons: *First,* in such cases, political parties may themselves be funding the salaries of journalists working for these media publications and that is not the key target of the offence of paying for news; *Second,* the key issue in such cases is disclosure as the public must have a right to know who the owners of the said publication are. To avail of this exclusion, political parties must themselves own the said media house. [This exclusion will appear in the section creating the substantive offence and not the definition section.]

7.48.4 Accordingly, a new Section 2(ea) should be introduced. Section 2(ea) will read as follows:

> "(ea) "paying for news" means directly or indirectly paying for any news or analysis relating to any election under this Act appearing in electronic media or print media (print, radio, television and all other electronic) for a price in cash or kind as consideration to any such media, entity, person employed therein or connected thereto in any manner, but not including political advertisements as defined under this law;
>
> <u>EXPLANATION</u>:- for the purpose of this clause the expression "electronic media" and "print media" shall have the meanings assigned in clauses (b) and (c) of section 126(a);"

7.48.5 At the same time, an analogous definition should be introduced for 'receiving payment for news'. Thus a new section, Section 2(ha) should be introduced, which will read as follows:

> "2(ha). "receiving payment for news" means any media entity, person employed therein or connected thereto in any manner, directly or indirectly receiving payment for any news or analysis relating to any election under this Act, not including political advertisements as defined under this Act."

'Political advertisement'

7.48.6 Given that the constitutional rationale of prohibiting paid news is to preserve the right to know of electors, it is pursuant to the same rationale that political advertisements should be regulated. The purpose of such regulation is so that political advertisements are clearly understood as paid-for publications and cannot successfully be disguised as objective, accurate news. Such advertisement should not qualify as 'paid news' as long as it is properly disclosed as a political advertisement. To this end, what counts as a 'political advertisement' must be defined. The general definition of 'advertisement' is found in the Code of Self-Regulation for Advertising published by the Advertising Standards Council of India.[317] This needs to be built upon in the context of political advertisements.

7.48.7 Thus, a new section 2(eb) will be introduced which will read as follows:

> "2(eb). "political advertisement" means any advertisement paid for by any political party, candidate of a political party, any other person contesting an election, or any other person connected therewith or associated thereto, carrying necessary disclosures as notified by the Election Commission in this regard."

(ii) Electoral offence

7.49.1 Paying for news is a practice that affects free and fair elections. It affects the electors' right to know and also skews elections in favour of those who possess economic wherewithal. There are also several attendant negative consequences in terms of vitiating the atmosphere in which elections are conducted. It is thus imperative that paying for news be made an electoral offence as well as receiving payment for it. Consequently, we recommend the introduction of a new Section 127B for this purpose. Section 127 B will read as follows:

[317] 'Advertisement' is defined as 'a paid-for communication, addressed to the public or a section of it, the purpose of which is to influence the opinions or behaviour of those to whom it is addressed...'

"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 twenty-five 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."

7.49.2 Not only will the incorporation of this electoral offence make paying for news penal, the stringent punishment will ensure that if the candidate himself is found guilty, then, in all likelihood, he will be disqualified pursuant to Section 8(3) of the RPA. A provision similar to the suggested Section 126-D should also be incorporated in the event that it is an offence committed by a company.

(iii) Corrupt practice

7.50 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 RP Act, it is necessary to make paying for news a 'corrupt practice' under Section 123 of the RP Act. As demonstrated above, there is an arguable case that paying for news constitutes 'undue influence' for the purpose of Section 123(2) of the RP Act. However it requires evidence to be adduced which might be difficult to obtain. To remove any difficulty in this regard, a presumption must be established by law that paying for news would constitute 'undue influence'. Thus we recommend the introduction of Section 123(2)(a)(iii) which will read as follows:

"(iii) pays for news"

This is an addition to a provision which already deems certain acts to constitute 'undue influence' and achieves the object with minimum legislative amendment.

(iv) Disclosure for political advertisements

7.51.1 As demonstrated above, currently guidelines for disclosure of political advertisements are scattered and non-uniform. In order to curb the practice of disguised political advertisement, disclosure provisions should be made mandatory for all forms of media. The purpose of disclosure is two fold: (a) to help the public identify the nature of the content (paid content or editorial content), and (b) to keep the track of transactions between the candidates and the media. Therefore, the extent to which the disclosure is being sought should serve these purposes. For example, the content should carry in bold letters "This content is sponsored" or "This is an advertisement". Further, it should use style including fonts etc. in a way that it can be clearly distinguished from news. This form should contain the details of the sponsor of the content. This should be made applicable to all political advertising. A failure to adhere to this requirement should be considered an electoral offence.

7.51.2 However, much of the disclosure requirement is a question of detail that is best left to the discretion of the ECI. It would be unwise for a law to lay down the specifics of disclosure which might need to evolve over time and be dynamic across different media. Accordingly, the Commission recommends the introduction of Section 127C in the RPA which will read as follows:

"127C. Non-disclosure of interest in political advertising

(1) Any political advertisement in any media shall carry a disclosure to this effect in the form and manner notified by the ECI in this regard.

(2) Any person who contravenes the provision of sub-section (1) shall be punishable with imprisonment for a term which may extend to six months or fine which may extend to five lakh rupees, or both."

7.51.3 A provision similar to the suggested Section 126D discussed in the next chapter should also be incorporated as section 127D in the event that it is an offence committed by a company.

"127D. Offences by companies.— (1) Where an offence under sub-section (1) of Section 127B 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."

CHAPTER VIII

OPINION POLLS

A. Regulation of Opinion Polls in India – A Background

(i) Development of opinion polls in India

8.1 Pre-election opinion polls and exit polls have become a regular feature in the last one and half decades within the Indian electoral landscape. Opinion polls are conducted by polling agencies and disseminated widely by the electronic and print media.[318] With the advent of a large number of television channels and newspapers, the race to conduct election surveys and publishing them as quickly as possible has become the norm.[319] Opinion polls of large scale samples conducted during the 1980s became important indicators of overall popular issues and sentiments.[320] The significance of opinion polls has continued through the 1990s and thereafter. The increase in the number of opinion polls was accompanied by attempts at regulation, which will be looked at in this section.

(ii) 1998 opinion poll guidelines

8.2.1 The earliest attempt to regulate opinion polls was made in 1998 when the ECI took an overall view of the situation and issued an order on 11thJanuary 1998 laying down "Guidelines for Publication and Dissemination of Results of Opinion Polls/Exit Polls", including government-controlled electronic media, in connection with the conduct of opinion polls and exit polls by them. This was done in the wake of impending general elections to the House of the People and to the Legislative Assemblies of Gujarat, Himachal Pradesh, Meghalaya, Nagaland and Tripura.[321]

8.2.2 The said guidelines prohibited publication or dissemination, in any manner whatsoever, of the result of any opinion poll conducted at any time, in or by any print or electronic media, after 5:00 p.m., forty-eight hours before the commencement of the first day of poll for the aforesaid elections, till the closing of poll in all States and Union territories. More specifically, the concerned guideline mandated that:

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[318] Law Commission of India, *Consultation Paper on Media Law'* May 2014, at 11, <http://www.lawcommissionofindia.nic.in/views/Consultation%20paper%20on%20media%20law.doc>.
[319] Praveen Rai, 'Status of Opinion Polls: Media Gimmick and Political Communication in India', 49(16) ECONOMIC AND POLITICAL WEEKLY (2014).
[320] Noro Kondo, *Election Studies in India,* INSTITUTE OF DEVELOPING ECONOMIES, March 2007, Discussion Paper No. 98<http://www.ide.go.jp/English/Publish/Download/Dp/pdf/098.pdf>.
[321] Mendiratta, *supra* note 161, at 715.

> *"No result of any opinion poll conducted at any time shall be published, publicised or disseminated, in any manner whatsoever, in or by any print or electronic media, after 1700 hours on February 14, 1998 (February 16, 1998 being the first day of poll for the aforesaid general elections) and till after the closing of poll in all States and Union territories, i.e., 1700 hours on March 7, 1998."*[322]

8.2.3 Almost simultaneously, the Press Council of India ('PCI') also examined the issue of dissemination of results of opinion polls and exit polls and formulated certain guidelines for the press and the print media. The crux of the PCI recommendations was that newspapers should not allow their forum to be used for distortions and manipulations of the elections and should not allow themselves to be exploited at the hands of interested parties.[323]

8.2.4 Consequently, the PCI mandated that:

> *"No newspaper shall publish exit-poll surveys, however genuine they may be, till the last of the poll is over."*[324]

The PCI issued such a guideline primarily because poll dates during an election are staggered. Hence, the media may end up carrying exit-poll surveys of the polls already held which would be likely to influence the voters where the polling is yet to commence.

(iii) Challenge to the guidelines of the ECI

8.3.1 However, the guidelines issued by the ECI witnessed a vehement protest from the electronic and print media. Media houses primarily contended that these guidelines infringed their fundamental right of speech and expression and also, their right of information under Article 19(1)(a).[325] Constitutionally, this right could only be curtailed by a law which was within the purview of Article 19(2). The guidelines of the EC were not law made by Parliament but only an executive instruction which could not curtail anyone's right under Article 19(1)(a). In *R Rajagopal v. Union of India*,[326] the guidelines of the EC were formally challenged before the Supreme Court. The guidelines were also challenged before the High Courts of Delhi[327] and Rajasthan[328]. As

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[322]Election Commission of India, '*Guidelines for Publication and Dissemination of Results of Opinion Polls/Exit Polls',* Order No. ECI/MCS/98/01, 20th January 1998 <http://eci.nic.in/archive/instruction/recent/media/pnxitpoll_FINAL.html>.
[323] Press Council of India, '*Guidelines on Pre-polls and Exit Polls Survey*', <http://presscouncil.nic.in/OldWebsite/history.htm>
[324]Id.
[325]Mendiratta, *supra* note 161, at 717.
[326]WP No 80 of 1998.
[327]Frontline v. Election Commission, WP No 449 of 1998.
[328]SN Tiwari v. Election Commission, WP No 355 of 1998.

common questions of law were involved in all these three petitions, the ECI sought transfer of the writ petitions to the Supreme Court for disposal under Article 139A. Upon hearing this batch of petitions in *Election Commission of India v. Union of India*,[329] the Supreme Court did not stay the operation of the impugned guidelines which is why they were duly observed by all electronic and print media at the time of the general elections in February-March 1998.

8.3.2 However, the issue regarding the validity of the ECI guidelines arose again during the elections to the House of the People and to the Legislative Assemblies of Andhra Pradesh, Arunachal Pradesh, Karnataka, Maharashtra and Sikkim held in September-October 1999. The Times of India Group of Newspapers, as well as certain other newspapers refused to observe the guidelines issued by the ECI.[330] Consequently, the ECI approached the Supreme Court for a direction against the Times of India Group to abide by the Commission's guidelines. Owing to the important constitutional issues involved in this matter, the Supreme Court referred this matter to a Constitution bench. The said bench expressed serious doubts about the constitutional validity of the impugned guidelines infringing the fundamental rights of the media houses. The Supreme Court also expressed surprise at how such guidelines could be enforced by the EC in the absence of any statutory sanction.[331] Consequently, the approach of the Supreme Court prompted the EC to withdraw its guidelines on 14th September 1999.[332] Such withdrawal meant that there were no restrictions on the conduct of opinion polls and exit polls or on the dissemination of results of these polls during the general elections to the House of the People and certain legislative assemblies held in September-October 1999.

(iv) Important developments in 2004

8.4.1 The vacuum with regard to guidelines on the publication and dissemination of results of opinion polls persisted till 2004. To arrive at a decision by consensus prior to the general elections to the House of the People that year, the EC convened a meeting of all political parties on 6thApril 2004, to deliberate on the issue of opinion polls and exit polls. The view of the majority of the political parties was that conducting opinion polls and publishing the results thereof should not be allowed from the date of issue of statutory notification calling the election till the completion of the poll. The suggestion that emerged out of the all-party meet was that in a multi-phased

[329] WP No 407 of 1999.
[330] Sukumar Muralidharan and V. Venkatesan, 'Polls and Opinions', 16(20) FRONTLINE, (Sept. 25-Oct. 8, 1999), <http://www.frontline.in/static/html/fl1620/16200320.htm>.
[331] Mendiratta, *supra* note 161, at 718.
[332] Election Commission of India, *'Guidelines for Publication and Dissemination of Results of Opinion Polls/Exit Polls – Withdrawal thereof'*, Order No. ECI/MCS/OP-EP/99, 14th September 1999 <http://eci.nic.in/archive/press/current/PN140999ORDER.htm>.

election where poll is taken on different dates, such prohibition in conducting and publishing the results of opinion polls should be for the entire period starting from the date of notification of the first phase of election and until the completion of the poll in the last phase.[333]A similar view was also voiced for exit polls, and all parties were of the view that in a multi-phased election, results of exit polls should not be allowed to be published until the completion of the poll in the last phase. The EC thereafter recommended to the Ministry of Law and Justice that there should be a specific provision in the Representation of the People Act, 1951 ('RP Act, 1951'), prohibiting publication and dissemination of the results of exit polls and opinion polls during the period mentioned above.

8.4.2 Upon receiving the aforesaid recommendation from the EC, the Ministry of Law and Justice sought the opinion of the then Attorney General of India, Mr. Soli Sorabjee in this regard. Mr. Sorabjee was of the view that prohibiting the publication of opinion polls and exit polls would constitute a breach of Article 19(1)(a) of the Constitution. Mr. Sorabjee opined that such prohibition would specifically violate the public's right to know, which has been held by the Supreme Court to be part of the freedom of speech[334]. He suggested that certain guidelines could be laid down to provide that while disseminating results of poll surveys, the agency concerned should provide the public with sufficient information, such as the:

(a) Name of the political party or organisation which commissioned the survey;
(b) Identity of the organisation conducting the survey and the methodology employed;
(c) Sample chosen and the margin of error.

8.4.3 Most importantly, Mr. Sorabjee pointed out that the EC, in exercise of its plenary powers under Article 324 of the Constitution, can issue directions requiring the media to comply with the guidelines. One of the significant takeaways from Mr. Sorabjee's opinion was that it did not contemplate an outright ban on the publication and dissemination of opinion polls, but regulation by means of guidelines issued by the EC in this regard.

(v) <u>Amendments to RPA, 1951 – Insertion of Sections 126A and 126B</u>

8.5.1 While duly considering the opinion of the Attorney General, the ECI pointed out that guidelines issued by it in 1998 regulating the publication and dissemination of opinion polls had to be withdrawn after the Supreme Court's observation that the ECI could not enforce them in law against the

[333] ECI 2004 Reforms, *supra* note 203.
[334]Indian Express v Union of India, (1981) Supp SCC 87.

media. Consequently, the ECI in its 2004 Proposed Reforms Report reiterated its view that there should be some statutory restriction on publishing the results of opinion polls and exit polls.[335]

8.5.2 This recommendation of the ECI was partially accepted by the Parliament in 2009 when Section 126A was inserted into the RPA.[336] The said provision places certain restrictions on the conduct of exit polls and dissemination of their results. Under Section 126A of the RPA, the conduct of exit polls and publishing or publicising by means of print or electronic media or dissemination in any other manner whatsoever, the result of any exit poll has been prohibited during such period as the EC may, by a general order notify in this regard. Significantly, the prohibition on publication of exit polls under Section 126A extends to both print as well as electronic media.

8.5.3 Contravention of Section 126A has been made punishable under Section 126A(3) with imprisonment for a term which may extend to two years or with fine or with both. Additionally, Section 126B has also been inserted to the RP Act, 1951 for punishment to companies who commit any offence under Section 126A. If the said offence is 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. However, opinion polls have been kept outside the purview of Sections 126A and 126B.

(vi) Opinion polls and self-regulatory standards

8.6.1 While statutory standards for regulation of opinion polls are lacking, due regard should be had to the self-regulatory standards laid down by the PCI as well the News Broadcasting Standards Authority ('NBSA') for the media.

8.6.2 The PCI in its "Guidelines on 'Pre-Poll' and 'Exit-Polls' Survey" has mandated that opinion polls cannot be conducted 48 hours before the first phase of polling in a multi-phase election. Further, details of the methodology, sample size, margin for error and background of the organisation conducting the poll would have to be indicated whenever such polls are published.

8.6.3 The NBSA has also issued "Guidelines for Election Broadcasts", which specifically state that:

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[335]ECI 2004 Reforms, *supra* note 203.
[336]Representation of the People (Amendment) Act, 2009.

> *"Special care must be taken to report opinion polls accurately and fairly, by disclosing to viewers as to who is commissioned, conducted and paid for the conduct of the opinion polls and its broadcast. If a news broadcaster carries the results of an opinion poll or other election projection, it must also explain the context, and the scope and the limits of such polls and their limitations. Broadcast of opinion polls should be accompanied by information to assist viewers to understand the poll's significance, such as the methodology used, the sample size, the margin of error, the fieldwork dates, and data used. Broadcasters should also disclose how vote shares are converted to seat shares."*[337]

(vii) <u>Current law and late Mr. Goolam E. Vahanvati's view on opinion polls</u>

8.7.1 Currently, opinion polls are barred from being published in electronic media for 48 hours prior to an election in that polling area under Section 126(1)(b) of the RP Act, 1951.

> *"Section 126(1)(b) – No person shall display to the public any election matter by means of cinematograph, television or other similar apparatus in any polling area during the period of forty-eight hours ending with the hour fixed for the conclusion of the poll for any election in that polling area".*[338]

8.7.2 The contravention of Section 126(1)(b) is punishable under Section 126(2) with imprisonment for a term which may extend to two years or with fine, or with both.

8.7.3 The ECI has strongly argued for further restriction on publication of opinion polls. Such restrictions are necessary because Section 126(1)(b) applies only to electronic media. This essentially means that an anomalous situation is created where the publication of the findings of opinion polls in print media remains unregulated.

8.7.4 The constitutionality of a modified version of this provision was endorsed by an opinion of Late Mr. Goolam E. Vahanvati, former Attorney-General of India on 13th June 2013. In his opinion, Mr. Vahanvati opined that since there is no real basis for distinguishing between opinion and exit polls, opinion polls could also be prohibited from being published for the entire election phase, analogous to the restriction on exit polls under Section 126A of the RP Act.[339] This opinion was in contradiction with that rendered by Mr.

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[337] News Broadcasting Standards Authority, '*Guidelines for Election Broadcasts', 24th November 2011,* <http://eci.nic.in/eci_main1/current/NBSA_07032014.pdf>.

[338]'Election matter', for the purpose of this section, has been defined under Section 126(3) as 'any matter intended or calculated to influence or affect the result of an election.

[339]Consultation Paper on Media Law, *supra* note 318.

Sorabjee in 2004 and consequently, the Ministry of Law and Justice referred the matter to be decided upon by the EC.

8.7.5 In September 2013, the ECI held fresh consultations with recognised political parties on the issue of banning opinion polls, in furtherance of which the views of these parties were sought.[340] The dominant view that came across from the views put forth by various political parties was that opinion polls should not be published or disseminated during the period starting from the date of notification till the completion of elections.[341] While the EC's attempt in this direction is laudable, it does not address concerns as to how such regulation of opinion polls should be carried out.

B. Issues with Current Regulations

(i) Effects on the purity of the electoral process

8.8 Legitimate apprehensions regarding the effect of opinion polls on the purity of the electoral process justify regulation of the same. Among these are concerns about the accuracy of opinion polls. There are a number of instances where election results predicted by such polls turned out to be incorrect, by a large margin. For instance, poll predictions based on election surveys during the general elections in 2004 went completely haywire for most of the polling agencies.[342] In 2004, almost all the polls conducted by media houses predicted that the National Democratic Alliance (NDA) would be able to retain power at the centre, which eventually did not happen. This raised questions about the polls being biased, or incorrect in some measure. Questions regarding certain specific problems with opinion polls have always existed, some of them being:

(ii) Potential of opinion polls to influence voters

8.9.1 The central justification for the regulation of opinion polls is the preservation of the sanctity and integrity of the electoral process. Concerns on this count arise on the grounds that opinion polls are able to influence electoral behaviour and distort electoral outcomes.

8.9.2 This influence on electoral behaviour can take two forms, assuming that opinion polls are properly conducted.[343] Both are predicated on

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[340]Election Commission of India, 'Proposal to restrict the publication and dissemination of opinion polls conducted during elections to Lok Sabha and Legislative Assemblies, No. 3/1/2012/SDR-Vol IV, 12th November 2013.
[341]Id.
[342] Praveen Rai, *supra* note 319.
[343] Herbert A. Simon, *Bandwagon and Underdog Effects and the Possibility of Election Predictions*, 18(3) THE PUBLIC OPINION QUARTERLY 245 (Autumn, 1954).

the understanding that the dissemination of social research will alter the original situation so that it is impossible to accurately predict outcomes. *First*, there is the possibility that a bandwagon or contagion effect could result. This refers to the case where information predicting the victory of a candidate could lead to votes being switched in his or her favour and away from other candidates. *Second*, there is the underdog effect. This refers to voters switching to favour candidates not predicted to win, so that the prediction or appearance of success undermines the actual outcome.

8.9.3 There is no clear empirical evidence to *precisely* demonstrate the degree to which these effects play out among the Indian electorate, or even to establish that such effects do operate. Even in jurisdictions (such as the United States[344], Canada[345], Germany[346] and the United Kingdom[347]) where studies have been undertaken, there is no authoritative understanding on how much influence opinion polls have on electoral behaviour.

8.9.4 On the other hand, an argument against opinion polls has been that information from opinion polls confuses voters, or as said by the EC, 'would be a deleterious intrusion into the mind of the voter'[348]. It is also believed that information from opinion polls may affect voters' perceptions of the chances that various parties may have of winning and consequently, by affecting voters' expectations about the outcome of an election, polls may affect the vote.[349] However, certain studies by political scientists suggest that holding a lead in an opinion poll generally earns an electoral candidate no more than a 4%-5% lead among undecided voters.[350] In fact, opinion polls published extremely close to the day of polling do not affect public opinion to a large extent because only a small percentage of voters remain undecided by then.[351] However, this is not to say that opinion polls do not influence the

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[344] *See, e.g.,* Richard Henshel and Willian Johnston, *The Emergence of Bandwagon Effects: A Theory*, 28 THE SOCIOLOGICAL QUARTERLY, 493 (1987), noting that evidence concerning the existence of a bandwagon effect in US polls has been mixed.

[345] *See, e.g.,* DO POLLS INFLUENCE THE VOTE? IN CAPTURING CAMPAIGN EFFECTS 263–279 (Henry E. Brady and Richard Johnston eds.), finding that polls did influence the vote in the 1988 elections in Canada.

[346] *See, e.g.,* Rüdiger Schmitt-Beck, M*ass Media, The Electorate, And The Bandwagon. A Study Of Communication Effects On Vote Choice In Germany*, 8(3) INT J PUBLIC OPIN RES 266 (1996), finding that opinion polls in Germany do not appear to mislead voters).

[347] Catherine Marsh, *Back on the Bandwagon: The Effect of Opinion Polls on Public Opinion*, 15(1) BRITISH JOURNAL OF POLITICAL SCIENCE 51 (1985).

[348] Election Commission of India, 'Guidelines for Publication and Dissemination of Results of Opinion Polls/Exit Polls', Order No. ECI/MCS/98/01, 20th January 1998 <http://eci.nic.in/archive/instruction/recent/media/pnxitpoll_FINAL.html>.

[349] Andre Blais, Elisabeth Gidengil and Neil Nevitte, '*Do Polls Influence the Vote?', Capturing Campaign Effects*, at 263, <https://www.press.umich.edu/pdf/0472099213-ch11.pdf>.

[350] Stephen Ansolabehere and Shanto Iyengar, 'Of horseshoes and horse races: Experimental Studies of the impact of poll results on electoral behaviour', 11(4) POLITICAL COMMUNICATION 413, 417 (1994).

[351] Id.

voters at all, only that the margin of voters actually influenced may remain unclear.

(iii) Independence of polling agencies

8.10 The independence of the agencies/organisations is threatened by the possibility of opinion polls being manipulated to favour certain political parties, or through bias in choosing sample sizes. Apprehensions against opinion polls arose, for example, in February 2014, when a sting operation by a Hindi news channel claimed that numerous poll agencies were willing to manipulate their poll projections by increasing their margin of error by a certain percentage of points, in favour of certain specific parties.[352]Notwithstanding the effect such manipulations may have on the voting patterns of citizens, it does shake the confidence of the people in the findings of such opinion polls. More importantly, for a first-past-the-post system like ours, this can spell drastic changes in election results and hence, the need for regulation of opinion polls should be urgently addressed.

(iv) Issue of robustness in findings

8.11.1 Statistically, opinion polls are often presented as point estimation, pinpointing a fixed number of seats won by a party.[353] However, these polls are actually representing estimation with a given degree of error.[354] Essentially, they represent interval estimation, a range of seats for every political party, and not the exact number of seats that a party would win. This important fact is generally not made known to the voters. Having knowledge of the fact of the margin of error in the findings of opinion polls would make for more informed voters. While the findings of opinion polls in India are largely considered to be fallible, psephologists believe that crucial factors such as choosing the optimum sample size, sample design and the representativeness of the sample can ensure some level of accuracy.[355]

8.11.2 It has been argued that a few instances of manipulation, in whatever manner they exist, do not make a case for an outright ban. Instead, they call for better regulation of opinion polls, in a manner that will be recommended in Part 6. As mentioned earlier as well, a total prohibition on publication and dissemination of results of opinion polls may amount to an infringement of the right under Article 19(1)(a) of the Constitution. An analysis

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[352]ET Bureau, *'Sting operation reveals massive manipulation by poll agencies',* THE ECONOMIC TIMES, 26th February 2014 <http://articles.economictimes.indiatimes.com/2014-02-26/news/47705569_1_opinion-poll-public-opinion-sting-operation>.

[353] Bibek Debroy, *'Banning Opinion Polls'*, ECONOMIC TIMES, 6th November 2013 <http://blogs.economictimes.indiatimes.com/policypuzzles/stupidity-of-banning-opinion-polls/>.

[354]*Id.*

[355]Praveen Rai, *supra* note 319.

of the manner in which opinion polls are statutorily regulated in other jurisdictions can provide some insights into how suitable amendments can be made to the RP Act, 1951 to regulate the same in India.

C. Regulation in Other Countries

8.12 The ECI's guidelines of 1998 refer to the position in a number of jurisdictions, noting that a number of "advanced democracies" have placed restrictions on the conduct of opinion polls.[356] In particular, the guidelines noted that Canada, France, Italy, Poland, Turkey, Argentina, Brazil and Colombia have imposed certain restrictions.[357] Some jurisdictions do not impose any restrictions on the publication of opinion or exit polls. These states include United States and Australia.

8.13 A number of jurisdictions do, however, regulate opinion polls. The practice of ensuring a cooling off period before voting commences has been a feature of a number of democracies, including Canada, France and Italy.[358] Where such provisions were struck down by courts, an important consideration related to the proportionality of the measure and its compatibility with the freedom of expression. The position in some jurisdictions has been discussed below, which can provide some guidance for regulation of the conduct of opinion polls in India:

(i) United Kingdom

8.14.1 The United Kingdom presents an important framework demonstrating successful self-regulation. There are currently no statutory restrictions on the publication of pre-election surveys, although the publication of exit polls taken before voting closes is prohibited by the Representation of the People Act, 2000. The Act contemplates a fine or imprisonment of no more than six months for publication of such exit polls.[359] The British media is committed to self-regulation and impartiality. For example, the British Broadcasting Corporation (BBC), for example, has internal guidelines on reporting opinion polls that have reportedly been effective for a number of years:[360]

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[356] Paragraph 6.

[357] Id.

[358] Article 19: Global Campaign for Free Expression, *Comparative Study of Laws and Regulations Restricting the Publication of Electoral Opinion Polls*, <http://www.article19.org/data/files/pdfs/publications/opinion-polls-paper.pdf>.

[359] Representation of People's Act, 2000 <http://www.legislation.gov.uk/ukpga/2000/2/pdfs/ukpga_20000002_en.pdf>.

[360] BBC *Draft Election Guidelines for May 2013* <http://www.bbc.co.uk/editorialguidelines/page/draftelectionguidelines-2013-01-24/#6.Polls%20and%20other%20tests%20of%20opinion>.

- *"not leading a programme or bulletin with the results of a pre-election poll;*
- *not including the results of an election survey in a headline;*
- *not relying on the interpretation given to a poll's result by the publication or organization which commissioned it;*
- *always reporting the expected margin of error, and where the gap between the two leading contenders is within the combined margin of error, saying so; and*
- *always reporting the dates of the poll, and who commissioned and carried out the poll."*

8.14.2 Moreover, the Office of Communications Code, known as the Ofcom Code, states that broadcasters may not publish the results of any opinion poll on polling day itself until the election or referendum poll closes.[361]

(ii) Canada

8.15.1 The reporting of poll results during federal elections is regulated by the Canada Elections Act, 2000. The Act prohibits the transmission of new election survey results to the public on polling day, before the close of all the polling stations in the electoral district.[362]

8.15.2 Any person transmitting an opinion poll within 24 hours after they are first transmitted to the public must provide the following together with the results:[363]

- *"the name of the sponsor of the survey;*
- *the name of the person or organization that conducted the survey;*
- *the date on which or the period during which the survey was conducted;*
- *the population from which the sample of respondents was drawn;*
- *the number of people who were contacted to participate in the survey; and*
- *if applicable, the margin of error in respect of the data obtained."*

[361] Section 6.5 The Ofcom Broadcasting Code <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/elections/>.
[362] Section 328, Canada Elections Act, 2000 <http://laws-lois.justice.gc.ca/eng/acts/e-2.01/page-87.html#docCont>.
[363] Section 326, Canada Elections Act, 2000.

(iii) France

8.16 Under Article 11 of the Loi 77-808 du 19 Juillet 1977, the publication and broadcasting of opinion polls was banned for the seven days preceding each of the two rounds of voting in the country's national elections. Exit polls were banned until the close of voting. In a landmark decision in 2011, the French Court of Cassation held that the 1977 law violated Article 10 of the European Convention on Human Rights.[364] A new law was adopted in February 2002 which replaces the week-long prohibition with a 24-hour publication ban. With the exception of internet sites, no person may publish or otherwise transmit the results of any opinion poll on the day before the vote. When opinion poll results are published, the law imposes an obligation on the media to provide details of the poll's methodology and exit polls remain prohibited.[365]

(iv) Singapore

8.17 Section 78C of the Parliamentary Elections Act, 2001, restricts the publication of electoral opinion poll results and imposes an outright prohibition on the publication of exit polls. The blackout period for the publication of opinion poll results begins with the issuance of the 'writ of election', at the very beginning of the election campaign, and ends with the close of all polling stations on polling day.[366] Therefore, the publication of poll surveys is prohibited for the entire period of elections. Furthermore, the Act lays down that any violation of the above provision shall be a criminal offence with a fine not exceeding $1,000 and/or imprisonment for a maximum of 12 months.

D. Opinion Polls – A Case for Regulation, and Not Outright Ban

8.18 While regulation of the publication of the results of opinion polls is an urgent necessity, a complete ban on the same would be constitutionally impermissible. Any restrictions, to whatever degree, on the conduct of public opinion polls would necessarily implicate the fundamental right to freedom of speech and expression. At a general level, the idea of deliberative democracy would require that decisions of public importance, including voting, be

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[364] Amelie Blocman, '*Incompatible with Article 10 of the ECHR*', IRIS Legal Observation of the European Audiovisual Observatory <http://merlin.obs.coe.int/iris/2001/9/article36.en.html>.

[365] Global Campaign for Free Expression, *'Comparative Study of Laws and Regulations Restricting the Publication of Electoral Opinion Polls'*, January 2003, <http://www.article19.org/data/files/pdfs/publications/opinion-polls-paper.pdf>.

[366] Section 78C of the Parliamentary Elections Act, 2001 <http://statutes.agc.gov.sg/aol/search/display/view.w3p;ident=6b3d8695-af98-44ee-a989-3c08f2d6c027;page=0;query=DocId%3A%228cc6883c-c5f5-4e3c-bad4-e3b6992999a5%22%20Status%3Ainforce%20Depth%3A0;rec=0#pr78C-he->.

undertaken after frank public discussion of the alternatives. Opinion polls attempt to contribute to this deliberation.

8.19 Outright bans on either the conduct or the publication and dissemination of exit polls would be entirely inconsistent with existing constitutional standards, as Mr. Soli Sorabjee concluded in his opinion in 2004.[367] Wholesale bans on opinion polls would not fall within any of the grounds listed under Article 19(2), or qualify as a reasonable restriction. As a result, while measures to improve the quality of information supplied to voters could be seen as furthering the right under Article 19(1)(a), they must do so while balancing this interest with the right to free expression of those conducting and/or disseminating opinion polls.

8.20 Former Attorney General of India, Mr. Ashok Desai furnished an opinion on 13th June 2014 on the proposed amendment of Section 126(1)(b) of the RP Act, 1951. Notably, Mr. Desai acknowledged that that in a staggered, multi-phased election, it would not be possible to blank out the electioneering news in a State going to poll when another State is not, nor would it be desirable to do so.[368] Television broadcasts have a national reach and are not contained within the boundaries of a particular constituency. Mr. Desai pointedly mentioned in his opinion that while a direct electoral appeal cannot be made during the proscribed period in the constituency going to poll, there is nothing to prevent the media broadcast elsewhere being received in that very constituency and about the very parties who are contesting in that area.[369] Hence, an outright ban on dissemination of election matter would not be practicable, keeping in view the reach of electronic as well as print media in contemporary times.

8.21 The issue of whether opinion polls require *regulation* engages the right to freedom of speech and expression in two important ways. First, those conducting opinion polls do so in exercise of their rights to free speech under Article 19(1)(a). Any regulation would need to acknowledge this right. Second, the Supreme Court has acknowledged that a general right to know is an element of the right to freedom of speech.[370] Also the Supreme Court has recognized, in *Union of India v. Association for Democratic Reforms* [371], that voters have a right to information concerning matters that would be relevant to their choices at the ballot. Regulation would have to be targeted at ensuring that a real and effective voters' right to information is secured.

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[367] New Delhi Bureau, *Ban on opinion, exit polls unconstitutional, says Soli Sorabjee*, THE HINDU, 10 April, 2004; Soli Sorabjee, Attorney General of India, *Opinion*, 8th April, 2004.
[368] Election Commission of India, 'Amendment of Section 126 of the Representation of the People Act, 1951', 29th April 2014.
[369] Id.
[370] Indian Express v. Union of India, (1981) Supp SCC 87 at 825).
[371] Union of India v. Association for Democratic Reforms, 1992 Suppl. (2) SCC 651.

8.22 Regulation of opinion polls also concerns the freedom of the press, which may not be recognised as a separate freedom, but is folded into the freedom of speech and expression.[372] The freedom of the press serves the larger purpose of the right of the people to be informed of a broad spectrum of facts, views and opinions.[373] Opinion polls assist the media in indicating contemporary concerns and attitudes among the public while also giving feedback to the media on the state of public opinion at a given point in time.[374] Some guidelines, such as those issued by the PCI and NBSA, already exist for the regulation of opinion polls. The time is now ripe for statutory regulation of the conduct of opinion polls by means of an amendment to the RP Act, 1951. Significantly, there is no empirical evidence as to how much opinion polls impact the actual voting pattern.[375] Hence, an outright ban on the conduct of opinion polls does not stand justified. Appropriate amendments need to be inserted within the RP Act, 1951, in a manner specified hereinafter.

E. Approach to Amendments

8.23 The Law Commission believes that any amendments to the RP Act, 1951 with respect to opinion polls must ensure adequate regard to the public's right to access all relevant information concerning elections. Certain principles may be duly considered before recommending statutory amendments to regulate opinion polls. Mr. Ashok Desai's main concern in his opinion referred to in Part 4 was that to what extent a television broadcast about the election could be subject to certain prohibition. Mr. Desai's opinion assumes importance for the Law Commission because it examines the contours of Section 126(1)(b), currently the only provision regulating opinion polls, and the duration for which a prohibition can be imposed on display of 'election matter'.[376]

8.24 Mr. Desai opines that in considering Section 126, it is necessary to balance two contending principles – the right to free and fair elections along with the freedom of speech. Since it is a penal provision, it should be strictly construed in light of the reality of elections in India. Mr. Desai concluded his opinion on Section 126 with the view that,

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[372] Sakal Papers (P) Ltd. v. Union of India AIR 1962 SC 305.
[373] Consultation Paper on Media Law, *supra* note 318, at 2.
[374] Howard Kushner, *Election Polls, Freedom of Speech and the Constitution*, 15 OTTAWA L. REV. 515, 517 (1983).
[375] Faizan Mustafa, *'Opinion Polls and Free Speech',* THE STATESMAN, 14 November 2013 <http://www.thestatesman.net/news/24788-opinion-polls-and-free-speech.html>.
[376] Election Commission of India, '*Amendment of Section 126 of the Representation of the People Act, 1951'*, 29th April 2014.

"The increasing changes in the technology of communication make it necessary that the Law Commission should have another look at the Section and clarify its limits."

8.25 To ensure the independence of the agencies conducting such polls, and to ensure that their findings raise confidence among the voters, their credentials should be known to the public. Following the Canadian example, the organisation conducting or sponsoring the opinion poll/survey should also transmit its own details along with the results of the opinion polls. This would facilitate the public to know the source of such findings and would evoke confidence in the results.

8.26 Apart from the details of the organisation conducting the survey, the results should also include other particulars, such as size of the sample surveyed, sampling method adopted, population from which the sample size was chosen, etc. This will ensure robustness of the findings of the opinion polls. It has been established that opinion polls, irrespective of the manner in which they are conducted, will always have a certain margin of error. This fact should be made known to the public. Whether published in print media or disseminated through electronic media, findings of opinion polls should always carry a disclaimer that such findings are only predictions which would necessarily have a certain margin of error. This would help ensure that the public is not misled by the results of opinion polls.

F. Recommendations

(i) Expand scope of Section 126 of the RPA, 1951

8.27.1 Currently, as discussed above in Part 1 of this Chapter, the ban under Section 126(1)(b) on display of election matter forty-eight hours before polling begins is limited to display by means of 'cinematograph, television or other similar apparatus'. Since this Section is also used to limit the broadcast of opinion polls and other similar content, the ban applies only to opinion polls in the electronic and not the print media.

8.27.2 This anomaly in the applicability in the law relating to publication of election matter must be rectified, particularly in an age where digital and print media are closely interconnected. Therefore, the Law Commission recommends 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.

(ii) <u>Add specific sections on disclosures related to opinion polls</u>

8.28.1 While the suggested amendments to Section 126(1)(b) expand the current restrictions on opinion polls to include print media, it does not address the concerns expressed in Part 2 of this Chapter regarding the independence and robustness of the opinion polls themselves.

8.28.2 A number of countries have laws to address these issues, as we saw in Part 3. The Law Commission believes that India too is at a juncture where the regulation of opinion polls is necessary 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, that the public is made adequately aware that opinion polls are in the nature of forecasts or predictions, and as such are liable to error.

8.28.3 Accordingly, we recommend that Sections 126C and 126D addressing opinion polls be added as follows:

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 sub-section (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".

CHAPTER IX

COMPULSORY VOTING

9.1 Provisions regarding voting have been enshrined in the RP Act and the Indian Constitution, and describe the exercise as a 'right', instead of a 'duty'. Thus, s. 62 of the RP Act expressly talks about the "right to vote" and s. 79(d) clarifies that the "electoral right" of the voter includes the right to "*vote or refrain from voting at an election.*" Furthermore, Article 326 of the Constitution, while specifying that elections to the Parliament and the Legislative Assemblies be conducted on the basis of adult suffrage, states that, "*every person who is a citizen of India… shall be entitled to be registered as a voter at any such election*." The characterisation of the decision to vote as a right, instead of a duty, has received judicial support.[377] For instance, in *PUCL v Union of India*, the Supreme Court expressly clarified that the right to vote is a "pure and simple statutory right."[378]

9.2 It is thus clear that the decision to vote is considered an exercise of such a *right*, and is not a duty prescribed under Part IVA of the Constitution on Fundamental Duties. However, compulsory voting refers to the practice of making voting a duty – by requiring citizens of a country to partake in the electoral process, whether by obliging them to vote or mark their attendance at the polling place. It has been introduced in some parts of world, both in well established and newly emerging democracies, with a bid to increase participation in the democratic process. Recently, on 9th November 2014, Gujarat Governor Sri O.P. Kohli gave his assent to the Gujarat Local Authorities Laws Bill, 2009, thus paving the way for introduction of compulsory voting in India.

A. Compulsory Voting in India: History and Context

9.3 Compulsory voting was first considered by the Parliament in 1950 during the enactment of the RP Act. Nevertheless, citing practical difficulties in implementation, it was rejected (led by members such as Dr. B.R. Ambedkar).

9.4 Then the Dinesh Goswami Committee in 1990 considered the question of making "voting compulsory" to increase voter turnouts. However,

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[377] In Lily Thomas v Speaker, Lok Sabha, (1993) 4 SCC 234, the Supreme Court held that that "right to vote means right to exercise the right in favour of or against the motion or resolution. Such a right implies right to remain neutral as well." In *PUCL v Union of India*, (2003) 4 SCC 399, the Supreme Court stated, "The right to vote for the candidate of one's choice is of the essence of democratic polity."

[378] PUCL v Union of India, (2013) 10 SCC 1, at para 21 (*hereinafter* "PUCL 2013").

the Committee rejected the idea based on "the practical difficulties involved in its implementation".[379]

9.5 Subsequently, in 2001, the Consultation Paper of the NCRWC on Electoral Reforms again considered, and rejected the proposal for compulsory voting, noting that it would "*not be feasible or advisable at present … [given that] in our situation, there may be several management and legal enforceability problems and difficult questions of penalty for not voting*."[380]

9.6 The Tarkunde Committee noted that:

> *"We have seriously considered the desirability of making it compulsory for voters to cast their votes in these elections. It appears to us that compulsory voting may be resented by the voters and may on balance prove counter-productive. It is desirable that compliance with the duty to cast one's vote should be brought about by persuasion and political education, rather than compulsion. Moreover, the implementation of a law of compulsory voting is likely to be very difficult and may lead to abuse*".[381]

9.7 Pursuant to this, the issue of compulsory voting was discussed in Parliament in 2004 and 2009, when two Private Members Bill introduced a bill to that effect. In 2004, Mr. B.S. Rawat introduced the Compulsory Voting Bill, 2004 "*to provide for compulsory voting by the electorate in the country and for matters connected therewith, be taken into consideration*."[382] The Bill was defeated by citing various arguments, *inter alia*, the coercive nature of the provision; respecting the active decision of some voters to not engage with the democratic process; the inability to reach the polling booths; personal circumstances; and the difficulty of implementation.[383] In 2009, Mr. J.P. Agarwal tabled another bill on compulsory voting, requiring the State to concomitantly provide polling booths at convenient locations and making special arrangements for elderly, disabled, and pregnant voters.[384] However, the then Law Minister Mr. Moily cautioned against such a move observing that it was coercive; difficult for the government to implement; and ignorant of causes of non-voting such as illness, preoccupation, and use of force by political parties. The Bill was later withdrawn.[385]

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[379] Goswami Committee Report, *supra* note 113, at para 11.4, page 38.
[380] NCRWC Consultation Paper, *supra* note 93, at para 17.1.
[381] Tarkunde Committee, REPORT OF THE COMMITTEE ON ELECTION EXPENSES, para 18, <http://lawmin.nic.in/ld/erreports/TarkundeCommitteeReport.pdf>.
[382] *Motion for Consideration of the Compulsory voting Bill,* LOK SABHA DEBATES, <http://164.100.47.132/LssNew/psearch/result14.aspx?dbsl=2311>.
[383] *Id*.
[384] *Compulsory voting in India,* SAKAL TIMES, 16th November 2014.
[385] *Government Expresses Inability to Enforce Compulsory voting*, THE HINDU, 13th August 2010, <http://www.thehindu.com/news/national/government-expresses-inability-to-enforce-compulsory-voting/article568460.ece>.

9.8 Finally, Mr. Atul Saronde petitioned the Supreme Court *vide* a PIL, urging it make voting compulsory to counter low voter turnouts and to ensure the 'representativeness' of the elected governments. On the question of penalties for failure to vote, Mr. Saronde suggested that the government disconnect electricity and water supplies and levy fines on the defaulting voters. Dismissing the petition in April, 2009, the two-judge bench of Chief Justice Balakrishnan and Justice Sathasivam said, "*We are not agreeable to your suggestion that electricity and water connection should be cut if anyone does not vote. These are inhuman methods to make a voter go to the polling booth*.[386]

9.9 Recently, the Gujarat Local Authorities Laws (Amendment) Bill, 2009 was introduced and (now) passed introducing compulsory voting at local-level elections such as at the Municipality, Municipal Corporation, and Panchayat level.

9.10 The history of compulsory voting proposals provides an adequate context within which to situate the larger debate about the appropriateness of compulsory voting, with specific reference to India.

B. Evaluating the Arguments For and Against Compulsory Voting

9.11 The arguments surrounding compulsory voting can be broadly divided into concerns of participation, equality, democracy, legitimacy, and other concerns. These will be discussed below.

(i) Participation: Does compulsory voting increase voter turnouts and improve the quality of political engagement?

9.12.1 Arend Lijphart in his influential 1997 essay made two strong arguments in favour of compulsory voting as a response to the "unequal electoral participation" in America. These involved the effect of compulsory voting in countering voter apathy by increasing turnout and in making the electorate more politically aware and engaged.[387] The underlying assumption

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[386]Dhananjaya Mahapatra, *SC Rejects Plea to Make Voting Compulsory,* THE TIMES OF INDIA, 18th April 2009, <http://timesofindia.indiatimes.com/india/Supreme-Court-rejects-plea-to-make-voting-compulsory/articleshow/4415484.cms>; S.Y. Qureshi, *Compulsion Won't Work: Voter Education Key To Participation*, HINDUSTAN TIMES, 19th November 2014, <http://www.hindustantimes.com/comment/analysis/voter-participation-can-be-achieved-through-systematic-poll-education/article1-1287635.aspx#sthash.3i2OoJZ5.dpuf>.

[387] Arend Lijphart, *Unequal Participation: Democracy's Unresolved Dilemma*, 91(1) THE AMERICAN POLITICAL SCIENCE REVIEW 1 (1997).

here is that compulsory voting will result in increased voting and consequently, more informed political participation and debate.

Increase in voter turnouts

9.12.2 On the first argument, it is relatively clear that compulsory voting results in an increased turnout, with different studies pointing to an increase between 7 to 17 percentage points.[388] A comprehensive cross-country Institute for Democracy and Electoral Assistance (*hereinafter* "**IDEA**") Study reveals that the difference in voter turnouts between the 28 countries with compulsory voting provisions on their statute books (regardless of enforcement levels) and the 171 countries without such provisions is 7.37%.[389]

9.12.3 Nevertheless, an increase in participation is a direct corollary of the severity and strict enforcement of sanctions. Studies have found that levels of abstention in compulsory voting regimes are highest when the quantum/type of penalty and the likelihood of its enforcement are high.[390] There are two major impediments arising from this penalty-enforcement conundrum in the replication of such high levels of turnout in India – the imposition of a heavy penalty, and being likely to enforce it.

9.12.4 The first is concerned with the determining the type of penalty. The current law is silent on the form of sanction, and clearly leaves such determination to the government. Consequently, it is unclear whether the penalty will amount to unnecessary coercion (as the "inhumane" suggestion before the Supreme Court in 2009 to cut off electricity and water supplies) or merely an informal sanction. Examples of the former are found in Peru, where defaulters cannot access certain government goods and services; Bolivia, where they are not entitled to receive their salaries for three months; and Belgium, where non-voters find it difficult to get a job in the public sector.[391]

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[388] Lijphart; L. Baston and K. Ritchie, TURNING OUT OR TURNING OFF? AN ANALYSIS OF POLITICAL DISENGAGEMENT AND WHAT CAN BE DONE ABOUT IT (2004); G.B. Powell, *Voting turnout in thirty democracies: Partisan, legal, and socio-economic influences* in ELECTORAL PARTICIPATION: A COMPARATIVE ANALYSIS (R. Rose eds., 1980); M. Franklin, *Electoral Participation* in CONTROVERSIES IN VOTING BEHAVIOR (R. Niemi and H.F. Weisberg eds., 4th edn, 2001); E. Keaney and B. Rogers, *A* CITIZEN'S DUTY: VOTER INEQUALITY AND THE CASE FOR COMPULSORY TURNOUT, (London: Institute for Public Policy Research, 2006).

[389] IDEA, *Compulsory Voting,* <http://www.idea.int/vt/compulsory_voting.cfm>. (*hereinafter* "IDEA Compulsory voting")

[390] Costas Panagopoulos, *The Calculus of Voting in Compulsory Voting Systems*, 30(4) POLITICAL BEHAVIOR 455 (2008); Alistair McMillan, *Force feeding Democracy*, INDIAN EXPRESS, 18th November 2014, <http://indianexpress.com/article/opinion/columns/forcefeeding-democracy/>.

[391] IDEA Compulsory voting, *supra* note 389.

9.12.5 Although currently unspecified, the penalties under discussion include being disenfranchised; along with the possible denial of BPL cards, driving licenses, passports, and other services.[392] Such measures are extreme and will disproportionately and adversely affect the poor or marginalised in India. The solution to non-voting as McMillan points out "cannot be to remove people from the electoral process."[393] In fact, an unintended consequence of such a measure is the disincentive on "qualified voters" (which is yet undefined) from registering themselves on the voter registration lists. Moreover, instead of specifying the penalty in the law, the criminalisation of non-voting has been left to delegated legislation. This vests great powers with the State, which can use it as a potential tool for harassment.[394] Conversely, if the penalty amounts to informal sanction – a mere slap on the wrist – then it will not act as a deterrent or have the desired effect.

9.12.6 The second concern deals with the difficulty in implementation – a concern voiced in various committee reports (Dinesh Goswami, National Commission to Review the Working of the Constitution), Parliamentary proceedings and Supreme Court decisions. Implementation (at a subsequent national level) involves the Election Commission making the more than 800 million eligible voters aware of the new law making voting compulsory. The Commission has to then expend time and resources in sending notices to each of the non-voters, conduct hearings, and subsequently impose and implement the stipulated penalties. Former Chief Election Commissioner S.Y. Qureshi, terming the implementation "practically impossible", cautioned against adding to the caseload of the already overburdened judicial system.[395] There are additional concerns regarding the registration process and faulty electoral rolls – voters lists often have defects and have names missing, a fact mentioned in the Parliamentary debates concerning Mr. J.P. Agarwal's proposed Bill.[396]

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[392] Pratap Bhanu Mehta, *Acts of Choice*, INDIAN EXPRESS, 22nd December 2009, < http://archive.indianexpress.com/news/acts-of-choice/557550/>; *Contentious Gujarat Voting Law has RSS Blessing,* BUSINESS STANDARD, 11th November 2014, <http://www.business-standard.com/article/politics/contentious-gujarat-voting-law-has-rss-blessings-114111000942_1.html>.

[393] McMillan, *supra* note 390.

[394] Mehta, *supra* note 392.

[395] S.Y. Qureshi, *Time to take up 'Right to Reject' Proposal,* HINDUSTAN TIMES, 30th January 2012, <http://www.thehindu.com/todays-paper/tp-national/time-to-take-up-right-to-reject-proposal-quraishi/article2843742.ece>.

[396] *Further discussion on the motion for consideration of Compulsory Voting Bill, 2009*, LOK SABHA DEBATES, <http://164.100.47.132/LssNew/Members/DebateResults.aspx?mpno=2399>; RFGI, *Analysis of Compulsory voting in Gujarat,* < http://www.rfgindia.org/publications/Analysis%20of%20Compulsory%20Voting%20in%20Gujarat.pdf>.

Improvement in the quality of political participation and debate

9.12.7 As the above section shows, compulsory voting might not have an equivalent increase in voter turnout as much in India as other countries. More importantly however, even guaranteeing higher voter turnout does not guarantee greater voter participation, as understood in its true, substantive sense. Many studies have shown that the "second order" effects of compulsory voting, measured in terms of better civic engagement; increased political knowledge and interest; and improved quality of participation, do not follow the more-evident "first order" effects of greater turnout. [397]

9.12.8 Thus, Engelen and Hooghe in their 2007 analysis of Belgian election data concluded that compulsory voting did not produce any "knowledge effects" amongst those who "voted to avoid sanction."[398] Similarly, an experiment in the 2007 Quebec provincial elections, where compulsory voting was enforced through financial sanctions saw "little evidence of second order effects".[399] The researchers concluded, "*though a sufficient motivator for getting an uninformed voter to the polls, avoiding foregoing money cannot be assumed to be a sufficient motivator for getting him or her to learn more about politics*". [400] Such a conclusion is supported by a 2007 study of British and Australian voters, which found that Australian voters were not better informed than their British counterparts about their political system, despite being required by law to vote.[401]

9.12.9 Interestingly, although the Australian example is widely cited as a successful model of compulsory voting, it has witnessed a high level (to the tune of 1-3%) of "donkey voting", which occurs when apathetic voters simply choose the first name on a ballot.[402]

9.12.10 Thus, Kelley and McAllister in their 1984 study attributed the donkey effect to giving an advantage of 1.3 percentage points to Australian candidates with a surname in the first third of the alphabet; whereas, such effects were not visible in the British elections, where there was no

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[397] Mcmillan, *supra* note 390.

[398] Bart Engelen and Marc Hooghe, *Compulsory Voting and its Effects on Political Participation, Interest, and Efficiency*", Paper Presented at the ECPR Joint Sessions Workshop, COMPULSORY VOTING: PRINCIPLES AND PRACTICE, Helsinki (2007).

[399] Peter John Loewen et al., Does Compulsory Voting Lead to More Informed and Engaged Citizens? An Experimental Test, 41(3) CANADIAN J. OF POL. SC. 655, 656 (2008).

[400] *Ibid.*, at 666.

[401] Chris Ballinger, *Compulsory Voting: Palliative Care for Democracy in the UK*, Paper Presented at the ECPR Joint Sessions Workshop, COMPULSORY VOTING: PRINCIPLES AND PRACTICE, Helsinki (2007).

[402] Amy King and Andrew Leigh, *Are Ballot Order Effects Heterogeneous,* 90(1) SOCIAL SCIENCE QUARTERLY 71, 73 (2009).

compulsory voting.[403] Concerns about donkey voting led to the introduction of random, instead of alphabetical, ballot ordering from 1984 in the Australian House of Representatives elections.

9.12.11 To conclude, there is no evidence that individuals will seek out more information in a bid to fulfil their voting obligations; and compulsory voting will not necessarily improve the quality of civic engagement.

(ii) <u>Equality: Does compulsory voting ensure the enfranchisement of the weaker classes?</u>

9.13 The participation argument for compulsory voting has an associated equality dimension to it. The argument proceeds on the assumption that voter apathy is more prevalent amongst the weaker, marginalised socio-economic class and thus compulsory voting will ensure that their voices get heard. Thus, compulsory voting was justified in Canada "for boosting electoral turnout amongst the weakest in society";[404] and in Belgium "to avoid upper class citizens putting pressure on uneducated or poor citizens not to vote in the elections".[405] However, such arguments are not applicable in India, where it is the rich, who often do not exercise their voting rights, and whose turnout is often lower than the poor.[406]

(iii) <u>Democracy: Does compulsory voting increase the 'representativeness' of the government or is it constitutionally untenable?</u>

9.14.1 The democratic argument is premised on a substantive notion of democracy where the elected government is truly representative *of* (all) the people, and not just a "self-selecting few". Thus compulsory voting is seen as increasing the "democratic degree" of elected assemblies.[407]

9.14.2 While democratic representativeness is a laudable goal, compulsory voting is not the appropriate means of achieving it. Very simply,

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[403] Jonathan Kelley, and Ian McAllister. 1984. ''Ballot Paper Cues and the Vote in Australia and Britain: Alphabetic Voting, Sex and Title, 48(2) PUBLIC OPINION QUARTERLY 452.
[404] Henry Milner et al., The Paradox of Compulsory voting: Participation does not Equal Knowledge, 8(3) IRPP POLICY MATTERS (2007).
[405] IDEA, *Compulsory voting in Western Europe,* in VOTER TURNOUT IN WESTERN EUROPE, <http://www.idea.int/publications/voter_turnout_weurope/upload/chapter%203.pdf> (*hereinafter* "IDEA, Europe")
[406] Amit Ahuja and Pradeep Chibar, *Why the Poor Vote in India: If I don't Vote, I am Dead to the State,* <http://www.polsci.ucsb.edu/faculty/ahuja/aa/Research_files/Ahuja%20and%20Chhibber%20-%20Why%20the%20Poor%20Vote%20in%20India%3ASCID%20%282012%29.pdf>.
[407] Jason Briggs and Karen Celis, *For and Against: Compulsory voting in Belgium and Britain,* 4(1) SOCIAL AND PUBLIC POLICY REV. 1, 5 (2010).

the government cannot "force-feed" democracy[408] by compelling people to vote, because doing so violates the cornerstone of democracy and our Constitution, which is freedom and individual choice. First, Article 326 of the Constitution makes it very clear that every citizen "*shall be entitled to be registered as a voter at any such election*", thereby providing citizens with an option of not registering themselves as voters. This is buttressed by ss. 62 and 79(d) of the RP Act that expressly talk about the "electoral right" of a person as including the right to "*vote or refrain from voting at an election*". The Supreme Court also talks about the "right" to vote,[409] noting that, "t*he right to vote for the candidate of one's choice is of the essence of democratic polity*."[410]

9.14.3 Secondly, as the absence of the right to vote in the Fundamental Duties prescribed in Part IVA make clear, the Constitution does cast any "duty" on citizens. This is especially important given the government's failure to act on the recommendations of Justice Verma's Committee Report of 1998 and the NCRWC's Report on Fundamental Rights, Directive Principles, and Fundamental Duties to amend Part IVA, Article 51-A to include "*duty to vote at elections, actively participate in the democratic process of governance and to pay taxes.*"[411] At most voting can be considered a civic duty of every citizen; but, to enforce it compulsorily is against the principles of an individual liberty.

9.14.4 Thirdly, compulsory voting violates the freedom of expression guaranteed under Article 19(1) of the Constitution. The Supreme Court has repeatedly recognised that there is a "*fine distinction… between the right to vote and the freedom of voting as a species of freedom of expression.*"[412] Whereas the right to vote is a statutory right conferred *only* on the fulfilment of certain criteria, the actual act of voting ("freedom of voting") is a manifestation of the freedom of expression.[413] Similarly, the Court in the *NOTA* judgment clarified that, "a *positive 'right <u>not</u> to vote' is a part of expression of a voter in a parliamentary democracy and it has to be recognized and given effect to in the same manner as 'right to vote'*".[414]

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[408] Mcmillan, *supra* note 390.
[409] In Lily Thomas v Speaker, Lok Sabha, (1993) 4 SCC 234, the Supreme Court defined voting as "formal expression of will or opinion by the person entitled to exercise <u>the right</u> on the subject or issue." [Emphasis supplied]
[410] PUCL v Union of India, (2003) 4 SCC 399.
[411] Chapter 3, *Fundamental Rights, Directive Principles, and Fundamental Duties*, para 3.40.3 in Ministry of Law and Justice, REPORT OF THE NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION Report of the NCRWC, <http://lawmin.nic.in/ncrwc/finalreport/v1ch3.htm>.
[412] Kuldip Nayar v Union of India, (2006) 7 SCC 1; PUCL v Union of India, (2003) 4 SCC 399; Union of India v Association for Democratic Reforms, (2002) 5 SCC 294, where the Court said *"a voter 'speaks out or expresses by casting vote*."
[413] The Court in the 2003 PUCL judgment further states, "freedom of voting as distinct from right to vote is thus a species of freedom of expression."
[414] PUCL 2013, at para 37.

9.14.5 The Supreme Court and other government functionaries have recognised that voters' refrain from voting on account of various factors such as the poor quality of candidates in the fray;[415] the opportunity cost of foregoing a daily wage, or the forced homelessness due to riots or natural disasters;[416] the absence of an enabling environment due to problems with electoral identity cards, and the difficulty in reaching the polling stations.[417] In such cases, "*the decision taken by a voter after verifying the credentials of the candidate either to vote or not is his right of expression under Article 19(1)(a) of the Constitution*."[418] Thus, coercing citizens to be involved in the democratic process contravenes their freedom of expression, while also reeking of "illiberalism".[419]

9.14.6 Finally, political science perspectives on the complexity of democracies argue that democracies need to accommodate dissent and diversity of views. This includes the option of disengagement, namely "*rights to abstain, to withhold assent, to refrain from making a statement or from participating*" if people believe "*voting is mistaken, undesirable, unnecessary or immoral."*[420]

(iv) Legitimacy: Does compulsory voting increase the legitimacy of elected governments?

9.15.1 The legitimacy argument is connected to the democracy argument above and posits that elected governments have a stronger mandate, and hence, greater legitimacy, when more people (or the entire population) comes out to vote. A corollary of greater participation and political engagement is the increased accountability of elected representatives, which only serves to strengthen the government's responsiveness, and thus legitimacy.[421]

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[415] PUCL 2013, at para 37 states, "A voter may refrain from voting at an election for several reasons including the reason that he does no consider any of the candidates in the field worthy of his vote."

[416] Qureshi, *supra* note 1; Qureshi, *supra* note 367.

[417] *Why ex-Gujarat Guv Kamla Beniwal vehemently opposed compulsory voting?*, BUSINESS STANDARD, 10th November 2014, <http://www.business-standard.com/article/politics/why-ex-gujarat-guv-kamla-beniwal-vehemently-opposed-compulsory-voting-114111000972_1.html>.

[418] PUCL, 2013, at para 19.

[419] Sanjay Hedge, *Gujarat's Compulsory voting Experiment Smacks of Illiberalism,* ECONOMIC TIMES, 16th November 2014, <http://articles.economictimes.indiatimes.com/2014-11-16/news/56137264_1_gujarat-local-authorities-laws-compulsory-voting-municipal-elections>. As Hegde notes, American philosopher Harold Stearns wrote,"*The root of liberalism, in a word, is hatred of compulsion, for liberalism has the respect for the individual and his conscience and reason which the employment of coercion necessarily destroys.*" Harold Stearns, LIBERALISM IN AMERICA: ITS ORIGIN, ITS TEMPORARY COLLAPSE, ITS FUTURE (1919).

[420] Annabelle Lever, *Compulsory Voting: A Critical Perspective*, 40(4) BR. J. OF POL. SC. 897,924, 926 (2010)

[421] Briggs, *supra* note 407, at 6-7.

9.15.2 Nevertheless, such an argument (erroneously) assumes that increased participation results in increased political engagement and that voters will responsibly exercise their new duty to vote. As the "donkey voting" phenomenon in Australia illustrates, compulsory voting can mask electoral apathy and create an "illusion of participation",[422] whereas legitimacy depends on a genuine desire to engage with the system.

(v) <u>Other arguments for and against compulsory voting</u>

9.16.1 Some other arguments espousing compulsory voting highlight the improvement in public awareness and financial benefits because resources generally utilised in convincing people to vote are instead focussed on campaigning on substantive issues. Such opinions fail to consider the cost of raising awareness about a change in the law and the heavy cost of implementing (registration, sending notices, conducting show-cause hearings, adjudicating, and appeals) and enforcing (based on the yet-undefined penalty) compulsory voting provisions.

9.16.2 More importantly, however, they fail to consider that compulsory voting hides the problem (and reasons) for voter disengagement, instead of confronting it. Various courts and committees have alluded to the causes for voter disillusionment (discussed above), and the need to focus on education and awareness campaigns that emphasise the importance of voting as a *civic* duty. As the then Law Minister of State, Mr. K. Venkatapathy noted while arguing against Mr. Rawat's Compulsory Voting Bill in Parliament in 2003:

> *"… such a participation [in the democratic process] should better come out from the people voluntarily rather than by coercion or allurements. A sense of duty in this regard should inform the people on their own and it is this sense of duty which should be the motivating factor in impelling people to turn up at the polling stations in larger numbers."*

9.16.3 Instead of seeking a quick fix, or an ornamental change in the law, politicians should pursue a strong reform agenda focusing on decriminalisation of politics; inner party democracy; campaign finance reform, including the removal of black money; and introducing accountability of elected representatives. Thus, instead of seeking persuasion by compulsion, the government should seek persuasion by education and action.

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[422] *Ibid.*, at 6.

9.16.4 Interestingly, many have suggested incentive schemes such as tax rebates or financial benefits[423] to boost electoral participation as an alternative to criminalising non-voting. Besides being financially burdensome and hard to administer, introducing money in the voting calculus fundamentally changes the nature of the right to vote, and the civic duty of voting. As Michael Sandel persuasively argues money "crowds out" and erodes important non-market norms of democratic participation and common good, which should guide our decision to vote.[424]

9.16.5 This section has analysed the arguments in favour of and against compulsory voting to conclude that the latter outweigh the former. Why then is it common in some parts of the world? The next section analyses compulsory voting from a comparative perspective to conclude that the phenomenon is not as pervasive as it appears and international models will not work in India.

C. Compulsory Voting: A Comparative Perspective

9.17 Compulsory voting is currently present in the statute books in 28 countries,[425] although such a figure does not give a true picture of the level of enforcement, which is even lower. Thus, most studies estimate that around 14 countries current enforce compulsory voting provisions. These include many small countries such as Belgium, Liechtenstein, Luxemburg, Nauru, and one canton in Switzerland; and others such as Australia, Brazil, Ecuador, Singapore, Peru, and Uruguay.[426] In fact, Dr. Lisa Hill and Jonathon Louth talk about how the list of countries currently enforcing compulsory voting is reduced to six, if limited to those with a "history of well-established democratic norms".[427]

9.18 Nor does the 28 countries figure indicate the trend towards which countries globally are moving. For instance, the fact that both Italy (1993) and the Netherlands (1967) have abolished compulsory voting; and others such as Liechtenstein and Greece have moved from a strict to a not-strict or non-enforcement of compulsory voting laws respectively has lead IDEA to question:

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[423] RFGI, *surpa* note 380; NCRWC Consultation Paper, *supra* note 93, at 17.1. In their consultation paper, NCRWC additionally recommend "small incentives" for non-tax payers in "*in the matter of rations, speed of granting certain licenses, passports, etc…. The revenue lost as a result could be treated as partial state funding of the electoral process. Such policies might help push electoral turnout up.*"

[424] Michael Sandel, WHAT MONEY CAN'T BUY 112-113 (2013).

[425] IDEA Compulsory voting, *supra* note 389.

[426] Id.

[427] Dr. Lisa Hill and Jonathoun Louth, *Compulsory voting Laws and Turnouts: Efficacy and Appropriateness,* (2004), <http://www.adelaide.edu.au/apsa/docs_papers/Aust%2520Pol/Hill%26Louth.pdf>, at 12.

> *"Is compulsory voting a dying phenomenon" in western Europe? Perhaps in a few years it will only be kept as a 'ghost' in countries' constitutions, without any intention to enforce it."*[428]

9.19 Most recently, Fiji abandoned compulsory voting in 2014, Chile in 2012, and Austria (the last remaining Tyrol district) abolished it in 2004. Others such as Egypt, Greece, Mexico, Paraguay, and Thailand have stopped enforcing it.[429] When Netherlands abolished compulsory voting in 1967, it did so citing three reasons – first, the right to vote was a right, which every citizen could decide whether to exercise or not. Secondly, sanctions against defaulters were hard to effectively enforce in practice; and finally, tasking parties with the responsibility of attracting voters would ensure that the resultant turn out was a better reflection of voters' interest and engagement with politics.[430]

9.20 Amongst the countries still enforcing compulsory voting provisions, most (excluding Australia where defaulters pay a fine) impose strict penalties. Thus, in Peru, voters must carry their stamped voting card to obtain certain goods and social services from some public offices.[431]

9.21 In Brazil, failure to vote results in the imposition of a fine. Failure to pay the fine however, entitles the State to impose a range of sanctions including being prohibited from applying for any public position; from receiving a salary from a public post; from sitting certain professional exams; and from obtaining a passport, identity card, certain types of loans, and teaching licenses in public educational institutions[432]

9.22 In Belgium, failure to vote in four elections within 15 years results in the disenfranchisement for ten years. But even apart from that, non-voters might find it difficult to get jobs in the public sector; or if they are civil servants, be disentitled to any promotion.[433]

9.23 As discussed above, penalising non-voters by penalising their poverty (such as in Brazil for failure to pay the fine) or restricting their access to government services and benefits (such as in Belgium and Peru) are extremely harsh measures and will not work in the Indian context, with its vast poverty and unemployment. Conversely, if the fine is too low, then it will only affect the poor and not change the behaviour of the rich, who do constitute a

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[428] IDEA, Europe, *supra* note 405, at 30.
[429] IDEA Compulsory voting, *supra* note 389.
[430] IDEA, Europe, *supra* note 405, at 26 and 29.
[431] IDEA Compulsory voting, *supra* note 389.
[432] Leticial Chelius, *Brazil: Compulsory voting and renewed interest amongst external voters*, <http://www.idea.int/publications/voting_from_abroad/upload/chap5-brazil.pdf> at 129.
[433] IDEA, Europe, *supra* note 405, at 28; IDEA Compulsory voting, *supra* note 389.

sizeable mass of the non-voting qualified voter population. In both cases, however, the result will be many court cases and delays in an already creaking judicial system. For all these reasons, comparative examples do not provide any justification for the imposition of compulsory voting in India.

D. Recommendation

9.24 Thus, the Law Commission does not recommend the introduction of compulsory voting in India and in fact, believes it to be highly undesirable for a variety of reasons described above such as being undemocratic, illegitimate, expensive, unable to improve quality political participation and awareness, and difficult to implement.

CHAPTER X

ELECTION PETITIONS

A. History

10.1 Article 329(b) of the Constitution provides for the election petition to be presented to the authority prescribed by law.

10.2 Initially, Article 324(1) of the Constitution specified that ECI shall be vested with the authority for appointing election tribunals to decide election-related disputes. Consequently, section 81 of the RPA required all election petitions to be presented to the ECI, which had the power under section 86 to appoint election tribunals. In 1956, the composition of these tribunals was changed from three members, comprising sitting or retired district judges or advocates with 10 years standing to a single member, being a sitting or retired district judge. Nevertheless, the ECI found this system ineffective, given the inordinate delay in the trial of election petitions, caused partly due to the regular challenge of the tribunals' interlocutory orders before the High Courts *vide* Articles 226-227, and sometimes even before the Supreme Court.[434]

10.3 This led to the amendment of Article 324(1) and sections 81 and 86, RPA by the Constitution (Nineteenth Amendment) Act, 1966 and the Representation of People (Amendment) Act, 1966 respectively to remove the ECI's jurisdiction to hear election petitions and vest it with (ordinarily) a single judge of the High Court[435] *vide* the newly inserted section 80A, RPA. The aim was to expedite the disposal of election petitions, as is evident from section 86(7), which envisages an endeavour to conclude the trial within six months. Section 86 provides that the Chief Justice will refer the election petition presented before the High Court to the judge or one of the judges assigned by them for the 'trial' of election petitions. Although in 1975 the Constitution was further amended to insert Article 329A to stipulate that election petitions relating to the Prime Minister or the Lok Sabha Speaker would be filed before the ECI and tried by a special authority consisting of a sitting Supreme Court judge, Article 329A was deleted in 1978.[436]

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[434] Mendiratta, *supra* note 161, at 1053-1054. See also Hari Vishnu Kamath v Ahmed Ishaque, 10 ELR 216 on the issue of interlocutory challenge and Article 329(b).

[435] In Krishnan Gopal v Prakash Chandra, AIR 1974 SC 209, the Supreme Court held that a retired High Court judge, requested by the Chief Justice of the High Court to serve as judge under Article 224A, and whose appointment was consented to by the President, could also hear election petitions. However, the Supreme Court expressed a preference for a permanent judge of the High Court.

[436] Mendiratta, *supra* note 161, at 1055.

B. Formalistic Nature of the Current Procedure of Filing a Petition

10.4 Unfortunately, the filing and trial of election petitions remains a very formalistic procedure and moreover, differs amongst High Courts. The matter is made worse because some states, such as Maharashtra and Goa, have a common High Court; whereas some High Courts have different benches in the same State. Additionally, different High Courts have different rules prescribing the bench to which the election petition can be filed – whether the Principal Seat of the High Court, or the bench within whose exclusive jurisdiction the particular contested election was conducted.

10.5 For instance, Mendiratta in his book talks about how an election petition filed before the Lucknow bench of the Allahabad High Court relating to an election in Rae Bareli (which fell under the principal seat of the High Court's jurisdiction) was dismissed as being non-maintainable because it was not filed in constituency in which the election was conducted, namely Rae Bareli. Moreover, even the application for transferring the petition to Rae Bareli was dismissed as non-maintainable because of the exclusive jurisdiction of both benches and the expiry of the limitation period.[437] Conversely, in Madhya Pradesh for instance, all election petitions are to be filed before the principal Bench in Jabalpur. Consequently, the Gwalior Bench of the High Court returned an election petition filed challenging an election in Gwalior; and when the petition was filed the next day before the principal Bench in Jabalpur, it was dismissed as being time-barred. The Supreme Court upheld this decision.[438]

10.6 The time limit within which an election petition has to be presented under section 81(1), RPA is 45 days and the petition need not be presented only to a judge in open court. It can also be presented to the administrative or ministerial staff of the High Court on the same day.[439] Nevertheless, any delay in presenting the petition will result in its summary dismissal *vide* section 86,[440] unless the limitation period expires during the vacation time of the Court.[441] In fact, the High Courts do not have the

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[437] *Ibid*, at 1055.
[438] Devendra Nath Gupta v Returning Officer, Gwalior Parliamentary Constituency, C.A. No. 7480 of 1997 decided by the Supreme Court on 26.11.1999. See also Mendiratta, *supra* note 161, at 1055.
[439] Raj Kumar Yadav v Samir Mahaseth, (2005) 3 SCC 601; Kishore Jha v Mahavir Prasad, AIR 1999 SC 3558.
[440] KV Rao v BN Reddi, AIR 1969 SC 872.
[441] Simhadri Satya Rao v M Budda Prasad, (1994) Supp 1 SCC 449; Hari Tripathi v Shiv Harsh, [1976] 3 SCR 308. However, see Mohd Ali v Azad Mohd, AIR 1999 SC 3429 when the election petition filed on the reopening of the Punjab and Haryana High Court was dismissed as time barred because the limitation period expired in the summer vacation *and* the Court

discretion, ordinarily accorded to them *vide* section 5 of the Limitation Act, to condone the delay in filing the petition. This ruling was premised on the idea that the RPA is a self-contained code to which the provisions of the Limitation Act do not apply.[442]

10.7 Regular rules of impleading proper parties do not apply to election petitions under the RPA. The Supreme Court in *Jyoti Basu v Debi Ghosal*[443] rejected the petitioner's impleadment of Jyoti Basu for his alleged collusion with the returned candidate to commit certain corrupt practices on the ground ss. 82 and 86(4) only permitted candidates as respondents to an election petition. The Court's rationale was that the concept of proper parties "is and must remain alien to an election dispute" under the RPA because such disputes must be confined between the petitioner and candidates of elections. Thus, any person, including the ECI or other election authorities, even if proper parties, cannot be joined as respondents.[444]

10.8 On the other hand, non-joinder of a candidate who is a necessary party to the election petitions will result in its summary dismissal *vide* section 86(1) and the provisions of the CPC, permitting the subsequent impleadment of parties, cannot be used as a curative method. Thus, once there is a non-joinder of a necessary party, the election petition *cannot* be amended in any manner to remedy the defect.[445] This rule applies even when there is an allegation of corrupt practice against a candidate who has not been joined in the petition as required by section 82(b),[446] regardless of whether the respondent(s) have condoned this non-compliance or have failed or been delayed in pointing out this defect.[447]

10.9 Section 86(1), RPA also statutorily obliges the High Court to summarily dismiss an improperly presented election petition (the rules of which vary according to each High Court) under sections 81 or 82. Election petitions *have* to be presented by the petitioner *personally* and cannot be presented by or through their advocates.[448] Furthermore, section 81(3) necessitates each petition to be accompanied by as many copies as there are

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had issued a notification declaring that it would remain open to hear election petitions in the summer.

[442] Hukumdev Narain v Lalit Narain Mishra, AIR 1974 SC 480; KV Rao v BN Reddi, AIR 1969 SC 872.

[443] AIR 1982 SC 983.

[444] Michael Fernandes v CK Jaffer Sharief, AIR 2002 SC 1041 and B Sundra Reddy v ECI, (1991) Supp 2 SCC 624 relying on their earlier decision in Jyoti Basu v Debi Ghosal, AIR 1982 SC 983.

[445] Mohan Raj v Surendra Taparia, AIR 1969 SC 677; K Kamaraja Nadar v Kunju Thevar, AIR 1958 SC 687. See also Mendiratta, *supra* note 161, at 1070.

[446] Manohar Joshi v Nitin Patil, AIR 1996 SC 796; NE Horo v Jahan Ara Singh, AIR 1972 SC 1840.

[447] Udhav Sing v Madhav Rao Scindia, AIR 1976 SC 744.

[448] GV Sreerama Reddy v Returning Officer, (2009) 7 SCJ 432.

respondents, and these 'spare' copies have to be filed at the time of filing the election petition, or at the very least within the stipulated 45 days to avoid summary dismissal under section 86. In *Satya Narain v Dhuja Ram*,[449] the Deputy Registrar of the High Court gave the petitioner certain time, which went beyond the limitation period, to file the required number of copies of his petition. However, despite filing the additional copies within the time limit prescribed by the Deputy Registrar, the High Court, and subsequently the Supreme Court dismissed the election petition *in limine*, ruling that the Deputy Registrar lacked the requisite authority to grant time. In addition, section 81(3) requires the petitioner to attest each copy of the election petition under their own signature as a true copy. Any signature by the petitioner's advocate, instead of the petitioner, results in the *in limine* dismissal of the election petition.[450] Similarly, having served a copy of the election petition to the respondent with one extra page than was presented before the High Court, the same cannot be subsequently rectified and results in the *in limine* dismissal of the petition.[451] Subsequently however, the Supreme Court has relaxed the rigid compliance with section 81(3) noting that some defects in the supply of true copies, such as the absence of stamp/seal/signature or attestation by the notary, are curable.[452]

10.10 Section 86 of the RPA also obliges the High Court to summarily dismiss an election petition for non-compliance with section 117's requirement of a security deposit of Rs. 2000. The High Court is not permitted to reduce or dispense with the amount of the deposit.[453] Nor does section 117 statutorily permit the Court to grant an extension, as it deems reasonable, to give the petitioner enough time to collect the requisite Rs. 2000 as security for costs to ensure compliance.

C. Appeal Procedure

10.11 Section 116A, RPA expressly provides for the right to appeal, both on a question of law and fact, against the High Court's order disposing an election petition under sections 98-99. This includes an appeal against the High Court's summary dismissal of an election petition under section 86(1), RPA,[454] although no appeal against an interim or final order can be filed before a Division Bench of the High Court.[455] Being the first court of appeal, the Supreme Court may reappraise the evidence or reverse a factual finding if

[449] AIR 1974 SC 1185.
[450] Sharif ud Din v Abdul Gani Lone, AIR 1980 SC 303.
[451] Rajendra Singh v Usha Rani, AIR 1984 SC 305. See also Mithilesh Pandey v Baidyanath Yadav, AIR 1984 SC 305.
[452] Ram Prasad Sarma v Mani Kumar Subba, AIR 2003 SC 51.
[453] *Charan Lal Sahu v Nandkishore Bhatt*, 53 ELR 284. See also Mendiratta, *supra* note 161, at 1082.
[454] Explanation to Section 86(1), RPA.
[455] Upadhyaya Devshankaran v Dhirendrasinh Solanki, AIR 1988 SC 915.

it finds that the High Court has improperly or (gravely) erroneously appraised or appreciated the evidence,[456] thus requiring the apex Court to correct the injustice.[457]

10.12 The statutory right to appeal was introduced pursuant to the 1966 amendment to the RPA. Before that, the decision of the election tribunal was final and conclusive under s. 105, RPA, although in 1956, section 116A was introduced to allow appeals to High Courts.[458] The position today is that a Special Leave Petition before the Supreme Court can only be filed against the High Court's interlocutory,[459] and not its final order.[460] Additionally, the Supreme Court can summarily dismiss an election appeal, although such powers should only be exercised in exceptional circumstances.[461] Ordinarily though, the appeal is treated as a matter of right. Section 116A(2) also specifies a limitation period of 30 days, although the Supreme Court may condone the delay in filing the appeal if "*if it is satisfied that the appellant had sufficient cause for not preferring the appeal within such period*."

10.13 Section 116B of the RPA provides for a stay of the operation of the order of the High Court under appeal. In *Indira Gandhi v Raj Narain*,[462] the Supreme Court clarified the permissible conditions of stay, when it suspended the disqualification imposed upon the appellant as a consequence of the High Court's order *vide* section 8A; and permitted her to sign the Parliamentary Register, and attend the Lok Sabha's sessions on the condition that she would not participate in the House's proceedings nor vote nor draw remuneration in her capacity as MP. However, for all other purposes, the appellant was to remain an MP.[463]

D. Drawbacks in the Present System

10.14 There are three primary drawbacks in the current system of filing election petitions, namely the non-uniform and formalistic procedure for presenting the petition, the inordinate delay in the trial of the election petition,

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[456] Pradip Buragohain v Pranati Phukan, (2010) 5 SCJ 815; Gajanan Bapat v Dattaji Meghe, AIR 1995 SC 2284
[457] Surinder Singh v Hardial Singh, (1985) 1 SCC 961.
[458] Mendiratta, *supra* note 161, at 1149.
[459] *Ibid.*, at 1149-1150.
[460] Dipak Ruhidas v Chandan Sarkar, AIR 2003 SC 3701.
[461] Bolin Chetia v Jogadish Bhuyan, AIR 3005 SC 1872.
[462] (1975) 2 SCC 159.
[463] Additionally, given that the appellant was the Prime Minister, the Supreme Court also said, "Independently of the restrictions under para III on her Membership of the Lok Sabha, her rights as Prime Minister or Minister, so long as she fills that office, to speak in and otherwiseto take part in the proceedings of either House of Parliament or a joint sitting of the Houses (without right to vote) and to discharge other functions such as are laid down in Articles 74, 75, 78, 88 etc., or under any other law, and to draw her salary as Prime Minister, shall not be affected or detracted from on account of the conditions contained in this stay order."

and the system of appeals on any question of law or fact that renders an appeal almost automatic.

10.15 *First*, the current procedure of filing election petitions differs amongst various High Courts – it varies from requiring the petitioner to file the petition before the Principal Seat of the High Court or the bench within whose exclusive jurisdiction the particular contested election was conducted. This issue is particular to those states, which share a common High Court (such as Maharashtra and Goa) and those Courts that have different benches, such as Tamil Nadu. The difference in procedures was brought out above, by citing the examples of the Allahabad and Madhya Pradesh High Courts from Mendiratta's book. This is sought to be remedied by amending s. 80A, RPA to provide that in such instances, the election petition shall be filed before the Principal Seat of the relevant High Court, while retaining the High Courts' existing discretion to decide to shift the hearing to another bench in the interests of justice or convenience.

10.16 *Secondly,* on the parties to the petition, s. 82 currently requires a petitioner, who is claiming a declaration that they or any other candidate had been duly elected, to implead all the contesting candidates in the petition. However, to implead those candidates who had lost their security deposits, and hence, have no chance of being declared duly elected, only constitutes a waste of time and resources of both the petition and these candidates. Hence, section 82 on the parties to the petition should be amended to reflect this concern.

10.17 *Thirdly,* the final formalistic nature in the trial of the election petition is evident in s. 86's mandate to summarily dismiss the election petition for non-compliance with the provisions of s. 117, RPA on the security of costs. The rationale behind summary dismissal for non-compliance with the forty-five day time limit under s. 81 and the requisite number of copies under s. 83 is to ensure speedy trial and disposal of the petition. For instance, until the petitioner does not submit as many copies of the petition as respondents, as required under s. 83, the High Court is unable to issue notice to these respondents and hence trial cannot commence. Similarly, granting unfettered discretion to extend the time period beyond the stipulated the forty-five day time limit to file the election petition under s. 81 can lead to interminable delays. However, unlike these instances, the election trial can continue even if the petitioner delays in filing the security for costs. Therefore, s. 86 should not permit a summary dismissal on those grounds and instead s. 117 should be amended to allow the Court to grant an extension of time, as it deems reasonable, to comply with s. 117 and dismiss the petition *only* on the failure to deposit the security for costs within this extended period. However, it is pertinent to note that currently s. 117 provides only for a deposit of Rs. 2000,

which is too low and has not been amended since 1996. Hence, the deposit amount should also increase to Rs. 10,000 in line with inflation.

10.18 *Fourthly,* currently election petitions are inordinately delayed, a fact recognised by the 4th ARC Report on Ethics, which stated that "*such petitions remain pending for years and in the meanwhile, even the full term of the house expires thus rendering the election petition infructuous.*"[464]

10.19 To understand the extent of delay in the conclusion of trial, it is instructive to look at some facts and figures. The dissolution of the 15th Lok Sabha in February 2014 rendered infructuous 25 election petitions that were pending before the High Court challenging the poll victories of many MPs.[465] These petitions, required to be filed within 45 days of the election results under s. 81, RPA, and endeavoured to be tried as expeditiously as possible, within six months under s. 86(7), were in fact pending for nearly five years. Nevertheless, based on RTIs filed with the ECI, the Economic Times reported that of the 110 election petitions filed after the 2009 Lok Sabha Elections, *none* had been decided within six months. In at least 21 petitions, the trial was concluded only after three years. The Economic Times also found that in many cases, the appeal was stalled in the Supreme Court, thus denying the petitioner efficacious relief.[466]

10.20 The NCRWC in its 2001 presented the following table regarding the pendency and disposal of election petitions:[467]

Election held	**Number of election petitions filed**	**Number of election petitions pending**	**Percent pending (in %)**
Lok-Sabha 1999	64	62	96.88%
Lok-Sabha 1998	49	13	26.53%
Lok-Sabha 1996	52	13	25%
Lok-Sabha 1991	86	15	17.44%
State Assemblies 2000			
Bihar	12	12	100%
State Assemblies 1999			
Andhra Pradesh	25	25	100%
Karnataka	26	26	100%
Maharashtra	32	32	100%
Arunachal Pradesh	2	2	100%

[464] ARC Report, *supra* note 119, at 16.
[465]Sanjay Patil, *5 petitions challenging election of MPs, including P Chidambaram to stay 'alive,* ECONOMIC TIMES, 28th February 2014, <http://articles.economictimes.indiatimes.com/2014-02-28/news/47774290_1_election-petition-election-results-chief-election-commissioner>.
[466] Id.
[467] NCRWC Consultation Paper, *supra* note 93, at para 15.1.

State Assemblies 1998			
Madhya Pradesh	42	32	76.19%
Rajasthan	11	11	100%
Delhi	4	4	100%
Meghalaya	2	2	100%
Himachal Pradesh	10	5	50%
Gujarat	12	7	58.33%
State Assemblies 1996			
Assam	11	4	36.36%
Haryana	20	5	25%
Kerala	17	11	64.71%
Tamil Nadu	8	6	75%
Pondicherry	3	3	100%
West Bengal	22	17	77.27%

10.21 Part of the problem lies in the continuous adjournments sought (despite the stipulations in section 86(6), RPA), the low priority accorded by the High Court in conducting and concluding the entire trial, and the almost automatic appeal (on both questions of fact and law) and stay application filed against a High Court's interim or final order. This results in cases such as Sushma Swaraj's, whose 2009 Lok Sabha election was challenged by Raj Kumar Patel. Ms. Swaraj subsequently challenged the maintainability of the petition, and it took the High Court approximate four years to reject Ms. Swaraj's application in December 2013. Pursuant to this, she filed an interim application (an SLP) before the Supreme Court,[468] which was finally dismissed as being infructuous because of the dissolution of the Lok Sabha in May 2014.[469] Similarly, Congress MLA, P. Veldurai's election to the Tamil Nadu Assembly (Cheranmahadevi constituency) in 2006 was set aside by the Supreme Court in 2011, five years later when he was campaigning for the next assembly elections in Tamil Nadu.[470]

10.22 These instances and the above facts reveal how inordinate delays defeat the purpose of filing an election petition to challenge the poll victory of the returned candidate. This in turn renders the right to vote illusory when election petitions, the only remedial mechanism provided to the ordinary voter against corrupt practices, are decided or dismissed after a majority or the entire assembly/parliamentary period has passed. Such a delay is detrimental to democracy, undermines the faith of the people in the electoral

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[468] SC stays proceedings against Sushma Swaraj on poll petition, ECONOMIC TIMES, 13th February 2014, < http://articles.economictimes.indiatimes.com/2014-02-13/news/47305406_1_poll-petition-election-petition-rajkumar-patel>.

[469] Sushma Swaraj v Raj Kumar Patel, SLP (Civil) No. 2951/2014 on 5th May 2014.

[470] P.H. Paul Manoj Pandian v Mr. P. Veldurai, Civil Appeal No. 4129/2009 decided by the Supreme Court on 13th April 2011. See also *Settle Election Disputes Quickly,* THE HINDU, 8th June 2012, <http://www.thehindu.com/opinion/editorial/settle-election-disputes-quickly/article3501800.ece>.

and judicial process and therefore, requires courts to give election petitions absolute priority. However, the Goswami Committee's proposal for ad hoc judges to clear the backlog does not address the underlying causes for delay and hence is not preferable.

10.23 One method of achieving this could be through an amendment to the law requiring strict abidance with the six-month stipulation in the RPA and to set up a permanent "election bench" to only deal with election petitions, a modification of the British 'election court' system described below. The delay is also partly a result of the overburdening of judges with other work, and the pressure caused by the pendency, which results in High Court judges reducing the priority in conducting election trials, since they take time and effort. Similar recommendations were made to constitute "special courts" or "election benches" designated for election petitions in the High Court by the NCRWC;[471] "special tribunals" under Article 323B comprising a High Court judge and a senior civil servant were recommended by the 4th ARC.[472] The Goswami Committee on the other hand endorsed the appointment of ad hoc judges to relieve the regular judges from their normal duty so as to entrust them with the hearing of the election petitions.[473] Moreover, similar to the Law Commission's recommendations to ensure expedited disposal under the Arbitration Act and the Commercial Courts Act in its 246th and 253rd Report respectively, the RPA should be amended to provide for daily hearings, minimum adjournments, time limits for filing written statements and case management.

10.24 In this context, it may be mentioned here that the Supreme Court of India, in a judgment pronounced on 27 February 2015, in the matter of *Mohd. Akbar vs. Ashok Sahu & Ors*[474] deemed it desirable to have dedicated Benches created by the Chief Justice of each High Court to deal with the election petitions exclusively. As the tenure of the members of the Parliament and Legislative Assemblies are relatively short, the Supreme Court felt it desirable that the disputes relating to election are resolved as early as possible. The Supreme Court attributed various reasons for this, such as:

> 12. ……..
>
> (i) *"Membership of the Legislative bodies under the scheme of our constitution is a sacred responsibility. The continuance of any member in such bodies who secured his election to such a body by legally impermissible means even for a day is most*

[471] NCRWC Report, *supra* note 13, at para 4.13.2.
[472] ARC Report, *supra* note 119.
[473] Goswami Committee Report, *supra* note 113, at Chapter IX, para 1.2.
[474] Civil appeal No. 2538-40 of 2015, arising out of SLP(Civil) Nos. 2487-2489 of 2015.

undesirable. Such continuance affords an opportunity to such a member to take part in the law making process affecting the destinies of the people.

(ii) Even from the point of view of the contesting candidates, unless the rights and the obligations are decided within a reasonable time, the adjudication and the consequences of the adjudication may eventually remain on paper without any tangible effect insofar as the participation of such parties in the legislative process.

13. However, we are sad to state that invariably the resolution of election disputes in this country takes unacceptably long periods in most of the cases. Very rarely an election dispute gets resolved during the tenure of the declared candidate reducing the adjudicatory process into a mockery of justice. Such delay coupled with a right of appeal to this Court makes the whole process of adjudication a task in a good number of cases. The reasons are many, we will only mention few:

(i) …..
(ii) …..
(iii) The absence of dedicated Benches in the High Court for resolution of the election disputes is another factor which contributes enormously to the delay in the adjudicatory process."

10.25 *Fifthly*, on a related note, while efforts at reducing delay focus on expediting trial, there is no regulation of the time limit within which courts have to pass an order after the conclusion of arguments. This is no different in the RPA and thus, for the first time, the Law Commission is recommending such a time limit.

10.26 *Sixthly*, the delay in the conclusion of trial extends to the delay caused by the inevitable filing of appeal in the Supreme Court, both as a regular appeal on fact and law provided under s. 116A and an interlocutory appeal filed as an SLP. The order of the High Court is subsequently stayed, permitting the returned candidate to remain an MP/MLA subject to certain restrictions. In many cases as noticed above, the petition finally becomes infructuous with the dissolution of the Parliament or Legislative Assembly. Hence, s. 116A has to be amended to remove any appeal on fact, and to remove the unfettered discretion of the courts in accepting an appeal filed after limitation.

10.27 *Finally*, it is difficult to reform the current system of election trials unless there is adequate information available on the extent of the problem – the number of trials pending, the average time spent in concluding a trial and in hearing the appeal, any courts with best practices etc.

E. Comparative Practices

10.28 The IDEA Institute has developed a set of guidelines on the conduct and challenge of elections reproduced below:

- *"The legal framework should provide that every voter, candidate and political party has the right to lodge a complaint with the competent electoral body or court when an infringement of electoral rights is alleged to have occurred.*
- *The law must require that the appropriate electoral body or court render a prompt decision to avoid the aggrieved party losing his or her electoral right.*
- *The law must provide a right of appeal to an appropriate higher level of electoral body or court with authority to review and exercise final jurisdiction in the matter. The decision of the court of last resort must be issued promptly.*
- *The legal framework should provide for timely deadlines for the consideration and determination of a complaint and the communication of the decision to the complainant."*[475]

10.29 The Venice Commission or the European Commission for Democracy through Law is another international body dealing with constitutional law, including election related procedures. More specifically, it is the independent consultative body of the Commission of Europe with independent experts as members. Item II.3.3 of the *Venice Commission's Code of Good Practice in Electoral Matters* stipulates the primary principles governing the process for filing an election petition to challenge an election, or for failure to comply with the electoral law. On the question of challenge, the Code states:

> *"If the electoral law provisions are to be more than just words on a page, failure to comply with the electoral law must be open to challenge before an appeal body. This applies in particular to the election results …. There are two possible solutions:*
>
> - *appeals may be heard by the ordinary courts, a special court or the constitutional court;*
> - *appeals may be heard by an electoral commission… the commissions are highly specialised whereas the courts tend to be less experienced with regard to electoral issues. As a precautionary measure, however, it is desirable that there should be some form of judicial supervision in place, making the higher commission the first appeal level and the competent court the second."*

10.30 The Code further emphasises the importance of keeping the time limits to lodge appeals and issue rulings as short as possible, keeping the procedure simple, eliminating formalism to "avoid decisions of

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[475] IDEA, *International Electoral Standards: Guidelines for reviewing the legal framework of elections*, <http://www.idea.int/publications/ies/upload/electoral_guidelines-2.pdf>, at 93-94.

inadmissibility", granting wide standing, clearly specifying the jurisdiction of different courts/tribunals and the appeal powers.[476]

10.31 Finally, the third international body regulating the resolution of election disputes is the Office for Democratic Institutions and Human Rights (*hereinafter* "ODIHR"), the specialist institution in the Organisation for Security and Cooperation in Europe dealing with election matters and election observations. In its *Resolving Election Disputes* report, the ODHIR makes the following observations with respect to the prompt resolution of disputes:

> *"Considering that the conduct of an election requires prompt decisions and actions within a pre-determined timeframe, the procedures governing election disputes should differ from those provided for general civil disputes. This could be reflected in shorter deadlines and a single appeal process, which can be justified so long as sufficient time is provided to file complaints and appeals… For each phase or facet of the electoral process (such as voter registration or the validity of the candidatures), the electoral law should expressly and systematically set deadlines for filing complaints and appeals by which either the courts or the electoral bodies must reach a decision."*

10.32 ODIHR lays down a time period of two months to determine all complaints and appeals because of its emphasis on ensuring that election outcomes are not delayed and recognises the ability to challenge election outcomes as an arguably integral part of the right to free elections under Article 3 of the First Protocol to the ECHR.[477] The ODIHR in addition delineates certain general principles along the lines articulated above.

10.33 Apart from these international principles, it in instructive to look at the system in a similar parliamentary democracy, namely the United Kingdom. Election disputes in the UK are resolved by an election petition process before an election court, which comprises two judges of the Queen's Bench Division, who are on rota for the trial of parliamentary election petitions. The election court has the same jurisdiction, power and authority as the High Court; it conducts a full trial, including determining the prevalence of corrupt practices, concluding with a certified determination to the Speaker of the

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[476] European Commission for Democracy through Law, *Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report*, Adopted by the Venice Commission at its 52nd Session, October 2002, CDL-AD(2002)023rev-e, at 29-31 < http://www.venice.coe.int/webforms/documents/CDL-AD%282002%29023rev-e.aspx>.

[477] ODIHR, *Resolving Election Disputes in the OSCE Area: Towards a Standard Election Monitoring System*, OSCE, (2000), <http://www.osce.org/odihr/elections/17567?download=true> at 9-13.

House of Commons.[478] The House of Commons is required to give effect to the election court's decision.

10.34 The procedure for challenging an election in the UK differs from India in the following significant aspects:[479]

- *"The election court is not a "standing" court or a division of the High Court permanently in existence. Instead it is a temporary court (usually) constituted in the constituency where the particular election was conducted,[480] and once it has concluded its task of deciding the petition, the election court cannot revisit or add to its decision subsequently.[481]*
- *The returning officer is deemed to be a respondent to the election petition if the administration of the election is under question, although they are not allowed to bring a petition.[482]*
- *The Senior Master of the Queen's Bench Division fixes security for costs, although usually the initial cost of bringing a parliamentary election petition is over £5,000.[483]*
- *The election petition must be filed within 21 days of the date of return, although there is "limited power to extend [this] time" period.[484] Similar to India, courts have regarded compliance with time limits, formal requirements and security for costs as "mandatory", with no discretion to extend time (under the Civil Procedure Rules) or relax the requirements even under exceptional circumstances.[485] Nevertheless, in a case concerning the extension of time under the Election Petition Rules (instead of the 1983 RPA), the High Court granted the same citing the disproportionate relation of mandatory time limits to the legitimate aim of securing speedy redress of election disputes.[486]*

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[478] UK Law Commission, *Electoral Law in the United Kingdom,* SCOPING CONSULTATION PAPER, (June 2012), at para 4.8, *(hereinafter* "LCI UK"), <http://lawcommission.justice.gov.uk/docs/electoral_law_scoping_consultation.pdf>.
[479] *Ibid.* at chapter 4.
[480] Section 123(3) of the UK Representation of Peoples Act, 1983 (*hereinafter* "UK RPA").
[481] R v Cripps ex parte Muldoon, [1984] QB 686
[482] The Electoral Commission, *Changing Elections in the UK,* September 2012, at 5 (*hereinafter* "EC UK"), <http://www.electoralcommission.org.uk/__data/assets/pdf_file/0010/150499/Challenging-elections-in-the-UK.pdf>.
[483] Rule 4 of the Election Petition Rules 1960; Section 136, UK RPA. See also LCI UK, *supra* note 478, at paras 4.32 and 4.33.
[484] Section 122, UK RPA. Also see LCI UK, *supra* note 480,at para 4.33.
[485] Williams v The Mayor of Tenby, (1879-80) LR 5 CPD 135; Absalom v Gillett, [1995] 1 WLR 128 at p 128; *Ahmed v Kennedy*, [2003] 1 WLR 1820 at [23]. See also LCI UK, *supra* note 478, at para 4.35.
[486] Miller v Bull, [2009] EWHC 2640 (QB), [43], [68]-[82], [92]-[94].

- *No appeal can be filed on a question of fact, although questions of law can be appealed via a "special case" to the High Court.*[487] *A judicial review is also available for any error in law.*[488]
- *The election court has a mixture of inquisitorial (it can call and examine witnesses unilaterally) and quasi-criminal (the role of the Director of Public Prosecutions and the court's duty to report corrupt or illegal practices) characteristics."*

10.35 In a bid to simply and expedite the process of challenging the electoral process or alleging that candidates committed electoral offences, which can take up to two years to decide,[489] the UK Election Commission assessed the election challenge procedure on two grounds – accessibility and transparency; and the proceedings – promptness, sanctions, and appeal. Along with the Law Commission, it has made the following recommendations:

On accessibility and transparency,[490]

- *Locus standi* should be granted widely to facilitate the challenge of election outcomes and the UK RPA, 1983 should be amended to clarify the grounds of challenge and the scope of the election court's jurisdiction.[491]
- Challenge procedures should be simplified and a formalistic approach, rendering election petitions inadmissible for procedural errors, should be avoided.
- The cost of challenging an election should be none, or should be kept to a minimum to prevent deterring citizens from filing election petitions.
- A clear, coherent, consistent, and uniform body of law across different elections should govern the resolution of election disputes.
- The challenge process should be transparent and easy to understand.
- Citing the Election Commission's call for simpler and more accessible process of challenging elections, the Law Commission has criticised the "*strict formality and general complexity of election petitions [that] constitute a high bar to access to the courts*." It has further suggested that petitions should only be filed if they affect the outcome of the election.[492]

The proceedings – promptness, sanctions, and appeal[493]

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[487] Sections 144, 146(4), UK RPA.
[488] R (Woolas) v The Parliamentary Election Court, [2010] EWHC 3169 (Admin).
[489] EC UK, *supra* note 482, at 5.
[490] *Ibid.,* at 12.
[491] *Ibid.,* at 4,12. See also LCI UK, *supra* note 478, at para 4.30.
[492] *Ibid.,* at para 4.39.
[493] EC UK, *supra* note 482, at 12-13.

- A decision on the challenge should ideally be given within two months, subject to exceptional circumstances.
- In the event of a successful challenge, appropriate sanctions such as annulment of election results and holding fresh elections should be permissibly authorised.
- Instead of the current provision only permitting the filing of a judicial review, the electoral law should provide a statutory right to appeal to a body capable of reviewing and exercising final jurisdiction in the matter. The appeal should be decided promptly.
- There should be a clear demarcation of the jurisdiction of the courts based on the type of case being heard.

10.36 In the United States, the system is vastly different, and contested election and recount rules vary by States, election types, criteria and procedures such as standing, procedures, grounds, and security deposits.[494] Further, Article I, Section 5 of the US Constitution states that that each House shall be the judge of its own elections, returns, and qualifications of members. Thus, the House is entitled to judge contested elections involving its seats, and is not bound by agreement of the parties or decisions of state tribunals, with its determination as to the right to the seat being final and non-justiciable.[495] At the federal level, election disputes are governed by the Federal Contested Elections Act, 1969, 2 USC §§ 381 that lays down the procedure by which defeated candidates may have their claim to the seat be adjudicated by the House.

F. Recommendations

10.37 Based on the aforesaid discussion, the Law Commission proposes the following amendments to the RPA:

(i) Section 79

At the end of sub-clause (e), after the words “has been held;”, add the following words “wherever applicable, a reference to the High Court in this Part shall also be deemed to include a reference to the ‘election bench’ designated by the Chief Justice of the relevant High Court in accordance with the procedure prescribed by this Part;”

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[494] National Clearinghouse on Election Administration, *Contested Election and Recounts,* (1990),<http://www.eac.gov/assets/1/Documents/Contested%20Elections%20&%20Recounts%201.pdf> at iii, 5.

[495] Roudebush v Hartke, 405 US 15 (1972); GPO, *Election Contests and Disputes,* <http://www.gpo.gov/fdsys/pkg/GPO-HPRACTICE-104/pdf/GPO-HPRACTICE-104-23.pdf> at 460.

(ii) Section 80A

- In sub-section (2) after the words “single Judge of the High Court”, add the words “, designated as an election bench,”.
- Delete the existing sub-section (3) and replace it with the following sub-section and explanation:

“(3) Where the High Court functions in more than one State, or where the High Court has more than one bench, the election petition shall be filed before the Principal Seat of the relevant High Court.

Explanation – The High Court in its discretion may, in the interests of justice or convenience, try an election petition, wholly or partly, at the bench or place other than the Principal Seat of the High Court.”

(iii) Section 82:

- Delete the word “and” present after the semi-colon at the end of sub-clause (a).
- After sub-clause (a), insert proviso with the words, “Provided that in cases where the petitioner makes an additional declaration that he himself or any candidate has been duly elected, no contesting candidates who have lost their security deposit shall be joined by the petitioner as respondents to his petition;”
- Add the word “and” at the end of the end of the newly added proviso to sub-clause (a) after the semi-colon.
- In sub-clause (b), at the beginning, before the words “any other candidate”, add the following words, “Notwithstanding anything contained in sub-clause (a),”

(iv) Section 86

- In sub-section (1), after the words “section 82”, delete “or section 117”.
- In sub-section (2), delete the word “one of the” appearing after “referred to the judge or”; and delete the word “assigned” appearing after “has or have been” and insert the word “designated” in its place; and after the words “by the Chief Justice”, add the words “as the election bench”.
- After sub-section (2), add sub-section (2A) with the following words:

  “(2A)(1) There shall be one or more election benches, comprising of one or more judges, as designated by the Chief Justice of the High Court under Section 80A(2), which shall only be dealing with election petitions presented in accordance with the provisions of this Part.

  (2) The trial of an election petition shall be continued from day to day until its conclusion, and the election bench shall not grant any adjournments unless sufficient cause is made out and may impose

costs, including exemplary costs, on the party seeking the adjournment.

(3) Every election petition shall be tried as expeditiously as possible and trial shall be concluded within six months from the date on which the election petition is presented to the High Court for trial.

Provided that if the trial is not concluded within six months, the designated election bench shall, for reasons to be recorded in writing, explain the cause for delay in a report to the Chief Justice of the High Court.

(4) The respondent(s) shall file the written statement within forty-five days from the date of service of summons.

Provided that if the election bench is satisfied that the respondent(s) were prevented by sufficient cause from filing the written statement within the said period of forty-five days, it may entertain the written statement within a further period of fifteen days, but not thereafter.

Provided further that on expiry of such fifteen-day period, the respondent(s) shall forfeit the right to file the written statement and the election bench shall not allow the written statement to be taken on record thereafter."

- In sub-section (3), delete the words "Judge who" appearing after "referred for trial to the same" and replace it with "election bench that" instead; and delete the word "his" appearing before "discretion" and insert the word "its" in its place.
- Delete entire sub-section (6) since it has already been incorporated in sub-section (2A)(2).
- Delete entire sub-section (7) since it has already been incorporated in sub-section (2A)(3).

(v) <u>Section 98</u>

- In the section, before the words "High Court", add the words "election bench of the".
- After sub-section (c), insert the following proviso, "Provided that such order of the election bench shall be made within ninety-days from the conclusion of arguments."

(vi) <u>Inserting a new Section 98A</u>

After Section 98 of the RPA, insert a new section, Section 98A titled "Collection and disclosure of data by the High Court" in the following words:

"**98A. Collection and disclosure of data by the High Court**: (1) Complete information regarding the number of election petitions filed and pending, the status of each petition, the names of the parties, and designated election bench shall be maintained and constantly updated by each High Court on its website.
(2) The Election Commission shall prepare an annual report compiling the information mentioned in sub-section (1) from all the High Courts, and shall publish the said information annually on its website."

(vii) Section 99

- In sub-section (1), before the words "High Court", insert the words "election bench of the" instead.
- In the proviso to sub-section (1), in sub-clauses (a) and (b) both, before the words "the High Court", insert the words "the election bench of" instead.

(viii) Section 100

- In sub-section (1), before the words "the High Court is of opinion", add the words "the election bench of"; and in sub-clause (iv) of sub-clause (d) of sub-section (1) before the words "the High Court shall declare", add the words "the election bench of".
- In sub-section (2), after the words, "If in the opinion of", add the words "the election bench of"; and in sub-clause (d) of sub-section (2) before the words "the High Court may decide that", add the words "the election bench of".

(ix) Section 102

In sub-section (b), before the words "the High Court shall decide between", add the words "the election bench of".

(x) Section 109

In sub-section (1), after the words "only by leave of", add the words "the election bench of".

(xi) Section 112

- In sub-section (2), after the words "under sub-section (1)", add the following words, "the election bench of".

- In sub-section (3), after the words, “to continue the proceedings upon such terms as”, add the words “the election bench of”.

(xii) Section 116A

- In sub-section (1), delete the words “(whether of law or fact)” appearing before “from every order” and insert the words “of law” instead; and after the words “from every order made by”, delete “a” and insert the words “the election bench of the” instead.
- In sub-section (2), before the words “the High Court under”, add the words “the election bench of”.
- Delete the entire proviso to sub-section (2), which starts with the words “Provided that the Supreme Court may”. Instead add the following proviso after sub-section (2): “Provided that if the Court is satisfied that the petitioner was prevented by sufficient cause from filing an appeal before the Supreme Court within the said period of thirty days it may entertain the petition within a further period of thirty days, but not thereafter.”
- Add a new sub-section (3) with the following words “Every appeal under this Chapter shall be tried as expeditiously as possible and every endeavour shall be made to conclude the appeal within three` months from the date on which the appeal is presented to the Supreme Court for hearing.”

(xiii) Section 116B

- In sub-section (1), after the words “application may be made to, add the following words, “the election bench of”; and after the words “time allowed for appealing therefrom and”, add the words “the election bench of”; and after the words “application for stay shall be made to”, add “the election bench of”.
- In sub-section (3), after the words, “operation of an order is stayed by”, add the words “the election bench of”.

(xiv) Section 117

- In sub-section (1), delete the words “two thousand” appearing after the words “a sum of” and insert the words “ten thousand” instead.
- After the end of sub-section (1) add the following proviso: “Provided that if the election bench of the High Court is satisfied that the petitioner was prevented by sufficient cause from depositing the said amount of ten thousand rupees, it may grant an extension of such time

as it deems reasonable and dismiss the petition if the amount is not deposited within the specified extended period."

- In sub-section (2), after the words, "the trial of an election petition,", add the words "the election bench of".

(xv) Section 119

After the words, "costs shall be at the discretion of", add the words "the election bench of".

CHAPTER XI

NOTA AND THE RIGHT TO REJECT

A. History and Context Leading Up to the Supreme Court's Decision in the *NOTA* Case

11.1 The proposal to introduce negative voting to reject all the candidates if voters found them unsuitable was first discussed by the Law Commission in its 170th Report in 1999, as part of its "alternative method of election" where candidates would only be declared elected if they obtained 50%+1 of all the valid votes cast. Although agreeable with the 50%+1 idea, on which negative voting was predicated,[496] the Commission citing practical difficulties did not issue any final recommendations on the topic of negative voting.

11.2 The ECI supported the similar introduction of a negative vote, first in 2001, under James Lyngdoh as the CEC, and then in 2004 under T.S. Krishnamurthy, in its proposed electoral reforms report. The ECI was concerned that the introduction of EVMs and the implementation of Rule 49O of the Election Rules had made it impossible to protect the secrecy of voting for those who wanted to abstain. Consequently, they proposed a legislative amendment to Rules 22 and 49B of the Election Rules to introduce "NOTA" as an option.[497] The Background Paper on Electoral Reforms prepared by the Legislative Department of the Law Ministry in 2010 also favoured the introduction of negative voting, unlike the NCRWC that found it either "impracticable or unnecessary."[498]

11.3 Given the inaction on the government's part, the People's Union for Civil Liberties filed a PIL on this issue in 2004. In 2013 thereafter, the Supreme Court struck down Rules 41(2) &(3) and 49O of the Election Rules as being *ultra vires* section 128 of the RPA and Article 19(1)(a) of the Constitution to the extent they violated the secrecy of voting.[499] Citing section 128, RPA and Rules 39(1), 41, 49M and 49O of the Election Rules, the Court

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[496] "The requirement of 50%+1 of the vote can be implemented without implementing the idea of negative vote simultaneously, though the idea of negative vote, as explained in the working paper, cannot be implemented without implementing the idea of 50%+1 vote." LCI, 170th Report, *supra* note 108, at para 9.29.

[497] ECI 2004 Reforms, *supra* note 203, at 9; ECI *Important Electoral Reforms Proposed by the ECI,* <http://eci.nic.in/eci_main/electoral_ref.pdf>, at 4.

[498] Background paper, *supra* note 230, at para 4.3 NCRWC Report, *supra* note 13, at para 4.7.2.

[499] The Court in People's Union of Civil Liberties v Union of India, (2013) 10 SCC 1, [34] observed "Therefore, secrecy is an essential feature of the "free and fair elections" and Rule 49-O undoubtedly violates that requirement"

noted that the "*secrecy of casting vote is duly recognised and is necessary for strengthening democracy*" to maintain the purity of elections.[500] Consequently, given that the right to vote and the right not to vote had been statutorily recognised, the Court held that secrecy had to be maintained regardless of whether voters decide to cast or not cast their votes. The Court also relied on international principles governing the right to secrecy as an integral part of voting and free elections under Article 21(3) of the Universal Declaration of Human Rights and Article 25(b) of the ICCPR. It therefore ruled that voters should have the option of rejecting all candidates who were standing for elections in their constituency and directed the ECI to include the option of NOTA in all Electronic Voting Machines.

11.4 The premise of the Supreme Court's decision was that secrecy of voting is crucial to maintain the purity of the electoral system. Consequently, introducing NOTA, by guaranteeing the secrecy in casting a negative or neutral vote, would increase public participation in the electoral process, which is fundamental to the "strength of democracy." Given that democracy is "all about choice" and voting constitutes its very "essence", non-participation in the election can cause "frustration and disinterest". Thus, the apex Court opined that NOTA would empower the people, thereby accelerating effective political participation, since people could abstain and register their discontent (with the low quality of candidates) without fear of reprisal; simultaneously, it would foster the purity of the election process by eventually compelling parties to field better candidates, thereby improving the current situation.

11.5 However, as former CEC, S.Y. Qureshi points out, NOTA is not the same as the right to reject. He gives an example where even if there are 99 votes cast in favour of NOTA, out of a total 100, the candidate who got only vote will be declared the winner, for having obtained the most number of valid votes.[501] The ECI issued a similar clarification that no re-elections will be called based on a cumulative reading of Rule 64(a) of the Election Rules and sections 53(2) and 65, RPA.[502] This is because the stated reason for ECI's demanding the introduction of NOTA was apparently to ensure the secrecy to the voter casting a negative vote and to prevent a bogus vote in their place; the right to reject did not figure in their original demands.[503] This is evident in

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[500] PUCL v Union of India, (2013) 10 SCC 1, [26]. The Court relied on its previous decisions in Kuldip Nayar v Union of India, (2006) 7 SCC 1 and S. Raghbir Singh Gill v S. Gurcharan Singh Tohra, (1980) Supp SCC 53.

[501] S.Y. Qureshi, *Pressure of a Button*, INDIAN EXPRESS, 3rd October 2013, <http://archive.indianexpress.com/news/pressure-of-a-button/1177434/>.

[502] ECI, *Supreme Court's judgment for "None of the Above" option on EVM– clarification*, No. ECI/PN/48/2013 dated 28.10.2013, < http://eci.nic.in/eci_main1/current/PN_28102013.pdf>.

[503] See letter of ECI dated 10th December 2001 to the Secretary, Minister of Law and Justice; Qureshi, *supra* note 501.

the Court's judgment – in terms of its emphasis on secrecy described above and the lack of any discussion on the right to reject, which was not prayed for by PUCL. Instead, the Court focused on how it hoped that NOTA would eventually pressurise parties to field sound candidates.

11.6 While some such as Mr. KK Venugopal and ADR supported the introduction of NOTA and pushed for extending it to include the right to reject, others such as Mr. Rajeev Dhavan, Mr. SY Qureshi, and Former Secretary-General of the Lok Sabha, Subhash Kashyap believed that the Court was too optimistic in thinking that NOTA would lead to cleaner politics.[504] In any event, in the 2014 Lok Sabha Elections, 1.1% of the total votes polled, or just less than 60 lakh votes were cast in favour of NOTA, although NOTA was not the most favoured option in any constituency.[505]

B. Comparative Practices

11.7 With the exception of Columbia, very few countries accept the right to reject principle. For instance, Nevada in the US[506] and Manitoba, Ontario, Alberta, Nova Scotia and Yukon in Canada although recognising a NOTA-like option, do not let it influence the election results by counting the votes separately[507] or treating them as spoilt ballots.[508] In fact, in the 2014 gubernatorial elections in Nevada, the Democratic nominee Robert Goodman was elected in his primary, despite polling second after their "none of these candidates" option.[509]

11.8 In Europe, the position is not different. Thus, Spanish law permits voters to validly submit envelopes without ballot papers, which are counted and declared as "blank votes"[510] or "*votos en blanco*". Although they

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[504] Manjari Katju, *The 'None of the Above' Option*, 48(42) ECONOMIC AND POLITICAL WEEKLY 10, 12 (2013).

[505] Bharti Jain, *"Election Results: NOTA Garners 1.1% of the Country's Vote Share*", TIMES OF INDIA, 17th May 2014, <http://timesofindia.indiatimes.com/news/Election-results-NOTA-garners-1-1-of-countrys-total-vote-share/articleshow/35222378.cms>; *Election Results 2014: Close to 60 Lakh Voters Chose 'None of The Above' This Time*", NDTV, 17th May 2014, <http://www.ndtv.com/elections/article/election-2014/election-results-2014-close-to-60-lakh-voters-chose-none-of-the-above-this-time-525984>.

[506] NRS 293.269(2), Title 24, Chapter 293 of Nevada Revised Statutes titled "Elections" permitting the NOTC option, although only "*votes cast for named candidates shall be counted in determining nomination or election.*"

[507] Section 117(2) of the Elections Act, Manitoba, 2006 allowing voters to secretly write "declined"; Section 53 of the Ontario Elections Act, 1990, Section 107.1(1) of the Election Act, Alberta, 2000 and Sections 232-233, Yukon Elections Act 2002 providing no secrecy while allowing voters to "decline" to vote.

[508] Section 118 of the Nova Scotia Elections Act 2011 treats a declined vote as a cancelled vote.

[509] Sean Sullivan, *Nevada Democrats pick 'None of these candidates' for Governor,* WASHINGTON POST, 11th July 2014, <http://www.washingtonpost.com/blogs/post-politics/wp/2014/06/11/nevada-democrats-pick-none-of-these-candidates-for-governor/>

[510] Sections 96 and 97 of the Representation of the People Institutional Act, 2011.

are considered valid in the allocation of seats in Spain's proportional representation system, even a majority of blank votes do not necessitate re-elections. Similarly, in France and Italy, a blank vote is recorded separately from a void vote, although there is no official space on the ballot.[511]

11.9 In Sweden, blank ballot papers permit voters to register their protest secretly. Although the votes are considered invalid, they are counted and reported separately from other forms of spoilt or invalid votes. Thus, there is no concept of right to reject. In 2014, Russia re-introduced the "against all" option on the ballot.[512]

11.10 Moving on to South America, Brazil with its compulsory voting provisions recognises both, blank or white votes (*voto em branco*) that are conscious sign of protest, and void or null votes (*voto nulu*) that are spoilt. However, neither is considered valid or counted for election results' purposes.[513] Article 77(2) of the Brazilian Constitution stipulates that only candidates winning a majority of *valid* votes, excluding blank and invalid votes, will be elected. The Superior Electoral Court in Brazil has clarified that, "*despite an ongoing myth, even in the event that half of votes cast are deemed invalid, such circumstances cannot render an election null and void.*"[514]

11.11 Columbia is an exception to the above trend, wherein if the blank vote gets a majority (50%+1), the election needs to be repeated (only once more) and the earlier candidates in the invalidated election cannot stand again.[515]

C. Recommendations

11.12 Given the underlying premise of the Supreme Court's decision in its 2013 NOTA judgment and the ECI's demand for introducing NOTA[516] was

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[511] Chiara Superti, *Vanguard of the Discontents: Blank and Null Voting as a Sophisticated Protest*, Dissertation Paper at Harvard, <http://scholar.harvard.edu/files/csuperti/files/supertibnvpaper.pdf>.

[512] Tatiana Stanovaya, '*Against All' and for the Kremlin?*, INSTITUTE OF MODERN RUSSIA, 21st January 2014, < http://imrussia.org/en/analysis/politics/646-against-all-and-for-the-kremlin>.

[513] Articles 2 and 5 of the Election Law 9504 of 1997; Electoral Code, Law No. 4737 of 1965.

[514] Superior Electoral Court, 2014 Elections: elections not to be declared null and void even if more than 50% of votes cast are deemed invalid, Brazil, 28th August 2014, < http://english.tse.jus.br/noticias-tse-en/2014/Agosto/2014-elections-elections-not-to-be-declared-null-and-void-even-if-more-than-50-of-votes-cast-are-deemed-invalid

[515] Article 9 of the of Legislative Act 01 of 2009 states "The voting must be repeated just one more time in order to elect [most democratically elected public officials] when blank votes constitute the majority of all of the valid votes." See also the government's FAQs at < http://www.registraduria.gov.co/-Voto-en-blanco-.html>.

[516] As former Chief Election Commissioner S.Y. Qureshi notes, "The EC's reason for demanding the option was not to institute the right to reject. It was to ensure the secrecy of

protecting the secrecy of the voter who wanted to express dissent, the justificatory rationale for introducing the right to reject has not been made out.

11.13 Good governance, which is purportedly the motivating factor behind the right to reject, can be successfully achieved without causing the complications introducing the right to reject will entail. Efforts should instead be made to implement the already existing provisions on decriminalising politics and increasing political awareness; and introduce other provisions such as inner party transparency and election finance reform.

11.14 The preference of other alternatives to improve the quality of elected representatives instead of favouring the right to reject can be seen from the above comparative practices, which show that Colombia is one of the only countries that has such a provision. Most countries with NOTA-like provisions only count and declare the number of such votes, instead of factoring it in the final election results.

11.15 For all these reasons, the Law Commission currently rejects the extension of the NOTA principle to introduce a right to reject the candidate and invalidate the election in cases where a majority of the votes have been polled in favour of the NOTA option. However, the issue might be reconsidered again in the future.

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the voter wanting to make a choice that amounts to abstention, and also to ensure that nobody casts a bogus vote in his place." Qureshi, supra note 501.

CHAPTER XII

RIGHT TO RECALL

A. History and Context

12.1 The right to recall (*hereinafter* "**RTR**") is one of the facets of direct democracy that refers to a process whereby an electorate is able to recall an elected representative for under-performance, corruption, or mismanagement while still in office, by filing a petition that triggers a re-election usually after a particular percentage of people sign the petition.

12.2 Currently, provisions for RTR are prescribed for local elections in Chhattisgarh,[517] Madhya Pradesh, Rajasthan, and Maharashtra and there are demands for introducing this system at the state and parliamentary level. However, proponents of RTR have not detailed the governing procedural framework, namely the percentage of electors needed to sign the petition; the grounds for initiating recall, or indeed whether any grounds are necessary; the minimum period, if any, after which recall can be initiated; nor specified the authority competent to decide whether to commence the recall based on the satisfaction of certain pre-conditions.[518] Other questions such as determining whether voters who did not vote in the original election can initiate a recall, whether there can be repeated recall petitions, and whether the recall representative is disqualified from standing in the bye-elections from that or any constituency also require consensus.[519]

12.3 The NCRWC in its 2001 report did not favour the introduction of RTR finding it either "impracticable or unnecessary."[520]

B. Analysing the Arguments For and Against the RTR

12.4 The arguments supporting the RTR primarily emphasise the importance of direct democracy in holding elected representatives to account by requiring them to seek post-election approval of their electorates. By providing a tool to dissatisfied citizens to rectify their mistake through "de-election" of their representatives, RTR serves to deter their under-performance, mis-management, corruption, or apathy. Supporters also point out that currently, electoral sanction in the forthcoming elections (often five

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[517] Section 47 of the Chhattisgarh Nagar Palika Act of 1961 provides for the right to recall of elected presidents for non-performance. The recall process is initiated when ¾ of the total elected representatives within the urban bodies write to the district collector demanding recall.
[518] Mendiratta, *supra* note 161, at 1174.
[519] *Id*.
[520] NCRWC Report, *supra* note 13, at para 4.7.2.

years away) is the only means of registering dissatisfaction, and given the absence of any continuing monitoring or accountability mechanism, RTR is an important step forward. Simply put, the damage to democratic institutions should be curtailed through democratic mechanisms and the RTR provides a "democratic disincentive" for poor performance and abuse of office.[521]

12.5 Another strand of the argument in favour of RTR is the consequent improvement in public trust in governance, insofar as many politicians will deliver good performances and reduce instances of corruption under threat of recall. Introducing the RTR may also deter candidates from spending excess amounts during their campaign, for a fear of being recalled. An incidental benefit is that it will result in voters continually monitoring and assessing political performance in a bid to determine whether they want to exercise their RTR.[522]

12.6 Against these arguments, opponents of RTR refer to various principled and practical objections. First, RTR can lead to an "excess of democracy",[523] wherein the threat of recall undermines the independence of the elected representatives – they will either pander to the majoritarian preferences and prejudices at the expense of safeguarding minority interests in passing populist measures. Alternatively, they will resort to a "clientelist distribution of patronage", whereby the elected representatives will use fear or favour to ensure that they are not recalled.[524] In both cases, short-term gains and instant results will be preferred over long-term, unpopular although beneficial policies. The legislative wisdom in enshrining a five-year Lok Sabha or Vidhan Sabha term was premised on the need for time to draft and implement good policies and to ensure stability. RTR threatens to challenge that inasmuch as it incentivises representatives to focus on local, constituency issues instead of larger public interest issues.[525] As former Attorney General of India, Mr. Soli Sorabjee points out, recall "s*ubjects the elected member to the supervision and control of his constituency. That would impair the free and independent discharge of his function*"[526]

12.7 Relatedly, as former CEC, S.Y. Qureshi notes the RTR can lead to greater instability and chaos, with various attempts being made by vested interests (either other political parties or opponents within the same party) to trigger the RTR on the smallest of issues and as soon as will be

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[521] Vinod Bhanu, *Right to Recall Legislators: The Chhattisgarh Experiment*, 43(4) ECONOMIC AND POLITICAL WEEKLY 15, 16 (2008).
[522] *Ibid.*, at 504.
[523] Sonika Bajpayee, *Right to Recall Elected Representatives*, 6(1) INDIAN L.J. (2013).
[524] Suhas Palshikar, *Why the Right to Recall is Flawed*, INDIAN EXPRESS, 14th September 2011, <http://archive.indianexpress.com/news/why-the-right-to-recall-is-flawed/846143/>.
[525] *Ibid*.
[526] Soli Sorabjee, *It's a Tightrope Walk,* HINDUSTAN TIMES, 2nd September 2011, <http://www.hindustantimes.com/columnsothers/it-s-a-tightrope-walk/article1-740561.aspx>

permissible.[527] Given this considerable uncertainty and tool for (mis)use by losing candidates, legislators will shift their focus from policy formulation to saving their constituency seat at all costs.

12.8 Further, as Mr. Sorabjee observes, recall is fraught with serious consequences for the representative being recalled – for instance, will (and should) the MP/MLA be given an opportunity to be heard, in consonance with the principles of natural justice, and to respond to the allegations in the recall petition. Or which body should be empowered to determine whether the alleged grounds in the petition, assuming that the RTR law provides for the specification of such grounds, are justified or not – the civil courts, the ECI or any other authority?[528]

12.9 More importantly, debates on the RTR ignore the larger issues of political reform such as decriminalisation, curtailing money in politics, internal democracy, and increased public awareness necessary to improve the quality of representation. Progress in these areas may eventually make the demand for RTR redundant.

12.10 The biggest practical challenge in implementing RTR has been articulated by the Mr. S.Y. Qureshi who points out that populated state and parliamentary constituencies in India (unlike in Switzerland or even the US) will result in a large number of signatures required to initiate a recall petition, going into lakhs. Not only will the ECI have to verify the authenticity of *every* single signature to prevent fraud, it will also have to determine whether the signatures are genuine and consensual or obtained via fraud or coercion.[529] Thus, introducing the RTR might have unintended effects in increasing corruption and the use of money and influence if representatives liable to be recalled try and ensure that a recall petition is not initiated against them.

12.11 Moreover, there is still the question of implementation and the expenditure of time and monetary resources cost in conducting regular bye-elections, supplemented by the fear of election fatigue.[530]

12.12 On the possibility of misuse, there is a fear that the RTR will be used by dominant caste members to harass lower caste elected representatives. Thus, Vinod Bhanu points to the Chhattisgarh experience where one of the recalled presidents was an independent candidate, who claimed that the BJP and the Congress councillors allied together to initiate the recall process. Bhanu notes that this has to be seen in the larger context of allegations of political bias and misusing the provisions for recall.[531]

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[527] Qureshi, *supra* note 1.
[528] Sorabjee, *supra* note 526.
[529] Qureshi, *supra* note 1.
[530] Qureshi, *supra* note 1; Sorabjee, *supra* note 526.
[531] Bhanu, *supra* note 521, at 16.

Hindustan Times, after surveying the experience in several states, reported some case studies on the functioning of the RTR. Pertinently, it gave the example of Dewangarh, a hamlet in Patiala in Punjab, which was reserved as a Scheduled Caste constituency in 2008. A brick kiln worker, Jaswinder Singh, was elected as the sarpanch, although the majority of the village's residents, who were members of the affluent Jat-Sikh community, did not welcome this. Consequently, during the first half of his five-year term, his other four colleagues – the panchs – did not attend a single panchayat meeting, and thereafter, exercised the RTR to remove Singh (Section 19 of the Punjab Panchayat Act, 1994 permits the panchs to remove a sarpanch after the completion of half the term, by moving a no-confidence motion against him). This was viewed by many as a tool for the influential against the weak and the poor.[532]

12.13 The RTR, as it is usually applied, is especially dangerous and liable to misuse in India that follows the first past the post system, where most winning candidates do not have the support and trust of 50% of their electorate in the first place. The RTR, which (mostly) requires the support of 50% of the electorate to remove the representative, can thus theoretically be used to recall most elected representatives in India. This is because any recall referendum or vote only consists of two options: 'yes' and 'no', or as in Chhattisgarh an occupied and a vacant seat.

C. Comparative Practices

12.14 In the U.S., 19 states allow the recall of elected state representatives, although there have only been two successful recall gubernatorial attempts – in North Dakota in 1921 and California in 2003.[533] The process varies across states, but broadly requires an application be filed to circulate a recall petition, following which the petition is circulated. The petition has to be signed by a specific number of people within a specified time and then submitted to the election officials for verification of signatures. After that, recall election is held.

12.15 In 11 of the 19 states, any registered voter (regardless of whether they voted in the original election) can initiate the recall process for *any* reason and no specific grounds for recall are needed. In fact, the National Conference of State Legislatures in the US notes, "*often, the reasons are political*."[534]

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[532] *Right to Recall?,* HINDUSTAN TIMES, 3rd September 2011, <http://www.hindustantimes.com/newdelhi/right-to-recall/article1-741300.aspx>.
[533] National Conference of State Legislatures, *Recall of State Officials,* 11th September 2013, <http://www.ncsl.org/research/elections-and-campaigns/recall-of-state-officials.aspx>.
[534] *Id*.

12.16 Canada provides for the RTR for members of the Legislative Assembly only in British Columbia *vide* the Recall and Initiative Act 1995. Here, the Chief Electoral Officer is mandated to decide the validity of the signed recall petition, which can be submitted on *any* grounds after 18 months. If the petition meets the requirements of the Act, a bye-election is conducted within 90 days. Pertinently, of the 24 recall applications approved since 1995, only one has succeeded in collecting enough signatures, although it had to be stopped because the concerned MLA resigned. Thus, no bye-election has ever been conducted.[535]

12.17 Switzerland recognises the RTR in six of its 26 cantons, although not at the federal level. The required number of signatures in the recall petition does not seem to based on a percentage of the electorate and is instead a fixed number, example 1000 in Schaffhauses and 15,000 in Ticino. The last successful recall attempt was in November 2003.[536]

12.18 Venezuela is the only country to have a constitutional RTR, since its introduction into Venezuelan law in 1999 under the new Constitution's Article 72. The RTR can also be applied against the Head of State, and was in fact used against President Hugo Chavez, who survived a recall election with 60% of the vote.[537]

12.19 The UK is the latest country to introduce the RTR through its *Recall of MP's Bill 2014-15* introduced in the House of Commons on 11th September 2014, three years after its first draft Bill was introduced in December 2011 as a response to the MP's expense crisis in 2009.[538] The Bill outlines two circumstances that trigger the recall – first, a sentence for less than one year of an MP convicted of an offence (given that any sentence over a year leads to disqualification); and second, when the "*House of Commons orders the suspension of the MP for at least 21 sitting days—or at least 28 calendar days if the motion is not expressed in terms of sitting days*." The recall petition needs to be signed by 10% of the electorate, following which the seat will be vacated and bye-elections held, where the recalled MP can contest again.

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[535] Elections BC, FAQs, <http://www.elections.bc.ca/index.php/referenda-recall-initiative/recall/faqs/>. See also Richard Kelly *et al.*, *Recall Elections*, Parliament and Constitution Centre, UK House of Commons Library, SN/PC/05089, 12th September 2014, at 8.

[536] Kelly, *supra* note 535, at 7.

[537] *Ibid*., at 8. See also, *Direct Democracy*, THE ACE PROJECT: THE ELECTORAL KNOWLEDGE NETWORK, <http://aceproject.org/ace-en/focus/direct-democracy/recall>.

[538] Kelly, *supra* note 535, at 4-5.

D. Recommendations

12.20 For all the reasons described above, the Law Commission is not in favour of introducing the RTR in any form.

CHAPTER XIII

TOTALISER FOR COUNTING OF VOTES

13.1 In 2008, the ECI *vide* letter dated 21.11.2008 to the Secretary, Ministry of Law and Justice, recommended amending the Election Rules to provide for the use of a totaliser for the counting of votes recorded in EVMs at elections. As per the ECI's suggestion, the results of votes polled in a group of 14 EVMs (hence, in 14 polling stations) would be calculated and announced together, in a change from the current practice of counting votes by each polling station.[539] This is based on technological constraints.

13.2 The underlying rationale behind the ECI's proposal was that the current system revealed the voting trends in each polling station, thus leaving the voters in that vicinity open to harassment, intimidation and post-election victimisation. Prior to the introduction of EVMs, ballot papers could be mixed, wherever it was considered "absolutely necessary" under Rule 59A of the Election Rules in light of "apprehend[ed] intimidation and victimisation of electors" However, EVMs do not permit this. Using a totaliser would increase the secrecy of votes during counting, thus preventing the disclosure of voting patterns and countering fears of intimidation and victimisation.

13.3 A totaliser would also help in situations such as witnessed in the 2014 Lok Sabha elections in Hoshangabad, where an EVM at the Mokalvada polling station in Sohagpur area malfunctioned just minutes before voting was to conclude at 6 pm. A lone voter, who arrived at the polling station at 5:50 pm then had to cast their vote in a newly installed EVM. The ECI issued a clarification that this single vote had to be counted, even if it compromised on the voter's secrecy and instead stated that one way of dealing with such situations in the future is the introduction of a totaliser machine to count the votes recorded on several EVMs contemporaneously.[540]

13.4 Although the ECI's proposal was referred to a Parliamentary Committee in 2009, no action was taken on it. In August 2014, the ECI moved the Law Ministry on this issue again.[541] Subsequently in September 2014, the Supreme Court in a PIL in *Yogesh Gupta v ECI*[542] issued directions to the government to issue to clarify why no steps were taken pursuant to the ECI's 2008 proposals. Noting that the issue had been referred to the Law

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[539] ECI Important Electoral Reforms*, supra* note 497, at 5.

[540] Raghvendra Rao, *Lone vote in Hoshangabad EVM to be counted, even if it blows voter's cover*, INDIAN EXPRESS, 14th May 2012, <http://indianexpress.com/article/india/india-others/lone-vote-in-hoshangabad-evm-to-be-counted-even-if-it-blows-voters-cover/99/>.

[541] Election Commission wants to use 'Totaliser' to enhance vote secrecy, ECONOMIC TIMES, 17th August 2014, <http://articles.economictimes.indiatimes.com/2014-08-17/news/52901387_1_law-ministry-ballot-paper-secrecy>/

[542] WP (Civil) No. 422/2014 order of the Supreme Court on 08.09.2014.

Commission for consideration, the three-judge bench of the Court asked the government what concrete steps it had taken on the ECI's suggestions of using a totaliser to prevent (or reduce) instances of intimidation or victimisation.[543] In its latest order on 16th January, the Court records the Government's submission that it would seek the views of the Law Commission, and the submission of an interim report on the issue.

13.5 The ECI's proposal has also been supported in the Background Paper on Electoral Reforms prepared by the Legislative Department of the Law Ministry in 2010.[544] Moreover, as the ECI has itself clarified, a "totaliser" has already been developed by EVM manufacturers to connect several control units at a time to indicate the total number of votes polled and recorded in the specified number of polling stations.[545] Thus, administratively it is not difficult to collect information about the number of votes polled by each candidate for a whole group of polling stations, thus hiding the pattern of voting in each individual booth.

13.6 For all these reasons, the Law Commission reiterates and endorses the ECI's suggestion for introducing a totaliser for the counting of votes recorded in EVMs. Similar to the existing Rule 59A, the Commission proposes to amend Rule 66A to empower the ECI to decide when, and in which constituency and polling booths, to employ a totaliser, after taking into consideration the context of the elections and any threats of intimidation or victimisation.

Recommendation

13.7 Thus, in Rule 66A of the Election Rules, 1961, in Rule 56C, the Law Commission recommends that:

After sub-section (2), a new sub-section (2A) may be inserted with the following words:

- "(2A) In the appropriate case, where the Election Commission apprehends intimidation and victimisation of electors in any constituency, and it is of the opinion that the votes recorded in the voting machines should be mixed before counting, it may by notification in the Official Gazette, specify such constituency where the returning officer shall use a totaliser for the counting of votes recorded in a group of electronic voting machines."

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[543] *Can totaliser be used for counting votes, asks SC*, THE HINDU, 10th September 2014, <http://www.thehindu.com/news/national/can-totaliser-be-used-for-counting-votes-asks-supreme-court/article6398304.ece>.
[544] Background paper, *supra* note 230, at para 6.15.
[545] Electronic Voting Machine, <http://pib.nic.in/elections2009/volume1/Chap-39.pdf>.

CHAPTER XIV

RESTRICTION ON GOVERNMENT SPONSORED ADVERTISEMENTS

14.1 Item VII(iv) of the Model Code of Conduct for the Guidance of Political Parties and Candidates proscribes the issuance of advertisements at the cost of public exchequer during election period, for the prospects of the party in power. This is to prevent the Union or State Governments from using public funds to release advertisements purportedly for the information of the public, but with a view to influencing the electorate on the eve of elections. However, the Model Code of Conduct only comes into force from the date of announcement of the elections and all public (government) spending on advertisements prior to that is completely unregulated. The operationalisation of the Model Code of Conduct nevertheless, creates a false dichotomy because the actual announcement of a date for the elections is a technical point – political parties are well aware of the impending elections long before the ECI officially notifies the dates. The party in power is thus uniquely positioned to issue government sponsored advertisements that highlights its achievements, giving it an undue advantage over other parties and candidates.

14.2 Keeping this in mind, in 2004, the ECI recommended a ban on advertisements "in any manner" of the achievements of the incumbent government for six months prior to the date of expiry of the term of the House to prevent the misuse of public funds. Moreover, in cases of premature dissolution, the ECI's scheme would come into place from the date of dissolution of the House. An exception was provided for "*advertisements/dissemination of information on poverty alleviation and health related scheme.*" Apart from this, the ECI recommended that the name or symbol of the political party should not appear in any banners or hoardings in public places depicting the government's achievements. The ECI's proposal found support in the Background Paper on Electoral Reforms prepared by the Legislative Department of the Law Ministry in 2010.[546]

14.3 The Law Commission supports and reiterates the general thrust of the ECI's proposal of regulating and restricting government sponsored advertisements prior to elections to maintain the purity of elections, prevent the use of public money for partisan interests, and ensure that no party or candidate gets an undue advantage over another in the spirit of free and fair

[546] Background paper, *supra* note 230, at para 6.4.

elections. The six-month period for the proposed ban is premised on the ECI's powers under the proviso to ss. 14(2) and 15(2) of the RPA to issue a notification for the conduct of the general elections to the Lok Sabha or the State Legislative Assembly *within* six months prior to the date of expiration of the Lok Sabha or the Assembly. An amendment in the law will reflect the concerns sought to be tackled in the Model Code of Conduct and will ensure regulation in the period prior to the announcement of the elections, thus improving democracy, human rights and good governance.

14.4 Such an amendment is also consonant with the recently released *Guidelines on Content Regulation of Government Advertising* of a three-member committee comprising Professor N.R. Madhav Menon, former Lok Sabha secretary general T.K. Vishwanathan and present Solicitor General Mr. Ranjit Kumar, and appointed by the Supreme Court to examine the misuse of public funds in government advertisements. The Committee sought to prevent the "arbitrary use" of the taxpayers' money to project political personalities/governments/parties without attendant public interest, and to promote private interests, by banning or severely restricting government advertisements that glorify political personalities or the ruling party, particularly on the eve of elections. Thus, it recommended that government advertisements be politically neutral and avoid photographs of political leaders, and only if it is essential then the photographs of the Prime Minister/Chief Minister or President/Governor be used. It also endorsed the ECI's suggestions on the "severe" restrictions on government advertisements six months prior to elections.[547] The guidelines are meant to apply till they are superseded by a validly enacted law, and the Law Commission's recommendations will help achieve that.

14.5 Further, the exception the advertisements regarding poverty alleviation and health related schemes should not carry any names or photographs of the leaders, in line with the Supreme Court-appointed committee's guidelines. It is imperative that any such legislative amendment should apply to all forms of print and electronic media and to banners and hoardings in public places.

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[547] *Court Guidelines to govern ads,* THE HINDU, 7th October 2014, <http://www.thehindu.com/news/national/court-guidelines-to-govern-govt-ads/article6476557.ece>; *Government ads should not project political leaders, panel tells SC,* BUSINESS STANDARD, 8th January 2015, <http://www.business-standard.com/article/news-ians/government-ads-should-not-project-political-leaders-panel-tells-sc-115010801351_1.html>; *SC Panel Comes out with Guidelines on Government Advertisements,* INDIAN EXPRESS, 6th October 2014, <http://indianexpress.com/article/india/india-others/sc-panel-comes-out-with-guidelines-on-govt-advertisements/>.

Recommendation

14.6 For these purposes, the Law Commission recommends the insertion of a new Chapter, Chapter VIIB in Part V of the RPA titled "Restriction on Government Sponsored Advertisements". It will read as follows:

> "**CHAPTER VIIB: RESTRICTION ON GOVERNMENT SPONSORED ADVERTISEMENTS**
>
> **75B. Restriction on Government Sponsored Advertisements.** – No Central or State government, as the case may be, shall, publish any advertisements of achievements of the Central of State government either in the print media, electronic media, or by way of banners or hoardings in public places for a period of six months prior to the date of expiry of the term of the House of the People or the Legislative Assembly of the concerned State.
>
> *Provided* that the restrictions above shall not apply to the advertisements of achievements of the governments relating to their poverty alleviation programmes or any health related schemes; however, such advertisements shall not carry any symbol of a political party or the names or photographs of any Minister or leader of any political party."

CHAPTER XV

RESTRICTION ON THE NUMBER OF SEATS FROM WHICH A CANDIDATE MAY CONTEST

15.1 Section 33(7) of the RPA permits a candidate to contest any election (parliamentary, assembly, biennial council, or bye-elections) from up to two constituencies, presumably to accord greater flexibility to candidates and increase their chances of winning a seat. 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; although the amendment did not explain the rationale for restricting the number to two. However, section 70, RPA stipulates that a candidate can hold only one seat at a time, regardless of whether they have been elected to more than one seat. Thus, if a candidate wins from two seats, section 70 necessitates an unnecessary bye-election at the cost of the exchequer, effort of the ECI, and harassment of the electorate that has to vote again (which might reduced turn out due to election fatigue). Moreover, the cost of conducting a bye-election should not be underestimated. In the 2014 Lok Sabha elections, the ECI estimates that approximately Rs. 10 crore will be spent on each constituency, and bye-elections will probably cost more given the absence of any economies of scale.[548]

15.2 Given that a candidate cannot hold two seats at the same time, the Law Commission agrees with the ECI's 2004 proposal that the RPA should be amended to provide that a person cannot contest from more than one seat at a time.[549] This proposal has also been endorsed by the Goswami Committee in 1990, the 170th Law Commission Report in 1999, and the Background Paper on Electoral Reforms prepared by the Legislative Department of the Law Ministry in 2010.[550]

15.3 However, the Commission does not endorse the ECI's alternate proposal to require winning candidates to deposit an appropriate amount of money (to the tune of Rs. 5 lakhs for Assembly and Rs. 10 lakhs for Parliamentary elections) being the expenditure for conducting the elections. Such a proposal does not correct the peculiarity in the law – the exercise of conducting bye-elections will still consume the ECI's time and effort;

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[548] *Lok Sabha poll cost jumps 80 times from Rs 10 crore to Rs 846 crore since 1952*, ECONOMIC TIMES, 8th April 2014, <http://articles.economictimes.indiatimes.com/2014-04-08/news/48971103_1_crore-expenditure-sikkim>.

[549] ECI 2004 Reforms, *supra* note 203, at 5.

[550] Goswami Committee Report, *supra* note 113, at 21; LCI 170th Report, *supra* note 108, at para 6.1.1; Background paper, *supra* note 230, at para 6.5.

inconvenience voters, who have to go to the polling station again; and most importantly, not serve as a deterrent to candidates.

Recommendation

15.4 The Law Commission thus recommends that 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.

CHAPTER XVI

INDEPENDENT CANDIDATES

A. Previous Suggestions

16.1 The question of independent candidates is often connected with the issue of fragmented voting and instability in the electoral system. The 170th Law Commission report dealt with the issue and concluded, "*the time is now ripe for debarring independent candidates from contesting Lok Sabha elections*." Similarly, the NCRWC recommended the "discouragement" of independent candidates, who are often "dummy" candidates or defectors from their party or those denied party tickets.[551] The rationale for permitting only those with "political standing" to contest was premised on the abysmal performance of independents in the 1998 general elections where, as the Indrajit Gupta Committee Report noted, of the 1900 contesting independent candidates, only 6 (0.65%) won while 885 (47%) lost their deposits.[552]

16.2 The underlying basis for such views stems from the perceived "non-seriousness" of "some" of the independent candidates, as can be seen from the example cited in the 170th Law Commission Report.[553] They talk about the case of BJP leader Mr. V.K. Malhotra, against whom quite a few persons, with the same name "V.K. Malhotra", stood as independent candidates in the Lok Sabha election in a bid to confuse voters and "mislead the masses". The Commission's proposed alternative was that any interested potential candidate "can always form a political party" to contest the elections, although such party would be required to poll at least 5% of the total valid votes. This was to ensure that the banning of independents did not contribute to a proliferation of parties.[554] Consequently, the Commission recommended the insertion of a new sub-section (1) to existing sections 4 and 5, RPA to the effect that:

> *"Only the political parties registered with the Election Commission under section 11(4) shall be entitled to put forward candidates to fill a seat in the House of the People [or Legislative Assembly]"*

16.3 The NCRWC's alternative proposal to discourage non-serious or "dummy" candidates is to only permit candidates with a "track record" to contest elections, namely if the candidates had won any local election or had been nominated by at least twenty elected members of Panchayats, Municipalities, or other local bodies. Additionally, independent candidates who fail to garner at least 5% of the total valid votes polled, should not be

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[551] NCRWC Report, *supra* note 13, at para 4.20.3.
[552] LCI, 170th Report, *supra* note 108, at para 3.3.1.
[553] *Ibid.,* at para 3.3.3.
[554] *Ibid.*, at paras 3.2.15.3 and 3.3.6.1.

permitted to contest as independents for the same office for at least six years.[555]

16.4 The ECI in a bid to discourage "non-serious candidate who poll a negligible number of votes" requested an amendment to section 34, RPA for (a) increasing the security deposit to Rs. 20,000 for Parliamentary and Rs. 10,000 for Assembly elections; and (b) empowering them to prescribe the security deposit before every general election.

B. Comparative Practices

16.5 In the European countries, independent candidates are allowed to contest in those countries that do not have the party-list system of proportional representation. Thus, thirteen countries allow independents to contests in national Parliamentary elections and include Bulgaria, Cyprus, Denmark, Estonia, France, Germany, Greece, Hungary, Ireland, Lithuania, Malta, Romania, and the United Kingdom. These countries follow different voting models, which comprise of majority/plurality voting in single-member districts (France, UK); a single transferable vote system (Ireland, Malta); and mixed-member systems, combining single-member districts with multi-member districts (Germany, Greece).

16.6 However, countries such as Belgium, Italy, Portugal and Spain that have closed-list systems, do not allow independent candidates.[556]

16.7 Moreover, the requirements that an independent candidate must fulfil before being eligible to stand do not seem to be very onerous. In countries such as France and the UK, there is no requirement for independent candidates to get signatures endorsing their candidature during nomination; in five countries including Germany and Ireland, independents have to present nomination signatures whereas party candidates do not; and in four countries such as Greece and Hungary, both independents and parties require nomination signatures before they are eligible.[557] In Ireland, a monetary deposit is an alternative to the signature requirement – an independent candidate has to either provide signatures of 30 electors, or deposit €500 with the nomination.

C. Recommendations

16.8 The current Law Commission agrees with its previous views expressed in the 170th Report and the NCRWC and ECI's proposals for a number of reasons.

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[555] NCRWC Report, *supra* note 13, at paras 4.20.3 and 4.20.4.

[556] European Parliament, Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs, *Independent Candidates in National and European Elections*: Study (2013), <http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/493008/IPOL-AFCO_ET(2013)493008_EN.pdf> at para 3.2 at 19.

[557] *Id*, at 22.

16.9 *First*, without doubt there is a proliferation of dummy and non-serious candidates in elections. Apart from the figures cited in the 170th Report, the success rate of independent candidates remains extremely low – a mere 0.53%.[558] In 2014, 3,182 independent candidates contested the Lok Sabha elections and only 3 won seats.[559]

16.10 *Second,* even the Supreme Court has weighed in on this issue in *Dhartipakar Madan Lal Agarwal* v. *Rajiv Gandhi*[560] and recommended that Parliament devise ways "to meet the onslaught" of such non-serious independent candidates. The court expressed its concerns, saying:

> *"Some independent individuals contest election genuinely and some of them have succeeded also but experience has shown that a large number of independent candidates contest the election for the mere sake of contesting, with a view to make out grounds for challenging the election. Presence of a number of independent candidates results in confusion, for the millions of the illiterate and ignorant electors who exercise their electoral right on the basis of 'symbols' printed on the ballot papers. The presence of large number of independent candidates makes the ballot paper of unmanageable size and ordinary elector is confused in the election booth while exercising his franchise. This leads to confusion."*

16.11 *Third*, the Commission agrees with the ECI's views given in the context of increasing the security deposit, that a proliferation of candidates puts "unnecessary and avoidable stress" in election management and increases security, law and order, and election administration expenditure.[561]

16.12 *Fourth,* proposals to discourage non-serious candidates have envisaged increasing the security deposits required under section 34, RPA. However, even the 2009 amendment to the RPA increased the deposit from Rs. 10,000 in Parliamentary and Rs. 5,000 in Assembly elections to only Rs. 25,000 and Rs. 10,000 respectively (the amount being halved for candidates belonging to SC/ST categories in both cases). Since many independents are defectors from their political parties, such an amount is not substantial enough to dissuade them or serve as an effect deterrent from standing, especially in the Assembly Elections. Moreover, the power to increase in security deposits does not lie with the ECI, and instead vests with the government which has

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[558] *Independents in polls: Success rate a mere 0.53% since 1952,* HINDU BUSINESS LINE, 7th April 2014, <http://www.thehindubusinessline.com/news/politics/independents-in-polls-success-rate-a-mere-053-since-1952/article5882180.ece>.

[559] *2014 Lok Sabha polls: 3% votes, but only 3 seats for independents*, ZEE NEWS, 17th May 2014, <http://zeenews.india.com/news/general-elections-2014/2014-lok-sabha-polls-3-votes-but-only-3-seats-for-independents_932888.html>.

[560] Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi, AIR 1987 SC 1577.

[561] ECI 2004 Reforms, *supra* note 203, at 3.

not used it often – prior to the 2009 amendment, security deposits were increased only in 1996 (before which it was Rs. 500 for Lok Sabha and Rs. 250 for Assembly elections).

16.13 Further, given that the RPA currently does not empower the ECI to frame rules under section 169 or prescribe the cap on election expenditure by an individual candidate under section 77 and Rule 90 of the Election Rules, the Law Commission does not recommend amending section 34 to vest such power with the ECI. As with section 169, RPA, the Central Government should prescribe the security deposit by legislative amendment notification in the official gazette, after consulting with the ECI.

16.14 *Fifth,* there exists a practice of independent candidates standing with the same name as candidates from recognised political parties, and this can cause a real confusion in the minds of the public, which might only look at the name of the candidate instead of the party symbol.

16.15 *Finally,* proposals put forth in its earlier 170th Report and in the NCRWC's Final Report that independents can always form a political party to contest elections if they want is correct inasmuch as it is cognizant of the fact that the process of forming a party under the Election Symbols (Reservation and Allotment) Order, 1968 and registering it under section 29A, RPA is not difficult.

16.16 For all these reasons, the Law Commission endorses the debarring of independent candidates, although it does not endorse an amendment of section 34 to empower the ECI to fix the security deposit before every general election. Thus, a proviso should be added after sub-clause (d) of section 4 of the RPA stating:

> "*Provided* that only the political parties registered with the Election Commission under sub-section (7) of section 29A shall be entitled to put forward candidates to fill a seat in the House of the People."

16.17 A similar proviso should be added after the first proviso in section 5, RPA stating:

> "*Provided* further that only the political parties registered with the Election Commission under sub-section (7) of section 29A shall be entitled to put forward candidates to fill a seat in the Legislative Assembly of a State."

CHAPTER XVII

PREPARATION AND USE OF COMMON ELECTORAL ROLLS

17.1 Article 324(1) of the Constitution empowers the ECI to, *inter alia*, supervise, direct, and control the preparation and revision of electoral rolls for all the elections to Parliament and State Legislatures, which it does under the RPA. Similarly, as per Article 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. However, the practice between the two is not always coordinated, as per the following observations in the Background Paper on Electoral Reforms prepared by the Legislative Department of the Law Ministry in 2010:

> *"…while some states have coordinated their electoral rolls with those prepared by the Election Commission, there are still some states that significantly modify them. Some states even have different qualifying dates for the State rolls from the Election Commission rolls…"*[562]

17.2 The ECI has adopted a similar stance noting that State laws have dealt with the issue of electoral rolls for local elections in three different ways – (a) the electoral rolls prepared by the ECI are used as the basis for the preparation and revision of rolls for local body elections; (b) the ECI's electoral rolls are used in toto for the local body elections; and (c) the ECI's parliamentary and assembly rolls are used as a draft for local elections, and are subject to further changes in the form of inclusions and exclusions. In fact, in some cases, the qualifying dates for the Parliamentary/Assembly rolls and local body rolls also differ.[563]

17.3 As the Background Paper and the ECI's 2004 reform proposal further note, such non-uniformity of practice amongst States causes duplication of essentially the same task between two different agencies, thereby duplicating the effort and the expenditure. This is especially true inasmuch as in most cases, the preparation and revision of rolls for both types of elections is entrusted to the same machinery at the field level. Further, it increases confusion amongst the voters, since they may find their names present in one roll, but absent in another.

17.4 Consequently, the use of common electoral rolls will save an enormous amount of time and effort, given that the ECI spends considerable money and exercises due care and caution in preparing its electoral rolls for

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[562] Background paper, *supra* note 230, at para 6.1.1.
[563] ECI 2004 Reforms, *supra* note 203, at 20.

the Parliamentary or Assembly election. Common electoral rolls will allow the use of Parliamentary and Assembly rolls to be used in local body elections through a "cut and paste" method,[564] with the requisite modifications based on the wards or polling areas of the local bodies. For instance, s. 7E of the Delhi Municipal Corporation Act, 1957 deals with the preparation and revision of electoral rolls and provides that:

> *"(1) The electoral roll for each ward shall be prepared before each general election in such manner as may be prescribed by rules by reference to the qualifying date and shall come into force immediately upon its final publication in accordance with the rules made for the purpose:*
>
> Provided *that if the Election Commission is satisfied that, instead of preparing a fresh electoral roll of a ward before a general election, it would be sufficient to adopt the electoral roll of the assembly constituency for the time being in force as relates to the ward it may, by order, for reasons to be specified therein, direct that the electoral roll of the assembly constituency for the time being in force as relates to the ward shall, subject to any rules made for the purpose, be the electoral roll of the ward for the general election.*
>
> *(2) The electoral roll prepared or adopted, as the case may be, under sub-section (1) shall—*
> *(a) unless otherwise directed by the Election Commission for reasons to be recorded in writing, be revised in the manner prescribed by rules by reference to the qualifying date before each by-election to fill a casual vacancy in a seat allotted to the ward; and*
> *(b) be revised in any year in the manner prescribed by rules by reference to the qualifying date if such revision has been directed by the Election Commission:*
>
> Provided *that if the electoral roll is not revised as aforesaid, the validity or continued operation of the said electoral roll shall not thereby be affected."*

17.5 The ECI, in its proposals in 2004 and in the CEC's letter dated 22.11.1999 to the Prime Minister has argued for the inclusion of common electoral rolls on the grounds of national interest in saving time, effort, and expenditure; reducing duplication or work and confusion amongst voters; and the fact that it would not pose "*any problems to the electoral machinery in the field as it is the same at the ground level.*" The ECI relied on the fact that in an attempt to reduce (conduct of) election expenditure, various common items of polling materials such as ballot boxes were already being used in all three Parliament, Assembly, and local body elections.

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[564] ECI 2004 Reforms, *supra* note 203, at 20.

Recommendation:

17.6 The Law Commission fully endorses the above suggestions of the ECI regarding the 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. We hope that the States will consider amending their laws based on the suggestions of the ECI and the Law Commission.

CHAPTER XVIII

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Below is a summary of conclusions and recommendations of the Commission on various issues discussed in the report. The amendments to the Constitution, RPA, Election Rules and any other laws have been made in track changes in the **Annexure** appended to this Report.

18.1 Election Finance

The Law Commission has proposed wide ranging reforms on the issue of candidate expenditure limits; disclosure obligations of individual candidates and political parties; and penalties imposable on political parties; as well as examining the issue of state funding of elections.

a. Section 77 of the RPA, regulating the election expenses incurred or authorized by candidates or their election agents, currently extends from the date of nomination to the date of declaration of results. This period should be extended by amending section 77(1) to apply from the date of notification of the elections to the date of declaration of results.

[Para 2.31(a)1]

b. Section 182(1) of the Companies Act, 2013 should be amended to require the passing of the resolution authorising the contribution from the company's funds to a political party at the company's Annual General Meeting (AGM) instead of its Board of Directors.

[Para 2.31(a)2]

c. The existing disclosure obligations of individual candidates are limited to maintaining an account of electoral expenses under sections 77 and 78, RPA. This is sought to be amended by inserting a new section 77A to require candidates or their election agents to maintain an account and disclose the particulars (names, addresses and PAN card numbers of donors and amounts contributed) of

    i. any individual contribution received by them from any person or company, not being a Government company and
    ii. any contribution by the political party from the date of notification of elections, which have to be made by the party by a crossed account payee cheque or draft or bank transfer.

[Para 2.31(b)3]

d. Section 78 should be amended in light of the proposed amendment to section 77A above, and the reference to more than one returned candidate should be removed.

[Para 2.31(b)4]

e. A new section 78A should be inserted requiring the district election officer to make publicly available, on his website or on file for public inspection on payment of prescribed fee, the expenditure reports submitted by every contesting candidate under section 78.

[Para 2.31(b)5]

f. Political parties should be required to maintain and submit annual 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, to the ECI every financial year. These accounts will fully and clearly disclose all the amounts received by the party and the expenditure incurred by it. The ECI will then upload these accounts online or keep them on file for public inspection on payment of fee.

[Para 2.31(b)6]

g. Disclosure provisions governing political parties has been substantially recast, with the existing 29C being deleted and replaced by a new section 29D requiring all parties to:

   i. mandatorily disclose all contributions in excess of Rs. 20,000;
   ii. include aggregate contributions from a single donor amounting to Rs. 20,000 within its scope;
   iii. disclose the names, addresses and PAN card numbers (if applicable) of these donors along with the amount of each donation above Rs. 20,000;
   iv. disclose such particulars even for contributions less than Rs. 20,000 if such contributions exceed Rs. 20 crore or 20 % of the party's total contributions, whichever is less. Consequential amendments will need to be made to the Election Rules and the IT Act.

[Para 2.31(b)7]

h. A new section 29E to be inserted in the RPA requiring the ECI to make publicly available, on its website or on file for public inspection on payment of prescribed fee, all the contribution reports submitted by all political parties under section 29D.

[Para 2.31(b)8]

i. ECI's transparency guidelines prescribing, *first*, a "statement of election expenditure" to be filed with it, by every party contesting an election within 75 days of the Assembly elections and 90 days of the General elections election; and *second,* expenses incurred by political parties to be usually in the form of cheque or draft, unless banking facilities are

not easily available or the payment is made to a party functionary in lieu of salary or reimbursement, should be given a statutory basis *vide* a newly inserted section 29F.

[Para 2.31(b)9]

j. The disqualification of a candidate for a failure to lodge an account of election expenses and contributions reports under section 77 and proposed 77A should be extended from the current three period up to a five year period, so that a defaulting candidate may be ineligible to contest at least the next elections.

[Para 2.31(c)10]

k. Express penalties, apart from losing tax benefits, should be imposed on political parties *vide* section 29G for the non-compliance with the disclosure provisions of proposed section 29D of the RPA. This should include a daily fine of Rs. 25,000 for each day of non-compliance, with the possibility of de-registration if the default continues beyond 90 days. Further, ECI may levy a fine of up to Rs. 50 lakhs if its finds any particulars in the party's statements as having been falsified.

[Para 2.31(c)11]

l. A new section 29H should be inserting penalising parties that contravene the stipulations of section 29B, RPA and section 182 of the Companies Act in terms of accepting contributions from impermissible donors, by levying a penalty of five times the amount so accepted.

[Para 2.31(c)12]

m. A new Part IVB, section 29I should be inserted to the RPA dealing with the "Regulation of Electoral Trusts", and detailing provisions pertaining to their entitlement to accept contributions, disclosure obligations, and penal provisions (apart from losing income tax exemptions) so that the RPA can be amended in line with the changes already made to the IT Act and the ECI guidelines on "Electoral Trust Companies" of 2013.

[Para 2.31(c)13]

n. The Commission does not consider a system of complete state funding of elections or matching grants to be feasible, given the current conditions of the country. Instead, it supports the existing system of indirect in-kind subsidies, with section 78B of the RPA being possibly amended in the future to expand these subsidies.

[Para 2.31(d)1-4]

18.2 Regulation of Political Parties and Inner Party Democracy

a. The Commission recommends amending sub-section (5) of section 29A of the RPA requiring that the accompanying memorandum/rules/ regulations with the party's application under sub-section (1). This accompanying document, by whatever name it is called, should also contain a specific provision stating that the party would shun violence

for political gains, and would avoid discrimination or distinction based on race, caste, creed, language or place of residence.

[Para 3.17.4, 1]

b. A new Chapter IVC should be inserted dealing with the "Regulation of Political Parties" and incorporating the Commission's previous recommendations in its 170th Report with certain modifications. Thus, sections 29J to 29Q will deal with internal democracy, party Constitutions, party organisation, internal elections, candidate selection, voting procedures, and the ECI's power to de-register a party in certain cases of non-compliance.

c. Another section, section 29R should be inserted in the same Part, providing for the de-registration of a political party for failure to contest Parliamentary or State elections for ten consecutive years.

[Para 3.17.4, 2]

18.3 Proportional Representation

18.3.1 It is clear that both the electoral systems come with their own merits and demerits – proportional representation theoretically being more representative, while the FPTP system being more stable It is also clear, from the experience of other countries that any changes in India's electoral system will have to follow a hybrid pattern combining elements of both direct and indirect elections. This, in turn will necessitate an increase in the number of seats in the Lok Sabha, which raises concerns regarding its effective functioning.

[Para 4.19.1]

18.3.2 As a result, the Law Commission recommends that the findings of the 170th Law Commission Report on the proportional system may be examined by the Government to determine whether its proposals can be made workable in India at present.

[Para 4.19.2]

18.4 Anti Defection Law in India

The Law Commission recommends a suitable amendment to the Tenth Schedule of the Constitution, which shall have the effect of vesting the power to decide on questions of disqualification on the ground of defection with the President or the Governor, as the case may be, (instead of the Speaker or the Chairman), who shall act on the advice of the ECI. This would help preserve the integrity of the Speaker's office.

[Para 5.22]

18.5 Strengthening the office of the Election Commission of India

The ECI should be strengthened by *first,* giving equal constitutional protection to all members of the Commission in matters of removability; *second,* making the appointment process of the Election Commissioners and the CEC consultative; and *third,* creating a permanent, independent Secretariat for the ECI.

a. Article 324(5) of the Constitution should be amended to equate the removal procedures of the two Election Commissioners with that of the Chief Election Commissioner. Thus, equal constitutional protection should be given to all members of the ECI in matters of removability from office.

[Para 6.9]

b. The appointment of all the Election Commissioners, including the CEC, should be made by the President in consultation with a three-member collegium or selection committee, consisting of the Prime Minister; the Leader of the Opposition of the Lok Sabha (or the leader of the largest opposition party in the Lok Sabha in terms of numerical strength); and the Chief Justice of India. Elevation of an Election Commissioner should be on the basis of seniority, unless the three member collegium/committee, for reasons to be recorded in writing, finds such Commissioner unfit. Amendments should be made in the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991 to reflect this.

[Para 6.12.5]

c. A new sub-clause (2A) should be added to Article 324 of the Constitution to provide for a separate independent and permanent Secretariat for the ECI along the lines of the Lok Sabha/Rajya Sabha Secretariats under Article 98 of the Constitution. This will further improve the independence of the ECI.

[Para 6.19 & 6.20]

18.6 Paid News and Political Advertisements

The issue of paid news and political advertisements should be regulated in the RPA in the following manner:

a. The definitions of “paying for news”, “receiving payment for news” and “political advertisement” should be inserted in section 2 of the RPA.

[Para 7.48.4 & 7.48.5]

b. The consequences attached to those indulging in such practices should be delineated by creating
    i. an electoral offence of “paying for news” / “receiving payment for news” in a newly inserted section 127B of the RPA - Not only will the incorporation of this electoral offence make paying for news / receiving payment for news penal, the stringent punishment will ensure that if the candidate themselves are found guilty, then, in all likelihood, they will be disqualified pursuant to section 8(3) of the RPA;

[Para 7.49.1]

    ii. a corrupt practice of paying for news under newly inserted sub-clause (iii) in section 123(2)(a) of the RPA.

[Para 7.50]

c. In order to curb the practice of disguised political advertisement, disclosure provisions should be made mandatory for all forms of media. The purpose of disclosure is two fold; *first*, to help the public identify the nature of the content (paid content or editorial content); and *second*, to keep the track of transactions between the candidates and the media. Thus, a new section 127C should be inserted in the RPA to deal with the non-disclosure of interests in political advertising. The ECI can regulate the specifics of the disclosure required.

[Para 7.51.2]

18.7 Opinion Polls

Section 126(1)(b) of the RPA, which prohibits the display of any election matter forty-eight hours before polling begins, is 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. Thus:

a. The ban on opinion polls in the electronic media does not extend to the print media and section 126(1)(b) should be amended to prevent the publication, publicity, or dissemination of any election matter by print or electronic media.

[Para 8.27.1]

b. Section 126(1)(b) should also provide for cognizance being taken only on the basis of a complaint made by order of, or under authority from, the ECI or the Chief Electoral Officer of the State.

[Para 8.27.2]

c. The regulation of opinion polls is necessary 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 RPA.

[Para 8.28.3]

18.8 Compulsory Voting

The Law Commission does not recommend the introduction of compulsory voting in India and in fact, believes it to be highly undesirable for a variety of reasons described above such as being undemocratic, illegitimate, expensive, unable to improve quality political participation and awareness, and difficult to implement.

[Para 9.24]

18.9 Election Petitions

Wide-ranging reforms have been suggested to Part VI of the RPA dealing with "disputes regarding elections" and the proposed amendments have been drafted in the annexure appended to this Report. These include, *inter alia*:

a. The introduction of one or more "election benches" in each High Court, designated so by the Chief Justice of the particular High Court, exercising jurisdiction over all election disputes under the RPA. A single Judge shall ordinarily exercise such jurisdiction, although the Chief Justice can assign more judges, if they so desire.

b. The procedure for presenting election petitions should be made simpler and less formalistic by:
   i. requiring election petitions to be ordinarily filed in the Principal seat of the relevant High Court, although this can be shifted to another bench or place in the interest of justice;
   ii. removing requirement of impleading those candidates who have lost their security deposit as respondents to an election petition, if the petitioner makes an additional declaration that he himself or any candidate has been duly elected; and
   iii. removing non-compliance with section 117's stipulation of security for costs as a ground for summarily dismissal under section 86.

c. The trial of election petitions by the election bench of the High Court should be expedited by providing for
   i. daily trial;
   ii. minimising adjournments, with the possibility of imposing exemplary costs;
   iii. a time limit of 45 days to file a written statement, with a further extension of 15 days, after which such right shall be forfeited;

d. The trial should be concluded within six months from the date of presentation of the petition; otherwise, a report should be sent to the Chief Justice of the High Court explaining the reasons for the delay.

e. The election bench of the High Court should pass its order under section 98 within ninety days from the conclusion of arguments.

f. A new provision, section 98A, should be inserted pertaining to the collection of data (such as the number of election petitions filed and pending, the status of each petition, the names of the parties, and designated election bench) by the High Court and uploading it on its website. The ECI has been mandated to prepare an annual report after compiling such data from all the High Courts across the country.

g. Appeals to the Supreme Court should now only be on the basis of a question of law, instead of the earlier provision permitting questions of fact *or* law as grounds for appeal. This appeal should be filed within 30 days of the High Court's order, although an extension of a maximum of 30 more days can be granted, with nothing thereafter. The Supreme Court should try and conclude the appeal within three months from the date of appeal.

h. The security for costs has been increased from the existing Rs. 2000 to Rs. 10,000, although section 117 has been amended to empower the election bench of the High Court to grant an extension of time, as considered reasonable, to deposit this new security amount.

[Para 10.37]

18.10 NOTA and the Right to Reject

The Law Commission currently rejects the extension of the NOTA principle to introduce a right to reject the candidate and invalidate the election in cases where a majority of the votes have been polled in favour of the NOTA option. This is premised on the fact that, *first*, the underlying premise of the Supreme Court's decision in *NOTA* was the importance of safeguarding the right to secrecy, and this secrecy rationale does not pre-empt the right to reject. *Second,* good governance, the motivating factor behind the right to reject, can be successfully achieved by bringing about changes in political horizontal accountability, inner party democracy, and decriminalisation. However, the issue might be reconsidered again in the future.

[Para 11.15]

18.11 The Right to Recall

The Law Commission is not in favour of introducing the right to recall in any form because it can lead to an excess of democracy, undermines the independence of the elected candidates, ignores minority interests, increases instability and chaos, increases chances of misuse and abuse, is difficult and

expensive to implement in practice, especially given that India follows the first past the post system.

[Para 12.20]

18.12 Totaliser for Counting of Votes

18.12.1 The Commission reiterates and endorses the ECI's suggestion for introducing a totaliser for the counting of votes recorded in electronic voting machines to prevent the harassment of voters in areas where voting trends in each polling station can be determined. Prior to the introduction of EVMs, ballot papers could be mixed under Rule 59A of the Election Rules, although this was not permitted for EVMs. Using a totaliser would increase the secrecy of votes during counting, thus preventing the disclosure of voting patterns and countering fears of intimidation and victimisation.

18.12.2 Thus, similar to the existing Rule 59A, the Commission proposes to amend Rule 66A to empower the ECI to decide when, and in which constituency and polling booths, to employ a totaliser, after taking into consideration various factors and the overall context of the elections.

[Para 13.7]

18.13 Restriction on Government Sponsored Advertisements

18.13.1 The Commission recommends regulating and restricting government sponsored advertisements six months prior to the date of expiry of the House/Assembly to maintain the purity of elections; prevent the use of public money for partisan interests of, *inter alia*, highlighting the government's achievements; and ensure that the ruling party or candidate does not get an undue advantage over another in the spirit of free and fair elections.

18.13.2 This can be achieved by inserting a new Chapter VIIB in Part V of the RPA 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

[Para 14.6]

18.14 Restriction on the Number of Seats from which a Candidate May Contest

The Commission recommends an amendment of section 33(7) of the RPA, which permits a candidate to contest any election (parliamentary, assembly, biennial council, or bye-elections) from up to two constituencies. In view of the expenditure of time and effort; election fatigue; and the

harassment caused to the voters, section 33(7) should be amended to permit candidates to stand from only one constituency.

[Para 15.4]

18.15 Independent Candidates

The Law Commission recommends that independent candidates be disbarred from contesting elections because the current regime allows a proliferation of independents, who are mostly dummy/non-serious candidates or those who stand (with the same name) only to increase the voters' confusion. Thus, sections 4 and 5 of the RPA should be amended to provide for only political parties registered with the ECI under section 11(4) to contest Lok Sabha or Vidhan Sabha elections.

[Para 16.16&16.17]

18.16 Preparation and Use of Common Electoral Rolls

The Law Commission endorses the ECI's suggestions regarding the 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. We hope that the States will consider amending their laws based on the suggestions of the ECI and the Law Commission.

[Para 17.6]

Sd/-
[Justice A.P. Shah]
Chairman

Sd/-	Sd/-	Sd/-
[Justice S.N. Kapoor]	**[Prof. (Dr.) Mool Chand Sharma]**	**[Justice Usha Mehra]**
Member	**Member**	**Member**
Sd/-	Sd/-	Sd/-
[Dr. S.S. Chahar]	**[P.K. Malhotra]**	**[Dr. Sanjay Singh]**
Member-Secretary	**Ex-officio Member**	**Ex-officio Member**

ANNEXURE
(To Report No.255)

AMENDMENTS TO THE REPRESENTATION OF THE PEOPLE ACT, 1951

Part I: PRELIMINARY

2. Interpretation.–(1) In this Act, unless the context otherwise requires,—

(e) "elector" in relation to a constituency means ……

(ea) "paying for news" means directly or indirectly paying for any news or analysis relating to any election under this Act appearing in electronic media or print media (print, radio, television and all other electronic) for a price in cash or kind as consideration to any such media, entity, person employed therein or connected thereto in any manner, but not including political advertisements as defined under this law;

EXPLANATION:- for the purpose of this clause the expression "electronic media" and "print media" shall have the meanings assigned in clauses (b) and (c) of section 126(a);

(eb) "political advertisement" means any advertisement paid for by any political party, candidate of a political party, any other person contesting an election, or any other person connected therewith or associated thereto, carrying necessary disclosures as notified by the Election Commission in this regard;

(f) "political party" means ….

(g) "prescribed" means…

(h) "public holiday" means…

(ha) "receiving payment for news" means any media entity, person employed therein or connected thereto in any manner, directly or indirectly receiving payment for any news or analysis relating to any election under this Act, not including political advertisements as defined under this Act.

Part II: QUALIFICATIONS AND DISQUALIFICATIONS

CHAPTER I: QUALIFICATIONS FOR MEMBERSHIP OF PARLIAMENT

4. Qualifications for membership of the House of the People.—A person shall not be qualified to be chosen to fill a seat in the House of the People 7* * *, unless—

(a) in the case of a seat reserved for the Scheduled Castes in any State, he is a member of any of the Scheduled Castes, whether of that State or of any other State, and is an elector for any Parliamentary constituency;

(b) in the case of a seat reserved for the Scheduled Tribes in any State (other than those in the autonomous districts of Assam), he is a member of any of the Scheduled Tribes, whether of that State or of any other State (excluding the tribal areas of Assam), and is an elector for any Parliamentary constituency;

(c) in the case of a seat reserved for the Scheduled Tribes in the autonomous districts of Assam, he is a member of any of those Scheduled Tribes and is an elector for the Parliamentary constituency in which such seat is reserved or for any other Parliamentary constituency comprising any such autonomous district;

(cc) in the case of the seat reserved for the Scheduled Tribes in the Union territory of Lakshadweep, he is a member of any of those Scheduled Tribes and is an elector for the Parliamentary constituency of that Union territory;

(ccc) in the case of the seat allotted to the State of Sikkim, he is an elector for the Parliamentary constituency for Sikkim;

(d) in the case of any other seat, he is an elector for any Parliamentary constituency.

Provided that only the political parties registered with the Election Commission under sub-section (7) of section 29A shall be entitled to put forward candidates to fill a seat in the House of the People.

5. Qualifications for membership of a Legislative Assembly.—A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless—

(a) in the case of a seat reserved for the Scheduled Castes or for the Scheduled Tribes of that State, he is a member of any of those castes or of those tribes, as the case may be, and is an elector for any Assembly constituency in that State;

(b) in the case of a seat reserved for an autonomous district of Assam, * * * he is a member of a Scheduled Tribe of any autonomous district and is an elector for the Assembly constituency in which such seat or any other seat is reserved for that district; and

(c) in the case of any other seat, he is an elector for any Assembly constituency in that State:

Provided that for the period referred to in clause (2) of article 371A, a person shall not be qualified to be chosen to fill any seat allocated to the Tuensang district in the Legislative Assembly of Nagaland unless he is a member of the regional council referred to in that article.

Provided further that only the political parties registered with the Election Commission under sub-section (7) of section 29A shall be entitled to put forward candidates to fill a seat in the Legislative Assembly of a State.

CHAPTER III: DISQUALIFICATIONS FOR MEMBERSHIP OF PARLIAMENT AND STATE LEGISLATURES

10A. Disqualification for failure to lodge account of election expenses and contribution reports.—If the Election Commission is satisfied that a person—

(a) has failed to lodge an account of election expenses and contribution reports within the time and in the manner required by or under this Act; and

(b) has no good reason or justification for the failure,

the Election Commission shall, by order published in the Official Gazette, declare him or her to be disqualified and any such person shall be disqualified for a period of three years up to a period of five years from the date of the order.

Part IVA: REGISTRATION OF POLITICAL PARTIES

29A. Registration with the Election Commission of associations and bodies as political parties.— (1) Any association or body of individual citizens of India calling itself a political party and intending to avail itself of the provisions of this Part shall make an application to the Election Commission for its registration as a political party for the purposes of this Act.

(2) Every such application shall be made,—

(a) if the association or body is in existence at the commencement of the Representation of the People (Amendment) Act, 1988 (1 of 1989), within sixty days next following such commencement;

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

(3) Every application under sub-section (1) shall be signed by the chief executive officer of the association or body (whether such chief executive officer is known as Secretary or by any other designation) and presented to the Secretary to the Commission or sent to such Secretary by registered post.

(4) Every such application shall contain the following particulars, namely:—

(a) the name of the association or body;
(b) the State in which its head office is situate;
(c) the address to which letters and other communications meant for it should be sent;
(d) the names of its president, secretary, treasurer and other office-bearers;
(e) the numerical strength of its members, and if there are categories of its members, the numerical strength in each category;
(f) whether it has any local units; if so, at what levels;
(g) whether it is represented by any member or members in either House of Parliament or of any State Legislature; if so, the number of such member or members.

(5) The application under sub-section (1) shall be accompanied by a copy of the memorandum or rules and regulations of the association or body, by whatever name called, and such memorandum or rules and regulations shall contain a specific provision that the association or body shall bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy, ~~and~~ would uphold the sovereignty, unity and integrity of India, shun violence for political gains, and avoid discrimination or distinction based on race, caste, creed, language or place of residence.

(6) The Commission may call for such other particulars as it may deem fit from the association or body.

(7) After considering all the particulars as aforesaid in its possession and any other necessary and relevant factors and after giving the representatives of the association or body reasonable opportunity of being heard, the Commission shall decide either to register the association or body as a political party for the purposes of this Part, or not so to register it; and the Commission shall communicate its decision to the association or body: *Provided* that no association or body shall be registered as a political party

under this sub—section unless the memorandum or rules and regulations of such association or body conform to the provisions of sub—section (5).

(8) The decision of the Commission shall be final.

(9) After an association or body has been registered as a political party as aforesaid, any change in its name, head office, office-bearers, address or in any other material matters shall be communicated to the Commission without delay.

29B. Political parties entitled to accept contribution.—– …..

~~**29C. Declaration of donation 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 received by such political party from any person in that financial year;~~

~~(b) the contribution in excess of twenty thousand rupees received by such political party from companies other than Government companies in that financial year.(2) The report under sub-section (1) shall be in such form as may be prescribed.~~

~~(3) 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.~~

~~(4) Where the treasurer of any political party or any other person authorised by the political party in this behalf fails to submit a report under sub-section (3) then, notwithstanding anything contained in the Income-tax Act, 1961 (43 of 1961), such political party shall not be entitled to any tax relief under that Act~~

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.

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-setion (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.

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.

29F. Election expenses by political parties. — (1) Every political party contesting an election shall, within seventy five days of the date of an election to a Legislative Assembly of a State or ninety days of the date of an election to the House of the People, lodge with the Election Commission a statement of election expenditure, which shall be a true copy of such statement maintained by the party in consonance with the directions of the Election Commission.

(2) The payment of any election expenditure over twenty thousand rupees should be made by the political parties via cheque or draft, and not by cash, unless there are no banking facilities or the payment is made to a party functionary in lieu of salary or reimbursement.

29G. Penalty.—(1) Where the treasurer of any political party or any other person authorised by the political party in this behalf fails to submit a report in the prescribed form within the time specified under sub-section (4) of section 29D then, notwithstanding anything contained in the Income-tax Act, 1961 (43 of 1961), such political party:

(a) shall not be entitled to any tax relief for such financial year under the Income-tax Act, 1961; and
(b) shall be liable to a penalty of twenty five thousand rupees for each day of non-compliance and so long as the non-compliance continues.

Provided that If such default continues beyond the period of ninety days, the Election Commission may de-register the political party after giving a reasonable opportunity to show cause.

(2) If the Election Commission finds on verification, undertaken whether suo motu or on information received, that the report submitted under sub-section (4) of section 29D is false in any particular, the Election Commission shall levy a fine up to a maximum of fifty lakh rupees on such political party.

29H. Penalty for political parties accepting contributions from an impermissible donor. – If a political party accepts any contribution offered to it from an impermissible donor, it shall be liable to pay a penalty that is five times the amount so accepted from such donor.

Explanation.– For the purpose of this section, "impermissible donor" refers to:

(a) a government company, as defined in section 29B;

(b) a company that does not comply with the requirements of sub-section (1) section 182 of the Companies Act, 2013; or

(c) any foreign source defined under clause (e) of section 2 of the Foreign Contribution (Regulation) Act, 1976.

Part IVB: REGULATION OF ELECTORAL TRUSTS

29I. Electoral Trusts entitled to accept contribution. (1) Subject to the provision of the Companies Act, 2013 and the Income Tax Act, 1961, an Electoral Trust approved by the Central Board of Direct Taxes under the Electoral Trusts Scheme, 2013 may accept any amount of contribution voluntarily offered to it by any person or company other than a Government Company:

Provided that no Electoral Trust shall be eligible to accept any contribution from any foreign source defined under clause (e) of section (2) of Foreign Contribution (Regulation) Act, 1976.

Provided further that all words and phrases used in this Part, shall have the same meaning as assigned to them in section 29B.

2. Maintenance, audit, publication of accounts by electoral trusts (a) Each Electoral Trust 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 Electoral Trust shall submit its accounts, duly audited by a qualified and practicing chartered accountant from panel of Chartered Accountants, selected by the Comptroller and Auditor General to the Election Commission.

(b) The Election Commission shall make publicly available, on its website, the audited accounts submitted by all electoral trusts under sub-section (1).

(c) 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.

3. Declaration of contribution received by the Electoral Trusts — (a) The treasurer of an Electoral Trust or any other person authorised by the trust in this behalf shall, in each financial year, prepare a report in respect of the following, namely: —

(i) the contribution received by such electoral trust from any person in that financial year, with name, address, PAN of such persons.

Provided that the Electoral Trust or any other person authorised by the Trust in this behalf shall not receive any donation in cash and without the name, address and PAN (if any);

(ii) the contribution to political parties from electoral trusts in that financial year with date amount, mode of payment and name of political party.

Provided that the electoral trusts shall not make any contribution to political parties in cash other than by bank account transfer.

(b) The report under this sub-section 2shall be in such form as may be prescribed.

(c) The report for a financial year under sub-section (1) shall be submitted by the treasurer of an Electoral Trust or any other person authorised by the Trust within six months of the close of each financial year to the Election Commission.

4. Disclosure of contribution reports submitted by Electoral Trusts by Election Commission – (a) The Election Commission shall make publicly available, on its website, the contribution reports, submitted by all Electoral Trusts under sub-sections (2) and (3) of this section.

(b) 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.

5. Penalty.—(1) Where the Electoral Trust fails to submit a report in the prescribed form within the time specified under sub-sections (2) or (3) of this section then, notwithstanding anything contained in the Income-tax Act, 1961 (43 of 1961), such Electoral Trust:

(a) shall not be entitled to any tax relief for such financial year under the Income-tax Act, 1961; and
(b) shall be liable to a penalty of twenty five thousand rupees for each day of non-compliance and so long as the non-compliance continues.

Provided that If such default continues beyond the period of ninety days, the Election Commission may ban the electoral trust from receiving any donations in future, after giving a reasonable opportunity.

(2) If the Election Commission finds on verification, undertaken whether suo motu or on information received, that the statement of accounts filed under this section is false in any particular, the Election Commission shall impose a fine up to a maximum of fifty lakh rupees on such Electoral trust.

(3) If the Electoral Trust has received funds from an impermissible donor, it shall be liable to penalty that is five times the amount so accepted by the Trust.

Explanation.– For the purpose of this section, "impermissible donor" refers to:

(a) a government company, as defined in section 29B;

(b) a company that does not comply with the requirements of sub-section (1) section 182 of the Companies Act, 2013; or

(c) any foreign source defined under clause (e) of section 2 of the Foreign Contribution (Regulation) Act, 1976.

Part IVC: REGULATION OF POLITICAL PARTIES

29J. Formation of political parties— (1) Political parties can be freely formed by the citizens of this country. The political parties shall form a constitutionally integral part of free and democratic system of Government.

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

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

29K. Name of political parties and power to sue— (1) A political party may sue and may be sued in its own name. A political party shall be competent to hold and dispose of properties.

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

29L. Constitution of a political party— The Constitution of a political party shall provide for the following matters:-

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

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

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

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

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

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

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

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

29M. Executive committees— The executive committee of a political party shall be elected. Its term shall not exceed years. Well before the expiry of the term, steps shall be taken for electing a new executive committee. It shall be open to the executive committee to constitute a sub-committee (by whatever name called) to carry out the business of the executive committee and to carry on regular and urgent executive committee business. The members of the sub-committee shall be elected by the members of the executive committee.

29N. Voting procedures— A political party and its organs shall adopt their resolutions on the basis of a simple majority vote. The voting shall be by secret ballot.

29O. Candidate selection—The candidates for contesting elections to the Parliament or the Legislative Assembly of the States shall be selected by the executive committee of the political party having due regard for the recommendations and resolutions passed by the concerned local party units.

29P. Regular elections— It shall be the duty of the executive committee to take appropriate steps to ensure compliance with the provisions of this chapter including holding of elections at all levels. The executive committee of a political party shall hold elections of national and State levels in the presence of the observers to be nominated by the Election Commission of

India. Where considered necessary, the Election Commission may also send its observers at elections to be held at other national and state levels.

29Q. Penalties for non compliance— The Election Commission shall be competent to inquire, either suo motu or on information received into allegation of non-compliance of any of the provisions of this Part. If on due inquiry, the Election Commission is satisfied that there has been non-compliance of any of the provisions of this chapter by any political party, the Commission shall call upon the party to rectify the non-compliance within the period prescribed by the Election Commission. In case, the non-compliance continues even after the period so prescribed, it shall be open to the Election Commission to impose such fine on the political party as it may deem appropriate in circumstances of the case including imposition of a penalty of Rs. 25,000/- per day for each day of non-compliance and withdrawal of registration of the party.

29R. Penalty for failure to contest elections for ten years consecutively– – (1) If any political party registered under section 29A of this Act does not contest any election to the House of the People or the Legislative Assembly of a State for ten consecutive years, its registration shall be liable to be cancelled by the Election Commission.

(2) The Election Commission shall scrutinise the registrations of all the political parties under section 29A, and if it finds that any registered party has not contested any election to the House of the People or the Legislative Assembly of a State for ten consecutive years, it shall cancel such registration.

Part V: CONDUCT OF ELECTIONS

CHAPTER I: NOMINATION OF CANDIDATES

33. Presentation of nomination paper and requirements for a valid nomination. —(1) On or before the date appointed under clause (a) of section 30 each candidate shall, either in person or by his proposer, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice issued under section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer :

Provided that a candidate not set up by a recognised political party, shall not be deemed to be duly nominated for election form a constituency unless the

nomination paper is subscribed by ten proposers being electors of the constituency:
Provided further that no nomination paper shall be delivered to the returning officer on a day which is a public holiday:
Provided also that in the case of a local authorities' constituency, graduates' constituency or teachers' constituency, the reference to "an elector of the constituency as proposer" shall be construed as a reference to ten per cent. of the electors of the constituency or ten such electors, whichever is less, as proposers.

(1A) Notwithstanding anything contained in sub-section (1) for election to the Legislative Assembly of Sikkim (deemed to be the Legislative Assembly of that State duly constituted under the Constitution), the nomination paper to be delivered to the returning officer shall be in such form and manner as may be prescribed :

Provided that the said nomination paper shall be subscribed by the candidate as assenting to the nomination, and—
(a) in the case of a seat reserved for Sikkimese of Bhutia-Lepcha origin, also by at least twenty electors of the constituency as proposers and twenty electors of the constituency as seconders;
(b) in the case of a seat reserved for Sanghas, also by at least twenty electors of the constituency as proposers and at least twenty electors of the constituency as seconders;
(c) in the case of a seat reserved for Sikkimese of Nepali origin, by an elector of the constituency as proposer:

Provided further that no nomination paper shall be delivered to the returning officer on a day which is a public holiday.]

(2) In a constituency where any seat is reserved, a candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains a declaration by him specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe is a Scheduled Caste or, as the case may be, a Scheduled Tribe of the State.

(3) Where the candidate is a person who, having held any office referred to in section 9 has been dismissed and a period of five years has not elapsed since the dismissal, such person shall not be deemed to be duly nominated as a candidate unless his nomination paper is accompanied by a certificate issued in the prescribed manner by the Election Commission to the effect that he has not been dismissed for corruption or disloyalty to the State.

(4) On the presentation of a nomination paper, the returning officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls :
Provided that no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly understood; and the returning officer shall permit any such misnomer or inaccurate description or clerical, technical or printing error to be corrected and where necessary, direct that any such misnomer, inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper shall be overlooked.

(5) Where the candidate is an elector of a different constituency, a copy of the electoral roll of that constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll shall, unless it has been filed along with the nomination paper, be produced before the returning officer at the time of scrutiny.

(6) Nothing in this section shall prevent any candidate from being nominated by more than one nomination paper:
Provided that not more than four nomination papers shall be presented by or on behalf of any candidate or accepted by the returning officer for election in the same constituency.

(7) Notwithstanding anything contained in sub-section (6) or in any other provisions of this Act, a person shall not be nominated as a candidate for election,—
(a) in the case of a general election to the House of the People (whether or not held simultaneously from all Parliamentary constituencies), from more than ~~two~~ one Parliamentary ~~Parliamentary constituencies~~constituency;
(b) in the case of a general election to the Legislative Assembly of a State (whether or not held simultaneously from all Assembly constituencies), from more than ~~two~~ one~~Assembly~~ Assembly constituency~~constituencies~~ in that State;
(c) in the case of a biennial election to the Legislative Council of a State having such Council, from more than ~~two~~ one Council~~Council~~ constituency ~~constituencies~~ in the State;

(d) in the case of a biennial election to the Council of States for filling two or more seats allotted to a State, for filling more than ~~two such seats~~one such seat;

(e) in the case of bye-elections to the House of the People from two or more Parliamentary constituencies which are held simultaneously, from more than ~~two~~one such Parliamentary ~~such Parliamentary constituencie~~constituency~~s~~;

(f) in the case of bye-elections to the Legislative Assembly of a State from two or more Assembly constituencies which are held simultaneously, from more than ~~two~~ one such Assembly ~~such Assembly~~ constituency~~constituencies~~;

(g) in the case of bye-elections to the Council of States for filling two or more seats allotted to a State, which are held simultaneously, for filling more than ~~two~~ one such~~such seats~~seat;

(h) in the case of bye-elections to the Legislative Council of a State having such Council from two or more Council constituencies which are held simultaneously, from more than ~~two~~ one such Council ~~such Council~~constituency ~~constituencies~~.

Explanation.— For the purposes of this sub-section, two or more bye-elections shall be deemed to be held simultaneously where the notification calling such bye-elections are issued by the Election Commission under section 147, section 149, section 150 or, as the case may be, section 151 on the same date.

CHAPTER VIIA: DECLARATION OF ASSETS AND LIABILITIES

CHAPTER VIIB: RESTRICTION ON GOVERNMENT SPONSORED ADVERTISEMENTS

75B. Restriction on Government Sponsored Advertisements. – No Central or State government, as the case may be, shall, publish any advertisements of achievements of the Central of State government either in the print media, electronic media, or by way of banners or hoardings in public places for a period of six months prior to the date of expiry of the term of the House of the People or the Legislative Assembly of the concerned State.

Provided that the restrictions above shall not apply to the advertisements of achievements of the governments relating to their poverty alleviation programmes or any health related schemes; however, such advertisements shall not carry any symbol of a political party or the names or photographs of any Minister or leader of any political party."

CHAPTER VIII: ELECTION EXPENSES AND MAINTENANCE OF ACCOUNTS

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 authorized by him or by his election agent between the date ~~on which he has been nominated~~of notification of such election and the date of declaration of the result thereof, both dates inclusive.

Explanation 1.—For the removal of doubts, it is hereby declared that—

(a) the expenditure incurred by leaders of a political party on account of travel by air or by any other means of transport for propagating programme of the political party shall not be deemed to be the expenditure in connection with the election incurred or authorised by a candidate of that political party or his election agent for the purposes of this sub-section.

(b) any expenditure incurred in respect of any arrangements made, facilities provided or any other act or thing done by any person in the service of the Government and belonging to any of the classes mentioned in clause (7) of section 123 in the discharge or purported discharge of his official duty as mentioned in the proviso to that clause shall not be deemed to be expenditure in connection with the election incurred or authorised by a candidate or by his election agent for the purposes of this sub-section.

Explanation 2.—For the purposes of clause (a) of Explanation 1, the expression "leaders of a political party", in respect of any election, means,—
(i) where such political party is a recognised political party, such persons not exceeding forty in number, and

(ii) where such political party is other than a recognised political party, such persons not exceeding twenty in number,

whose names have been communicated to the Election Commission and the Chief Electoral Officers of the States by the political party to be leaders for the purposes of such election, within a period of seven days from the date of the notification for such election published in the Gazette of India or Official Gazette of the State, as the case may be, under this Act:

Provided that a political party may, in the case where any of the persons referred to in clause (i) or, as the case may be, in clause (ii) dies or ceases to be a member of such political party, by further communication to the Election Commission and the Chief Electoral Officers of the States, substitute new name, during the period ending immediately before forty-eight hours ending with the hour fixed for the conclusion of the last poll for such election, for the name of such person died or ceased to be a member, for the purposes of designating the new leader in his place.

(2) The account shall contain such particulars, as may be prescribed.

(3) The total of the said expenditure shall not exceed such amount as may be prescribed.

77A. Account of contributions received.—Every candidate at an election shall, either by himself or by his election agent, also keep an account of the following particulars in respect of the donations or contributions received by the candidate after the date of notification of election, namely: —

(a) the amount of contribution received by the candidate from his party for the election;
(b) the amount of contribution received by the candidate from—
    (i) any person;
    (ii) any company, not being a government company
(c) the name, address and PAN card details, if applicable, of the donor in sub-clause (b) above;
(d) the nature of each contribution, in particular, whether it is:
    (i) cash;
    (ii) cheque; or
    (iii) gifts in kind;
(e) the date on which the contribution was received.

Explanation: All contributions by a political party to its candidate shall be made by a crossed account payee cheque or draft or bank transfer.

78. 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 and contribution reports which shall be a true copy of the account kept by him or by his election agent under section 77 and section 77A respectively.

78A. Disclosure of account submitted by contesting candidates.– (1) The district election officer shall make publicly available, on his website, the accounts of election expenses and contribution reports submitted by every contesting candidate or their election agent under section 78.

(2) The district election officer 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 under Rule 88 of the Conduct of Election Rules, 1961.

Part VI: DISPUTES REGARDING ELECTIONS

CHAPTER I: INTERPRETATION

79. Definitions.— In this Part and in [Part VII] unless the context otherwise requires,—
(d) “electoral right” means….

(e) "High Court" means the High Court within the local limits of whose jurisdiction the election to which the election petition relates has been held; wherever applicable, a reference to the High Court in this Part shall also be deemed to include a reference to the ‘election bench’ designated by the Chief Justice of the relevant High Court in accordance with the procedure prescribed by this Part;

(f) “returned candidate” means….

CHAPTER II: PRESENTATION OF ELECTION PETITIONS TO ELECTION COMMISSION

80A. High Court to try election petitions.—(1) The Court having jurisdiction to try an election petition shall be the High Court.

(2) Such jurisdiction shall be exercised ordinarily by a single Judge of the High Court, designated as an election bench, and the Chief Justice shall, from time to time, assign one or more Judges for that purpose:
Provided that where the High Court consists only of one Judge, he shall try all election petitions presented to that Court.

(3) Where the High Court functions in more than one State, or where the High Court has more than one bench, the election petition shall be filed before the Principal Seat of the relevant High Court.

Explanation – The High Court in its discretion may, in the interests of justice or convenience, try an election petition, wholly or partly, at the bench or place other than the Principal Seat of the High Court ~~The High Court in its discretion may, in the interests of justice or convenience, try an election petition, wholly or partly, at a place other than the place of seat of the High Court.]~~

82. Parties to the petition. —A petitioner shall join as respondents to his petition—

(a) where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all

the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates;
Provided that in cases where the petitioner makes an additional declaration that he himself or any candidate has been duly elected, no contesting candidates who have lost their security deposit shall be joined by the petitioner as respondents to his petition; and~~and~~

(b) Notwithstanding anything contained in sub-clause (a), any other candidate against whom allegations of any corrupt practice are made in the petition.

CHAPTER III: TRIAL OF ELECTION PETITIONS

86. Trial of election petitions. —(1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 ~~or section 117~~.
Explanation.—An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98.

(2) As soon as may be after an election petition has been presented to the High Court, it shall be referred to the Judge or ~~one of the~~ Judges who has or have been ~~assigned~~ designated by the Chief Justice as the election bench for the trial of election petitions under sub-section (2) of section 80A.

(2A)(1) There shall be one or more election benches, comprising of one or more judges, as designated by the Chief Justice of the High Court under Section 80A(2), which shall only be dealing with election petitions presented in accordance with the provisions of this Part.
(2) The trial of an election petition shall be continued from day to day until its conclusion, and the election bench shall not grant any adjournments unless sufficient cause is made out and may impose costs, including exemplary costs, on the party seeking the adjournment.
(3) Every election petition shall be tried as expeditiously as possible and trial shall be concluded within six months from the date on which the election petition is presented to the High Court for trial.
Provided that if the trial is not concluded within six months, the designated election bench shall, for reasons to be recorded in writing, explain the cause for delay in a report to the Chief Justice of the High Court.
(4) The respondent(s) shall file the written statement within forty-five days from the date of service of summons.
Provided that if the election bench is satisfied that the respondent(s) were prevented by sufficient cause from filing the written statement within the said

period of forty-five days, it may entertain the written statement within a further period of fifteen days, but not thereafter.
Provided further that on expiry of such fifteen-day period, the respondent(s) shall forfeit the right to file the written statement and the election bench shall not allow the written statement to be taken on record thereafter.

(3) Where more election petitions than one are presented to the High Court in respect of the same election, all of them shall be referred for trial to the same election bench that ~~Judge who~~ may, in ~~his~~ its discretion, try them separately or in one or more groups.

(4) Any candidate not already a respondent shall, ……

(5) The High Court may, upon such terms as to costs …..
~~(6) The trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.~~

~~(7) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial.~~

(6) <deleted>
(7) <deleted>

98. Decision of the High Court.—At the conclusion of the trial of an election petition [the election bench of the High Court] shall make an order—
(a) dismissing the election petition; or
(b) declaring the election of [all or any of the returned candidates] to be void; or
(c) declaring the election, of [all or any of the returned candidates] to be void and the petitioner or any other candidate to have been duly elected.
Provided that such order of the election bench shall be made within ninety-days from the conclusion of arguments.

98A. Collection and disclosure of data by the High Court: (1) Complete information regarding the number of election petitions filed and pending, the status of each petition, the names of the parties, and designated election bench shall be maintained and constantly updated by each High Court on its website.

(2) The Election Commission shall prepare an annual report compiling the information mentioned in sub-section (1) from all the High Courts, and shall publish the said information annually on its website.

99. Other orders to be made by the High Court.—(1) At the time of making an order under section 98 [the election bench of the High Court] shall also make an order—

[(a) where any charge is made in the petition of any corrupt practice having been committed at the election, recording—

(i) a finding whether any corrupt practice has or has not been proved to have been committed *** at the election, and the nature of that corrupt practice; and

(ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice; and]

(b) fixing the total amount of costs payable and specifying the persons by and to whom costs shall be paid:

Provided that [a person who is not a party to the petition shall not be named] in the order under sub-clause (ii) of clause (a) unless—

(a) he has been given notice to appear before [the election bench of the High Court] and to show cause why he should not be so named; and

(b) if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness who has already been examined by [the election bench of the High Court] and has given evidence against him, of calling evidence in his defence and of being heard.

[(2) In this section and in section 100, the expression "agent" has the same meaning as in section 123.]

100. Grounds for declaring election to be void.— (1) Subject to the provisions of sub-section (2) if the election bench of the High Court is of opinion—

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

(i) by the improper acceptance or any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent], or
(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or
(iv) by any non—compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

the election bench of the High Court shall declare the election of the returned candidate to be void.

(2) If in the opinion of the election bench of the High Court, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice *** but the High Court is satisfied—

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and [without the consent], of the candidate or his election agent;

* * * * *

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(d) that in all other respects the election was free from any corrupt *** practice on the part of the candidate or any of his agents,

then the election bench of the High Court may decide that the election of the returned candidate is not void.

102. Procedure in case of an equality of votes.—If during the trial of an election petition it appears that there is an equality of votes between any candidates at the election and that the addition of a vote would entitle any of those candidates,—
(a) any decision made by the returning officer under the provisions of this Act shall, in so far as it determines the question between those candidates, be effective also for the purposes of the petition; and
(b) in so far as that question is not determined by such a decision the election bench of the High Court shall decide between them by lot and proceed as if the one on whom the lot then falls had received an additional vote.

CHAPTER IV: WITHDRAWAL AND ABATEMENT OF ELECTION PETITIONS

109. Withdrawal of election petitions.—(1) An election petition may be withdrawn only by leave of the election bench of the High Court.

(2) Where an application for withdrawal is made under sub-section (1), notice thereof fixing a date for the hearing of the application shall be given to all other parties to the petition and shall be published in the Official Gazette.

112. Abatement of election petitions.—(1) An election petition shall abate only on the death of a sole petitioner or of the survivor of several petitioners.
(2) Where an election petition abates under sub-section (1), the election bench of the High Court shall cause the fact to be published in such manner as it may deem fit.
(3) Any person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner and upon compliance with the conditions, if any, as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the election bench of the High Court may deem fit.

CHAPTER IVA: APPEALS

116A. Appeals to Supreme Court.—(1) Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie to the Supreme Court on any question ~~(whether of law or fact)~~of law from every order made by ~~a~~ the election bench of the High Court under section 98 or section 99.
(2) Every appeal under this Chapter shall be preferred within a period of thirty days from the date of the order of the election bench of the High Court under section 98 or section 99:
Provided that if the Court is satisfied that the petitioner was prevented by sufficient cause from filing an appeal before the Supreme Court within the said period of thirty days it may entertain the petition within a further period of thirty days, but not thereafter.
(3) Every appeal under this Chapter shall be tried as expeditiously as possible and every endeavour shall be made to conclude the appeal within three months from the date on which the appeal is presented to the Supreme Court for hearing.~~Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within such period.~~

116B. Stay of operation of order of High Court.—(1) An application may be made to the election bench of the High Court for stay of operation of an order made by the High Court under section 98 or section 99 before the expiration of the time allowed for appealing therefrom and the election bench of the High Court may, on sufficient cause being shown and on such terms and conditions as it may think fit, stay the operation of the order; but no application for stay

shall be made to the election bench of the High Court after an appeal has been preferred to the Supreme Court.
(2) Where an appeal has been preferred against an order made under section 98 or section 99, the Supreme Court may, on sufficient cause being shown and on such terms and conditions as it may think fit, stay the operation of the order appealed from.
(3) When the operation of an order is stayed by the election bench of the High Court or, as the case may be, the Supreme Court, the order shall be deemed never to have taken effect under sub-section (1) of section 107; and a copy of the stay order shall immediately be sent by the High Court or, as the case may be, the Supreme Court, to the Election Commission and the Speaker or Chairman, as the case may be, of the House of Parliament or of the State Legislature concerned.

CHAPTER V: COSTS AND SECURITY FOR COSTS

117. Security for costs.—(1) At the time of presenting an election petition, the petitioner shall deposit in the High Court in accordance with the rules of the High Court a sum of ten thousand ~~two thousand~~ rupees as security for the costs of the petition.
Provided that if the election bench of the High Court is satisfied that the petitioner was prevented by sufficient cause from depositing the said amount of ten thousand rupees, it may grant an extension of such time as it deems reasonable and dismiss the petition if the amount is not deposited within the specified extended period.

(2) During the course of the trial of an election petition, the election bench of the High Court may, at any time, call upon the petitioner to give such further security for costs as it may direct.

119. Costs.—Costs shall be in the discretion of the election bench of the High Court:
Provided that where a petition is dismissed under clause (a) of section 98, the returned candidate shall be entitled to the costs incurred by him in contesting the petition and accordingly the High Court shall make an order for costs in favour of the returned candidate.

Part VII: CORRUPT PRACTICES AND ELECTORAL OFFENCES

CHAPTER I: CORRUPT PRACTICES

123. Corrupt practices. — The following shall be deemed to be corrupt practices for the purposes of this Act:

…..

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person 7 [with the consent of the candidate or his election agent], with the free exercise of any electoral right:

Provided that—

(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—

(i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure;~~,~~ or

(iii) pays for news,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

CHAPTER III: ELECTORAL OFFENCES

126. Prohibition of public meetings during period of forty—eight hours ending with hour fixed for conclusion of poll.— (1) No person shall—

(a) convene, hold or attend, join or address any public meeting or procession in connection with an election; or

(b) publish, publicise or disseminate any election matter by means of print or electronic media~~display to the public any election matter by means of cinematograph, television or other similar apparatus~~; or

(c) propagate any election matter to the public by holding, or by arranging the holding of, any musical concert or any theatrical performance or any other entertainment or amusement with a view to attracting the members of the public thereto,

in any polling area during the period of forty-eight hours ending with the fixed for the conclusion of the poll for any election in the polling area.

(2) Any person who contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(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.

~~(3) In this section, the expression "election matter" means any matter intended or calculated to influence or affect the result of an election.].~~

126B. Offence by companies.— (1) Where an offence under sub-section (2) of section 126A…..

….

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 sub-section (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.

127A. Restriction on the printing of pamphlets, posters, etc. – (1) No person shall print or publish …..

127B. Paying 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 twenty-five 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.

127C. Non-disclosure of interest in political advertising

(1) Any political advertisement in any media shall carry a disclosure to this effect in the form and manner notified by the ECI in this regard.

~~(1)~~(2) Any person who contravenes the provision of sub-section (1) shall be punishable with imprisonment for a term which may extend to six months or fine which may extend to five lakh rupees, or both.

127D. Offences by companies.— (1) Where an offence under sub-section (1) of Section 127B 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.

CONDUCT OF ELECTION RULES, 1961

PART V: COUNTING OF VOTES IN PARLIAMENTARY AND ASSEMBLY CONSTITUENCIES

66A. Counting of votes where electronic voting machines have been used.— In relation to the counting of votes cast at a polling station, where voting machine has been used,—
(i) the provisions of rules 50 to 54 and in lie of rules 55,56, and 57, the following rules shall respectively apply, namely:—

"55C. *Scrutiny and inspection of voting machines.—* ……

56C. *Counting of votes.—* (1) After the returning officer is satisfied that a voting machine has in fact not been tampered with, he shall have the votes recorded therein counted by pressing the appropriate button marked "Result" provided in the control unit whereby the total votes polled and votes polled by each candidate shall be displayed in respect of each such candidate on the display panel provided for the purpose in the unit.

(2) As the votes polled by each candidate are displayed on the control unit, the returning officer shall have,-

(a) the number of such votes recorded separately in respect of each candidate in Part II on Form 17C;
(b) Part II of Form 17C completed in other respects and signed by the counting supervisor and also by the candidates or their election agents or their counting agents present; and
(c) corresponding entries made in a result sheet in Form 20 and the particulars so entered in the result sheet announced.

(2A) In the appropriate case, where the Election Commission apprehends intimidation and victimisation of electors in any constituency, and it is of the opinion that the votes recorded in the voting machines should be mixed before counting, it may by notification in the Official Gazette, specify such constituency where the returning officer shall use a totaliser for the counting of votes recorded in a group of electronic voting machines.

57C. *Sealing of voting machines.—* ….

AMENDMENTS TO THE CONSTITUTION OF INDIA, 1950

324. Superintendence, direction and control of elections to be vested in an Election Commission.- (1) 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 President and Vice-President held under this Constitution *** shall be vested in a Commission (referred to in this Constitution as the Election Commission)

(2) 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 other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.

(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.

(3) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission.

(4) Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President may also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the Commission by clause (1).

(5): Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of ~~the Election Commissioners and~~ the Regional Commissioners shall be such as the President may by rule determine;

Provided that the Chief Election Commissioner and any other Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner and any other Election Commissioner shall not be varied to his disadvantage after his appointment:

Provided further that ~~any other Election Commissioner or~~ a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

(6) The President, or the Governor of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1).

Tenth Schedule: Provisions as to disqualification on ground of defection

1. **Interpretation**…..

2. **Disqualification on ground of defection**…..

4. **Disqualification on ground of defection not to apply in case of merger**….

5. **Exemption.—**….

6. **Decision on questions as to disqualification on ground of defection.**—(1) If any question arises as to whether a member of a House has become subject to disqualification under this Schedule, the question shall be referred for the decision of the ~~Chairman or, as the case may be, the Speaker of such House and his decision shall be final~~:

(a) President, in case of disqualification of a member of either House of Parliament;

(b) Governor, in case of disqualification of a member of a House of the Legislature of a State.

Provided that the decision of the President or the Governor as to whether a member of a House has become subject to disqualification under this Schedule shall be final.~~where the question which has arisen is as to whether the Chairman or the Speaker of a House has become subject to such disqualification, the question shall be referred for the decision of such member of the House as the House may elect in this behalf and his decision shall be final.~~

(2) ~~All proceedings under sub-paragraph (1) of this paragraph in relation to any question as to disqualification of a member of a House under this Schedule shall be deemed to be proceedings in Parliament within the meaning of article 122 or, as the case may be, proceedings in the Legislature of a State within the meaning of article 212.~~ Before giving any decision on any

such question, the President or the Governor, as the case may be, shall obtain the opinion of the Election Commission and shall act according to such opinion.

Provided that no member of a House shall be disqualified under this Schedule, unless he has been given a reasonable opportunity of being heard by the Commission in the matter.

7**. Bar of jurisdiction to courts**….

AMENDMENTS TO THE ELECTION COMMISSION (CONDITIONS OF SERVICE OF ELECTION COMMISSIONERS AND TRANSACTION OF BUSINESS) ACT, 1991

Election Commission (Appointment and Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991

An Act to determine the appointment and conditions of service of the Chief Election Commissioner and other Election Commissioners and to provide for the procedure for transaction of business by the Election Commission and for matters connected therewith or incidental thereto.

Chapter 1 — Preliminary

1. Short title.– This Act may be called the Election Commission (Appointment and Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991.

2. Definitions.–……

Chapter 1A – Appointment of Chief Election Commissioner and Election Commissioners.

2A. Appointment of Chief Election Commissioner and Election Commissioners – (1) The Election Commissioners, including the Chief Election Commissioners, shall be appointed by the President by warrant under his hand and seal after obtaining the recommendations of a Committee consisting of:

(a) the Prime Minister of India – Chairperson

(b) the Leader of the Opposition in the House of the People – Member

(c) the Chief Justice of India – Member

Provided that after the Chief Election Commissioner ceases to hold office, the senior-most Election Commissioner shall be appointed as the Chief Election Commissioner, unless the Committee mentioned in sub-section (1) above, for reasons to be recorded in writing, finds such Election Commissioner to be unfit.

Explanation: For the purposes of this sub-section, "the Leader of the Opposition in the House of the People" shall, when no such Leader has been so recognised, include the Leader of the single largest group in opposition of the Government in the House of the People.

AMENDMENTS TO THE COMPANIES ACT, 2013 (18 of 2013)

182. Prohibitions and restrictions regarding political contributions.— (1) Notwithstanding anything contained in any other provision of this Act, a company, other than a Government company and a company which has been in existence for less than three financial years, may contribute any amount directly or indirectly to any political party:

Provided that the amount referred to in sub-section (1) or, as the case may be, the aggregate of the amount which may be so contributed by the company in any financial year shall not exceed seven and a half per cent of its average net profits during the three immediately preceding financial years:

Provided further that no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at the annual general meeting ~~a meeting of the Board of Directors~~ and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making and the acceptance of the contribution authorised by it.

AMENDMENTS TO THE INCOME TAX ACT, 1961(43 of 1961)

13A. Special provision relating to incomes of political parties.- Any income of a political party which is chargeable under the head "Income from house property" or "Income from other sources" or "Capital gains" or any income by way of voluntary contributions received by a political party from any person shall not be included in the total income of the previous year of such political party :

Provided that—

(a) such political party keeps and maintains such books of account and other documents as would enable the Assessing Officer to properly deduce its income therefrom;

(b) in respect of each such voluntary contribution in excess of twenty thousand rupees, such political party keeps and maintains a record of such contribution and the name and address of the person who has made such contribution; and

(c) the accounts of such political party are audited by an accountant as defined in the Explanation below sub-section (2) of section 288 :

Provided further that if the treasurer of such political party or any other person authorised by that political party in this behalf fails to submit a report under sub-section (3) of section 29DC of the Representation of the People Act, 1951 (43 of 1951) for a financial year, no exemption under this section shall be available for that political party for such financial year.

Explanation.—For the purposes of this section, "political party" means a political party registered under section 29A of the Representation of the People Act, 1951 (43 of 1951).

Prashant Bhushan

(TRUE COPY)

Report of the Committee on Electoral Reforms

[1st May, 1990]

REPORT OF THE COMMITTEE ON ELECTORAL REFORMS

GOVERNMENT OF INDIA

MINISTRY OF LAW AND JUSTICE LEGISLATIVE DEPARTMENT

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Chapter I

INTRODUCTION

1.1. Success of Parliamentary democracy.— Bharat can legitimately be proud of its being the largest democracy in the world and of its unique success as demonstrated through regular periodical elections inspite of steep illiteracy and backwardness of its people.

1.2. Display of maturity of judgment by people at elections.— The credit for our success with the working of parliamentary democracy based on universal adult suffrage goes, in no small measure, to our people who have displayed their maturity of judgment through their native intelligence and commonsense in choosing, and also changing, the Government according to their choice.

1.3. Massive operation in a country wide elections.—The massive operation of our country wide elections naturally inspires global awe and respect. Holding of elections in sky high and snow-clad mountains in North; scattered tiny islands in South; thick forests in East; and a vast tracks of marshy and desert lands in West; poses

daunting problems which have been, time and again, successfully overcome. At the present reckoning, the electoral machinery has to plan and manage an election for an electorate of nearly 500 millions spread over 25 States and 7 Union territories of big, medium and small sizes; nearly 5.5 lakhs of polling stations; requirement of an army of about 3 million personnel; vast quantity of ballot papers, ballot boxes and other materials.

1.4. Observation of Sir Antony Eden on Indian Experiment.— Sir Antony Eden, Former Prime Minister of United Kingdom was perhaps greatly influenced by these factors when he observed:—

> "Of all the experiments in government which have been attempted since the beginning of Time, I believe that the Indian venture into parliamentary government is the most exciting. A vast sub-continent is attempting to apply to its

tens and hundreds of millions a system of free democracy which has been slowly evolved over the centuries in this small island, Great Britain. It is a brave thing to try to do so. The Indian venture is not a pale imitation of our practice at home, but a magnified and multiplied reproduction on a scale we have never dreamt of. If it succeeds, its influence on Asia is incalculable for good. Whatever the outcome, we must honour those who attempt it."

1.5. Danger to free and fair elections.— Leaving now our laurels alone, it becomes imperative to take stock of the present state of affairs which causes real concern and anxiety because of the existence of the looming danger threatening to cut at the very roots of free and fair elections.

1.6. The role of money and muscle powers at elections deflecting seriously the well accepted democratic values and ethos and corrupting the process; rapid criminalisation of politics greatly encouraging evils of booth capturing, rigging, violence etc.; misuse of official machinery, i.e. official media and ministerial; increasing menace of participation of non

-serious candidates; form the core of our electoral problems. Urgent corrective measures are the need of the hour lest the system itself should collapse.

1.7. Recent Measures of electoral reforms.— Electoral reforms are correctly understood to be a continuous process. But the attempts so far made in this area did not touch even the fringe of the problem. They proved to be abortive. Some of the recent measures like reduction of voting age and anti-defection law are no doubt laudable and the basic principles underlying those measures should be appreciated. But there are other vital and important areas in election field completely neglected and left high and dry.

1.8. Details of steps so far on electoral reforms.— All these four decades, especially after 1967, the demand for electoral reforms hasbeen mounting up. The subject of electoral reforms received wide attention at various Seminars and Forums. Many eminent persons and academicians have written on various aspects of electoral reforms. It would be relevant to make reference in brief to some of them.

(1) The Report of the Joint Parliamentary Committee on amendment to election law - Part I and Part II - submitted in 1972 in two parts and the draft Bill appended thereto.

(2) The Report of the Committee For Democracy (CFD) set up by Shri Jaya Prakash Narayan under the Chairmanship of Justice Tarkunde in August 1974.

(3) Consideration of the various aspects of electoral reforms by the Sub-Committee of Cabinet appointed in 1977.

(4) Consideration of the various aspects of electoral reforms by the Sub-Committee of the Cabinet between 1982 - 1984.

(5) Various Presidential Addresses in Parliament.

(6) Various Reports of Election Commission containing the views, suggestions and recommendations of the Chief Election Commissioners from 1952 onwards and the package of proposals made by the Commission in 1982.

(7) The comments and views of the present Chief Election Commissioner, Shri R.V.S. Peri Sastri, as contained in his Notes circulated at the meeting of the political parties held on 9-1- 1990.

(8) The recommendations of the various Seminars including the one organised in March, 1983 by the Institute of Constitutional and Parliamentary Studies in New Delhi to deal with the various aspects of electoral reforms.

(9) Write ups, articles etc. in national press regarding various aspects of electoral law and procedure.

(10) Articles in Periodical "Swarajya" by Shri R. Venkataraman, Preident of India in Sixties (1960)

1.9. Some of the books by eminent authors dealing with either comprehensively the various aspects of electoral reforms or particular important aspects thereof are—

(1) 'Lack of Political Will' by Shri Ramakrishna Hegde, former Chief Minister of Karnataka and at present Deputy Chairman of the Planning Commission.

(2) 'Electoral Reforms' a book by Shri L.P. Singh, former Governor.

(3) 'Rescue Democracy From Money Power' by Shri Rajagopalachari (Rajaji), former Governor-General and an eminent statesman.

(4) Reports of various Seminars addressed by Shri S.L. Shakdher,

former Chief Election Commissioner; Shri R.K. Trivedi, Former Chief Election Commissioner; Shri R.V.S. Peri Sastri, Present Chief Election Commissioner; Shri LK. Advani (MP) and others.

1.10. Thus, there are in existence informative, productive and useful voluminuous materials on the subject. The general public has been getting the feeling that there is lack of political will to undertake any useful exercise of electoral reforms.

1.11. Meeting with representatives of Political Parties under Chairmanship of the Prime Minister.— In this context, the quick and timely initiative of the Prime Minister, Shri Visvanath Pratap Singh, on the assumption of office of the National Front Government is refreshing. It has revived the hope that meaningful electoral reforms could now be a distinct possibility

and efforts would be directed towards removing the serious drawbacks and distortions in the election law and procedure.

1.12. A meeting mainly of the representatives of political parties in Parliament was convened on the 9th January, 1990 at New Delhi under the Chairmanship of the Prime Minister, Shri Vishwanath Pratap Singh. Various aspects of electoral reforms were discussed at the meeting. In summing up of the deliberations, the Prime Minister outlined the following areas of electoral reforms on which general discussions at the meeting took place and broad consensus on the need for corrective measures emerged:—

(1) Outlines of areas of electoral reforms indicated by Prime Minister.— Change of electoral system with special reference to Proportional Representation System and List System on which divergent views were earlier expressed; (2) Strengthening of the Election Commission and securing its independence including making the holder of the post of the Chief Election Commissioner ineligible for any office under the government after his term; (3) More stringent laws to deal with evil of booth capturing and impersonation; (4) Fresh delimitation to cure the various distortions; provision for rotation of seats reserved for scheduled castes; Reservation of seats for women;

(5) Expeditious disposal of election petitions and appeals by sitting Judges and to manage their other work by appointment of ad hoc Judges; (6) Examination of the present provision of Anti-Defection Law and introduction of necessary changes to limit its application only to certain areas of legislative activities and to limit the powers of the presiding officers of the Legislatures; (7) Public Funding of elections;

(8) Fixation of rational basis for ceiling of election expenses and need for removing the present distortions; (9) Multi-purpose photo identity cards to voters; (10) Statutory time-limit for holding bye-elections;

(11) Statutory backing to certain provisions of Model Code; (12) Statutory backing to the Observers' role; (13) Combating the evil of non-serious candidates contesting elections; (14) Elimination of misuse of official machinery.

1.13. Constitution of a Committee on Electoral Reforms.— On the basis of the conclusions at the meeting of 9th January, 1990, the Government constituted a Committee under the Chairmanship of Law Minister Shri Dinesh Goswami with the following members to go into the various aspects of electoral reforms enumerated above:—

1. Shri H.K.L. Bhagat, M.P. (Indian National Congress)
2. Shri L.K, Advani, M.P. (Bharatiya Janata Party)
3. Shri Somnath Chatterjee, M.P. (Communist Party of India) [Marxist]
4. Shri Ghulam Rasool Matto, M.P. (National Conference)
5. Shri Chimanbhai Mehta, M.P.
6. Shri Indrajit M.P.
7. Shri Homi F. Daji, Former M.P. (Communist Party of India)
8. Shri Era Sezhiyan, Former M.P. (Janata Dal)
9. Shri V. Kishore Chandra Deo, Former M.P. (Congress (S)
10. . Shri LP. Singh, Former Governor
11. Shri S.L. Shakdher, Former Chief Election Commissioner

1.14. Shri K.Ganesan, former Secretary, Election Commission of India, who has been appointed honorary Consultant in the Ministry of Law and Justice for the specific work of electoral reforms has been instructed to assist the Committee in its deliberations. Shri J.C. Sharma, Consultant in the Ministry of Law and Justice, Legislative Department has been instructed to assist Shri K. Ganesan in the matter.

1.15. Smt. V.S. Rama Devi, Secretary, Legislative Department, Ministry of Law and Justice, has also been requested to assist the Committee in its deliberations.

1.16. At the first meeting of the Committee held on the 3rd February, 1990 at New Delhi under the Chairmanship of Shri Dinesh Goswami, Law Minister, the Chairman indicated that detailed working paper under various heads of subjects of the contemplated electoral reforms would be prepared and circulated to members.

1.17. Shri K. Ganesan has been instructed to prepare the detailed working paper' in consultation with Shri Era Sezhiyan and the Law Minister.

1.18. Preparation of detailed Notes-Part I and Part II.— Detailed Notes under different Headings have been prepared with necessary Appendices thereto. The number of such main headings are 10 in Part-I and the number of sub-items thereunder are 55 covering every main aspects of election law and procedure.

1.19. Under Part - I, detailed notes on the different electoral systems obtaining in a few countries and the examination of those systems from the point of view of its suitability to Indian conditions have been prepared with necessary Appendices thereto.

1.20. These notes - Parts I and II - were circulated to the members of the Committee well in advance.

1.21. Details of Meetings of the Committee.— Thereafter, the Committee had six meetings as per the details given below:—

1. 7th March, 1990
2. 8th March, 1990
3. 30th March, 1990
4. 31st March, 1990

5. 2nd April, 1990

6. 11th April, 1990

1.22. Further Notes on Specific Subjects.— At these meetings, the Committee examined the Notes on subjects in Part-I and Part-II and also considered the following additional notes prepared on specific subjects:—

(1) Note on proposal regarding amendment to section 39 of the Representation of the People Act, 1951 (relating to increase in the number of proposers to a nomination paper in the case of elections to Rajya Sabha and Legislative Councils).

(2) Recommendations made by the National Seminar on 'Elections and role of Law Enforcement' organised by the National Police Academy, Hyderabad and a note thereon.

(3) Additional notes on 'Offence of Booth Capturing' prepared in consultation with Shri L.P. Singh.

(4) The opinion of the Attorney-General on the various legislative measures proposed for discouraging non-serious candidates from contesting elections.

(5) A Note containing broad outlines of U.K. law regarding election expenses prepared by Shri Era Sezhiyan.

(6) A Note on 'Contribution by Companies to Political Parties' prepared by Shri LP. Singh.

1.23. Suggestions and views from MPs &Others.— Apart from the above Notes, a brief statement containing gist of the suggestions in the letters received from Members of Parliament and other important persons on electoral reforms in response to the letter of the Minister of Law and Justice dated the 28th December, 1989 inviting their viewsand suggestions, were also circulated to the members of the Committee. Such of the important suggestions as are having a bearing on the subjects

dealt with in the Notes have also been taken into account by the Committee.

1.24. The Committee concluded its work on the 4th May, 1990 at which the draft final report of the Committee has been approved.

Chapter II

ELECTORAL MACHINERY

1. Set up of multi-member Commission

1.1.Set up of multi-member Commission with three members.— The Committee examined the question of making the Election Commission as a multi-member body. There has been broad agreement among all members about the Commission being a multi-member body. The Committee feels that the Election Commission should be a three member body.

1.2.Mode of Appointment.— As regards the mode of appointment of the Chief Election Commissioner and the two Election Commissioners, the Committee recommends as follows:—

(i)The appointment of the Chief Election Commissioner should be made by the President in consultation with Chief Justice of India and the Leader of the Opposition (and in case no Leader of the opposition is available, the consultation should be with the leader of the largest opposition group in the Lok Sabha).

(ii)The consultation process should have a statutory backing.

(iii)The appointment of the other two Election Commissioners should be made in consultation with the Chief Justice of India, Leader of the Opposition (in case the Leader of the opposition is not available, the consultation should be with the leader of the

largest opposition group in the Lok Sabha) and the Chief Election Commissioner.

(iv)Appointment of Regional Commissioner.—The appointment of Regional Commissioners for different zones as proposed is not favoured. However, such appointment should be made only as envisaged in the Constitution and not on a permanent footing.

2. Steps for securing independence of the Commission

2.1. Various measures have been considered for securing the real independence of the Election Commission.

2.2. Protection of Salary of Chief Election Commissioner and other Election Commissioners on the analogy of Chief Justice of India and Judges of the Supreme Court.— The Committee recommends that the protection of salary and other allied matters relating to the Chief Election Commissioner and the ElectionCommissioners 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 measures being taken, a parliamentary law should be enacted for achieving the object.

2.3. Expenditure to be 'Voted'.—The Committee feels that the proposal to make the expenditure of the Commission to be 'charged' is not necessary. Such expenditure should continue to be 'voted' as of now.

2.4. Ineligibility for any appointment under the Government after expiry of term.—The Committee further recommends that on the expiry of the terms of office, the Chief Election Commissioner and the Election Commissioners should be made ineligible not only for any appointment under the Government but also to any office including the post of Governor the appointment to which is made by the President.

2.5. Tenure of the Chief Election Commissioner and other Election Commissioners.—As regards the tenure of the Chief Election Commissioner and other Election Commissioners, the Committee recommends that it should be for a term of five years or sixty-five years of age whichever is later. The Committee makes it clear that the Chief Election Commissioner and Election Commissioners should in no case continue in office beyond the age of sixty-five years and for more than ten years in all.

3. Set up of the Secretariat

Provision analogous in respect of Lok Sabha Secretariat.—The Committee agrees that in regard to the set up of the secretariat of the Commission, provisions on the lines of Article 98(2) of the Constitution relating to Lok Sabha Secretariat should be made and that till such provision is made, a law of Parliament should be enacted.

4. Set up of electoral machinery at State level

4.1. Chief Electoral Officer to be exclusively entrusted with election work.—The Committee considered the suggestion for appointment of a full-time Chief Electoral Officers in States. The consensus is that Chief Electoral Officers, when so appointed, should exclusively be entrusted with the election work and not saddled with any other items of work.

The Committee is of the view that the present provision in the law is adequate.

4.2. Creation of supervisory agency not favoured.—The Committee examined the suggestion of the Election Commission for the creation of a supervisory agency for a group of districts. However, it does not accept the suggestion,

4.3. Disciplinary control of Election Commission over State-level officers employed for election work to be made effective and complete.—As regards the disciplinary control over the state-level officers including the Chief Electoral Officer, the

Committee feels that even after the recent insertion of the provision in section 28-A of the Representation of the People Act, 1951 treating such officers as are drafted for election duties, on deputation to the Election Commission, no disciplinary proceedings could be taken against them directly by the Election Commission itself. Keeping this in view, the Committee recommends that the matter should be further examined as to how best the Commission's control over the officers during the election period could be made more effective and complete in all respects including framing of charges, launching of prosecution and disciplinary proceedings against concerned officers for breach of duty during the period of his deputation to the Election Commission.

4.4. Transfer of officers connected with election work to be only with concurrence of the Election Commission.—As regards the question of placing certain restrictions on the transfer of officers connected with the election work when the election is in prospect, the Committee agrees that such transfers should be effected only with the concurrence of the Election Commission.

5. Extension of jurisdiction of electoral machinery in relation to elections to Panchayat Raj institutions.

Matter to be considered after ascertaining contemplated constitutional measures.—The committee took note of the proposal under contemplation to amend the Constitution of India in regard to set up of Panchayat Raj institutions. For this reason, the Committee feels that the matter relating to the extension of jurisdiction of electoral machinery in relation to elections to Panchayat Raj institutions should be taken up only after ascertaining the exact details of the contemplated legislative or constitutional measures.

6. Power of contempt in favour of Election Commission

Conferment of Power of contempt on Election Commission not favoured.—The Committee considered the proposal of

empowering the Election Commission with power of contempt of court to the limited purpose of Symbol cases and reference cases regarding disqualification of sitting members. It does not, however, favour the proposal.

REFERENCE SOURCES

1. Minutes of the meeting of the Committee dated 3rd February, 1990.

2. Minutes of the meeting of the Committee dated the 7th March, 1990.

3. Minutes of the meeting of the Committee dated the 8th March, 1990.

4. Minutes of the meeting of the Committee dated the 31st March,1990.

5. Minutes of the meeting of the Committee dated the 2nd April, 1990.

6. Notes on Subjects in Part I - Chapter II - Electoral Machinery.

1. Steps for improving enrolment of all eligible names:

1.1. Post office to be focal point.—The Committee took for consideration various measures proposed in the Notes. As regards the post offices being made as a focal point in the sense that they should be associated with the preparation and maintenance of electoral rolls up

-to-date and upkeep of records, there is broad consensus among the members for the acceptance of this proposal.

1.2. The Committee further agrees that the mater might be fully discussed as pointed out in the Notes by the Election Commission with the Postal Board and the Census Commissioner.

1.3. Defects and drawbacks in present system of preparation of electoral rolls.—Many members of the Committee are strongly of the view that there are various defects and drawbacks in the present system of the preparation of electoral rolls because of acts of omissions and commissions of the officials. They observed that in some cases there were large scale omissions of names from the electoral rolls in the past even though enumeration cards were delivered to the electors at the time of house to house enumeration. In that context, the Committee considered the question of strengthening the relevant provisions of the Representation of the People Act, 1950 so as to provide for a more stringent punishment for breach of official duty in connection with the preparation, revision etc. of electoral rolls.

1.4. Stringent punishment for breach of official duty in connection with preparation or revision of electoral rolls.—The Committee recommends that section 32 of the Representation of the People Act. 1950 should be suitable amended for this purpose. The Committee feel that the punishment of sentence for breach of official duty in connection with the preparation and revision of electoral rolls should be atleast for six months as against only the imposition of fineas at present.

1.5. Power to Commission in regard to disciplinary proceedings and Recording of adverse entries.—The Committee agrees that the Election Commission should be given power not only to recommend disciplinary proceedings for breach of official duty but also should be empowered to record adverse entries against officers found guilty of lapses in their duty and forward them to the concerned authorites.

1.6. Officers connected with preparation of rolls to be deemed to be on deputation to Election Commission.—For the above purpose, as in the case of officers connected with the conduct of poll who are deemed to be on deputation subject to the control, superintendence and discipline of the Election Commission (vide section 28 A of the Representation of the People Act, 1951),

officers connected with the preparation and revision of electoral rolls should also be brought under the control and disciplinary jurisdiction of the Election Commission.

2. Issue of multi-purpose photo identity cards:

2.1. Acceptance of the scheme.—There is unanimity of views among all the members in regard to the implementation of the scheme of issue of multi-purpose photo identity cards.

2.2. The Committee agrees that the steps for successful implementation of the scheme as proposed in para 3.11 of the Notes - Pan I should be undertaken and that a time-bound programme for covering the entire country with the proposed scheme is desirable.

2.3. Steps to be taken for successful implementation of the scheme.—The following steps are indicated in paragraph 3.11 of the Notes which are accepted.

(a) Other Government departments and Ministries should be involved to make the possession of the card by every adult citizen compulsory for receiving benefits and facilities.

(b) Baba Atomic Research Centre should be associated to prepare fuller details of the scheme from the point of view of cheaper cost and of its intamperability with a provision for keeping some sort of a duplicate photo identity lists containing all the names of the electors in a particular area which could ultimately take the place of the electoral roll.

(c) Active involvement of the postal agencies for covering all areas and make them to serve as the focal point for the field operation connected with the scheme, is necessary.

(d) Provision of adequate funds of the Government in the annual budgets of the Central Government and the State Governments to meet the expenditure is necessary.

(e) Identifying an agency of the State Government and making it fully responsible for the implementation of the scheme is essential.

(f) Fixation of a time-bound programme for covering the entire country is desirable.

REFERENCE SOURCE

1. Minutes of the Meeting of the Committee dated the 8th March, 1990.

2. Minutes of the Meeting of the Committee dated the 2nd April, 1990.

3. Notes on Subjects - Part I - Chapter IV - Electoral Rolls-

Chapter V

POLITICAL PARTIES AND CANDIDATES

1. Restriction on candidates contesting from several constituencies:

Prohibition of candidates contesting from more than two constituencies.—The Committee took note of the problems created by persons contesting elections from several constituencies in the absence of any kind of restrictions in that regard. The Committee therefore, recommends that a person should not be allowed to contest elections from more than two constituencies of the same class.

2. Lowering of age-limit for contesting candidates:

Age-limit to be lowered.—The Committee feels that with the reduction of voting age from 21 to 18 years, it would be appropriate that the age qualification for contesting should be reduced to 21 years in the case of elections to Legislative Assemblies and Lok Sabha and to 25 years in the case of elections to Legislative Councils and Council of States.

Accordingly, the Committee recommends the reduction of the age as proposed.

3. Registration and recognition of political parties:

3.1. Present position.—The Committee took note of that before insertion of the provisions in the Representation of the People Act, 1951 in 1988 (vide section 29-A) the registration and recognition of political parties were fully regulated by the Election Symbols (Reservation and Allotment) Order, 1968 which is operated by the Election Commission.

3.2. Problems and difficulties created by section 29-A of the Act.—After the insertion of new section 29-A of the Act for the purpose of making the political organisations seeking registration to conform in form only to the provisions of the Constitution, especially to the preamble thereto, the powers of the Election Commission in regard to registration of political parties under the Symbols Order has been taken away. The Election Commission has to apply the new provisions for the registration of political parties,

3.3. The Committee observed that in view of the provisions ofsection 29-A of the Act and of a very large number of applications from political parties for registration on the eve of the last Lok Sabha elections, the Commission had no option except to register as many as 261 political parties. This has created many practical and administrative problems and difficulties at the time of election.

3.4. All the members of the Committee, except Shri H.K.L. Bhagat, feel that the new provision in section 29-A do not serve any purpose.

3.5. Seeking Attorney-General's opinion.—It has been brought to the notice of the members of the Committee that the Attorney-General of India whose opinion was sought on the various measures for discouraging non-serious candidates from election

contests, has observed that new section 29-A has not served any useful purpose.

3.6. Deletion of Section 29-A favoured.—After taking into account the above factors, all the members of the Committee, except Shri H.K.L. Bhagat, feel that section 29-A should be deleted and the matter of registration of political parties should be left to be decided solely by the Election Commission under the Symbols Order applying the criteria of tangible proof of 1% of the valid votes to be secured by applicant party for registration.

3.7. The question of what would be the effect of deletion of section 29-A on the continuance or otherwise of the 261 political parties which have been registered under that section has also been raised. Members of the Committee feel that the proposed provision relating to the deletion of section 29-A should also include a consequential provision authorising the Election Commission to deal with afresh any application for registration after the removal of the 261 political parties from the list of registered parties.

3.8. No need to recognise Alliance of political parties and any change in the Symbols Order.—The Committee feels that there is no need for recognising alliances of political parties at elections and for any change in the present procedure of allotment of symbols.

4. Regulations for containing contests bv non-serious candidates:

4.1. When the matter regarding various measures proposed for containing non-serious candidates from contesting election was taken up, some members felt that the opinion of the Attorney-General should be obtained as to whether restrictions proposed would not amount to discrimination as envisaged in the provisions of the Constitution. Accordingly, the opinion of the Attorney-General was obtained.

4.2. Attorney-General's opinion.—The Attorney-General has inter- alia given the opinion that the various measures proposed for discouraging non-serious candidates from election contests would not be open to challenge on the ground that they introduce the element of discrimination as the proposed legislative measures could be sustained

on their being on rational basis in regard to classification. Therefore they are not discriminatory.

4.3. Measures recommended.—The Committee further discussed the matter with reference to the opinion of the Attorney-General. The Committee recommends that the following measures should be taken up:

(a) Security deposit should be fixed as follows:—

(i) In the case of a candidate set up by a recognised National or State Party—

(i) for Assembly elections - Rs. 500

(ii) for Lok Sabha elections - Rs. 1000

The usual concessions to Scheduled castes and Scheduled tribes candidates should also be available.

(ii) In the case of independents and candidates set up by registered parties—

(i) for Assembly elections - Rs. 2500

(ii) for Lok Sabha elections - Rs. 5000

(b) If an independent candidate or a candidate set up by a registered party fails to secure 1/4, as against 1/6 of the valid votes polled as at present, the security deposit should be forfeited.

(c) The number of proposers to a nomination paper to be filed by an independent candidate or a candidate set up by a

registered party should be ten drawn from different assembly segments.

(d) Arrangement of names of candidates in the ballot paper should be in the following order:—

1. Candidates of recognised national parties.

2. Candidates of recognised state parties.

3. Candidates of registered parties.

4. Independent.

4.4. The Committee also considered the proposal that there should be a separate deposit by each of the proposer or a bond to be executed by him if the contest is by an independent candidate or a candidate set up by a registered party. However, the Committee does not favour the acceptance of this proposal.

4.5. The Committee does not also favour the proposal to prevent agents of independent candidates and candidates set up by registered parties from attending to the duties as polling agents and counting agents as it would be very harsh to do so.

5.(a) Regulation of functioning of political parties:

(b) Compulsory maintenance of account of election expenses by political parties and audit thereof:

(c) Submission of Annual Returns by political panics:

(d) Enforcement of observance by political parties of requirements:

5.1. No unanimity of views on question of regulations.—The Committee discussed in details all aspects of the matters referred to above with reference to the Notes on the subject as contained in sub- items Nos. 8 to 10. It is found that there is no unanimity of views among the members of the Committee. While a few members want regulation of functioning of political parties as it is the best way to ensure internal democracy and also

compulsory audit of account of political parties, some others are not in favour of such a proposal because of practical difficulties.

5.2. Regulation through Symbols order also not favoured.—It has been brought to the notice that even though making a law regulating the functioning of political parties would be controversial one, it could be considered whether the Election Commission should be asked to make suitable provisions in the Symbols Order to the limited effect that if a party does not observe the provisions of its constitution in regard to holding of periodical elections to its various organs, the Election Commission should have the power to withhold the allotment of symbols to the candidates set up by that party till such time the requirements are fulfilled by the party. Majority of the members do not favour this approach.

6. Statutory hacking for model code of conduct:

6.1. The Committee considered the various items in Part VII, Party in Power, in the present Model Code of Conduct evolved by the Election Commission.

6.2. Only vital and important provisions of code to be covered by statute.—The Committee is of the view that only such of the provisions of the Model Code as are vital and important in nature should be brought under the Statute. The Committee feels that to make any violation of the Model Code by Ministers and others as a corrupt practice would result in penalising the contesting candidate who might not have any part to play in regard to such violation, However, the Committee agrees that the items enumerated in para 11.6 of the Notes should be brought under the Statute as an electoral offence instead of corrupt practice.

6.3. Details of items.—The following are the items which according to the Committee, should be brought within the ambit of the proposed electoral offence:—

(a) Combining of official visit with work relating to elections or making use of official machinery or personnel in connection with any such work;

(b) Using Government transport, including official aircrafts,vehicles, machinery and personnel in connection with any work relating to elections;

(c) restricting or monopolising the use of public places for holding election meetings or use of helipads for air flights in connection with any work relating to elections;

(d) restricting or monopolising the use of rest houses, dak bungalows or other Government accommodation or the use of such accommodation (including premises appurtaining thereto) as a campaign office or for holding any public meeting for the purposes of election propaganda;

(e) issuing of advertisements at the cost of public exchequer in the newspapers and other media;

(f) using official news media for partisan coverage of political news and publicity of achievements with a view to furthering the prospects of any party or candidate;

(g) announcing or sanctioning of any financial grants in any form or making payments out of discretionary funds;

(h) laying of foundation stones of projects or the inauguration of schemes of any kind or the making of any promises of construction of roads or the provision of any facilities;

(i)making of any ad hoc appointments in Government or public undertakings during the election period for the furtherence of the prospects of any party or candidate;

(j)entering any polling station or place of counting by a Minister except in his capacity as a candidate or as a voter or as an authorised agent;

(k) ban on transfer of officers and staff specified in section 28-A when election is in prospect.

REFERENCE SOURCE

1. Minutes of the Meeting of the Committee dated the 8th March, 1990.

2. Minutes of the Meeting of the Committee dated the 31st March, 1990.

3. Minutes of the Meeting of the Committee dated the 2nd April, 1990.

4. Notes on Subjects - Part I - Chapter V - Political Parties and Candidates.

5. Opinion of Attorney-General on the subject of containing non- serious candidates dated the 30th March, 1990.

Chapter VI

CONDUCT OF POLL

1. Constitution of Indian Election Service

Constitution of Indian Election Service not favoured.—The Committee considered in some detail the proposal of the Election Commission recommending the constitution of Indian Election Service. However, the Committee feels that there is no need for such a service to be constituted.

2. Ban on transfer of offices connected with elections

Ban on transfer officers.—The Committee accepts the proposal for legal provision for imposing ban on transfer of civil and police officers connected with elections for a specific period. The Committee recommends accordingly that the law should be suitably amended.

3. Statutory status of Commission's observers

3.1. Statutory status for observers.—The Committee accepts the suggestion to clothe the Commission's observers at elections with statutory powers.

3.2. Power to stop poll, counting and declaration of result pending decision by Commission.—The Committee desires that the law should spell out their specific role like the power to stop (1) the poll for specified reasons; (2) the counting and (3) the declaration of the result. The Committee further suggests that in all these cases, the matter should be referred to the Election Commission for final decision.

3.3. Power of Election Commission to assign other functions.—The Committee also agrees that there could be a general provision in the proposed law to the effect that an observer may be assigned such other functions as may be entrusted to him by the Election Commission, as in the case of a District Election Officer.

4. Role of Voluntary organisations

No need to give statutory recognition to role of voluntary organisation.—The Committee does not favour the proposal to give statutory recognition to the role of voluntary organisations and constitution of a Political Council or Election Council in regard to the conduct of free and fair elections.

Facility under general powers of Election Commission.—The Committee feels that the Election Commission itself could afford under its general powers, such facilities as it finds proper and necessary.

5. Use of Electronic Voting Machines

5.1. Demonstration of working of Electronic Voting Machines.

—The Committee considered the proposal for the use of electronic voting machines at elections. It feels that the machines

should be tested by technological experts with a view to remove any doubts or misapprehensions in the minds of the public with regard to the credibility of the working of the machines. The Committee discussed further the matter on 30th March, 1990 and 31st March, 1990. The technoligical experts from the Electronic Corporation of India Limited,

Hyderabad and of the Department of Electronics have demonstrated the working of the machine on those days.

5.2. Testing and clearance from technological experts.—The members have been prima facie satisfied that the electronic voting machines are free from the drawbacks alleged on the eve of the last general election to Lok Sabha held in 1989. Still the Committee desired that a clearance from technological experts to the effect that the doubts and misapprehensions entertained about the credibility of the working of the machines are not well founded, should be obtained. High level technological experts were commissioned by the Electronics Department of the Government of India to go into the question of all aspects of the working of the machines especially from the points of view of its credibility and intamperability. This team of technological experts, after through probe into the matter has given clearance certifying that the machines could be used at our elections.

5.3. Use of Electronic Voting machines at all future elections.—The Committee desires that the electronic voting machines should be put to use at all future bye-elections and general elections to Lok Sabha, Assemblies and also Panchayats and Local Bodies elections with a view to educating the electors in all parts of the country and familiarising them with the working of the machines.

5.4. Intensive training to polling personnel.—The Committee further desires that intensive training programme of polling personnel at all levels should also be arranged.

5.5. The Secretary of the Electronics Department, Shri Rajamani who was also present at the meeting on 31st March, 1990 to assist the members of the Committee in the matter, has been requested to get the Electronic Voting Machines tested by a team of technological experts to be identified by his Department. He has been further instructed to take urgent steps in this behalf.

6. Provision of an electronic device to record particulars of electors as in the photo identity card as a safeguard against booth capturing etc.

6.1. Possibility of new electronic device to record details of electors.—Shri Kishore Chandra Deo, one of the members, has suggested that the possibility of providing a suitable separate gadget or device or in the electronic voting machine itself to record essential particulars of an elector with his coded numbers as contained in multi- purpose identity card should be explored so as to provide for a foolproof measure to safeguard against booth capturing and impersonation. At the time of the poll, each elector should produce his multi-purpose identity card which should be fed into this machine to record his essential particulars. According to him, the system would be foolproof because each elector should produce individually his identity card at the time of his identification and it would not therefore be possible for

booth capturers or impersonators to procure in bulk such multi-purpose identity cards.

6.2. Feasibility report from technologists.—The Committee considered the suggestion of Shri Kishore Chandra Deo and instructed the technologists of the Electronics Corporation of India who were present for the demonstration of the voting machine to apply their mind to all aspects of the matter ans send their feasibility report quickly.

7. Set up of mobile polling: stations:

7.1. The Committee considered the proposal regarding set up of mobile polling stations as detailed in the Notes.

7.2. Set up of Mobile auxiliary polling stations.—It has been explained that the set up of mobile polling stations would mostly be with a view to enabling weaker sections of electorate who run the risk of being prevented from travelling a long distance to a polling station to exercise their votes near their area of residence. In other words, the mobile polling stations would take the place of auxiliary polling stations which are being set up at present in a limited way to enable weaker sections to exercise their votes freely near their place of residence.

7.3. Protection to auxiliary stations.—The members want such mobile polling stations (vans) to be used only as auxiliary polling stations and it should be stationed for the full polling period. It should also be well protected with adequate police force.

7.4. The Committee also took note of that set up of such auxiliary polling stations does not require amendment of law as the Election Commission could, by executive administrative instructions, achieve the object.

8. Steps to eradicate booth capturing, rigging, intimidation etc.

8.1. The fact that the Committee is exercised over the problems of booth capturing which seriously affect a free and fair election is clear from the detailed discussions on the topic among the members and consideration of various measures to tackle the problems.

8.2. Consideration of suggestions.—The Committee not only considered the Notes on the subject put up for consideration but also the additional Notes prepared on the advice of Shri L.P. Singh, one of the members of the Committee.

8.3. Inadequacy of recent amendments of law.—The Committee took note of that the law has been specifically

amended in 1988 with a view to dealing with the menace of booth capturing.

The amendments introduced in 1988 are as follows:—

(i) Insertion of a new provision, as section 58-A of the Representation of the People Act, 1951 (adjourment of poll or countermanding of election on the ground of booth capturing);

(ii) Insertion of a new clause (8) in section 123 to make booth capturing as a corrupt practice; and

(iii) Insertion of new section 135-A to make the offence of booth capturing as an electoral offence.

8.4. The Committee feels mat inspire of these amendments, the situation does not improve in any way. On the other hand, it has been found that cases of booth capturing were assuming alarming proportions at the recent general elections to Lok Sabha and to a number of State Legislative Assemblies held in 1989 and 1990. The Committee also feels that the new provisions are suffering from serious drawbacks making the provisions ineffective in operation. They therefore proved to be inadequate.

8.5. The Committee notices the following drawbacks:—

(i) Drawbacks in present law.—Under section 58-A of the Act, the Election Commission is required to be guided only by the report of the Returning Officer in the matter of deciding whether booth capturing has taken place or not. It provides a scope for misuse of power by the Returning Officer if he intentionally fails to report to the Election Commission the actual position.

(ii) Under section 58-A of the Act, if the Commission is satisfied that a large number of polling stations are involved in booth capturing, it is left with the only choice under the law to countermand the election and order a fresh

election and not the option of only ordering repoll in the entire constituency.

(iii) The electoral offence under section 135-A is not specifically made a cognizable offence.

(iv) The punishment for the commission of the offence of booth capturing is only imprisonment for not less than one year which may extend to three years whereas the seriousness of the offence calls for a more stringent punishment.

(v) Acts of 'coercion'\and 'intimidation' or 'any form of direct or indirect threat' or 'any interference with the free exercise of the recording of the votes' which are also the species of booth capturing have not been brought within the ambit of section 135-A of the act.

(vi) There are no enabling provisions at present for the investigation of the cases of booth capturing at the instance of the Election Commission through the Central or State police investigation agency; for the establishment of special courts; and for appointment of public prosecutors. In the absence of such a power, the Election Commission is unable to play its legitimate role of conducting a free and fair poll and deal witheffectively the violation of the law.

8.6. Recommendations.—After detailed discussion, the Committee recommends that—

(i) Section 58-A of the Act should be so amended as to enable the Election Commission to take a decision regarding booth capturing not only on the report of the Returning Officer but even otherwise. In this context, the Committee feels that the expression "otherwise" used in Article 356 of the Constitution (provision in case of failure of constitutional machinery in States) should provide a useful guidance.

(ii) Under section 58-A of the Act, the Election Commission should not only be empowered to countermand the election and order a fresh election as now provided under the law, but also empowered to declare the earlier poll to be void and order only a repoll in the entire constituency depending on the nature and seriousness of each case.

(iii) It is essential that an enabling provision should be incorporated in the law empowering the Election Commission to locate (1) an investigation agency; State or Central; (2) a prosecuting agency; (3) constitution of special courts wherever necessary. It is not necessary to bind in any way specifically the Election Commission in regard to these matters.

(iv) The suggestion of Shri R.K. Trivedi, Former Chief Election Commissioner in his report and of Shri Rajaji that the State Government should function as a caretaker Government during the period of elections is not been favoured.

(v) The suggestion that the formation of voluntary organisations should be encouraged to oversee the conduct of the poll in every constituency is also not favoured.

(vi) The proposal to make the electoral offence of booth capturing as a cognizable offence with a stringent punishment is accepted. (This aspect is also being with dealt below).

(vii) Statutory recognition to standing instructions of the Election Commission.—The proposals that there should be a strict enforcement of standing instructions of the Commission regarding surrender of arms, apprehensions of bad elements etc. and that for this purpose a statutory recognition should be given to the issue of standing instructions by the Commission by insertion of a suitable enabling provision in the Act, are accepted.

(viii) Election Commission to take concrete steps for proper coordination between State and Central Police Forces.— The suggestions that there should be proper coordinationbetween

State and Central Police Forces and deployment of Central Forces for election duty at polling stations whereever found necessary are accepted. The Committee desires that the Election Commission should be asked to examine further the matter for taking concrete steps in that behalf.

(ix) No Need for deployment of planning and supervisory machinery over existing arrangement.—The suggestion for deployment of planning and supervisory machinery in the constituencies to oversee the arrangements over and above the existing arrangements under the existing instructions of the Commission is found to be neither feasible nor necessary.

9. Time-limit for holding bye-elections.

9.1. The Committee took note of the reasons for the delay in holding bye-elections as explained in the Notes.

9.2. In this context, the Committee examined the proposal as contained in the Notes that a bye-election should be held within three months of the vacancy with the rider that if the vacancy has arisen within six months prior to a general election normally due, it would not be necessary to fill the vacancy.

9.3. Time limit of six months and non-filling of vacancy if general election due within one year.—The consensus among members is that a bye-election should be held within six months of the occurrence of the vacancy as against the proposal of three months provided that bye-election to fill a vacancy need not be held if a general election is normally due within one year from the date of the occurrence of the vacancy.

10. Power to order repoll.

10.1. The Committee has already recommended that the Election Commission should enjoy a statutory power in cases of booth capturing either to countermand the election after declaring the election held to be void or order a repoll in the entire constituency (vide sub-item 5 - Steps to eradicate booth

capturing, rigging, intimidation etc.). It has also decided to recommend that the Election Commission should be enabled to act not only on the basis of a report from the Returning Officer but also otherwise on the basis of all material circumstances brought before it.

10.2. Regional Commissioners, observers to have power to order deferring of counting etc.—Incidentally, the Committee feels that the Regional Commissioners and observers appointed by the Commission or any other supervisory officers employed by the Commission at elections, should have the power under the law to order the deferring of counting or declaration of the result pending decision of the Commission on their report regarding the facts submitted to the

Commission.

11. Reasons for low polling and remedial measures.

11.1. The Committee discussed at length the matter analysing the reasons for low polling and about the remedial measures that would be required to set right the matter.

11.2. Suggestion for repoling in case of low polling in entire constituency.—Incidentally, one of the members observed that where there has been a low percentage of voting, say 20 percent, it might be on account of threats given to the electorate not to participate at elections as has happened in the recent past. In such a case, he felt that there should be a repoll in the entire constituency for the reason that there has been no free and fair poll reflecting fully the verdict of the constituency.

11.3. On the other hand, some other members have felt that a winning candidate who might not have any connection or any hand in issuing such threats resulting in low polling, should not be deprived of his success.

Matter not to be pursued.—In these circumstances, the Committee feels that the matter need not be pursued.

11.4. Compulsory voting not favoured.—One of the members feels that the only effective remedy for low percentage of voting is to introduce the system of compulsory voting as in Australia. The Committee does not however favour the suggestion because of practical difficulties involved in its implementation.

11.5. Present procedure regarding postal ballot most unsatisfactory.—Some members feel that the procedure followed now in regard to postal ballot paper facilities is most unsatisfactory as many of the persons who are entitled to such facility are not actually benefitted. In many cases, the facility remains only in paper.

11.6. Need for close examination of present procedure to remove drawbacks.—The Committee feels strongly that there should be a close examination of the present procedure to remove the drawbacks and make the facility of postal ballot really meaningful.

11.7. Eligibility of candidates' workers etc. for postal ballot suggested.—One member observed that persons employed as drivers, workers etc. of transport vehicles used by candidates should also be made eligible for postal ballot paper facility.

11.8. Examination by Election Commission.—The Committee recommends that the Election Commission should look into this aspect and make these categories of persons to be entitled to the facility of postal ballot paper by treating them to be on election duty under the law.

11.9. Drawbacks in procedure followed in regard to ArmPersonnel etc.—The Committee has examined the Notes in paragraphs8.6 to 8.8 regarding the existing system of voting by postal ballot paper followed in the case of army personnel, persons employed in diplomatic service, personnel of para-military force, etc.

11.10. The Committee agrees that as explained in the Notes, the present facility of voting by postal ballot paper in these cases has not served any useful purpose for the reason that there are many practical difficulties in ensuring that the despatch of postal ballot papers to these categories of persons and return of those papers to the Returning Officers concerned in time after voting according to the time schedule could not be followed.

11.11. **Proposal for Voting through Proxy accepted.—** The Committee accepts the proposal that the army personnel, persons outside India in diplomatic services, and also persons belonging to para

-military forces, etc. should enjoy the facility of voting at elections through proxy.

11.12. **Study of procedure obtaining in U.K.**—In this context, the Committee wants that the system of voting by proxy as followed in the United Kingdom should be studied quickly for adoption in our country by suitable amendment to the law and procedure.

12. Countermanding of poll on death of candidates.

12.1. **Countermanding only in case candidate set up by recognised party dies.—**The Committee examined the Notes on this item and also took note of similar provisions in 1985 Ordinance issued in the case of last general election to the Punjab Legislative Assembly in 1985. The Committee agrees that the law should be amended so as to provide to the effect that only if a candidate set up by recognised political party dies, the election should be countermanded and not otherwise.

12.2. Present provision regarding countermanding defective and confusing.—Incidentally, one member observed that the present provision under section 52 dealing with cases of countermanding of election on the death of a candidate seems to be defective and also confusing. In this context, it has been brought to the notice

of the Committee that recommendations of Shri S.P. Sen Verma, a Former Chief Election Commissioner, contained in his Report on 1968-69 elections suggesting specifically the lines on which section 52 of the Act should be amended to remove any scope for doubt.

12.3. Acceptance o: Commission's proposal in 1968-69.—The Committee accepts the lines of amendment to section 52 of the Act as suggested by Shri S.P. Sen Verma except that the outer limit for countermanding the poll should be the death of a candidate 'before the commencement of the poll' and not "declaration of the result" as proposed by Shri S.P. Sen Verma.

13. Term of Members of Rajya Sabha and holding of biennial elections,

13.1. The Committee took note of the suggestion in the Notes on the subject.

13.2. Amendment of law to make cycle of retirement in all cases uniform not favoured.—The Committee feels that though the retirement of members of Rajya Sabha elected from different States on the completion of their term, is not uniform and that the cycle of retirement on the same day has been broken, it is not necessary to make the amendment to law as proposed to bring into effect one single day of retirement in all cases.

13.3. The Committee feels that such a course would unnecessarily curtail and interfere with the term of members of the Rajya Sabha.

14. Qualification for elections to Rajya Sabha and requirement as to number of proposers:

14.1. Change in requirement of candidate being elector in a state from where he seeks election not favoured.—One member observed that the present requirement for contesting election to Rajya Sabha that the candidate should be an elector in the State from which he seeks such election, is being generally misused.

He therefore felt that as in the case of elections to Lok Sabha the requirement for contesting at elections to Rajya Sabha should be that the person must be an elector in any parliamentary constituency in India.

14.2. However, the Committee finds that there is no unanimity of views among the members on this suggestion.

14.3. Reduction of number of proposers to a nomination paper favoured.—The Committee examined the requirement as contained in section 39 of the Representation of the People Act, 1951 that a nomination filed in conection with an election to Rajya Sabha should be proposed by ten proposers and the additional notes on the subject circulated to members. The Committee feels that this requirement of ten proposers would create practical difficulties for smaller parties to muster the required number of proposers.

14.4. Amendment of section 39 to provide for one proposer and one seconder only.—Accordingly, the Committee recommends that section 39 should be so amended as to lay down that a nomination paper in connection with an election to Rajya Sabha and Legislative Council by members of the Legislative Assembly may require only one proposer and one seconder.

REFERENCE SOURCE

1. Minutes of the Meeting of the Committee dated the 8th March, 1990.

2. Minutes of the Meeting of the Committee dated the 30th and 31st March, 1990.

3. Minutes of the Meeting of the Committee dated the 2nd April, 1990.

4. Notes on Subjects-Part I (Chapter VI - Conduct of Poll).

5. Note on requirements of ten proposers for Rajya Sabha elections.

6. Note containing the recommendations of the National Seminar on “Elections and role of law enforcement” at Hyderabad - Category III).

7. Note on offences of Booth capturing.

8. Report of the Technological Experts team on the use of Electronic Voting Machines.

Chapter VII

ELECTION EXPENSES

1. Fixing reasonable ceiling on rational basis.

1.1. Power to Election Commission to lay down ceiling on eve of every general election.—The Committee examined the suggestions contained in paragraph 7.5 of the Notes. The Committee feels that the law should lay down provisions enabling the Election Commission to revise the ceilings of election expenditure on the eve of every general election to Lok Sabha and Assembly of a State.

1.2. Accordingly, the Committee recommends that section 77(3) of the Act should be amended empowering the Election Commission to lay down the ceilings instead of the Central Government notifying as at present the maximum election expenditure under the Rules in consultation with the Election Commission.

2. Accounting of election expenses.

2.1. Amendment of law to remove present distortions.—The Committee examined the proposals contained in paragraph 3.2 of the Notes on the subject. The consensus is that the law relating to accounting of election expenses should be restored at least to the position that existed prior to 1974 and that many of the destortions should be removed.

2.2. Expression “any other person” not to be used in section

77.—In this context, the Committee feels that by bringing the expenses incurred by "any other person" within the purview of section 77, it would provide scope for the third person to misuse the provision to vitiate the election of the candidate without the expenditure being in the knowledge of the candidate or his election agent. The Committee therefore desires that the expression "or any other person" in the proposed section 77, should not be used.

2.3. The Committee also feds that the use of the words "whether before, during or after an election" should be deleted from the proposed

amendment.

2.4. Recommendation regarding period of accounting.—The Committee is of the view that the period of accounting should be between the date of notification of the election and the date of declaration of the result of the election.

2.5. Deletion of two explanations and the proviso to section

77.—The Committee also favours the deletion of Explanations to Section 77 and the proviso which have made inroads into the provisions of the law making it ineffective.

2.6. Furnishing of declaration in Affidavit and with oath not favoured.—The Committee is not also in favour of the candidate furnishing a declaration in the prescribed form of affidavit with an oath sworn before a judicial magistrate or oath commissioner owning responsibility for the correct and true account of the election expenditure even though such a provision existed in the past.

2.7. Present system of declaration in return of election expenses to continue.—In dais context, the Committee feels that the present system of giving simple declaration in the return of election expenses would be sufficient.

2.8. Unauthorised expenditure to be an electoral offence.—The Committee also agrees that any unauthorised expenditure incurred by any person other than the candidate or his election agent should be prohibited and treated as an electoral offence and that such an offence should be made punishable with imprisonment for a period of not less than one year in addition to fine.

2.9. Lines of Amendment to Section 77 outlined.—Keeping the above points in view, the Committee feels that the amendment to section 77(1) should be on the following lines:

"(1) All expenditure incurred or authorised either by the candidate or his election agent on account of or in respect of the conduct or management of the election shall be required to be included in the account of election expenditure of the candidate".

2.10. Penal offence for failure to keep an election account to be made more stringent.—The Committee also feels that failure to keep an election account which is already a penal offence under section 171-F, IPC should be made more stringent by providing for imprisonment of at least six months in addition to fine.

2.11. Submission of false account to be electoral offence.—The Committee also recommends that submission of false account should be an electoral offence and the minimum punishment for violation of this provision should be two years imprisonment.

2.12. Guidance from UK Law.—The Committee observes that the notes circulated by Shri Era Sezhiyan analysing the provisions of the

U.K. Act relating to election expenses should be kept in view before formal amendments are drawn up.

3. Regulation or ban of donations by companies

3.1. The Committee examines the Notes on the subject and also the additional notes by Shri L.P. Singh.

3.2. Complete ban on Companies donation proposed.—After discussion, the Committee feels that there should be a complete ban on donations by companies and the relevant law should be amended accordingly.

3.3. Loophole of clandestine contributions to be plugged.—Shri

L.P. Singh has observed that though he would agree with the proposal still there would be scope for substantial clandestine contributions to political parties under the table through the contractors of the companies though not directly by the companies and this aspect should also be examined to tighten the law. The Committee wants this aspect should also be kept in view in formulating the provisions so that no loophole is left

REFERENCE SOURCES

1. Minutes of the Meeting of the Committee dated the 31st March, 1990.

2. Minutes of the Meeting of the Committee dated the 2nd April, 1990.

3. Notes on Subjects - Part - I (Chapter VII - Election Expenses).

4. Notes by Shri Era Sezhiyan on U.K. Law on election expenses.

5. Note on Contributations by companies to political parties by Shri L.P. Singh.

Chapter VIII

STATE FUNDING OF ELECTIONS

1. Fixation of ceiling of State Assistance

1.1. State assistance to be in kind.—The Committee has discussed on 2nd April and 11th April, 1990 the proposals and points contained in the Notes on the subject.

1.2. The Committee is of the view that State assistance only in kind and not in cash should be extended.

1.3. While members generally agree on principle that State assistance could be extended in respect of the various items enumerated in the Notes, the Committee feels that it would be very difficult to prohibit or contain private expenditure on various items listed in the notes.

1.4. Identification of four areas for State assistance.—After some discussion, the Committee feels that to start with, only in respect of three or four items out of the various items listed in the Notes, State

Assistance should be provided.

1.5. Accordingly, the Committee recommends State assistance in kind in respect of—

(1) Provision of prescribed quantity of fuel or petrol to vehicles used by candidates;

(2) Supply of additional copies of electoral rolls;

(3) Payment of hire charges for prescribed number of microphones used by candidates;

(4) Distribution of voters' identity slips now being done by contesting candidates should be exclusively undertaken by electoral machinery and all candidates should be prohibited from issuing such slips.

1.6. Election Commission to work out details.—The details of the manner and mode of State assistance in the above areas and its implementation should be left to the Election Commission to

work out. The Committee further feels that only minimum enabling provisions should be included in the law.

2. Eligibility of State assistance - candidates of political parties and independents.

2.1. State assistance only to candidates set up by recognised parties.—The Committee recommends that State assistance in respect of the above items should be extended only to candidates set up recognised political parties.

2.2. The Committee also recommends that the Independent candidates and candidates set up by registered parties need not be made eligible for State assistance.

3. Restriction of private expenses on items made eligible for State assistance

Ban on private expenses except on distribution of voters' identity slips not favoured.—The Committee is of the view that, as pointed above, except in the case of distribution of Voters' identity slips which should be taken over by the electoral machinery prohibiting completely all the candidates from issuing such slips, there need not be any ban on private expenditure in respect of other items proposed for State assistance.

4. Financial Assistance to political parties on annual basis

Proposal not favoured.—The Committee is not in favour of any financial assistance as proposed.

REFERENCE SOURCE

1. Minutes of the Meeting of the Committee dated the 2nd April, 1990.

2. Minutes of the Meeting of the Committee dated the 11th April, 1990.

3. Notes on Subjects-Part I (Chapter VIII-State Funding of Elections).

Chapter IX

ELECTION DISPUTES AND ELECTORAL OFFENCES

1. Steps for expeditious disposal of election petitions and appeals.

1.1. The Committee discussed the proposal as contained in the Notes on the subject.

1.2. Recommendation for appointment of Ad hoc Judges.—The Committee has agreed with the proposal for the appointment of adequate number of ad hoc judges who would relieve the regular judges from their normal duty for the purpose of entrusting to them the trial of election petitions.

1.3. Appointment of Commissions to record evidence of witnesses not favoured.—The Committee does not however favour the proposal as contained in the Notes for appointment of commissions under the jurisdiction of the High Court for the purpose of taking evidence of witnesses and placing the recorded evidence before the High Court for further trial of election petition on questions of law and fact.

1.4. Substitution in cases of non prosecution not favoured.—The Committee feels also that there is no need for the amendment of law as proposed for substitution of a person as a petitioner in the event of the petitioner himself resorting to non-prosecution of the petition.

2. Stringent penal provisions against electoral offences.

2.1. The Committee discussed the various proposals on this subject at the meetings held on 2nd April, 1990 and 11th April, 1990. The views and recommendations of the Committee are as follows:—

(a) Section 126 - Prohibition of public meeting on the day preceding election day and on the election day.

2.2. Extension of prohibition period to 72 hours not favoured.

—The Committee is not in favour of the proposal of the Seminar conducted by the National Police Academy, Hyderabad, to extend the prohibition to 72 hours ending with the hour fixed for the conclusion of the poll in any election. It is of the view that the present prohibition of 48 hours is adequate.

2.3. The Committee took note of that the present prohibition is only in respect of public meetings. Secondly, the punishment for contravention of the provision is only fine which may extend to Rs. 250/

2.4. Expansion of provision as per recommendations of Joint Parliamentary Committee favoured.—After considering the Report of the Joint Parliamentary Committee of 1972 and the draft Bill appended thereto, the Committee has agreed to expand the provision of section 126 as recommended in the said draft Bill.

(b) Section 127 - Disturbance at election meeting:

The Committee approves the suggestion that the imprisonment for the violation of the provision should be for six months or fine of Rs. 2,000/- or with both.

(c) Section 127-A - Restrictions on printing of pamphlets, posters, etc.

The Committee agrees that the provisions should be more stringent for violation of the restriction on printing of pamphlets, posters, etc. Accordingly, it recommends that section 127-A should be amended to increase the imprisonment to two years from six months.

(d) Penal provisions of these sections to be made more stringent.—Section 129 - Officers etc. at elections not to act for candidates or to influence voting:

Section 130 - Prohibition of canvassing in or near polling stations:

Section 131 - Penalty for disorderly conduct near polling stations:

Section 132 - Penalty for misconduct at the polling stations:

Section 134- Breach of official duty in connection with elections:

Section 135 - Removal of ballot papers from the polling stations to be an offence:

The Committee recommends that penal provisions in all these sections should be examined further to make them more stringent.

(e) Section 133-Penalty for illegal hiring or procuring of vehicles and conveyance at elections:

Penalty for illegal hiring or procuring of vehicles to be more stringent and cognizable.—The Committee considered the recommendations of the Joint Parliamentary Committee of 1972. It feels that the amendment to section 133 should be on the lines suggested in the Bill appended to the Report of the Joint Parliamentary Committee of 1972; that the punishment for the violation should be six months imprisonment with fine; and that the offence should also be made cognizable.

(f) Section 134-A - Penalty for Government servants acting as election agents, polling agent or counting agent:

Amplification of provision to include ‘local authority’ not favoured.—The Committee considered the Report of the Joint Parliamentary Committee of 1972 suggesting that the persons working in any local authority should also be brought within the

ambit of this section. The Committee, however, does not agree with this proposal on account of practical difficulties.

(g) Section 135 - Removal of ballot papers from the polling stations to be an offence:

(1) Amendment of section 135.—The Committee considered the report of the Joint Parliamentary Committee of 1972 and the Bill appended thereto suggesting the inclusion of the expression "force or violence or show of force or violence" in regard to the ballot papers being taken out of the polling stations.

(2) The Committee feels that it would be sufficient if a simple expression "takes away the ballot paper or attempts to take away the ballot paper out of polling station" is inserted in the law.

(3) The Committee feels that the imprisonment for violation of this offence should be one year.

3. New Electoral offences

The Committee examined the following items for the purpose of incorporating new electoral offences and further strengthening the law.

(a) Personation (Impersonation).

Impersonation to be an electoral offence.—The Committee took note of that at present it is only an offence under the Indian Penal Code (vide Chapter IXA - Offence relating to Elections - section 171-D). The Committee after considering the Report of the Joint Parliamentary Committee of 1972, recommends that impersonation should be made an electoral offence under the Representation of the People Act, 1951 and should also be made more stringent by providing for punishment of imprisonment which may extend to three years or with fine or with both.

offence to be cognizable.—The Committee further recommends that the offence should be made a cognizable offence.

(b) Use of vehicles for conveyance at elections:

The Committee accepts the recommendation of the Joint Parliamentary Committee of 1972 in this regard to make this offence as an electoral offence and suggests that the provisions should be made on the lines of the Bill appended to the Report of the Committee (vide section 133-A).

(c) Ban on plying of mechanically propelled vehicles on poll day:

(1) Exemption of owner driven car and public transport buses from ban favoured.—While the Committee agrees to the imposition of complete ban on mechanically propelled vehicles like lorries, tractors with trailers, buses, taxies, auto-rickshaws etc., it does not favour the imposition of any ban on owner driven cars and public transport buses which should be exempted from the ban.

(2) offence to be made cognizable.—The Committee also accepts that the punishment for violation of this ban should be two years and

the offence should be made cognizable.

(3) Recommendation of cancellation of licences in suitable cases.—The Committee also accepts the suggestion that in suitable cases licences of the vehicles should be cancelled and the vehicle itself could be confiscated.

(4) Details to be worked out by Election Commission and insertion of only simple enabling provision.—The Committee feels that the matter should be left to the Election Commission to work out the full details and that the parliamentary law should only provide for simple enabling provision.

(d) Prohibition of going armed to or near a polling station on poll day,

(1) Carrying of firearms etc. to be an electoral offence.—The Committee agrees to the insertion of a new penal provision banning carrying of firearms and lethal weapons on the poll day and treating the violation thereof as an electoral offence.

(2) Offence to be made cognizable.—The Committee approves that imprisonment for violation of this electoral offence should be two years. The offence should be made cognizable.

(3) Arms to be confiscated and licence cancelled.—The Committee also recommends that arms found with guilty persons should be confiscated and the licence cancelled where such licence had been issued.

(e) Ban on sale and distribution of liquor and other intoxicated drinks,:

(1) The Committee considered the proposal of the Joint Parliamentary Committee of 1972 and the provisions of the Bill appended thereto.

(2) Sale and distribution of liquor etc. to be made an electoral offence.—The Committee feels that the provisions in the said Bill should be adopted and the punishment for contravention should be six months imprisonment and fine of Rs. 2,000/-.

(3) Confiscation of quantity of liquor.—The Committee also feels that the quantity of liquor found in the possession of the person in contravention of the penal provision should also be confiscated.

(4) Exemption of ‘consumption of liquor’ from penal provision.—The Committee agrees with the suggestion of a member that the expression ‘consumption of liquor’ should not be used in the penal provisions.

(f) Lodging of false account of election expenses:

(1) Lodging of flase account to be an electoral offence and imprisonment for two years.—The Committee has already

approved the inclusion of this few electoral offence. The Committee suggests that

for contravention of this provision, the imprisonment should be for two years.

(2) Offence to be non cognizable.—The Committee feels that because of the nature of the offence, it should not be made cognizable.

(g) Violation of Model Code

(1) Violation to be an electoral offence.—The Committee has already approved the insertion of this new electoral offence.

(2) Offence to be non cognizable.—The Committee recommends that the punishment for contravention of this provision should be for two years and that the offence need not be cognizable.

(h) Grant of paid holiday to employees on the day of poll:

(1) The Committee approves the proposal of the grant of paid holiday to employees in any business, trade, industrial undertaking or any other establishment on the day of poll as contained in the Report of the Joint Parliamentary Committee of 1972 and the Bill appended thereto (vide section 135-A).

(2) Punishment for contravention.—The Committee recommends that for contravention of this provision the person should be fined Rs. 500/- as against Rs. 50/- as proposed by the Joint Parliamentary Committee,

4. Strengthening of statutory provisions relating to disqualification:

(1) Conviction under the Prevention of Insults to National Honour Act to be ground for disqualification.—The Committee considered the proposal of the Chief Election Commissioner to

bring persons convicted under the Prevention of Insults to National Honour Act. 1971 under disqualification provisions by making it for six years. The Committee accepts this proposal.

3.2. Diqualificauon for making conviction for moral turpitude or detention under National Security Act not favoured.—However, the Committee has not favoured the suggestion to disqualify persons found guilty of moral turpitude or persons detained under the National Security Act whose detention had been approved by a judicial Advisory Committee.

REFERENCE SOURCES

1. Minutes of the Meeting of the Committee dated the 2nd April, 1990.

2. Minutes of the Meeting of the Committee dated the 11th April, 1990.

3. Notes on Subjects - Pan I (Chapter IX - Election Disputes and Electoral Offences).

4. Note containing the recommendations of the Seminar on

“Elections and role of law enforcement” at Hyderabad (Category

III).

Reference Source

1. The minutes of the Meeting of the Committee dated 11th April 1990.

2. Notes on the Subject-Part i (Chapter X. Anti-Defection Law).

Chapter X

ANTI-DEFECTION LAW

1.1. The Committee examined the proposals in the Notes on the subject.

1.2. Shri H.K.L. Bhagat, M.P.(Indian National Congress), is strongly opposed to any change in the present law relating to anti-defection as, according him, such changes would dilute the provisions.

1.3. Other members are unanimously of the view that the three important changes as proposed in the Notes should be accepted.

1.4. Recommendations for amendments.—The Committee has accordingly recommended that the Anti-Defection Law (Tenth Schedule to the Constitution) should be chaged in the following respects:—

1. Disqualification provisions should be made specifically limited to cases of (a) voluntarily giving up by an elected member of his membership of the political party to which the member belongs; and (b) voting or absentention from voting by a member contrary to his party direction or whip only in respect of a motion of vote of confidence or a motion amounting to no- confidence or Money Bill or motion of vote of thanks to the President's address.

2. The power of deciding the legal issue of disqualification should not be left to the Speaker or Chairman of the House but to the President or the Governor, as the case may be, who shall act on the advice of the Election Commission, to whom the question should be referred for determination as in the case of any other post-election disqualification of a Member.

3. The nominated members of the House concerned should incur disqualification if he joins any political party at any period of time.

Chapter XI OFFICE OF PROFIT

1.1. The Committee took note of the drawbacks in the present position of giving blanket power of exemption to the legislatures in regard to disqualification of a member for holding office of profit, as pointed out in the Notes. However, the Committee is of

the view that the suggestion that the Committee of Parliament of Office of Profit should decide the procedure for laying down stringent guiding principles for exempting the offices from the purview of inhibiting provisions of the Constitution, would not be acceptable to States as it infringed upon State subjects.

1.2. Law Ministry to prepare Model Bill and circulate it to States for adoption.—Consequently, the Committee desires that the Law Ministry should do an exercise in the matter for the preparation of a Model Bill for circulation and adoption by the various State Governments.

Reference Source

1. Minutes of the Meeting of the Committee dated 11th April 1990.

2. Notes on the subject - Part - I (Chapter XI - Office of Profit).

Chapter XII

ELECTORAL SYSTEMS - EXAMINATION

1. Proposal for change of system of elections

1.1. No unanimity.—The Committee observed that there is no unanimity in regard to this matter. Some members totally opposed the proposal for any change in the present system while others desired a change over to Proportional Representation System.

2. Constitution of Expert Committee to examine change of electoral system.

2.1. Law Ministry and Election Commission to examine constitution of Expert Committee.—In view of the sharp difference of opinion in the matter, the Committee feels that it should only recommend that the subject of change of the present electoral system should be examined by an expert committee. Accordingly, it recommends to the Law Ministry and the

Election Commission that the matter relating to change of the present electoral system should be pursued and that if necessary an Expert Committee should be constituted for the purpose.

Reference Source

1. Minutes of the Meeting of the Committee dated 11th April, 1990.

2. Notes on the Subject - Part II - (Electoral Systems - Examination).

Chapter XIII MISCELLANEOUS

1. Suggestions and comments from MPs, etc.—Shri Dinesh Goswami, Law Minister and Chairman of the Committee, wrote on 28th December 1989, to all Members of Parliament and some other eminent persons furnishing them with the broad outlines of electoral reforms to be considered by the Committee and seeking their views on them.

1.2. In response to this letter, many Members of Parliament and other eminent persons and organisations sent their comments and views.

1.3. A compilation of these comments and views in brief has been prepared and placed before the Committee for its consideration.

1.4. The Committee finds that many of the suggestions either directly or indirectly have already been taken note of in the Notes prepared for the consideration of the Committee and in fact examined by the Committee. The Committee however finds that a very large number of suggestions and views fall outside the scope of the Committee's task as outlined by the Prime Minister in his concluding remarks at the meeting of the political parties held on 9th January, 1990 and subsequent decisions of the Committee outlining the important items to be taken up for its consideration.

1.5. Constitution of a Standing Committee of Parliament.—At the meeting of the Committee held on 11th April, 1990, one member suggested that as the electoral reforms is a continuous process, a Standing Committee of Parliament should be constituted to go into all electoral matters from time to time.

1.6. The Committee accepts this suggestion and requests the Ministry of Law, Legislative Department, to take necessary steps in this direction.

1.7. Existence of near unanimity of decisions.—The Committee is gratified to note that there exists near unanimity or broad consensus among members in arriving at definite conclusions on majority of items discussed by the Committee. It is no doubt true that during discussions, Shri H.K.L. Bhagat, M.P. (Indian National Congress), time and again, made it clear that he was not in a position to commit his party to any definite views on the various items of the Subject and that his party would consider the various points on their merits as and when the Government brought forward legislation in the parliament.

1.8. Emergence of broad consensus or agreement.—The Committee has made sincere efforts in discussing the whole range of electoral reforms and succeeded in arriving at broad consensus in respect of the most of the items. Though it found that there were divergence of views among members in respect of some of the important and vital areas like (1) Regulation of functioning of Political parties; (2) State funding of elections; (3) Change of present electoral system etc. it was because of the very nature of these controversial or contentious subjects which, at any time, bound to generate differences of perception and approach. Barring these few areas, it is really gratifying that all the members brought to bear an objective approach to the subject of electoral reforms and contributed towards the emergence of broad consensus or agreement on very many important and vital areas.

1.9. Peculiar nature of election law.—The Committee is conscious of the fact that any amount of tinkering with the law to remove drawbacks, defects and shortcomings of the law would not produce hundred per cent success. It is so because the election law does not concern only with any particular section or specified small class of persons. It comprehends within its ambit the entire mass of millions of people and a very large number of political groupings with different ideologies and leanings. The success of any legislative measure in regard to election law and procedure therefore greatly depends on the proper working of, and adherence to, the system on the part of the electoral machinery at all levels, political parties and candidates and the electorate. The Committee only hopes that such a realisation would be strengthened among all of them so that India could continue to be an oasis of democracy as pointed by the Supreme Court.

1.10. Committee's efforts only to further the prospects of free and fair elections.—Keeping the above inhibiting factors in view, the Committee would be rest content with a recognition that the Committee has done its best with a view to injecting purity and furthering the prospects of free and fair elections.

Reference Sources

1. The Minutes of the Meeting of the Committee on Electoral Reforms dated 11.4.1990.

2. Compilation of the Comments and Views of Members of Parliament etc. in response to the letter of the Minister of Law and Justice in December, 1989.

Chapter XIV

SUMMARY OF RECOMMENDATIONS

1.1. The following is the summary of the recommendations of the Committee based on its conclusions as indicated in the earlier Chapters.

1.2. It is necessary to state here that though decisions indicated below have been arrived at on the basis of the consensus among majority of the members, the representative of the Indian National Congress, Shri H.K.L. Bhagat M.P. has made it clear, as stated earlier, that his party would consider the law as and when brought before the Parliament on its merits and that he would not like to express any definite views on any of the matters without ascertaining the views of his party.

However, he expressed himself in favour of (1) reservation of seats for women and (2) introduction of the system of multi-purpose identity cards.

1.3. The following summary should therefore be taken as the broad consensus of the members of the Committee.

CHAPTER II ELECTORAL MACHINERY

1. Set up of multi-member Commission

1. The Election Commission should be a multi-member body with three members.

2. The Chief Election Commissioner should be appointed by the President in consultation with the Chief Justice of India and the Leader of the Opposition (and in case no Leader of Opposition is available, the consultation should be with the Leader to the largest opposition group in the Lok Sabha).

3. The consultation process should have a statutory backing.

4. The appointment of other two Election Commissioners should be made in consultation with Chief Justice of India, the Leader of the Opposition (in case no Leader of Opposition is available, the consultation should be with the Leader to the largest opposition group in the Lok Sabha) and the Chief Election Commissioner.

5. The appointment of Regional Commissioners for different zones is not favoured. Such appointments should be made only as and when necessary and not on a permanent footing.

2. Steps for securing independence of the Commission

6. 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 measures being taken, a parliamentary law should be enacted.

7. The expenditure of the Commission should continue to be 'voted' as of now.

8. The Chief Election Commissioner and the Election Commissioners should be made ineligible not only for any appointment under the Government but also to any office including the office of Governor appointment to which is made by the President.

9. The tenure of the Chief Election Commissioner and other Election Commissioners should be for a term of five years or sixty-five years of age, whichever is later and they should in no case continue in office beyond sixty-five years and for more than ten years in all.

3. Set up of the Secretariat

10. The set up of the secretariat of the Commission should be on the lines of Article 98(2} of the Constitution relating to Lok Sabha Secretaria and till such provision is made, a law of Parliament should be enacted.

4. Set up of electoral machinery at State level

11. The Chief Electoral Officers should exclusively be entrusted with the election work and not saddled with any other items of work.

12. There is no need for the creation of a supervisory agency for a group of districts as proposed by the Election Commission.

13. The provisions in section 28-A of the Representation of the People Act, 1951 should be examined further with a view to provide for effective and complete control over the officers in all respects including framing of charges, lodging of prosecution and disciplinary proceedings against those officers for breach of duty during the period of his deputation to the Election Commission.

14. The transfer of officers connected with the election work should be effected only with the concurrence of the Election Commission.

5. Extension of jurisdiction of electoral machinery in relation to Panchayat Raj Institutions.

15. The question relating to extension of jurisdiction of electoral machinery in relation to elections to Panchayat Raj institutions should be taken up only after ascertaining the exact details of the contemplated legislative or constitutional measures.

6. Power of contempt in favour of Election Commission

16. The proposal for clothing the Election Commission with the power of contempt is not favoured.

CHAPTER III DELIMITATION OF CONSTITUENCIES

17. There should be a fresh delimitation on the basis of 1981 census.

18. There should be rotation of seats reserved for Scheduled Castes but the manner of achieving the object of rotation of seats should be left to the Delimitation Commission and the Parliamentary law to be made for the purpose.

19. Political parties should give larger representation to women candidates at election to the House of Parliament and State Legislatures by putting up more numbers of them at elections.

20. Any change of multiple of assembly seats is not favoured.

CHAPTER IV ELECTORAL ROLLS

1. Steps for improving enrolment of all eligible names

21. Post offices should be the focal point for the preparation and maintenance of electoral rolls, up-to-date and up-keep of records. The Election Commission should fully discuss this matter with the Postal Board and the Census Commissioner.

22. Section 32 of the Representation of the People Act, 1950 should be further strengthened so as to provide for more stringent punishment for breach of official duty in connection with the preparation, revision etc. of electoral rolls.

23. The punishment should be at least for 6 months as against only the imposition of fine as at present.

24. The Election Commission should be given power not only to recommend disciplinary proceedings for breach of official duty but also should be empowered to record adverse entries against officers found guilty of lapses in their duty and forward them to the concerned authorities.

25. The officers connected with the preparation and revision of electoral rolls should also be brought under the control and disciplinary jurisdiction of the Election Commission as in the case of officers connected with the conduct of poll.

2. Issue of multi-purpose photo identity cards

26. Steps for successful implementation of the scheme of multi- purpose photo identity cards as proposed should be undertaken and that a time-bound programme for covering the entire country with the proposed scheme is desirable.

CHAPTER V

POLITICAL PARTIES AND CANDIDATES

1. Restriction on candidates contesting from several constituencies.

27. A person should not be allowed to contest elections from more than two constituncies of the same class.

2. Lowering of age-limit for contesting candidates

28. Age qualification for contesting elections to Legislative Assemblies and Lok Sabha should be reduced to 21 years and in the case of elections to Legislative Councils and Council of States to 25 years.

3. Deletion of Section 29-A relating to registration of Parties and regulation by Symbols Order.

29. Section 29-A of the Representation of the People Act, 1951 dealing with the registration of political parties should be deleted and the matter of registration of political parties should be left to be decided solely by the Election Commission under the Election Symbols (Reservation and Allotment) Order, 1968. The law should also include a consequential provision authorising the Election Commission to deal with afresh any application for registration after the removal of all the political parties registered under section 29-A of the Act from the list of registered parties.

30. There is no need for recognising alliances of political parties at elections or for any change in the present procedure of allotment of symbols.

4. Regulations for containing contests by non-serious candidates

31. Security deposit in the case of a candidate set up by a recognised National or State Party should be rupees five hundred for Assembly elections and rupees one thousand for Lok Sabha elections with usual concessions to Scheduled Caste and Scheduled Tribe candidates.

32. Security deposit in the case of independents and candidates set up by registered parties should be rupees two thousand five hundred for Assembly elections and rupees five thousand for Lok Sabha elections.

33. If an independent candidate or a candidate set up by a registered party fails to secure ¼ as against 1/6 of the valid votes polled as at present, the security deposit should be forfeited.

34. The number of proposers to a nomination paper to be filed by an independent candidate or a candidate set up by a registered party should be ten, drawn from different assembly segments.

35. The arrangement of names of candidates in the ballot paper should be in the following order, namely:—

1. Candidates of recognised National Parties

2. Candidates of recognised State Parties

3. Candidates of registered parties, and

4. Independents.

36. The proposal that there should be a separate deposit by each of the proposer or a bond to be executed by him in the case of an independent candidate or a candidate set up by a registered party is not favoured.

37. The proposal to prevent agents of independent candidates and candidates set up by registered parties from attending to the duties as polling agents and counting agents is not also favoured.

5. (a) Regulation of functioning of political parties

(b) Compulsory maintenance of account of election expenses by political parties and audit thereof

(c) Submission of Annual Returns bv political parties

(d) Enforcement of observance by political parties of requirements.

38. The matter relating to the above items need not be pursued as there is no unanimity of views.

39. The suggetion to clothe the Election Commission under the Symbols Order the power to withhold the allotment of symbols to the candidates set up by a political party if that party does not observe the provisions of its constitution in regard to holding of periodical elections to its various organs is not favoured.

6. Statutory backing for model code of conduct

40. The following items in the model code should have the statutory backing and should therefore be brought within the ambit of the law:—

(a) Combining of official visit with work relating to elections or making use of official machinery or personnel in connection with any such work;

(b) Using Government transport, including official aircrafts, vehicles, machinery and personnel in connection with any work relating to elections;

(c) restricting or monopolising the use of public places for holding election meeting or use of helipads for air flights in connection with any work relating to elections;

(d) restricting or monopolising the use of rest houses, dak bungalows or other Government accommodation or the use of such accommodation (including premises appertaining thereto) as a campaign office or for holding any public meeting for the purpose of election propaganda.

(e) issuing of advertisements at the cost of public exchequer in the newspapers and other media;

(f) using official news media for partisan coverage of political news and publicity of achievements with a view to furthering the prospects of any party or candidate.

(g) announcing or sanctioning of any financial grants in any form or making payments out of discretionary funds;

(h) laying of foundation stones of projects or the inauguration of schemes of any kind or the making of any promises of construction of roads or the provision of any facilities;

(i) making of any ad hoc appointments in Government or public undertakings during the election period for the furtherance of the prospects of any party or candidate;

(j) entering any polling station or place of counting by a Minister except in his capacity as a candidate or a voter or as an authorised agent;

(k) Ban on transfer of officers and staff specified in section 28-A when election is in prospect.

41. Violation of these provisions should be made an electoral offence and not corrupt practice.

CHAPTER VI CONDUCT OF POLL

1. Constitution of Indian Election Service

42. The constitution of Indian Election Service as proposed by the Election is not favoured.

2. Ban on transfer of officers connected with elections

43. The law should be suitably amended for imposing a ban on transfer of civil and police officers connected with elections for a specified period.

3. Statutory status of Commission's Observers

44. The Commission's observers should be clothed with statutory powers. However, the law should spell out their specific role like the power to stop (1) the poll for specified reasons; (2) the counting and

(3) the declaration of the result. In all these cases, the matter should be referred to the Election Commission for final decision.

45. A general provision may also be included in the proposed law to the effect that an observer may be assigned such other functions as may be entrusted to him by the Election Commission.

4. Role of Voluntary Organisations

46. The proposal to give statutory recognition to the role of voluntary organisations and constitution of a Political Council or Election Council in regard to the conduct of elections is not favoured. The Election Commission may afford under its general powers such facilities to these voluntary organisations as it finds proper and necessary.

5. Use of Electronic Voting Machines

47. In view of the report of the technological experts certifying the credibility of the Electronic Voting Machines, the Electronic Voting Machines may be put to use at all future bye-elections and general elections to Lok Sabha and State Assemblies and local bodies. Intensive training programme for polling personnel at all levels on the working of the machines should also be arranged.

6. Provision of an electronic device to record particulars from Identity card

48. Provision for an electronic device to record particulars of electors as in the photo identity cards as a safeguard against booth capturing etc. should be examined further.

7. Set up of mobile polling stations

49. Mobile polling stations fitted in vans may take the place of auxiliary polling stations which are being set up at present to enable the weaker sections to exercise their votes freely near their areas of residence. Such mobile polling stations should be stationed for the full polling period and should also be well protected with adequate police force.

8. Steps to eradicate booth capturing. Rigging, intimidation etc.

50. Section 58-A of the Representation of the People Act, 1951 should be amended enabling the Election Commission to take a decision regarding booth capturing not only on the report of the Returning Officer but even otherwise.

51. The Election Commission should not only be empowered to countermand the election and order a fresh election under the law butalso declare the earlier poll to be void and order only a repoll in the entire constituency depending on the nature and seriousness of each case.

52. An enabling provision should be incorporated in the law empowering the Election Commission to locate (1) an investigation agency; State or Central; {2) a prosecuting agency; (3} constitution of special courts wherever necessary. It is not necessary to bind in any way specifically the Election Commission in regard to these matters.

53. The suggestion that the State Government should function as a caretaker Government during the period of election is not favoured.

54. The suggestion that the formation of voluntary organisations should be encouraged to oversee the conduct of the poll in every constituency is also not favoured.

55. The electoral offence of booth capturing should be made a cognizabe offence.

56. Statutory recognition should be given to the issue of standing instructions by the Election Commission by insertion of a suitable enabling provision in the Act.

57. There should be proper coordination between State and Central police forces and deployment of Central forces for election duty at polling stations wherever found necessary. The

Election Commission should further examine the matter for taking concrete steps in that behalf.

58. The suggestion for deployment of planning and supervisory machinery in the constituencies to oversee the arrangements over and above the existing arrangements under the existing instructions of the Commission is not favoured.

9. Time-limit for holding bye-elections

59. A bye-election should be held within six months of the occurrence of the vacancy and such a bye-election need not be held if a general election is normally due within one year from the date of the occurrence of the vacancy.

10. Power to order repoll

60. The Regional Commissioners and Observers appointed by the Commission or any other supervisory officers employed by the Commission at elections should have the power under the law to order the deferring of counting or declaration of the result pending decision of the Commission on their report.

11. Reasons for low polling and remedial measures.

61. The suggestion that there should be a repoll if there has been a low percentage of voting, say 20 per cent, in a constituency is not accepted.

62. The present procedure relating to postal ballot paper facility should be closely examined to remove drawbacks and make the facility really meaningful.

63. The suggestion that persons employed as drivers, workers etc. of transport vehicles used by candidates should be made eligible for postal ballot paper facility should be looked into by the Election Commission with a view to making these categories of persons entitled to the facility of postal ballot paper.

64. Army personnel, persons outside India in diplomatic service and also persons belonging to para-military forces should

enjoy the facility of voting at elections through proxy and the system obtaining in that behalf in the U.K. should be studied quickly for adoption in our country by suitable amendment to law and procedure.

12. Countermanding of poll on death of candidate

65. Section 52 of the Representation of the People Act, 1951 should be amended to provide to the effect that only if a candidate set up by recognised political party dies, the election should be countermanded and not otherwise.

66. Section 52 of the Representation of the People Act, 1951 should be further amended on the lines proposed in the Report of the Election Commission on 1968-89 Elections in order to remove any scope for doubt or confusion: However, the countermanding of the poll should be ordered if the death of a candidate takes place before the commencement of the poll and not declaration of the result, as proposed by the Election Commission.

13. Term of members of Rajva Sabha and holding of biennial elections

67. Though the retirement of members of Rajya Sabha elected from different States on the completion of their term is not uniform and cycle of retirement on the same day has been broken, it is not necessary to make amendment to law as proposed for the purpose of bringing into effect one single day of retirement in ail cases.

14. Qualification for election to_ Rajya Sabha and requirement as to number of proposers.

68. Any change in the present requirement that a candidate at elections to Rajya Sabha should be an elector in the State from which he seeks such election is not necessary.

69. Section 39 to the Representation of the People Act, 1951 relating to number of proposers to a nomination paper of a

candidate at elections to Rajya Sabha and Legislative Councils by the members of the Legislative Assembly should be amended to provide for only one proposer and one seconder as against ten proposers.

CHAPTER VII

ELECTION EXPENSES

1. Fixing reasonable ceiling on raational basis

70. Section 77(3) of the Representation of the People Act, 1951 should be amended empowering the Election Commission to lay down the ceilings instead of the Central Government notifying as at present the maximum election expenses under the Rules in consultation with the Election Commission.

2. Accounting of election expenses

71. Section 77(1) should be amended on the following lines:—

"(1) All expenditure incurred or authorised either by the candidate or his election agent on account of or in respect of the conduct or management of the election shall be required to be included in the account of election expenditure of the candidate".

72. There is no need for including "any other person" within the purview of section 77(1) or the use therein of expression "whether before, during or after an election".

73. The two Explanations and the proviso to section 77 should be deleted.

74. There is no need for the candidate furnishing in the prescribed form of affidavit with an oath sworn before a judicial magistrate or oath commissioner owning responsibility for the correct and true account of the election expenses. The present system of giving simple declaration in return of election expenses would be sufficient.

75. Any unauthorised expenditure incurred by any person other than the candidate or his election agent should be prohibited and treated as an electoral offence and that such offence should be made punishable with imprisonment for a period of not less than one year in addition to fine.

76. Failure to keep an election account which is already a penal offence under section 171-F, IPC should be made more stringent by providing for imprisonment of at least six months in addition to fine.

77. Submission of false account should be made an electoral offence and the minimum punishment for violation of this provision should be two years imprisonment.

3. Regulation or ban of donations by companies.

There should be a complete ban on donations by companies and the relevant law should be amended accordingly.

CHAPTER VIII

STATE FUNDING OF ELECTIONS

1. Fixing of ceiling of State Assistance

78. To start with State assistance in kind should be given in respect of—

(1) Provision of prescribed quantity of fuel or petrol to vehicles

used by candidates.

(2) Supply of additional copies of electoral rolls

(3) Payment of hire charges for prescribed number of microphones used by candidates.

(4) Distribution of voters' identity slips now being done by contesting candidates should be exclusively undertaken by electoral machinery and all candidates should be prohibited from issuing such slips. The details of the manner and mode of State

assistance in the above areas and its implementation should be left to the Election Commission to work out. The law should contain minimum enabling provision for the purpose.

2. Eligibility of State assistance - candidates of political parties and independents

79. The State assistance in respect of the above items should be extended only to candidates set up by recognised political parties.

3. Restriction of private expenses on items made eligible for State assistance

80. There need not be any ban on private expenditure in respect of items proposed for State assistance except in the case of distribution of Voters' identity slips which should be taken over by the electoral machinery prohibiting completely all the candidates from issuing such slips.

4. Financial assistance to political parties on annual basis

81. Any financial assistance to political parties on annual basis as proposed is not favoured.

CHAPTER IX

ELECTION DISPUTES AND ELECTORAL OFFENCES

1. Steps for expeditious disposal of election petitions and appeals

82. The proposal for the appointment of adequate number of ad hoc judges who would relieve the regular judges from their normal duty for the purpose of entrusting to them the trial of election petitions is accepted.

83. The proposal for the appointment of commissions under the jurisdiction of the High Court for the purpose of taking evidence of witnesses and placing the recorded evidence before

the High Court for further trial of election petition on questions of law and facts is not accepted.

84. There is no need for the amendment of law for substitution of a person as a petitioner in the event of the petitioner himself resorting to non-prosecution of the petition.

2. Stringent penal provisions against electoral offences

85. The suggestion that the prohibition of public meetings as envisaged in section 126 should be extended to 72 hours ending with the hour fixed for the completion of the poll in any election is not accepted. The present prohibition of 48 hours is adequate.

86. Expansion of provision as per recommendation of Joint Parliamentary Committee is favoured.

87. Section 127 - Disturbance at election meetings - the imprisonment for the violation of the provision should be for six months or fine of rupees two thousand or with both.

88. Section 127-A - Restrictions on printing of pamphlets, posters etc. -This section should be amended to increase the imprisonment to two years from six months.

89. Section 129 - Officers etc. at election not to act for candidates or to influence voting:

Section 130 - Penalty for canvassing in or near polling stations:

Section 131 - Penalty for disorderly conduct near polling stations:

Section 132 - Penalty for misconduct at the polling stations:

Section 134 - Breach of official duty in connection with election:

Section 135 - Removal of ballot papers from the polling stations to be an offence:

Penal provisions in all these sections should be examined further to make them more stringent.

90. Section 133 - Penalty for illegal hiring or procuring conveyance at elections:

Section 133 should be amended on the lines proposed in the Bill appended to the Report of the Joint Parliamentary Committee of 1972. The punishment for the violation should be six months imprisonment and also with fine. The offence should also be made cognizable.

Section 134-A-Penalty for Government servants acting as election agent, polling agent or counting agent:

91. Section 134-A need not be amended for bringing within its ambit persons working in any local authority also.

Section 135 - Removal of ballot papers from the polling stations to be an offence:

92. Section 135 should be amended for using the expression “takes away the ballot paper or attempts to take away the ballot paper out of polling station” in substitution of the word “fraudulently takes or attempts to take”.

3. New Electoral Offences

93. Personation (Impersonation) should be made an electoral offence. It should also be made more stringent by providing forpunishment of imprisonment which may extend to three years or fine or with both. The offence should also be made cognizable.

Use of vehicles for conveyance at elections

94. Provision should be made on the lines of the Bill appended to the Report of the Joint Parliamentary Committee of 1972 (vide section 133- A).

Ban on Diving of mechanically propelled vehicles on poll day

95. Law should be amended to impose complete ban on mechanically propelled vehicles like lorries, tractors with trailers, buses, auto-rickshaws etc. However owner driven cars and public buses should be exempted from the ban. Punishment for violation of this ban should be two years. The offence should be made cognizable. In suitable cases licences of the vehicles should be cancelled and the vehicles confiscated. The matter should be left to the Election Commission to work out the full details and the parliamentary law should only provide for simple enabling provision.

Prohibition of going armed to or near a polling station

96. A new penal provision banning carrying of firearms and lethal weapons on the poll day and treating the violation thereof as an electoral offence should be inserted in the Representation of the People Act, 1951. Imprisonment for violation should be two years and the offence should be made cognizable. Arms found with guilty persons should be confiscated and the licence cancelled where such licence had been issued.

Ban on sale and distribution of liquor and other intoxicated drinks.

97. Provisions in the Bill appended to the Report of the Joint Parliamentary Committee of 1972 should be adopted. Punishment for contravention should be six months imprisonment and fine of rupees two thousand. The quantity of liquor found in the possession of the person in contravention of the penal provision should also be confiscated.

98. The expression “consumption of liquor” need not be used in the penal provisions.

Lodging of false account of election expenses

99. As already stated the lodging of false account of election expenses should be made an electoral offence. The imprisonment

for contravention of the provision should be for two years. However, the offence need not be made cognizable.

Mode Code violation

100. As already stated, the violation of model code should be an electoral offence. Punishment for contravention of this provision should be two years imprisonment. The offence need not be made cognizable.

Grant of paid holiday to employees on the day of poll

101. A provision as contained in the Report of the Joint Parliamentary Committee of 1972 and the Bill appended thereto (vide section 135-A) should be made for the purpose of grant of paid holiday to employees in any business, trade, industrial undertaking or any other establishment on the day of poll. Punishment for contravention of this provision should be a fine of rupees five hundred as against rupees fifty proposed by the Joint Parliamentary Committee.

Strengthening of statutory provisions relating to disqualification

102. Conviction under the Prevention of National Honour Act, 1971 should be a ground for disqualification for six years as proposed by the Chief Election Commissioner.

103. The suggestion to disqualify persons found guilty of moral turpitude or persons detained under National Security Act whose detention had been approved by a Judicial Advisory Committee is not accepted.

CHAPTER X

ANTI-DEFECTION LAW

104. The Anti-Defection Law (10th Schedule to the Constitution) should be amended in the following respects:—

1. Disqualification provisions should be made specifically limited to cases of (a) voluntarily giving up by an elected member of his membership of the political party to which the member belongs; and (b) voting or absentention from voting by a member contrary to his party direction or whip only in respect of a motion of vote of confidence or a motion amounting to no- confidence or Money Bill or motion of vote of thanks to the President's address.

2. The power of deciding the legal issue of disqualification should not be left to the Speaker or Chairman of the House but to the President or the Governor, as the case may be, who shall act on the advice of the Election Commission, to whom the question should be referred for determination as in the case of any other post-election disqualification of a Member.

3. The nominated members of the House concerned should incur disqualification if he joins any political party at any period of time.

CHAPTER XI

OFFICE OF PROFIT

105. The suggestion that the Committee of Parliament on Office of Profit should decide the procedure for laying down stringent guiding principles for exempting the offices from the purview of inhibiting provisions of the Constitution is not desirable. However, the Law

Ministry should do an exercise in the matter for the preparation of a model bill for circulation and adoption by various State Governments.

CHAPTER XII

ELECTORAL SYSTEMS-EXAMINATION

106. The subject relating to change of the present electoral system should be examined by an expert Committee. Law Ministry and Election Commission should take up the matter for examination of the suggestion to constitute an expert committee.

CHAPTER XIII

MISCELLANEOUS

107. A Standing Committee of Parliament should be constituted to go into all electoral matters from time to time as the electoral reforms is a continuous process. The Ministry of law, Legislative Department, should take necessary steps in this direction.

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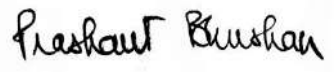


(TRUE COPY)

REPORT OF THE NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION

-- SUMMARY OF RECOMMENDATIONS

CONTENTS

CHAPTER 11
SUMMARY OF RECOMMENDATIONS

[Of the various recommendations, 58 recommendations involve amendment to the Constitution, 86 involve legislative measures and the rest involve executive action.
Those recommendations which involve amendments to the Constitution are given in italics]

CHAPTER 3
FUNDAMENTAL RIGHTS, DIRECTIVE PRINCIPLES AND FUNDAMENTAL DUTIES

⇒ › Fundamental Rights

(1) In article 12 of the Constitution, the following Explanation should be added:-
'Explanation – In this article, the expression "other authorities" shall include any person in relation to such of its functions which are of a public nature.'
[Para 3.5]

(2) In articles 15 and 16, prohibition against discrimination should be extended to "ethnic or social origin; political or other opinion; property or birth".
[Para 3.6]

(3) Article 19(1)(a) and (2) should be amended to read as follows:

"Art. 19(1): All citizens shall have the right -
(a) to freedom of speech and expression which shall include the freedom of the press and other media, the freedom to hold opinions and to seek, receive and impart information and ideas."

19(2): "Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence, or preventing the disclo-sure of information received in confidence except when required in public interest.".
[Para 3.8.1]

(4) A Proviso to article 19(2) of the Constitution should be added as under:-
"Provided that, in matters of contempt, it shall be open to the Court to permit a defence of justification by truth on satisfaction as to the bona fides of the plea and it being in public interest.".
[Paras 3.8.2 and 7.42]

(5) The existing article 21 may be re-numbered as clause (1) thereof, and a new clause (2) should be inserted thereafter on the following lines: -

"(2) No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.".
[Para 3.9]

(6) After clause (2) in article 21 as proposed in para 3.9, a new clause, namely, clause (3) should be added on the following lines:-

"(3) Every person who has been illegally deprived of his right to life or liberty shall have an enforceable right to compensation."
[Para 3.10]

(7) After article 21, a new article, say article 21-A, should be inserted on the following lines:-

"21-A. (1) Every person shall have the right to leave the territory of India and every citizen shall have the right to return to India.

(2) Nothing in clause (1) shall prevent the State from making any law imposing reasonable restrictions in the interests of the sovereignty and integrity of India, friendly relations of India with foreign States and interests of the general public."
[Para 3.11]

(8) A new article, namely, article 21-B, should be inserted on the following lines:

"21-B. (1) Every person has a right to respect for his private and family life, his home and his correspondence.

(2) Nothing in clause (1) shall prevent the State from making any law imposing reasonable restrictions on the exercise of the right conferred by clause (1), in the interests of security of the State, public safety or for the prevention of disorder or crime, or for the protection of health or morals, or for the protection of the rights and freedoms of others.".
[Para 3.12]

(9) A new article, say article 21-C, may be added to make it obligatory on the State to bring suitable legislation for ensuring the right to rural wage employment for a minimum of eighty days in a year.
[Para 3.13.2]

(10) As regards article 22, the following changes should be made:-

(i) The first and second provisos and Explanation to article 22(4) as contained in section 3 of the Constitution (44th Amendment) Act, 1978 should be substituted by the following proviso and the said section 3 of the 1978 Act as amended by the proposed legislation should be brought into force within a period of not exceeding three months:-

"Provided that an Advisory Board shall consist of a Chairman and not less than two other members, and the Chairman and the other members of the Board shall be serving judges of any High Court:

Provided further that nothing in this clause shall authorize the detention of any person beyond a maximum period of six months as may be prescribed by any law made by Parliament under sub-clause (a) of clause (7).".

(ii) In clause (7) of article 22 of the Constitution, in sub-clause (b), for the words "the maximum period", the words "the maximum period not exceeding six months" shall be substituted.
[Para 3.14.2]

(11) After article 30, the following article should be added as article 30A:

"30-A: Access to Courts and Tribunals and speedy justice

(1) Everyone has a right to have any dispute that can be resolved by the application of law decided in a fair public hearing before an independent court or, where appropriate, another independent and impartial tribunal or forum.

(2) The right to access to courts shall be deemed to include the right to reasonably speedy and effective justice in all matters before the courts, tribunals or other fora and the State shall take all reasonable steps to achieve the said object.".
[Para 3.15.1]

(12) Article 39A in Part IV should be shifted to Part III as a new article 30-B to read as under:-

"30-B. Equal justice and free legal aid: The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.".
[Para 3.15.2]

(13) Article 300-A should be recast as follows:-

"300-A. (1) Deprivation or acquisition of property shall be by authority of law and only for a public purpose.

(2) There shall be no arbitrary deprivation or acquisition of property:

Provided that no deprivation or acquisition of agricultural, forest and non-urban homestead land belonging to or customarily used by the Scheduled Castes and the Scheduled Tribes shall take place except by authority of law which provides for suitable rehabilitation scheme before taking possession of such land."
[Para 3.16.2]

(14) In article 31-B, the following proviso should be added at the end, namely:-
"Provided that the protection afforded by this article to Acts and Regulations which may be hereafter specified in the Ninth Schedule or any of the provisions thereof, shall not apply unless such Acts or Regulations relate –

(a) in pith and substance to agrarian reforms or land reforms;
(b) to reasonable quantum of reservation under articles 15 and 16;
(c) to provisions for giving effect to the policy of the State towards securing all or any of the principles specified in clause (b) or clause (c) of article 39."
[Para 3.17]

(15) Clauses (1) and (1A) of article 359 should be amended by substituting for "(except articles 20 and 21)", the following:-

"(except articles 17,20,21,23,24,25 and 32)"
[Para 3.18.2]

(16) The relevant provision in the Constitution (93rd Amendment) Bill, 2001 making the right to education of children from 6 years till the completion of 14 years as a Fundamental Right should be amended and enlarged to read as under:-

"30-C. Every child shall have the right to free education until he completes the age of fourteen years; and in the case of girls and members of the Scheduled Castes and the Schedule Tribes until they complete the age of eighteen years.".

[Para 3.20.2]

(17) After article 24, the following article should be added:-

"Article 24A. Every child shall have the right to care and assistance in basic needs and protection from all forms of neglect, harm and exploitation.".
[Para 3.21.2]

(18) After the proposed article 30-C, the following article may be added as article 30-D:-

"30-D. Right to safe drinking water, prevention of pollution, conservation of ecology and sustainable development. -

Every person shall have the right –
(a) to safe drinking water;
(b) to an environment that is not harmful to one's health or well-being; and
(c) to have the environment protected, for the benefit of present and future generations so as to –
(i) prevent pollution and ecological degradation;
(ii) promote conservation; and
(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.".
[Para 3.22.3]

(19) Explanation II to article 25 should be omitted and sub-clause (b) of clause (2) of that article should be reworded to read as follows:-

"(b) providing for social welfare and reform or the throwing open of Hindu, Sikh, Jaina or Buddhist religious institutions of a public character to all classes and sections of these religions.".
[Para 3.23.2]

(20) It shall be desirable that some optimum level of population with a view to take necessary action under this constitutional provision is prescribed. In article 347 of the Constitution, for the words "a substantial proportion of the population", the words "not less than ten per cent of the population" should be substituted.
[Para 3.24]

⇒ › Directive Principles

(21) The Commission recommends that the heading of Part IV of the Constitution should be amended to read as "DIRECTIVE PRINCIPLES OF STATE POLICY AND ACTION".
[Para 3.26.3]

(22) A strategic Plan of Action should be initiated to create a large number of employment opportunities in five years to realize and exploit the enormous potential in creating such employment opportunities. The components of this plan may include:

(1) Improvement of productivity in agriculture that will activate a chain of activities towards increased income and employment opportunities.

(2) Integrated horticulture that will include production of fruits, vegetables and flowers, cut-flowers for export and medicinal plants as well as establishment of bio-processing industries aimed primarily at value-addition of agricultural products.
(3) Intensification of animal husbandry programs and production of quality dairy products.
(4) Integrated Program of Intensive Aquaculture including use of common property resources like village ponds and lakes.
(5) Afforestation and Wasteland Development to bring an additional 12 million hectares under forest plantation and contribute to rural asset building activity.
(6) Soil and Water Conservation to support afforestation and Natural Resource Conservation towards eco-friendly agriculture.
(7) Water Conservation and Tank Rehabilitation.
(8) Production and use of organic manures through vermiculture and other improved techniques and production of organic health foods from them.
[Para 3.27.3]

(23) The Commission recommends that an independent National Education Commission should be set up every five years to report to Parliament on the progress of the constitutional directive regarding compulsory education and on other aspects relevant to the knowledge society of the new century. The model of the Finance Commission may be usefully looked into.
[Para 3.31.3]

(24) After article 47, the following article should be added, namely:-

47A. "Control of population.- The State shall endeavour to secure control of population by means of education and implementation of small family norms.".
[Para 3.32]

(25) An inter-faith mechanism to promote such civil society initiatives should be set up. This may be done under the auspices of the National Human Rights Commission set up under section 3 of the Protection of Human Rights Act, 1993 which, inter alia, provides for the participation of "the Chairpersons of the National Commission for Minorities, the National Commission for Scheduled Castes and Scheduled Tribes and the National Commission for Women" who shall be deemed to be the Members of the Commission for the discharge of functions specified in clauses (b) to (j) of the section 12 of the said Act. This body could, in addition to its other statutory functions, also function in collaboration with the National Foundation for Communal Harmony as a mechanism for promotion of inter-religious harmony for inter alia overseeing the installation and working of "Mohalla Committees" and other civil society, initiatives in sensitive areas. With an appropriate statutory enablement by way of enlargement of section 12 of the said Act, the purpose could be achieved without additional expenditure for setting up a separate mechanism. Section 12 of the said Act with consequential amendments to section 3(3) could be amended by the addition of clause (k), which shall read as under:
"(k) promoting through civil society initiatives, inter-faith and inter-religious harmony and social solidarity.".
The Chairpersons of the National Commission for the Backward Classes and the National Commission for Safai Karamcharis should be co-opted to this body.
[Para 3.34.2]

(26) There must be a body of high status which first reviews the state of the level of implementation of the Directive Principles and Economic, Social and Cultural Rights and in particular (i) the right to work, (ii) the right to health, (iii) the right to food, clothing and shelter,

(iv) Right to Education up to and beyond the 14th year, and (v) the Right to Culture. The said body must estimate the extent of resources required in each State under each of these heads and make recommendations for allocation of adequate resources, from time to time. For ensuring that the Directive Principles of State Policy are realized more effectively, the following procedure should be followed:-:-

(i) The Planning Commission should ensure that there is special mention/emphasis in all the plans and schemes formulated by it, on the effectuation/realization of the Directive Principles of State Policy.
(ii) Every Ministry/Department of the Government of India should make a special annual report indicating the extent of effectuation/realization of the Directive Principles of State Policy, the shortfall in the targets, the reasons for the shortfall, if any, and the remedial measures taken to ensure their full realization, during the year under report.
(iii) The report under item (ii) should be considered and discussed by the Department Related Parliamentary Standing Committee, which shall submit its report on the working of the Department indicating the achievements/failures of the Ministry/Department along with its recommendations thereto.
(iv) Both the Reports mentioned at items (ii) and (iii) above should be discussed by the Planning Commission in an interactive seminar with the representatives of various NGOs, Civil Society Groups, etc. in which the representatives of the Ministry/Department and the Departmental Related Parliamentary Standing Committee would also participate. The report of this interaction shall be submitted to the Parliament within a time bound manner.
(v) The Parliament should discuss the report at item (iv) above within a period of three months and pass a resolution about the action required to be taken by the Ministry/Department concerned.
A similar mechanism as mentioned above may be adopted by the States.
[Paras 3.35.2 and 3.35.3]

(27) The Report of the National Statistical Commission (2001) stresses the importance of availability of adequate, credible and timely socio-economic data generated by the statistical system, both for policy formulation and for monitoring progress of the sectors of economy and pace of socio-economic change. The Commission endorses the recommendations of the National Statistical Commission and stresses the importance of their implementation.
[Para 3.36]

⇒ › Fundamental Duties

(28) For effectuating Fundamental Duties, the following steps should be taken:-
(i) The first and foremost step required by the Union and State Governments is to sensitise the people and to create a general awareness of the provisions of fundamental duties amongst the citizens on the lines recommended by the Justice Verma Committee on the subject. Consideration should be given to the ways and means by which Fundamental Duties could be popularized and made effective;
(ii) Right to freedom of religion and other freedoms must be jealously guarded and rights of minorities and fellow citizens respected;
(iii) Reform of the whole process of education is an immediate but immense need, as is the need to free it from governmental or political control; it is only through education that will power to adhere to our Fundamental Duties as citizens can be inculcated;
(iv) Duty to vote at elections, actively participate in the democratic process of governance and to pay taxes should be included in article 51A; and

(v) The other recommendations of the Justice Verma Committee on operationalisation of Fundamental Duties of Citizens should be implemented at the earliest.
[Para 3.40.3]

(29) The following should also be incorporated as fundamental duties in article 51A of the Constitution -
(i) To foster a spirit of family values and responsible parenthood in the matter of education, physical and moral well-being of children.
(ii) Duty of industrial organizations to provide education to children of their employees.
[Para 3. 40.4]

CHAPTER 4
ELECTORAL PROCESSES AND POLITICAL PARTIES

⇒ › Electoral Processes

(30) While some far-reaching reforms in the electoral processes are necessary, no major constitutional amendment is required. The necessary correctives could be achieved by ordinary legislation modifying the existing laws, or in many cases, merely by rules and executive action. A foolproof method of preparing the electoral roll right at the Panchayat level constituency of a voter and supplementing it by a foolproof voter ID card which may in fact also serve as a multi-purpose citizenship card for all adults. A single exercise should be enough for preparing common electoral rolls and ID cards. The task could be entrusted to a qualified professional agency under the supervision of the Election Commission of India (EC) and in coordination with the SECs. The rolls should be updated constantly and periodically posted on the web site of the Election Commission and CDROMs should be available to all political parties or anyone interested. Prior to elections, these rolls should be printed and publicly displayed at the post offices in each constituency, as well as at the panchayats or relevant constituency headquarters. These should be allowed to be inspected on payment of a nominal fee by anyone. Facilities should also be provided to the members of the public at the post offices for submitting their applications for modification of the electoral rolls.
[Paras 4.7.3 and 4.8.3]

(31) Introduction of Electronic Voting Machines (EVMs) in all constituencies all over the country for all elections as rapidly as possible.
[Para 4.9]

(32) Under section 58A of the Representation of the People Act, 1951, the Election Commission should be authorised to take a decision regarding booth capturing on the report of the returning officers, observers or citizen groups. Also, the EC should be empowered to countermand the election and order a fresh election or to declare the earlier poll to be void and order a re-poll in the entire constituency. Further, the EC should consider the use of tamper-proof video and other electronic surveillance at sensitive polling stations/ constituencies.
[Para 4.10]

(33) Any election campaigning on the basis of caste or religion and any attempt to spread caste and communal hatred during elections should be punishable with mandatory imprisonment. If such acts are done at the instance of the candidate or by his election agents, these would be punishable with disqualification.
[Para 4.11]

(34) The Representation of the People Act should be amended to provide that any person charged with any offence punishable with imprisonment for a maximum term of five years or more, should be disqualified for being chosen as or for being a member of Parliament or Legislature of a State on the expiry of a period of one year from the date the charges were framed against him by the court in that offence and unless cleared during that one year period, he shall continue to remain so disqualified till the conclusion of the trial for that offence. In case a person is convicted of any offence by a court of law and sentenced to imprisonment for six months or more the bar should apply during the period under which the convicted person is undergoing the sentence and for a further period of six years after the completion of the period of the sentence. If any

candidate violates this provision, he should be disqualified. Also, if a party puts up such a candidate with knowledge of his antecedents, it should be derecognised and deregistered.
[Para 4.12.2]

(35) Any person convicted for any heinous crime like murder, rape, smuggling, dacoity, etc. should be permanently debarred from contesting for any political office.
[Para 4.12.3]
(36) Criminal cases against politicians pending before Courts either for trial or in appeal must be disposed off speedily, if necessary, by appointing Special Courts.
[Para 4.12.4]

(37) A potential candidate against whom the police have framed charges may take the matter to the Special Court. This court should be obliged to enquire into and take a decision in a strictly time bound manner. Basically, this court may decide whether there is indeed a prima facie case justifying the framing of charges.
[Para 4.12.5]

(38) The Special Courts should be constituted at the level of High Courts and their decisions should be appealable to the Supreme Court only (in similar way as the decisions of the National Environment Tribunal). The Special Courts should decide the cases within a period of six months. For deciding the cases, these Courts should take evidence through Commissioners.
[Para 4.12.6]

(39) The benefit of sub-section (4) of section 8 of the Representation of the People Act, 1951 should be available only for the continuance in office by a sitting Member of Parliament or a State Legislature. The Commission recommends that the aforesaid provision should be suitably amended providing that this benefit shall not be available for the purpose of his contesting fresh elections.
[Para 4.12.7]

(40) The proposed provision laying down that a person charged with an offence punishable with imprisonment for a maximum period of five years or more should be disqualified from contesting elections after the expiry of a period of one year from the date the charges were framed in a court of law should equally be applicable to sitting members of Parliament and State Legislatures as to any other such person.
[Para 4.12.8]

(41) In matters of disqualification on grounds of corrupt practices, the President should determine the period of disqualification under section 8A of the Representation of the People Act, 1951 on the direct opinion of the EC and avoid the delay currently experienced. This can be done by resorting to the position prevailing before the 1975 amendment to the said Act.
[Para 4.13.1]

(42) The election petitions should also be decided by special courts proposed in para 4.12.6. In the alternative, special election benches may be constituted in the High Courts and earmarked exclusively for the disposal of election petitions and election disputes.
[Para 4.13.2]

(43) The existing ceiling on election expenses for the various legislative bodies be suitably raised to a reasonable level reflecting the increasing costs. However, this ceiling should be fixed by the

Election Commission from time to time and should include all the expenses by the candidate as well as by his political party or his friends and his well-wishers and any other expenses incurred in any political activity on behalf of the candidate by an individual or a corporate entity. Such a provision should be the part of a legislation regulating political funding in India. Further, Explanation 1 to section 77(1) of the Representation of the People Act, 1951 should be deleted.
[Para 4.14.2]

(44) The political parties as well as individual candidates should be made subject to a proper statutory audit of the amounts they spend. These accounts should be monitored through a system of checking and cross-checking through the income-tax returns filed by the candidates, parties and their well-wishers. At the end of the election each candidate should submit an audited statement of expenses under specific heads.
[Para 4.14.2]

(45) Every candidate at the time of election must declare his assets and liabilities along with those of his close relatives. Every holder of a political position must declare his assets and liabilities along with those of his close relations annually. Law should define the term 'close relatives'.
[Para 4.14.5]

(46) Any system of State funding of elections bears a close nexus to the regulation of working of political parties by law and to the creation of a foolproof mechanism under law with a view to implementing the financial limits strictly. Therefore, proposals for State funding should be deferred till these regulatory mechanisms are firmly in position.

[Para 4.14.5]

(47) All candidates should be required under law to declare their assets and liabilities by an affidavit and the details so given by them should be made public. Further, as a follow up action, the particulars of the assets and liabilities so given should be audited by a special authority created specifically under law for the purpose. Again, the legislators should be required under law for the purpose. Again, the legislators should be required under law to submit their returns about their liabilities every year and a final statement in this regard at the end of their term of office.
[Para 4.14.6]

(48) Campaign period should be reduced considerably.
[Para 4.15.4]

(49) Candidates should not be allowed to contest election simultaneously for the same office from more than one constituency.
[Para 4.15.5]

(50) The election code of conduct, which should come into operation as soon as the elections are announced, should be given the sanctity of law and its violation should attract penal action.
[Para 4.15.6]

(51) The Commission while recognizing the beneficial potential of the system of run off contest electing the representative winning on the basis of 50% plus one vote polled, as against the first-past-the-post system, for a more representative democracy, recommends that the Government

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

(52) Intra-State delimitation exercise may be undertaken by the Election Commission for Lok Sabha and Assembly constituencies and the Scheduled Castes and Non-Scheduled Area Scheduled Tribe seats should be rotated. The Delimitation Body should, however, reflect the plural composition of society.
[Para 4.17]

(53) The provisions of the Tenth Schedule of the Constitution should be amended specifically to provide that all persons defecting - whether individually or in groups - from the party or the alliance of parties, on whose ticket they had been elected, must resign from their parliamentary or assembly seats and must contest fresh elections. In other words, they should lose their membership and the protection under the provision of split, etc. should be scrapped. The defectors should also be debarred to hold any public office of a minister or any other remunerative political post for at least the duration of the remaining term of the existing legislature or until, the next fresh elections whichever is earlier. The vote cast by a defector to topple a government should be treated as invalid. Further, the power to decide questions as to disqualification on ground of defection should vest in the Election Commission instead of in the Chairman or Speaker of the House concerned.
[Para 4.18.2]

(54) The practice of having oversized Council of Ministers should be prohibited by law. A ceiling on the number of Ministers in any State or the Union government be fixed at the maximum of 10% of the total strength of the popular house of the legislature.
[Para 4.19]

(55) The practice of creating a number of political offices with the position, perks and privileges of a minister should be discouraged and at all events, their number should be limited to two per cent of the total strength of the lower house.
[Para 4.19]

(56) Independent candidates should be discouraged and only those who have a track record of having won any local election or who are nominated by at least twenty elected members of Panchayats, Municipalities or other local bodies spread out in majority of electoral districts in their constituency should be allowed to contest for Assembly or Parliament.
[Para 4.20.3]

(57) In order to check the proliferation of the number of independent candidates and the malpractices that enter into the election process because of the influx of the independent candidates, the existing security deposits in respect of independent candidates may be doubled. Further, it should be doubled progressively every year for those independents who fail to win and still keep contesting elections. If any independent candidate has failed to get at least five percent of the total number of votes cast in his constituency, he/she should not be allowed to contest as independent candidate for the same office again at least for 6 years.
[Para 4.20.4]

(58) An independent candidate who loses election three times consecutively for the same office as such candidate should be permanently debarred from contesting election to that office.
[Para 4.20.5]

(59) The minimum number of valid votes polled should be increased to 25% from the current 16.67% as a condition for the deposit not being forfeited. This would further reduce the number of non-serious candidates.
[Para 4.20.6]

(60) It should be possible without any constitutional amendment to provide for the election of the Leader of the House (Lok Sabha/State Assembly) along with the election of the Speaker and in like manner under the Rules of Procedure. The person so elected may be appointed the Prime Minister/Chief Minister.
[Para 4.20.7]

(61) The issue of eligibility of non-Indian born citizens or those whose parents or grandparents were citizens of India to hold high offices in the realm such as President, Vice-President, Prime Minister and Chief Justice of India should be examined in depth through a political process after a national dialogue.
[Para 4.21]

(62) The Chief Election Commissioner and the other Election Commissioners should be appointed on the recommendation of a body consisting of the Prime Minister, Leader of the Opposition in the Lok Sabha, Leader of the Opposition in the Rajya Sabha, the Speaker of the Lok Sabha and the Deputy Chairman of the Rajya Sabha. Similar procedure should be adopted in the case of appointment of State Election Commissioners.
[Para 4.22]

(63) All candidates should be required to clear government dues before their candidature are accepted. This pertains to payment of taxes and bills and unauthorised occupation of accommodation and availing of telephones and other government facilities to which they are no longer entitled. The fact that matters regarding Government dues in respect of the candidate are pending before a Court of Law should be no excuse.
[Para 4.23]

(64) In order to obviate the uncertainty in identifying certain offices as offices of profit or not, suitable amendments should be made in the Constitution empowering the Election Commission of India to identify and declare the various offices under the Government of India or of a State to be 'offices of profit' for the purposes of being chosen, and for being, a member of the appropriate legislature.
[Para 4.24.3]

⇒ › Political Parties

(65) A comprehensive law regulating the registration and functioning of political parties or alliances of parties in India [may be named as the Political Parties (Registration and Regulation) Act] should be made. The proposed law should -

(a) provide that 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 per cent, 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.
(b) make it compulsory for the parties to maintain accounts of the receipt of funds and expenditure in a systematic and regular way. The form of accounts of receipt and expenditure and declaration about the sources of funds may be prescribed by an independent body of Accounts & Audit experts, created under the proposed Act. The accounts should also be compulsorily audited by the same independent body, created under the legislation which should also prepare a report on the financial status of the political party which along with the audited accounts should be open and available to public for study and inspection.
(c) make it compulsory for the political parties requiring their candidates to declare their assets and liabilities at the time of filing their nomination before the returning officers for election to any office at any level of government.
(d) provide that no political party should sponsor or provide ticket to a candidate for contesting elections if he was convicted by any court for any criminal offence or if the courts have framed criminal charges against him.
(e) specifically provide that if any party violates the provision mentioned at sub-para (d) above, the candidate involved should be liable to be disqualified and the party deregistered and derecognised forthwith.
[Paras 4.30.1, 4.30.3, 4.30.4, 4.30.5 and 4.34]

(66) The Election Commission should progressively increase the threshold criterion for eligibility for recognition so that the proliferation of smaller political parties is discouraged. Only parties or a pre-poll alliance of political parties registered as national parties or alliances with the Election Commission be allotted a common symbol to contest elections for the Lok Sabha. State parties may be allotted symbols to contest elections for State legislatures and the Council of States (Rajya Sabha).
[Para 4.31.2]

(67) In a situation where no single political party or pre-poll alliance of parties succeeds in securing a clear majority in the Lok Sabha after elections, the Rules of Procedure and Conduct of Business in Lok Sabha may provide for the election of the Leader of the House by the Lok Sabha along with the election of the Speaker and in the like manner. The Leader may then be appointed as the Prime Minister. The same procedure may be followed for the office of the Chief Minister in the State concerned.
[Para 4.33.2]
(68) An amendment in the Rules of Procedure of the Legislatures for adoption of a system of constructive vote of no confidence should be made. For a motion of no-confidence to be brought out against a government at least 20% of the total number of members of the House should give notice. Also, the motion should be accompanied by a proposal of alternative Leader to be voted simultaneously.
[Para 4.33.3]

(69) A comprehensive legislation providing for regulation of contributions to the political parties and towards election expenses should be enacted by consolidating such laws. This new law should –

(a) aim at bringing transparency into political funding;

(b) permit corporate donations within higher prescribed limits and keep them transparent;

(c) make all legal and transparent donations up to a specified limit tax exempt and treat this tax loss to the state as its contribution to state funding of elections;

(d) contain provisions for making both donors and donees of political funds accountable. The Government should encourage the corporate bodies and agencies to establish an electoral trust which should be able to finance political parties on an equitable basis at the time of elections;

(e) provide that audited political party accounts like the accounts of a public limited company should be published yearly with full disclosures under predetermined account heads; and

(f) provide for immediate de-recognition of the party and enforcement of penalties for filing false or incorrect election returns.

[Paras 4.35.2, 4.35.3, 4.35.4 and 4.36]

(70) The presiding officers, the minister for parliamentary affairs, and the chief whips of parties should periodically meet to review the work of the departmental parliamentary committees and take remedial action. It should be entirely possible for the Parliament to sanction budgets to secure the services of specialist advisors to assist these committees in conducting their inquiries, holding public hearings, collecting data about legislation and administrative details pertaining to countries which have relevance to the Indian conditions.
[Para 5.6.3]

(71) Immediate steps be taken to set up a Nodal Standing Committee on National Economy with adequate resources in terms of both in house and advisory expertise, data gathering and computing and research facilities for an ongoing analysis of the national economy for assisting the members of the Committee to report on a periodic basis to the full House.
[Para 5.7]

(72) The Parliament should be associated with the initial stage itself in the matter of formulating proposals for constitutional amendment. The actual drafting should be taken up only after the principles underlying the amendment have been thoroughly considered in a parliamentary forum and subjected to a priori scrutiny by the constituent power. A Standing Constitution Committee of the two Houses of Parliament for a priori scrutiny of amendment proposals should be set up.
[Paras 5.8.2 and 5.8.3]

(73) With the proposed establishment of three new Committees, namely, the Constitution Committee, the Committee on National Economy and the Committee on Legislation, the existing Committees on Estimates, Public Undertakings and Subordinate Legislation may not be continued.
[Para 5.9.1]

(74) The Petitions Committee of Parliament has tremendous potential as a supplement to the proposed Lok Pal institution. It should be made more widely known and used for ventilation, investigation and redressal of people's grievances against the administration.
[Para 5.9.2]

(75) Major reports of all Parliamentary Committees ought to be discussed by the Houses of Parliament especially where there is disagreement between a Parliamentary Committee and the Government.
[Para 5.9.3]

(76) For a more systematic approach to the planning of legislation, the following steps should be taken:-
(a) Adequate time for consideration of Bills in committees and on the floor of the Houses as also to subject the drafts to thorough and rigorous examination by experts and laymen alike should be provided.
(b) All major social and economic legislation should be circulated for public discussion by professional bodies, business organisations, trade unions, academics and other interested persons.
(c) The functions of the Parliamentary and Legal Affairs Committee of the Cabinet should be streamlined;
(d) More focussed use of the Law Commission should be made;

(e) A new Legislation Committee of Parliament to oversee and coordinate legislative planning should be constituted; and
(f) All Bills should be referred to the Departmental Related Parliamentary Standing Committees for consideration and scrutiny after public opinion has been elicited and all comments, suggestions and memoranda are in. The Committees may schedule public hearings, if necessary, and finalise with the help of experts the second reading stage in the relaxed Committee atmosphere. The time of the House will be saved thereby without impinging on any of its rights. The quality of drafting and the content of legislation will necessarily be improved as a result of following these steps.
[Paras 5.10.1 and 5.10.2]

(77) The Parliament may consider enacting suitable legislation to control and regulate the treaty-power of the Union Government whenever appropriate and necessary after consulting the State Governments and Legislatures under article 253 "for giving effect to international agreements".
[Para 5.10.3]

(78) The Parliamentarians have to be like Caesar's wife, above suspicion. They must voluntarily place themselves open to public scrutiny through a parliamentary ombudsman. Supplemented by a code of ethics which has been under discussion for a long time, it would place Parliament on the high pedestal of people's affection and regard.
[Para 5.11.1]

(79) Mass media should be encouraged to accurately reflect the reality of Parliament's working and the functioning of Parliamentarians in the Houses. Televising all important debates nationwide in addition to the Question Hours, publication of monographs, handouts, radio, TV, press interviews, use of audio-visual techniques, especially to arouse curiosity and interest of the younger generation, and regular briefing of the press will go a long way in making people better acquainted with the important national work that is being done inside the historic parliament building.
[Para 5.11.2]

(80) It is a legitimate public expectation that membership of Legislatures should not be converted into an office of lucrative gain but remain an office of service. The question of salaries, allowances, perks and pensions of lawmakers should be looked into on a rational basis and healthy conventions built.
[Para 5.11.3]

(81) The Parliament and the State Legislatures should assemble and transact business for not less than a minimum number of days. The Houses of State Legislatures with less than 70 members should meet for at least 50 days in a year and other Houses for at least 90 days while the minimum number of days for sittings of Rajya Sabha and Lok Sabha should be fixed at 100 and 120 days respectively.
[Para 5.11.4]

(82) In order to maintain basic federal character of the Rajya Sabha, the domiciliary requirement for eligibility to contest elections to Rajya Sabha from the concerned State is essential. This should be maintained.
[Para 5.11.5]

(83) Better and more institutionalized arrangements are necessary to provide the much-needed professional orientation to newly elected members. The emphasis should be on imparting practical knowledge on how to be an effective member.
[Para 5.12]

(84) The findings and recommendations of the Public Accounts Committees (PACs) should be accorded greater weight. A convention should be developed with the cooperation of all major parties represented in the legislature to treat the PACs as the conscience-keepers of the nation in financial matters.
[Para 5.13]

(85) Union Government should take necessary steps for the early enactment of the Fiscal Responsibility Bill pending before Parliament. The State Assemblies should enact similar legislation as provided for in article 293 to put their respective fiscal houses in order.
[Para 5.14]

(86) The privileges of legislators should be defined and delimited for the free and independent functioning of Parliament and State Legislatures. It should not be necessary to run to the 1950 position in the House of Commons every time a question arises as to what kind of legal protection or immunity a Member has in relation to his or her work in the House.
[Para 5.15.3]

(87) Article 105(2) may be amended to clarify that the immunity enjoyed by Members of Parliament under parliamentary privileges does not cover corrupt acts committed by them in connection with their duties in the House or otherwise. Corrupt acts would include accepting money or any other valuable consideration to speak and/or vote in a particular manner. For such acts, they would be liable for action under the ordinary law of the land. It may be further provided that no court will take cognisance of any offence arising out of a Member's action in the House without prior sanction of the Speaker or the Chairman, as the case may be. Article 194(2) may also be similarly amended in relation to the Members of State Legislatures.
[Para 5.15.6]

(88) An Audit Board should be constituted for better discharge of the vital function of public audit, but the number of members to be appointed, the manner of their appointment and removal and other related matters should be dealt with by appropriate legislation, keeping in view the need for ensuring independent functioning of the Board.
[Para 5.16.2]

(89) Though no specific change is needed in the existing provisions of the Constitution insofar as appointment of the Comptroller and Audit General of India (C&AG) and other related matters are concerned, yet a healthy convention be developed to consult the Speaker of the Lok Sabha, before the Government decides on the appointment of the C&AG so that the views of the Public Accounts Committee are also taken into account.
[Para 5.16.3]

(90) The considerations that apply at the Union level in regard to the functioning of the office of C&AG should apply with equal force at the State level. The State Accountants General (AGs) should be given greater authority by the C&AG, while maintaining its general superintendence, direction and control to bring about a broad uniformity of approach in the sphere of financial discipline. The C&AG should evolve accounting policies and standards and norms for all bodies

and entities that receive public funds, such as autonomous bodies and the Panchayat Raj institutions.
[Para 5.16.4]

(91) The operations of the office of the C&AG itself should be subject to scrutiny by an independent body. To fulfil the canons of accountability, a system of external audit of C&AG's organization should be adopted for both the Union and the State level organizations.
[Para 5.17]

(92) The MP LAD Scheme, as being inconsistent with the spirit of the Constitution in many ways, should be discontinued immediately.
[Para 5.19.2]

(93) Legislation envisaged in article 98(2) should be undertaken to reorganise the Secretariats as independent and impartial instruments of Parliament, with special emphasis on upgrading professional competence.
[Para 5.20.1]

(94) It would be useful to reform the budgetary procedure for streamlining the work of Parliament.
[Para 5.21.2]

(95) The number of days on which voting is considered essential should be reduced to the barest minimum and the time for such voting in a given session be fixed in advance with appropriate whips requiring full attendance of members.
[Para 5.21.3]

(96) In order to ensure better scrutiny of administration and accountability to Parliament, parliamentary time in the two houses may be suitably divided between the government and the opposition.
[Para 5.21.4]

(97) The best way to deal with issues of procedural reforms in a professional (and not political) manner is to have them studied by a Study Group outside Parliament as was done in U.K. The conclusions and suggestions of the Group can be considered by the Rules Committees of the houses of Parliament. Accordingly, a Study Group outside Parliament for study of Parliament should be set up.
[Para 5.21.5]

CHAPTER 6
EXECUTIVE AND PUBLIC ADMINISTRATION

(98) While improving the nature and institutional response of administration to the challenges of democracy is imperative, the system can deliver the goods only through devolution, decentralisation and democratisation thereby narrowing the gap between the base of the polity and the super structure.
[Para 6.2.8]

(99) District should be considered as a basic unit of planning for development. Functions, finances, and functionaries relating to the development programmes would have to be placed under the direct supervision and command of elected bodies at the district levels of operation to give content and substance to such programmes of development and public welfare. This would, to a substantial degree, correct the existing distortions and make officials directly answerable to the people to ensure proper implementation of development programmes under the direct scrutiny of people.
[Para 6.4.1]

(100) India should move to a system where the State guarantees the title to land after carrying out extensive land surveys and computerizing the land records. It will take some time but the results would be beneficial for investment in land. This will be a major step forward in revitalizing land administration in the country as it would enable Right to access, Right to use and Right to enforce decisions regarding land. Similar rationalization of records relating to individuals rights in properties other than privately held lands (which are held in common) would improve operational efficiency which left unattended foment unrest. A coherent public policy addressed to the modern methods of management would contribute to better use of assets and raise dynamic forces of individual creativity. Run away expansion in bureaucratic apparatus of the State would also get curtailed by new management system.
[Para 6.4.2]

(101) Energetic efforts should be made to establish a pattern of cooperative relationship between the State and associations, NGOs and other voluntary bodies to launch a concerted effort to regenerate the springs of progressive social change. State and civil society are not to be treated antithical but complementary.
[Para 6.5.4]

(102) The questions of personnel policy including placements, promotions, transfers and fast-track advancements on the basis of forward-looking career management policies and techniques should be managed by autonomous Personnel Boards for assisting the high level political authorities in making key decisions. Such Civil Service Boards should be constituted under statutory provisions. They should be expected to function like the UPSC. The sanctity of parliamentary legislation under article 309 is needed to counteract the publicly known trends of the play of unhealthy and destabilizing influences in the management of public services in general and higher civil services in particular.
[Para 6.7.1]

(103) Above a certain level--say the Joint Secretary level - all posts should be open for recruitment from a wide variety of sources including the open market. Government should specialize some of the generalists and generalize some of the specialists through proper career

management which has to be freed from day to day political manipulation and influence peddling.
[Para 6.7.2]

(104) Social audit of official working should be done for developing accountability and answerability. Officials, before starting their career, in addition to the taking of an oath of loyalty to the Constitution, should swear to abide by the basic principles of good governance. This would give renewed sense of commitment by the executives to the basic tenets of the Constitution.
[Para 6.7.3]

(105) The services have remained largely immune from imposition of penalties due to the complicated procedures that have grown out of the constitutional guarantee against arbitrary and vindictive action (article 311). The constitutional safeguards have in practice acted to shield the guilty against swift and certain punishment for abuse of public office for private gain. A major corollary has been erosion of accountability. It has accordingly become necessary to re-visit the issue of constitutional safeguards under article 311 to ensure that the honest and efficient officials are given the requisite protection but the dishonest are not allowed to prosper in office. A comprehensive examination of the entire corpus of administrative jurisprudence has to be undertaken to rationalize and simplify the procedure of adminis-trative and legal action and to bring the theory and practice of security of tenure in line with the experience of the last more than 50 years.
[Para 6.7.4]

(106) The civil service regulations need to be changed radically in the light of contemporary administrative theory to introduce modern evaluation methodology.
[Para 6.7.5]

(107) The administrative structure and systems have to be consciously redesigned to give appropriate recognition to the professional and technical services so that they may play their due role in modernizing our economy and society. The specialist should not be required to play second fiddle to the generalist at the top. Conceptually we need to develop a collegiate style of administrative management where the leader is an energizer and a facilitator, and not an oracle delivering verdicts from a high pedestal.
[Para 6.7.6]

(108) A parliamentary legislation under article 312(1) should be enacted. It should be debated in professional circles as well as by the general public.
[Para 6.7.7]

(109) Right to information should be guaranteed and needs to be given real substance. In this regard, government must assume a major responsibility and mobilize skills to ensure flow of information to citizens. The traditional insistence on secrecy should be discarded. In fact, we should have an oath of transparency in place of an oath of secrecy. Administration should become transparent and participatory. Right to information can usher in many benefits, such as speedy disposal of cases, minimizing manipulative and dilatory tactics of the babudom, and, last but most importantly, putting a considerable check on graft and corruption.
[Para 6.10]

(110) The Union Government should take steps to move the Parliament for early enactment of the Freedom of Information Legislation. It will be a major step forward in strengthening the values of a free and democratic society.
[Para 6.11]

(111) To remain actively involved in new development programmes the people would also need the support of well organized, well prepared, knowledge-oriented personnel and well thought out policies. Think tanks and organized intellectual groups would have to be promoted through state funding, etc. without abridging their autonomy.
[Para 6.12]

(112) The structural problems of foreign policy would be to constantly aim at making the best possible use of the international order and use it to our advantage. In the country's governance, the duality of foreign and domestic policy should end. The two should not be antithetical. A serious effort is required to combine the two to recast relations and launch a creative initiative to achieve strategic partnerships the world over on the principles of inter-dependence without domestic interests being relegated to the background. This calls for a thorough change in the form, working and structuring of Foreign Affairs mechanisms including the External Affairs Ministry. Foreign policy implementation calls for cutting through the mind-set of a generation.
[Para 6.14]

(113) One of the measures adopted in several western countries to fight corruption and mal-administration is enactment of Public Interest Disclosure Acts which are popularly called the Whistle-blower Acts. Similar law may be enacted in India also. The Act must ensure that the informants are protected against retribution and any form of discrimination for reporting what they perceived to be wrong-doing, i.e., for bona fide disclosures which may ultimately turn out to be not entirely or substantially true.
[Para 6.16.3]

(114) The Government should examine the proposal for enacting a comprehensive law to provide that where public servants cause loss to the State by their mala fide actions or omissions, they would be made liable to make good the loss caused and, in addition, would be liable for damages.
[Para 6.17]

(115) The Union Government should frame rules, without further loss of time, under Section 8 of the Benami Transactions (Prohibition) Act, 1988 for acquiring benami property. Further, a law should be enacted to provide for forfeiture of benami property of corrupt public servants as well as non-public servants.
[Para 6.19]

(116) The Government should examine enacting a law for confiscation of illegally acquired assets on the lines suggested by the Supreme Court in Delhi Development Authority vs. Skipper Construction Co. (P) Ltd. (AIR 1996 SC 2005). There is no need to set up an additional independent Authority to determine this issue of confiscation. The Tribunal constituted under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, (SAFEMA) 1976, which could deal with similar situation arising out of other statutes may be conferred additional jurisdiction to determine cases of confiscation arising out of the Benami Transactions (Prohibition) Act, 1988 and the Prevention of Corruption Act, 1988, (as may be amended) and other legislations which empower confiscation of illegally acquired assets. Tribunal will exercise distinct and separate jurisdictions under separate statutes.

[Para 6.20.2]

(117) The Prevention of Corruption Act, 1988 should be amended to provide for confiscation of the property of a public servant who is found to be in possession of property disproportionate to his/her known sources of income and is convicted for the said offence. In this case, the law should shift the burden of proof to the public servant who was convicted. In other words, the presumption should be that the disproportionate assets found in possession of the convicted public servant were acquired by him by corrupt or illegal means. A proof of preponderance of probability shall be sufficient for confiscation of the property. The law should lay down that the standard of proof in determining whether a person has been benefited from an offence and for determining the amount in which a confiscation order is to be made, is that which is applicable to civil cases, i.e. a mere preponderance of probability only. A useful analogy may be seen in Section 2(8) of the Drug Trafficking Act 1994 in United Kingdom.
[Para 6.20.3]

(118) The Constitution should provide for appointment of Lok Pal. The Prime Minister should be kept out of the purview of the Lok Pal.
[Para 6.21.1]

(119) The Union Government should take steps for early enactment of the Central Vigilance Commission Bill, already introduced in Parliament.
[Para 6.22]

(120) The Constitution should contain a provision obliging the States to establish the institution of Lokayuktas in their respective jurisdictions in accordance with the legislation of the appropriate legislatures.
[Para 6.23.2]

(121) When once a Commission of Inquiry is constituted under the Commissions of Inquiry Act, 1952 or otherwise, the Government should consult the Chairperson of the Commission in respect of time required for completion / finalisation of the report. Once such a time is specified, the Commission should adhere to it. The Action Taken Report on the report should be announced by the Government within a period of three months from the date of submission of the report.
[Para 6.24.2]

CHAPTER 7
THE JUDICIARY

(122) In the matter of appointment of Judges of the Supreme Court, it would be worthwhile to have a participatory mode with the participation of both the executive and the judiciary in making recommendations. The composition of the Collegium gives due importance to and provides for the effective participation of both the executive and the judicial wings of the State as an integrated scheme for the machinery for appointment of judges. A National Judicial Commission under the Constitution should be established.

The National Judicial Commission for appointment of judges of the Supreme Court shall comprise of:
(1) The Chief Justice of India : Chairman
(2) Two senior most judges of the Supreme Court: Member
(3) The Union Minister for Law and Justice : Member
(4) One eminent person nominated by the President
after consulting the Chief Justice of India: Member

The establishment of a National Judicial Commission and its composition are to be treated as integral in view of the need to preserve the independence of the judiciary.
[Para 7.3.7]
(123) A committee comprising the Chief Justice of India and two senior-most Judges of the Supreme Court will comprise the committee of the National Judicial Commission exclusively empowered to examine complaints of deviant behaviour of all kinds and complaints of misbehaviour and incapacity against judges of The Supreme Court and the High Courts. If the committee finds that the matter is serious enough to call for a fuller investigation or inquiry, it shall refer the matter for a full inquiry to the committee [constituted under the Judges' (Inquiry) Act, 1968]. The committee under the Judges Inquiry Act shall be a permanent committee with a fixed tenure with composition indicated in the said Act and not one constituted ad-hoc for a particular case or from case to case, as is the present position under section 3(2) of the Act. The tenure of the inquiry committee shall be for a period of four years and to be re-constituted every four years. The inquiry committee shall be constituted by the President in consultation with the Chief Justice of India. The inquiry committee shall inquire into and report on the allegation against the Judge in accordance with the procedure prescribed by the said Act, i.e. in accordance with the sub-sections (3) to (8) of Section 3 and sub-section (1) of Section 4 of the said Act and submit their report to the Chief Justice of India, who shall place before a committee of seven senior-most judges of the Supreme Court. The Committee of seven Judges shall take a decision as to - whether (a) findings of the inquiry committee are proper and (b) any charge or charges are established against the judge and if so, whether the charges held proved are so serious as to call for his removal (i.e. proved misbehaviour) or whether it should be sufficient to administer a warning to him and/or make other directions with respect to allotment of work to him by the concerned Chief Justice or to transfer him to some other court (i.e. deviant behaviour not amounting to misbehaviour). If the decision of the said committee of judges recommends the removal of the Judge, it shall be a convention that the judge promptly demits office himself. If he fails to do so, the matter will be processed for being placed before Parliament in accordance with articles 124(4) and 217(1) Proviso (b). This procedure shall equally apply in case of Judges of the Supreme Court and the High Courts except that in the case of a Supreme Court Judge the judge against whom complaint is received or inquiry is ordered, shall not participate in any proceeding affecting him.

In appropriate cases the Chief Justice of the High Court or the Chief Justice of India, may withhold judicial work from the judge concerned after the inquiry committee records a finding against the judge.
[Para 7.3.8]

(124) Article 124(3) contemplates appointment of Judges of Supreme Court from three sources. However, in the last fifty years not a single distinguished jurist has been appointed. From the Bar also, less than half a dozen Judges have been appointed. It is time that suitably meritorious persons from these sources are appointed.
[Para 7.3.9]
(125) The retirement age of the Judges of the High Court should be increased to 65 years and that of the Judges of the Supreme Court should be increased to 68 years.
[Para 7.3.10]

(126) In the matter of transfer of Judges, it should be as a matter of policy and the power under article 222 and its exercise in appropriate cases should remain untouched. The President would transfer a Judge from one High Court to any other High Court after consultation with a committee comprising the Chief Justice of India and the two senior-most Judges of the Supreme Court.
[Para 7.3.11]

(127) A proviso should be inserted in article 129 so as to provide that the power of court to punish for contempt of itself inherent only in the Supreme Court and the High Courts and is available as part of the privilege of Parliament and State Legislatures, and no other court, tribunal or authority should have or be conferred with a power to punish for contempt of itself.
[Para 7.4.7]

(128) A suitable provision may be inserted in the Constitution so as to provide that except the Supreme Court and the High Courts no other court, tribunal or authority shall exercise any jurisdiction to adjudicate on the validity or declare an Act of Parliament or State Legislature as being unconstitutional or beyond legislative competence and so ultra vires. Such a provision may be made as clause (5) of article 226.
[Para 7.5]

(129) A 'Judicial Council' at the apex level and Judicial Councils at each State at the level of the High Court should be set up. There should be an Administrative Office to assist the National Judicial Council and separate Administrative Offices attached to Judicial Councils in States. These bodies must be created under a statute made by Parliament. The Judicial Councils should be in charge of the preparation of plans, both short term and long term, and for preparing the proposals for annual budget.
[Para 7.7]

(130) The budget proposals in each State must emanate from the State Judicial Council, in regard to the needs of the subordinate judiciary in that State, and will have to be submitted to the State Executive. Once the budget is so finalized between the State Judicial Council and the State Executive, it should be presented in the State Legislature.
[Para 7.8.1]

(131) The entire burden of establishing subordinate courts and maintaining subordinate judiciary should not be on the State Governments. There is a concurrent obligation on the Union

Government to meet the expenditure for subordinate courts. Therefore, the Planning Commission and the Finance Commission must allocate sufficient funds from national resources to meet the demands of the State judiciary in each of the States.
[Para 7.8.2]

(132) The presiding officers in courts should be adequately trained. To ensure competence, there should be a proper selection, freedom of action, training, motivation and experience. To maintain their competence it is necessary to have continuing education for the judges. Some national judicial institutions have to be properly structured to give such training. There should be a proper monitoring of moving the judges where work demands such movement from places where there are no arrears of work. There has to be systematic assessment of training needs of judicial personnel at different levels.
[Para 7.10.2]

(133) The Government should ensure basic infra-structure needed to all courts and arrange to ensure that courts are not handicapped for want of infra-structural facilities. Governments, both at the Centre and in the States, should constitute committee of secretaries to review government litigation with a view to avoid adjudication, wherever possible, give priority in filling of written statements, wherever required, and instruct government advocates to seek early decision on government litigation.
[Para 7.10.4]

(134) In the Supreme Court and the High Courts, judgements should ordinarily be delivered not later than ninety days from the conclusion of the case. If a judgement is not rendered within such time – it is possible that the complexities of the case and the effect the decision may have on another similar situation might compel greater and larger judicial consideration and contemplation – the case must be listed before the court immediately on the expiry of ninety days for the court to fix a specific date for the pronouncement of the judgement.
[Para 7.10.5]

(135) An award of exemplary costs should be given in appropriate cases of abuse of process of law.
[Para 7.11]

(136) The recommendations of the Law Commission of India in regard to the Nagar Nyayalayas, Conciliation Courts, ADR systems of urban litigation, evidence recording by Commissioners, etc. as incorporated in the Code of Civil Procedure (Amendment) Act, 2000 should be brought into force with such modifications as would take care of a few serious objections.
[Para 7.13.3]

(137) The provisions relating to conciliation in the Arbitration and Conciliation Act, 1996 should suitably be amended to provide for obligatory recourse to conciliation or mediation in relation to cases pending in courts. Further, the scope and functions of the Legal Services Authorities constituted under the Legal Services Authorities Act, 1987 should be enlarged and extended to enable the Authorities to set up conciliation and mediation fora and to conduct, in collaboration of other institutions wherever necessary, training courses for conciliators and mediators.
[Para 7.13.4]

(138) Each High Court should, in consultation with the judicial councils referred to in para 7.7, prepare a strategic plan for time-bound clearance of arrears in courts under its jurisdiction. The

plan may prescribe annual targets and district-wise performance targets. High Courts should establish monitoring mechanisms for progress evaluation. The purpose is to achieve the position that no court within the High Court's jurisdiction has any case pending for more than one year. This should be achieved within a period of five years or earlier.
[Para 7.13.5]

(139) The criminal investigation system needs higher standards of professionalised action and it should be provided adequate logistic and technological support. Serious offences should be classified for purpose of specialized investigation by specially selected, trained and experienced investigators. They should not be burdened with other duties like security, maintenance of law and order etc., and should be entrusted exclusively with investigation of serious offences.
[Para 7.14.2]

(140) The number of Forensic Science Institutions with modern technologies such as DNA fingerprinting technology should be enhanced.
[Para 7.14.3]

(141) The system of plea-bargaining (as recommended by the Law Commission of India in its Report) should be introduced as part of the process of decriminalisation.
[Para 7.14.4]

(142) In order that citizen's confidence in the police administration is enhanced, the police administration in the districts should periodically review the statistics of all the arrests made by the police in the district as to how many of the cases in which arrests were made culminated in the filing of charge-sheets in the court and how many of the arrests ultimately turned out to be unnecessary. This review will check the tendency of unnecessary arrests.
[Para 7.14.5]

(143) The legal services authorities in the States should set up committees with the participation of civil society for bringing the accused and the victims together to work out compounding of offences.
[Para 7.14.6]

(144) Statements of witnesses during investigation of serious cases should be recorded before a magistrate under Section 164 of the Code of Criminal Procedure, 1973.
[Para 7.14.7]

(145) The case for a viable, social justice-oriented and effective scheme for compensation victims is now widely felt. The Government at the Union level and in the States are well advised under the directive principles as well as under International Human Rights obligations to legislate on the subject of an effective scheme of compensation for victims of crime without further delay.
[Para 7.15.3]

(146) The tremendous support which the criminal justice might derive from the people once the compensation scheme is introduced even in a modest scale, and the possibilities of advancing the crying need for social justice in a very real sense, are attractive enough for the State to find money to float the scheme immediately.
[Para 7.15.4]

(147) The National Informatics Centre in collaboration with or with the assistance of the Indian Law Institute and the Government Law Departments should set up a Digital Legal Information System in the country so that all courts, legal departments, law schools would be able to access and retrieve information from the data bank of the important law libraries in the country."
[Para 7.17.2]

(148) Progressively the hierarchy of the subordinate courts in the country should be brought down to a two-tier of subordinate judiciary under the High Court. Further, strict selection criteria and adequate training facilities for the presiding officers of such courts should be provided. In order to cope up with the workload of cases at the lower level and also to curtail arrears and delay, the States should appoint honorary judicial magistrates selected from experienced lawyers on the criminal side to try and dispose less serious and petty cases on part-time basis on the pattern of Recorders and Assistant Recorders in UK. They could set for, say, 100 days in a year and hold court later in the evenings after regular court hours. This would relieve the load on the regular magistracy.
[Para 7.18]

(149) Since the issues relating to human rights, more particularly relating to unlawful detention, have now occupied a center-stage, both nationally and internationally, it shall be desirable that the Protection of Human Rights Act, 1993 may be suitably amended to provide that, in addition to the powers generally vested in that Court, such courts shall have the power to issue directions of the nature of a habeas corpus as was available to the High Courts under section 491 of the Code of Criminal Procedure, 1898. Vesting of such power will go a long way in providing help to the indigent and vulnerable sections of the society in view of the proximity and easy accessibility of the Court of Session.
[Para 7.19.3]

CHAPTER 8
UNION-STATE RELATIONS

⇒ › Legislation

(150) Individual and collective consultation with the States should be undertaken through the Inter-State Council established under article 263 of the Constitution. Further, the Inter-State Council Order, 1990, issued by the President may clearly specify in para 4(b) of the order the subjects that should form part of consultation in the Inter-State Council.
[Para 8.2.13]

(151) "Management of Disasters and Emergencies, Natural or Man-Made" should be included in List III of the Seventh Schedule.
[Para 8.2.14]

⇒ › Finance

(152) It might be worthwhile to provide explicitly for taxing power for the States in respect of certain specified services. For the Union also an explicit entry would be helpful, rather than leaving it to the residuary power of entry 97. However, it may be better to first let a consensus list of services to be taxed by the States come into force to be treated as the exclusive domain of the States, even if the formal taxing power is exercised by the Union. A de facto enumeration of services that can be taxed exclusively by the States should get priority from policy makers with a view to augmenting the resource pool of the States. Specific enumeration of services that may become amenable to taxation by the States should be made. An appropriate amendment to the Constitution in this behalf should be made to include certain taxes, now levied and collected by the Union, to be levied and collected by the States.
[Para 8.5]

⇒ › Trade, Commerce and Intercourse

(153) For carrying out the objectives of articles 301, 302, 303 and 304, and other purposes relating to the needs and requirements of inter-State trade and commerce and for purposes of eliminating barriers to inter-state trade and commerce Parliament should, by law, establish an authority called the "Inter-State Trade and Commerce Commission" under the Ministry of Industry and Commerce under article 307 read with Entry 42 of List-I.
[Para 8.8.2]

⇒ › Resolution of Disputes

(154) Article 139A, which confers power on the Supreme Court to withdraw cases involving the same or substantially the same question of law, which are pending in Supreme Court and one or more High Courts, should be amended so as to provide that it can withdraw to itself cases even if they are pending in one court where such questions as to the legislative competence of the Parliament or State Legislature are involved.
[Para 8.9.4]

(155) As river water disputes being important disputes between two or more States and/or the Union, they should be heard and disposed by a bench of not less than three Judges and if necessary, a bench of five Judges of the Supreme Court for the final disposal of the suit.

[Para 8.11.7]

(156) Appropriate provisions may be made as envisaged by article 145(1) in consultation with the Supreme Court or if the Supreme Court so opts to provide for the same by the Supreme Court Rules to appoint Commissioners or Masters and to have the evidence recorded not by the Supreme Court itself but by the Commissioners or Masters so that the precious time of the Supreme Court is saved.
[Para 8.11.8]

(157) Appropriate Parliamentary legislation should be made for repealing the River Boards Act, 1956 and replacing it by another comprehensive enactment under Entry 56 of List I. The new enactment should clearly define the constitution of the River Boards and their jurisdiction so as to regulate, develop and control all inter-State rivers keeping intact the adjudicated and the recognized rights of the States through which the inter-State river passes and their inhabitants. While enacting the legislation, national interest should be the paramount consideration as inter-State rivers are 'material resources' of the community and are national assets. Such enactment should be passed by Parliament after having effective and meaningful consultation with all the State Governments.
[Para 8.11.9]

(158) In resolving problems and coordinating policy and action, the Union as well as the States should more effectively utilize the forum of inter-State Council as recommended by the Commission on Centre-State Relations (Sarkaria Commission). This will be in tune with the spirit of cooperative federalism requiring proper understanding and mutual confidence and resolution of problems of common interest expeditiously.
[Para 8.12.4]

(159) In order to reduce tension or friction between States and the Union and for expeditious decision-making on important issues involving States, the desirability of prior consultation by the Union Government with the inter-State Council may be considered before signing any treaty vitally affecting the interests of the States regarding matters in the State List.
[Para 8.13.3]
⇒ › Executive

(160) The powers of the President in the matter of selection and appointment of Governors should not be diluted. However, the Governor of a State should be appointed by the President only after consultation with the Chief Minister of that State. Normally the five year term should be adhered to and removal or transfer should be by following a similar procedure as for appointment i.e. after consultation with the Chief Minister of the concerned State.
[Para 8.14.2]

(161) In the matter of selection of a Governor, the following matters mentioned in para 4.16.01 of Volume I of the Sarkaria Commission Report should be kept in mind:-
v He should be eminent in some walk of life.
v He should be a person from outside the State.
v He should be a detached figure and not too intimately connected with the local politics of the State.
v He should be a person who has not taken too great a part in politics generally, and particularly in the recent past.

In selecting a Governor in accordance with the above criteria, the persons belonging to the minority groups should continue to be given a chance as hitherto.
[Para 8.14.3]

(162) There should be a time-limit – say a period of six months – within which the Governor should take a decision whether to grant assent or to reserve a Bill for consideration of the President. If the Bill is reserved for consideration of the President, there should be a time-limit, say of three months, within which the President should take a decision whether to accord his assent or to direct the Governor to return it to the State Legislature or to seek the opinion of the Supreme Court regarding the constitutionality of the Act under article 143.
[Para 8.14.4]

(163) Suitable amendment should be made in the Constitution so that the assent given by the President should avail for all purposes of relevant articles of the Constitution. However, it is desirable that when a Bill is sent for the President's assent, it would be appropriate to draw the attention of the President to all the articles of the Constitution, which refer to the need for the assent of the President to avoid any doubts in court proceedings.
[Para 8.14.6]

(164) A suitable Article should be inserted in the Constitution to the effect that an assent given by the President to an Act shall not be permitted to be argued as to whether it was given for one purpose or another. When the President gives his assent to the Bill, it shall be deemed to have been given for all purposes of the Constitution.
[Para 8.14.7]

(165) The following proviso may be added to article 111 of the Constitution:

"Provided that when the President declares that he assents to the Bill, the assent shall be deemed to be a general assent for all purposes of the Constitution."
Suitable amendment may also be made in article 200.
[Para 8.14.8]

(166) Article 356 should not be deleted. But it must be used sparingly and only as a remedy of the last resort and after exhausting action under other articles like 256, 257 and 355.
[Paras 8.18 and 8.19.2]

(167) In case of political breakdown, necessitating invoking of article 356, before issuing a proclamation thereunder, the concerned State should be given an opportunity to explain its position and redress the situation, unless the situation is such, that following the above course would not be in the interest of security of State, or defence of the country, or for other reasons necessitating urgent action.
[Para 8.19.5]

(168) The question whether the Ministry in a State has lost the confidence of the Legislative Assembly or not, should be decided only on the floor of the Assembly and nowhere else. If necessary, the Union Government should take the required steps, to enable the Legislative Assembly to meet and freely transact its business. The Governor should not be allowed to dismiss the Ministry, so long as it enjoys the confidence of the House. It is only where a Chief Minister refuses to resign, after his Ministry is defeated on a motion of no-confidence, that the Governor can dismiss the State Government. In a situation of political breakdown, the Governor

should explore all possibilities of having a Government enjoying majority support in the Assembly. If it is not possible for such a Government to be installed and if fresh elections can be held without avoidable delay, he should ask the outgoing Ministry, (if there is one), to continue as a caretaker government, provided the Ministry was defeated solely on a issue, unconnected with any allegations of maladministration or corruption and is agreeable to continue. The Governor should then dissolve the Legislative Assembly, leaving the resolution of the constitutional crisis to the electorate.
[Para 8.20.3]

(169) The problem of political breakdown would stand largely resolved if the recommendations made in Chapter 4 in regard to the election of the leader of the House (Chief Minister) and the removal of the Government only by a constructive vote of no-confidence are accepted and implemented.
[Paras 8.20.3 and 8.20.4]
Normally, President's Rule in a State should be proclaimed on the basis of Governor's Report under article 356(1). The Governor's report should be a "speaking document", containing a precise and clear statement of all material facts and grounds, on the basis of which the President may satisfy himself, as to the existence or otherwise of the situation contemplated in article 356.
[Para 8.20.5]

(170) In clause (5) of article 356 of the Constitution, in clause (a) the word "and" occurring at the end should be substituted by the word "or" so that even without the State being under a proclamation of Emergency, President's rule may be continued if elections cannot be held.
[Para 8.21.3]

(171) Whenever a proclamation under article 356 has been issued and approved by the Parliament it may become necessary to review the continuance in force of the proclamation and to restore the democratic processes earlier than the expiry of the stipulated period. For this, new clauses (6) & (7) to article 356 may be added on the following lines: -

"(6) Notwithstanding anything contained in the foregoing clauses, the President shall revoke a proclamation issued under clause (1) or a proclamation varying such proclamation if the House of the People passes a resolution disapproving, or, as the case may be, disapproving the continuance in force of, such proclamation.

(7) Where a notice in writing signed by not less than one-tenth of the total number of members of the House of the People has been given, of their intention to move a resolution for disapproving, or, as the case may be, for disapproving the continuance in force of, a proclamation issued under clause (1) or a proclamation varying such proclamation:

(a) to the Speaker, if the House is in session; or
(b) to the President, if the House is not in session,

a special sitting of the House shall be held within fourteen days from the date on which such notice is received by the Speaker, or, as the case may be, by the President, for the purpose of considering such resolution.".
[Para 8.21.4]

(172) Article 356 should be amended so to ensure that the State Legislative Assembly should not be dissolved either by the Governor or the President before the proclamation issued under article 356(1) has been laid before Parliament and it has had an opportunity to consider it.
[Para 8.22.3]

(173) Government may consider the demands of the Coorgies for a Sainik School, a Development Board and a University for them in Coorg.
[Para 8.23.1]

(174) Steps may be taken for better protection of Sindhi language and culture by setting up of a Centre of Sindhi Language and Culture with the State providing necessary facilities for the same. The difficulties faced by the Sindhi migrants may be examined and corrective measures taken to facilitate grant of citizenship as per the existing law.
[Para 8.23.2]

CHAPTER 9
DECENTRALISATION AND DEVOLUTION

⇒ › Panchayats

(175) Article 243K and 243Z should be amended on the following lines:-

1. Amendment of article 243K.-
In article 243K,-
(a) for clause (1), the following clauses shall be substituted, namely:-

"(1) Subject to the provisions of clause (1A), the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.

(1A) The Election Commission shall have the power to issue any directions or instructions to the State Election Commission for the discharge of its functions under clause (1).".

(b) after clause (4), the following clause shall be inserted, namely:-

"(5) The State Election Commission shall submit its annual report to the Election Commission and to the Governor, every year and it may, at any time, submit special reports on any matter which in its opinion is of such urgency or importance that it should not be deferred till the submission of its annual report.".

2. Amendment of article 243ZA.-

In article 243ZA, for clause (1), the following clauses shall be substituted, namely:-

"(1) Subject to the provisions of clause (1A), the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in article 243K.

(1A) The Election Commission shall have the power to issue any directions or instructions to the State Election Commission for the discharge of its functions under clause (1).".
[Para 9.6.2]

(176) Panchayats should be categorically declared to be 'institutions of self-government' and exclusive functions be assigned to them. For this purpose, article 243G should be amended to read as follows:-

"Powers, authority and responsibility of Panchayats

243G. Subject to the provisions of this Constitution, the Legislature of a State shall, by law, vest the Panchayats with such powers and authority as are necessary to enable them to function as institutions of self-government and such law shall contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as shall be specified therein, with respect to-

(a) preparation of plans for economic development and social justice;
(b) the implementation of schemes for economic development and social justice as shall be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.".

Similar amendments should be made in article 243W relating to the powers, authority and responsibilities of Municipalities, etc.
[Paras 9.7.1 and 9.7.2]

(177) The Eleventh and Twelfth Schedules to the Constitution should be restructured in a manner that creates a separate fiscal domain for Panchayats and Municipalities. Accordingly, articles 243H and 243X should be amended making it mandatory for the legislation of the States to make laws devolving powers to Panchayats and Municipalities.
[Para 9.8.2]

(178) In order to enable the Finance Commission to take a macro-level view, the provisions sub-clauses (bb) and (c) of clause (3) of article 280 should be amended. The words "on the basis of the recommendation" in these sub-clauses should be replaced by the words "after taking into consideration the recommendations."
[Para 9.8.3]

(179) In the part of clause (1) of article 243-I which calls for constitution of State Finance Commission (SFC) at the expiration of every fifth year, in line with article 280(1), the words "or at such earlier time as the Governor considers necessary" may be added after the words 'fifth year'. While it is for the State Legislature to ensure that the Government implements fully its assurances, there should be constitutional obligations for placing the Action Taken Report (ATR) before the legislature within 'six months' after the submission of the report. Clause (4) of article 243-I may need to be amended accordingly.
[Para 9.8.4]

(180) The necessary legislative power of fixing upper limit of taxes on professions, trades, callings and employment under article 276 should be vested in Parliament by suitably amending that article.
[Para 9.8.5]

(181) All local authorities may be allowed to borrow from the State Government and financial institutions.
[Para 9.8.6]

(182) An enabling provision should be made in Part IX of the Constitution permitting the State Legislature to make, by law, provisions that would empower the State Government to confer on the Panchayats full power of administrative and functional control over such staff as are transferred following devolution of functions, notwithstanding any right they may have acquired from State Act/Rules. They should also have the power to recruit certain categories of staff required for service in their jurisdiction.
[Para 9.9.1]

(183) A proviso to clause (1) of article 243E should be inserted to the effect that a reasonable opportunity of being heard shall be given to a Panchayat before it is dissolved.
[Para 9.10]

(184) A provision for constitution of a State Panchayat Council under the chairmanship of the Chief Minister [on the pattern of Gujarat State Council for Panchayats as provided in the Gujarat Panchayats Act, 1993] should be made in the Constitution on the analogy of the provision in article 263 of the Constitution relating to the Inter-State Council. The leader of the opposition may be made ex-officio vice-chairman of the Council to provide a consensual approach to the development of Panchayats as fully democratic, efficient and responsible institutions.
[Para 9.11]

(185) Necessary provisions should be made for audit of Panchayat accounts to ensure that all works related to audit (conduct of audit, submission of audit report and compliance with audit objections if any) are completed within a year of the close of a financial year. To ensure uniformity in the practice relating to audits of accounts, the Comptroller and Auditor-General of India should be empowered to conduct the audit or lay down accounting standards for Panchayats.
[Para 9.12]

⇒ › Municipalities

(186) Whenever a Municipality is superseded, a report stating the grounds for such dissolution should be placed before the State Legislature.
[Para 9.13]

(187) All provisions regarding qualifications and disqualifications for elections to local authorities should be consolidated in a single law and until that is done, each State should prepare a manual of existing provisions for public information.
[Para 9.14]

(188) The State Election Commission (SEC) should have the authority to prescribe ceiling of expenses and code of conduct in elections. Further, the State laws should clearly specify the powers of the SEC to disqualify candidates or set aside elections in the event of violations of those laws.
[Para 9.15]

(189) It should be the duty of a State and the Union (in case of Panchayats and Municipalities located in Union territories) to ensure the completion of elections within the stipulated limits. It should also be duty of the State Election Commissioner to ensure this and in the event of possible delay make a report to the Governor of the State drawing his attention to the problems and suggesting remedial action to fulfill the requirements of the Constitution. Articles 243K and 243 ZA should be suitably amended to specify that the responsibility for the conduct of elections shall include all preparatory steps for the same including the electoral rolls and matters connected therewith and the responsibility for the same shall vest with the State Election Commission.
[Para 9.16.2]

(190) The functions and responsibilities of delimitation, reservation and rotation of seats and matters connected therewith should be vested in a delimitation Commission constituted by law by the appropriate legislature and not in the SEC.
[Para 9.16.2]
(191) The Representation of the People Act and State laws should specify that common polling stations should be used for elections to local bodies, State Legislatures and Parliament.

[Para 9.17.2]

(192) The State laws should provide guidelines for the delimitation work such as parity, as far as possible, in the ratio between the population of a territorial constituency and the number of seats within the same class of Panchayats or Municipalities.
[Para 9.17.3]

(193) State laws should specify that changes in the administrative boundaries of districts, sub-divisions, taluks, police stations, etc., should not be made within six months prior to a panchayat or a municipal election.
[Para 9.17.4]

(194) To remove ambiguities, articles 243D and 243T should be suitably amended to provide for rotation and changes only at the time of delimitation and not in between. State laws should provide the guidelines for the process of reservation which should ensure transparency and adequate opportunities for eliciting voter response.
[Para 9.18.2]

(195) To clarify the precise position of reservation under clause (6) of article 243D and clause (6) of article 243T to be provided by the State law, the overall total of reserved seats and reserved offices in Panchayats and Municipalities should be specified.
[Para 9.18.3]

(196) The State Election Commissioner should have a fixed term of 5 years. He/she should be equal to a Judge of the High Court. The broad qualifications for a State Election Commissioner may be specified under the State law.
[Para 9.19.1]

(197) The concept of a distinct and separate tax domain for municipalities should be recognised. This concept should be reflected in a list of taxes in the relevant schedule. Carving out items from the existing State lists such as item 49 (taxes on land and buildings) and item 52 (taxes on entry of goods into a local area for consumption) should not be difficult.
[Para 9.21]

⇒ › Institutions in North East India

(198) The North Eastern part of India with its large number of tribal communities and emerging educated elites has self-governing village councils and organized tribal chiefdoms. Efforts are to be made to give all the States in this region the opportunities provided under the 73rd and 74th Constitution Amendments. However, this should be done with due regard to the unique traditions of the region and the genius of the people without tampering with their essential rights and giving to each State the chance to use its own nomenclature for systems of governance which will have local acceptance.
[Para 9.22.3]

(199) Careful steps should be taken to devolve political powers through the intermediate and local-Ievel traditional political organisations, provided their traditional practices carried out in a modern world do not deny legitimate democratic rights to any section in their contemporary society. The details of state-wise steps to devolve such powers will have to be carefully considered in a proper representative meeting of traditional leaders of each community, opinion

builders of the respective communities and leaders of State and national stature from these very groups. A hasty decision could have serious repercussions, unforeseen and unfortunate, which could further complicate and worsen the situation. To begin with, the subjects given under the Sixth Schedule and those mentioned in the Eleventh Schedule could be entrusted to the Autonomous District Councils (ADCs). The system of in-built safeguards in the Sixth Schedule should be maintained and strengthened for the minority and micro-minority groups while empowering them with greater responsibilities and opportunities, for example, through the process of Central funding for Plan expenditure instead of routing all funds through the State Governments. The North Eastern Council can play a central role here by developing a process of public education on the proposed changes, which would assure communities about protection of their traditions and also bring in gender representation and give voice to other ethnic groups.

[Para 9.23(i)]

(200) Traditional forms of governance should be associated with self-governance because of the present dissatisfaction. However, positive democratic elements like gender justice and adult franchise should be built into these institutions to make them broader based and capable of dealing with a changing world.
[Para 9.23(ii)]

(201) The implementation of centrally funded projects from various departments of the Union Government should be entrusted to the ADCs and to revived village councils with strict monitoring by the Comptroller and Auditor-General of India.
[Para 9.23(iii)]

(202) The process of protection of identity and the process of development and change are extremely sensitive. These twin processes need to be understood in the framework of a changing world and the role of all communities, small and large, in that world. Therefore, the North Eastern Council should be mandated to conduct an intensive programme of public awareness, sensitization and education through non-government organizations, State Governments, and its own structure to help bring about such an understanding of the proposals.
[Para 9.23(iv)]

(203) The provisions of the Anti-Defection Law in the proposed revised form as recommended in para 4.18.2 of the Report should be made applicable to all the Sixth Schedule areas.
[Para 9.23(v)]

(204) Given the demographic imbalance which is taking place in the North-East as a result of illegal migration from across the borders, urgent legal steps are necessary for preventing such groups from entering electoral rolls and citizenship rolls of the country. Reservations for local communities and minorities from other parts of the country should be made in the State Legislatures. Issuance of multi-purpose identity cards to all Indian citizens should be made mandatory for all Indian residents in the North East on a high-priority basis and the National Citizenship Law to be reviewed to plug the loopholes which enable illegal settlers to become ‘virtual’ citizens in a short span of time, using a network of touts, politicians and officials.
[Para 9.23(vi)]

(205) A National Immigration Council should be set up under law to examine and report on a range of issues including Work Permits for legal migrants, Identity Cards for all residents, a

National Migration Law, a National Refugee Law, review of the Citizenship Act, the Illegal Migrants Determination by Tribunal Act and the Foreigners Act.
[Para 9.23(vii)]

(206) Local communities should be involved in the monitoring of our borders, in association with the local police and the Border Security Force.
[Para 9.23(viii)]

(207) As regards Nagaland, the Naga Councils should be replaced by elected representatives of various Naga society groups with an intermediary tier at the district level. Village Development Boards should be less dependent on State and receive more Centrally-sponsored funds.
[Para 9.25]
(208) As regards Assam, –

(i) the Sixth Schedule should be extended to the Bodoland Autonomous Council with protection for non-tribal, non-Bodo groups,
(ii) other Autonomous Councils be upgraded to Auto-nomous Development Councils with more Central funds for infrastructure development; within the purview of the 73rd Amendment but also using traditional governing systems at the village level.
[Para 9.28]

(209) As regards Meghalaya, –

(1) A tier of village governance should be created for a village or a group of villages in the Autonomous District Councils, comprising of elected persons from the traditional systems plus from existing village councils with not more than 15 persons at each village unit.

(2) The number of seats in each of the Autonomous District Councils in Meghalaya should be increased by 10 seats, i.e., to a total number of 40 seats. Of the 10 additional seats, having regard to the non-representation of women and non-tribals, the Governor may nominate up to five members from these categories to each of the ADCs. The other five may be elected as follows:-
(a) By Syiems and Myntris, from among themselves to the Khasi Autonomous Council.
(b) By Dolois from among themselves to the Jaintia Autonomous District Council; and
(c) By Nokmas from among themselves to the Garo Autonomous District Council.
[Para 9.29]

(210) As regards Tripura, –

(i) The changes which may be made in respect of other Autonomous Councils should also apply in respect of the Autonomous District Council(s) in Tripura.
(ii) The number of elected members in the Council should be increased from 28 to 32.
(iii) The number of nominated members should be increased to six from the current two. The existing non-tribal seats (currently, they have three elected seats) be converted to tribal seats. Three non-tribals may be nominated by the Governor and three tribal women may be nominated by the Chief Executive Member.
[Para 9.30]
(211) As regards Mizoram, –

(i) An intermediary elected 30-member tier should be developed at the district level in areas not covered by the Sixth Schedule, i.e., excluding the Chakma, Lai and Mara District Autonomous Councils. There would thus be two tiers below the State Legislature: the District and the Village.
(ii) Village Councils in non-Scheduled areas should be given more administrative and judicial powers; two or more villages be combined to form one village council, given the small population in the State.
(iii) Consideration should be given to groups seeking Sixth Schedule status, depending on viability of the demand, including size of population, territorial and ethnic contiguity.
(iv) Central funding as outlined in general recommendations should be provided to the ADCs.
(v) Nominated seats for women, non-tribals and Sixth Schedule tribes in non-scheduled area (not to exceed six over and above the size of the Councils, making a total of 36 members); current size of ADCs should be increased to 30 with a similar provision for women and non-scheduled tribes.
[Para 9.31]

(212) As regards Manipur,

(i) the provisions of the Sixth Schedule should be extended to hill districts of the State,
(ii) the 73rd Amendment should be implemented vigorously in the areas of the plains where, despite elections, the system is virtually non-existent.
[Para 9.32]

CHAPTER 10
PACE OF SOCIO-ECONOMIC CHANGE AND DEVELOPMENT

(213) The Citizens' Charters be prepared by every service providing department/agency to enumerate the entitlements of the citizens. In case a citizen fails to receive the public goods and the services in the manner and to the extent set out in such charters, he/she should have recourse to an easy and effective system of grievance redressal through chartered Ombudsman. These citizen's charters should include specifically the entitlements of citizens belonging to Scheduled Castes (SCs), Scheduled Tribes (STs) and other deprived classes. In the case of these deprived classes the charters can with advantage provide for National and State Commission for SCs, STs, BCs (Backward Classes), Minorities, women, safai karamcharis to function effectively as ombudsman-bodies. The charter of these National and State Commissions and the way they are constituted should be such as to facilitate the role, inter alia, as ombudsman-bodies for different deprived classes.
[Para 10.3.2]

(214) The Civil Services Boards, recommended to be set up under Chapter 6 for considering promotions and placements, should be directed to specifically consider the performance of officers in promoting the welfare of Scheduled Castes, scheduled tribes and other deprived categories. When officers are being considered for promotion and placement economic agencies/ministries, weightage should be given to officers who have worked conscientiously and efficiently to implement constitutional values and norms under the law and rules and regulations for the welfare, development and empowerment of the above disadvantaged categories and those who have failed in this and those who have not worked at least for five years in the areas and sectors pertaining to these categories should be excluded from placements in economic ministries/agencies. For this purpose, the provision should be made for Social Justice Clearance before an officer of class I or class II is promoted along the lines detailed in para 3.2 at pages 1390-1391 of Book-3, Vol.II.
[Para 10.3.3]

(215) Reservation for members of the SCs and the STs should be brought under the purview of a statute covering all aspects of reservation, as detailed in para 8.10 at pages 1406-1408 of Book-3, Vol.II, including setting up Arakshan Nyaya Adalats or Tribunal to adjudicate upon all cases and disputes pertaining to reservation in posts and vacancies in Government, Public Sector, Banks and other financial institutions, Universities and all other institutions and organisations to which reservations are and become applicable. These Tribunals should have the status of High Courts, appeals lying only to the Supreme Court. These Tribunals should have their main Bench at Delhi and other Benches in the States. The Chairperson, Vice-Chairperson and other Members of the Tribunal and its benches should be selected on the basis of their record in the implementation of Reservation in their earlier positions. The statute should, inter alia, have a penal provision including imprisonment for those convicted of wilfully or negligently failing to implement reservation. The statute and related provisions should be brought under the Ninth Schedule to the Constitution.
[Para 10.3.4]

(216) The three Constitution amendments enacted in the last two years to undo the harm done in 1997 to the long pre-existing rights of SCs and STs in reservations should be put into effect forthwith. The Central and State Governments should amend the executive orders issued in 1997 regarding the roster and restore the pre-1996 roster. This should also be brought under the purview of the statute mentioned above.

[Para 10.3.5]

(217) The Reservation for backward classes should also be brought under a statute which, while containing the specificities of reservation for BCs should also contain provisions for Arakshan Nyaya Adalats or Tribunal for providing Justice in reservation, penal provisions, etc. as recommended in the case of the statute in respect of SCs and STs.
[Para 10.3.6]

(218) It should be mandatorily stipulated in the Memoranda of Understanding (M.O.Us.) of privatisation or dis-investment of public sector undertakings that the policy of reservation in favour of SCs, STs and BCs shall be continued even after privatisation or dis-investment in the same form as it exists in the Government and this should also be incorporated in the respective statutes of reservation. As a measure of social integration there should be a half per cent reservation for children of parents one of whom is SC/ST and the other parent is non-SC/non-ST and this reservation should be termed as reservation for the Casteless.
[Para 10.3.7]

(219) In view of the weighty opinion against the formal introduction of reservation in the higher judiciary, and the fact that over fifty years, the progress of education, however tardy, has certainly produced adequate number of persons of the SC, ST and BC in every State who possess the required qualifications, having necessary integrity, character and acumen required for Judges of Supreme Court and High Courts for appointment as Judge of the superior judiciary, a way could and should, therefore, be found to bring a reasonable number of SCs, STs and BCs on to the Benches of the Supreme Court and High Courts in the same way in which, in practice, it is found is followed in respect of advocates from different social segments/regions of the country/States or different religious communities so that on the one hand the overwhelming opinion against formal reservation in the Supreme Court and High Courts is respected and on the other hand, the feeling of alienation of the vast majority of Indians comprising SCs, STs and BCs that, in spite of having persons of requisite calibre and character among them, they are being ignored in the appointment of Judges, is resolved.
[Para 10.3.9]

(220) There should be reservation for SCs, STs and BCs (including BC minorities and especially More and Most Backward classes), with a due proportion of women from each of these categories in the matter of allotment of shops under the public distribution system, and other allotments like petrol stations, gas agencies, etc. for distribution of commodities by public authority. There is need for support mechanism to help entrepreneurs among these deprived sections to help them to come up in these business ventures. These measures should be taken on the lines as spelt out in para 4.6 at page 1393 of Book-3 Vol.II.
[Para 10.3.10]

(221) Massive programmes of employment should be undertaken and expanded to cover all such people and provide them employment at statutory minimum wage fixed for agricultural labourers at least for 80 days in the year over and above the unsteady employment they normally have. The nature of the work to be undertaken, the mode of payment of wages etc. should be as detailed in para 4.5 at pages 1392 to 1393 of Book-3 of Volume-II. Inclusion of Right to Work as a fundamental right has been recommended in para 3.13.2 of this Report and this will provide the necessary constitutional base and support for this programme.
[Para 10.3.11]

(222) Residential schools for SCs and STs should be established in every district in the country – one each for SC boys and SC girls, and ST boys and ST girls, as one item of an important package of comprehensive measures required for the development and empowerment of SCs and STs. Similarly, the Commission recommends that residential schools should be set up for the BCs in every district, one each for BC boys and BC girls, including minorities who belong to BCs and with special attention to More Backward and Most Backward classes among BCs. The proportion of the students of the specific category of weaker sections (say 75 per cent) and of other social categories (say 25 per cent), the principles of location, methodology of covering the Minority B.C., phasing and funding, mode of selection of the candidates, management etc. should be as detailed in paras 5.4 and 6.2 at pages 1395 to 1397 of Book 3 of Volume II. This system has got the support of the precedent and experience for the last two decades in Andhra Pradesh state, providing ground for hope in this important and indispensable measure. In addition, the Commission recommends that it is also necessary to see that the SCs, STs and BCs especially the More and Most Backward classes of BCs from poor and middle-class families get due benefit of good and prestigious private educational institutions in the country as well as in foreign educational institutions at all levels and in all disciplines, at state cost. Funding for this can be found by measures outlined in sub-para (v) of para 5.4 at page 1396 of Book 3 of Volume II. The measures detailed in sub para (ii) and (iv) of para 5.4 at pages 1395 and 1396 of Book 3 of Volume II should be followed in the matter.
[Para 10.4.1]

(223) Incentives should be offered to students to prepare for such courses of study in technical, vocational, scientific and professional disciplines. Only a massive transfer of resources to the educational programmes for the scheduled castes and scheduled tribes will enable us to achieve the kind of quantitative expansion needed to bring these communities on par with others in terms of skills and knowledge base to engage with the modern world. It is only then that they would be in a position to compete on the basis of their own strength and rise to the leadership role in different spheres of public life. This aspect of measures for building up a reservoir of highly educated professional, scientific and technological manpower among these categories in population equivalent proportion should be borne in mind along with its earlier recommendations regarding residential schools of high quality and elementary education, and provisions and outlays should be made accordingly.
[Para 10.4.3]

(224) Social policy should aim at enabling the SCs, STs and BCs (including BC minorities and especially the More and Most Backward Classes among BCs) and with particular attention to the girls in each of these categories to compete on equal terms with the general category. This was always necessary but this becomes more important and increasingly urgent in the context of a knowledge society that is emerging. Reservation has helped the above deprived categories to enter state educational institutions from which they had been debarred and / or otherwise excluded in the past. Reservation continues to be necessary since these adverse factors have not ceased to exist. But with the growth of high quality educational institutions built up by the wealthier sections, almost entirely drawn from non-SC, non-ST, non-BC categories, as a high quality stream distinct and separate from the state educational system, it becomes important to ensure that other measures in addition to reservations are introduced. Without these measures, along with the Commissions recommendations on elementary education, the gap between the SC, ST and BC on the one hand and the rest of society will inexorably continue and even be widened.
[Para 10.4.4]

(225) The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, should be strictly enforced to bring to an early end to this degrading practice of manual scavenging so offensive to human dignity without abridgement of the employment and income of existing Safai Karamcharis. Automatic applicability of the Act to all States should be brought about by the amendment suggested in para 7.2 at page 1399 of Book 3 of Volume II. Further, the specifics and details of the abolition of the manual scavenging system and the liberation and rehabilitation of safai karamcharis and protection of safai karamcharis during the transition period should be as detailed in para 7.3 of pages 1399 to 1401 of Book 3 of Volume II, including its incorporation in the System of Social Justice Clearance of officers at the time of their consideration for promotion. Limitations placed on the National Commission for Safai Karamcharis should be removed and it should be given the same powers and functional autonomy as is being enjoyed by the National Human Rights Commission; it should be adequately equipped to achieve its objective of total liberation and full rehabilitation of safai karamcharis. This should form an integral part of a National Sanitation Policy-cum-National Social Justice Policy.
[Para 10.5]

(226) The bleak situation will continue to bedevil the SCs and STs and the nation unless appropriate new institutions are created to take charge of the full quantum of outlay of SCP and TSP (i.e. outlay not less than the population equivalent proportion of the total plan outlay of the Centre/each State) and manned by competent experts of SCs and STs and others genuinely working for them, to formulate Plans in accordance with the developmental needs and priorities of the SCs and STs and ensure that these plans are implemented effectively. This new institutional system should consist of an integrated network of National Development Council for SCs and STs, and National SCs and STs Development Authority, State SCs and STs Development Authorities and District SCs and STs Development Authorities. Out of the total plan outlay of the Centre and of each State, before sectoral allocations are made, an outlay equivalent to the population proportion of SCs and STs should be placed at the disposal of the National and respective State Authorities, as the corpus of SCP and TsP for formulation of plans in accordance with the needs and priorities of SC & ST. For this, the system as detailed in para 9.2 at pages 1409 to 1411 of Book-3, Volume-II should be established. The schemes as illustrated in sub-para (9) of para 9.2 at pages 1410-1411 of Book-3, Volume-II should also be taken up on a massive scale. This will at one stroke remove the various limitations and difficulties faced by the SCP and TSP and create a powerful, integrated instrument of social transformation based on the vision of economic liberation, educational equality and social dignity of the SCs and STs.
[Para 10.6.2]

(227) Land reforms involving distribution and allotment of lands from different sources (i.e. Government lands not required for genuine public use, Bhoodan lands, ceiling surplus lands, etc.) to the SCs and STs along with supportive mechanism in the shape of supply of subsidised capital and credit and extension be made, and development of these lands through irrigation and other means be undertaken. In this context, the measures recommended at (b) of sub-para (9) of para 9.2 at page 1410 of Book-3, Volume-II and in para 14(i) to (vi) at pages 1416 to 1417 of Book-3, Volume-II should be implemented. Similarly, with regard to enforcement of the Minimum Wages Act for agricultural labour, the methodology recommended at (c) of sub-para (9) of para 9.2 of page 1410 Book-3, Volume-II should be followed. Strong legal action is needed to prevent alienation of lands belonging to the tribal communities and effective prior rehabilitation of tribals before displacement due to developmental projects. For this purpose, the measures listed in para 13.2 at page 1414 to 1415 of Book-3, Volume-II should be undertaken. Additionally, the tribal

communities have to be associated with the management of forest resources, for not only their livelihoods, but also for protecting their way of life and cultural identity which are indissolubly linked to forests. For this purpose, action as recommended in sub-paras (10) and (11) of para 13.2 at page 1416 of Book-3, Volume-II should be taken.
[Para 10.7.1]

(228) In the matter of harmonising the preservation of the land ownership of STs, industrial and other development, action should be taken as outlined in sub-paras (6), (8) and (9) of para 13.2 of pages 1415 to 1416 of Book-3, Volume-II.
[Para 10.7.2]

(229) Special safeguards should be provided to protect the wholesome traditions of the cultural heritage and of the intellectual property rights of the tribal people. This is no less important for the tribal identity than the effort to prevent alienation of land and land-related institutional rights of tribal people.
[Para 10.7.3]

(230) All areas governed by the Fifth Schedule to the Constitution should be forthwith transferred to the Sixth Schedule extending the applicability of the Sixth Schedule to tribal areas other than the North Eastern States to which alone the Sixth Schedule now applies, and all tribal areas which are neither in the Fifth Schedule nor in the Sixth Schedule should also be brought forthwith under the Sixth Schedule. Special programmes of training and orientation for the elected representatives of the Sixth Schedule bodies and related officials should be undertaken and conducted regularly in order to secure the full potential of local developmental and administrative autonomy envisaged under the Sixth Schedule.
[Para 10.7.4]

(231) The Government should step in firmly and clearly, if the gap is to be bridged between private prejudices, in the name of "efficiency" on the one hand and the just aspirations of the SC, ST, BC including BC minorities, and women. For this, the Government should take the initiative along the lines suggested in para 11.3 at pages 1412 and 1413 of Book-3, Volume-II.
[Para 10.7.5]

(232) Further, the Government should examine other economic and activity sectors at every level of each such sector and see whether the SCs and STs are adequately represented in each of them. If they are not, remedial measures either through reservation or through other means should be undertaken to see that they are adequately represented at every level in every such sector. Similar action should also be taken with regard to backward classes including BC minorities, especially More and Most Backward Classes and women of all categories. This is possible, if non-economic prejudices are excluded, without watering down the genuine requirements of efficiency.
[Para 10.7.6]

(233) Agriculturists and other traditional producing classes face certain adverse effects of sudden and unprepared exposure to the regimes of WTO, IPR, etc. In order to protect them from these adverse effects while at the same time to secure the benefits of those regimes, a national convention should be convened involving Ministers in charge of Ministries connected with globalisation and Ministers in charge of Agriculture and other sectors of traditional produce and authentic representatives of the peasant organizations as well as organisations of other traditional producing classes, to identify remedial Steps arrive at a consensus about them and these should be implemented quickly. There should be a continuing mechanism involving all these to

continuously monitor implementation and corrections and modifications required from time to time.
[Para 10.7.7]

(234) Agriculturists and many other traditional producing classes suffer from the adverse effects of natural calamities like drought, cyclone, floods, etc. A similar national convention should identify the measures required to protect them from such adverse effects of natural calamities including crop insurance, preparedness etc., arrive at a consensus about these measures and institute a continuing machinery of continuous monitoring and corrections and modifications.
[Para 10.7.8]

(235) On the one hand, there should be an effective legal structure to protect the SCs and STs against atrocities and discriminatory practices based on untouchability and along with such structure and its efficient functioning and on the other hand, there should also be attitudinal change of a profound nature in the general society.
[Para 10.8.1]

(236) With regard to legal structure, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 needs to be strengthened and its effective enforcement ensured. This include the establishment of special courts exclusively to try offences under this Act, inclusion of certain crimes in the list of atrocities, certain penal provisions where they do not exist, appropriate plugging of certain loopholes and comprehensive rehabilitation of victims and so on. For this purpose, the measures suggested in para 8.2.1, 8.2.2, 8.2.3, 8.3 and 8.4 (a) to (p) of Book-3, Vol.II at pages 1401 to 1404 should be taken.
[Para 10.8.2]

(237) Regarding untouchability which continues to be widely prevalent in old classic forms as well as in new forms in line with modern developments, multi-pronged measures covering human rights education, moral education, building up of a strong democratic movement against untouchability and effective punitive action under the Protection of Civil Right Acts, 1955 (PCR Act) are required. In view of this, the entire gamut of measures suggested in paras 8.6 to 8.8 at pages 1404 and 1405, Book-3, Vol.II should be taken.
[Para 10.8.3]

(238) The National Science and Technology Commission referred to in Chapter 6 should also promote measures for extending the umbrella of modern science and technology and higher scientific and technological research to cover SCs, STs and BCs, women and other poor sections of the society, devise means by which they can also be introduced into this field and potential talent among them identified and nurtured so that they also are enabled to contribute to the advancement of higher scientific and technological research in the country and so that there is no feeling that they are shut out from this important area on account of non-scientific prejudices.
[Para 10.9]

(239) The Constitution of India contains distinct provisions for the protection and promotion of the interests of Scheduled Castes and Scheduled Tribes, Backward classes, women, minorities and other weaker sections. It is necessary to strengthen these provisions by amendments, etc. and certain other similar steps. Accordingly, the amendments to the Constitution listed in para 15 at pages 1417 and 1418 of Book-3, Vol.II, covering articles 46, 335, 16, 15 and List III of the Seventh Schedule should be carried out.
[Para 10.10]

(240) As regards the minorities, the following shall be implemented:-
(a) Steps should be taken for improvement of educational standards amongst the minority communities. Special programmes should be drawn up after the widest consultation with the leaders of minority communities including leaders of BCs, SCs and STs among Minorities from academic, professional, business, and socio-political spheres and from low-occupational spheres. Such programmes should be generously funded. Only educational and cultural advancement will help the cause of national integration as well as raise the capabilities of the communities. This is the high road to national cohesion.

(b) At present the political representation of minority communities in legislatures, especially Muslims, has fallen well below their proportion of population. The proportion of BCs among them is next to nil. This can lead to a sense of alienation. It is recommended that in situations of this kind, it is incumbent for political parties to build up leadership potential in the minority communities, including BCs, SCs and STs among them, for participation in political life. The role of the state for strengthening the pluralism of Indian polity has to be emphasised.

(c) Backward classes belonging to religious minorities who have been identified and included in the list of backward classes and who, in fact, constitute the bulk of the population of religious minorities should be taken up with special care along with their Hindu counterparts in the developmental efforts for the backward classes. This should be on the pattern of the approach to the development of Backward Classes formulated by the Working Group for the Development and Empowerment of Backward Classes in the Tenth Plan referred to separately under Backward Classes.

(d) An effort needs to be made to carry out special recruitment of persons belonging to the underrepresented minority communities in the police forces of States, para military forces and armed forces.
[Para 10.11.2]

(241) In every State, the linguistic minorities should be provided the facility of having instruction for their children at elementary stage of education in their mother tongue. Numerous recommendations in this behalf and other matters have been made by the Commissioner for Linguistic Minorities in his successive Annual Reports regarding the various problems faced by the linguistic minorities. The Government of India in the Ministry of Social Justice and Empowerment and the Ministry of Human Resources Development should collate all these recommendations and see that substantive action is taken on each of them.
[Para 10.11.3]

(242) The denotified tribes/communities have been wrongly stigmatized as crime prone and subjected to highhanded treatment as well as exploitation by the representatives of law and order as well as by the general society. Some of them are included in the list of Scheduled Tribes and others are in the list of Scheduled Castes and list of backward classes. The special approach to their development has been delineated and emphasized in the Reports of the Working Groups for the Development of Scheduled Tribes, Scheduled Castes and Backward Classes in successive Plans and also in the Annual Reports of the Commissioners for Scheduled Castes and Scheduled Tribes, National Commission for Scheduled Castes and Scheduled Tribes and the National Commission for Backward Classes. There are also special reports available on de-notified tribes. Their recommendations have not received attention. The Ministry of Social Justice and Empowerment and the Ministry of Tribal Welfare should collate all these materials and

recommendations contained in the reports of the working groups and the reports of the National Commissions and other reports referred to and strengthen the programmes for the economic development, educational development, generation of employment opportunities, social liberation and full rehabilitation of denotified tribes. Whatever has been said about vimuktajatis also holds good for nomadic and semi-nomadic tribes/communities. Similar action should be taken in respect of nomadic and semi-nomadic tribes/communities as done in the case of de-notified tribes or vimuktajatis. The continued plight of these groups of communities distributed in the list of Scheduled Castes, Scheduled Tribes and backward classes is an eloquent illustration of the failure of the machinery for planning, financial resources allocation and budgeting and administration in the country to seriously follow the mandate of the Constitution including article 46. The setting up of an integrated net work of National Scheduled Castes and Scheduled Tribes Development Authority, etc. recommended in para 10.5.2 to 10.5.3 will provide a structural mechanism to deal in a practical way with the vimuktajatis as well as nomadic and semi-nomadic tribes/ communities within the frame work of the SCP and TsP. Similarly the approach to the development of backward classes referred to at para 10.14 contains the approach to deal in a practical way with the Vimuktajatis and nomadic and semi-nomadic tribes/communities who are in Backward Class list.
[Para 10.12.1]

(243) The Commission also considered the representations made on behalf of the De-notified and Nomadic Tribal Rights Action Group and decided to forward them to the Ministry of Social Justice & Empowerment with the suggestion that they may examine the same preferably through a Commission.
[Para 10.12.2]

(244) The Union legislation for agricultural workers, drafted as far back as 1978-80, should be introduced and passed immediately. A realistic scheme of credible implementation of minimum wages Acts with particular attention to agricultural labours, relying to a suitable degree on the district Collectors/Dy. Commissioners and district superintendents of police, should be immediately put into action. For this purpose the measures suggested in para 17.2 at page 1413 of Book 3 Vol.II should be followed.
[Para 10.13.2]

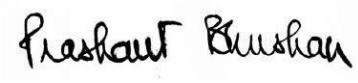
(245) Despite prohibition of begar and other forms of forced labour by the Constitution, the practice of bonded labour has not ended as it is patronised by the most powerful sections in the rural areas. Child labour too is widespread. In order to deal effectively with this problem in keeping with the mandate of the Constitution, the Commission recommends that a fully empowered National Authority for the Liberation and Rehabilitation of bonded labour, as recommended by the Commission for Rural Labour in 1990-91, should be set up immediately along with similar authorities at the State level. In addition, simultaneous rehabilitation of released Bonded Labourers and education for released bonded child labourers and other measures referred to in para 19.2 at page 1414 of Book 3,Vol.II should be taken.
[Para 10.14]

(246) The Government should immediately implement every one of the recommendations of the Working Group on Employment of Backward Classes in the Tenth Plan which covers all aspects and fields of their development – Economic, Educational, social, employment, reserva-tion, etc. – taking in with particular care those backward classes who belong to religious minorities along with their Hindu counterparts in a cohesive manner. For example, some of the residential talent schools earmarked for Backward Classes should be located in areas of concentration of Muslim

B.Cs. Further there should be residential talent schools for backward classes as separately recommended for SCs and STs at the rate of one each for boys and girls in each district, 75% being taken from backward classes and 25% from other categories. The Government should without any delay introduce reservation for backward classes in seats in educational institutions since absence of promotion of their education through reservation and other means when there is reservation of employment is anomalous.
[Para 10.15]

(247) Action in accordance with the suggestions made in para 16.2 at page 1412 of Book 3 Vol.II, covering reservation, development, empower-ment, health including malnutrition and maternal anaemia and protection against violence should be taken.
[Para 10.16]

(248) The problems relating to prostitution, child prostitutes and children of prostitutes have been the subject of a landmark judgment of the Supreme Court in Gaurav Jain's case of 9th July, 1997 and the Report of Committee of Secretaries on Prostitution, Child Prostitutes and children of Prostitutes set up in 1997 as explained in para 20.1 and 20.2 at pages 1414 to 1415 of Book 3 Vol.II. In respect of this area of problem, the Government should take action according to the suggestion listed at para 20.3 at page 1415 of Book 3 of Vol. II, covering implementation of the judgement and the Secretaries' report, eliminating the Devadasi system, provision of development and education and prevention of HIV / AIDS.
[Para 10.17]



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